

No. 20-16890

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DARLENE YAZZIE, CAROLINE BEGAY, LESLIE BEGAY,
IRENE ROY, DONNA WILLIAMS and ALFRED MCROYE,

Plaintiffs-Appellants,

v.

KATIE HOBBS, in her official capacity as Secretary
of State for the State of Arizona

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Arizona
No. CV-20-08222-PCT-GMS
Hon. G. Murray Snow

APPELLANTS' EXCERPTS OF RECORD

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

Darlene Yazzie, et al.,
Plaintiffs,
v.
Katie Hobbs,
Defendant.

No. CV-20-08222-PCT-GMS
ORDER

Pending before this Court is Darlene Yazzie, Caroline Begay, Leslie Begay, Irene Roy, Donna Williams, and Alfred McRoye (collectively, “Plaintiffs”)’ Motion for Preliminary Injunction (Doc. 9) and Defendant Katie Hobbs (“Defendant”)’ Motion in Limine (Doc. 51). For the reasons stated below, Plaintiffs’ Motion for Preliminary Injunction is denied and Defendant’s Motion in Limine is denied.

BACKGROUND

On the Navajo Nation reservation in Arizona, several variables make voting by mail difficult. Most Navajo Nation residents do not have access to standard mail service, meaning most do not have access to home delivery and must travel to retrieve their mail. (Doc. 9-3 at 15.) Lack of home delivery, combined with the lengthy distance many Navajo Nation residents have to travel to reach a post office and socioeconomic factors that make travel burdensome, makes accessing the postal service challenging for many Navajo Nation residents. *Id.* 15–16.

In Arizona, voters can opt to vote by mail. Arizona law provides that vote by mail

1 ballots “must be received by the county recorder or other officer in charge of elections or
2 deposited at any polling place in the county no later than 7:00 p.m. on election day”
3 (“Receipt Deadline”). A.R.S. § 16-548(a). Plaintiffs, whom are registered voters and
4 enrolled members of the Navajo Nation living on-reservation, oppose the Receipt Deadline
5 because they argue that the postal service and other circumstances on the reservation makes
6 it harder for Navajo Nation residents to meet the Deadline. (Doc. 9.)

7 Plaintiffs filed their Complaint on August 26, 2020. The Complaint asserts that the
8 Receipt Deadline violates Section 2 of the Voting Rights Act, the equal protection clause
9 of the United States Constitution, and Article 2, Section 21 of the Arizona Constitution.
10 (Doc. 1.) On September 2, 2020, Plaintiffs filed a Motion for Preliminary Injunction
11 seeking that Defendant count vote by mail ballots sent by Navajo Nation members living
12 on-reservation that are postmarked on or before Election Day (“Postmark Deadline”).
13 (Doc. 9.) Defendant subsequently filed a Motion in Limine, objecting to a declaration
14 submitted with Plaintiffs’ Motion for Preliminary Injunction and to testimony Plaintiffs
15 intended to offer at the hearing on Plaintiffs’ Motion. (Doc. 51.) On September 22, 2020,
16 this Court held an evidentiary hearing on Plaintiffs’ Motion.

17 DISCUSSION

18 I. Legal Standard

19 A preliminary injunction is “an extraordinary and drastic remedy, one that should
20 not be granted unless the movant, by a clear showing, carries the burden of persuasion.”
21 *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). A plaintiff seeking a preliminary
22 injunction must show that (1) it is likely to succeed on the merits; (2) it is likely to suffer
23 irreparable harm without an injunction; (3) the balance of equities tips in its favor; and
24 (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555
25 U.S. 7, 20 (2008). “A preliminary injunction may also be appropriate if a movant raises
26 ‘serious questions going to the merits’ and the ‘balance of hardships . . . tips sharply
27 towards’ it, as long as the second and third *Winter* factors are satisfied.” *Disney Enter.,*
28 *Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

1 Further, there is a heightened burden where a plaintiff seeks a mandatory
2 preliminary injunction, which should not be granted “unless the facts and law clearly favor
3 the plaintiff.” *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1441 (9th Cir. 1986)
4 (internal citation omitted); *see also Dahl v. HEM Pharms. Corp.*, 7 F.3d 1399, 1403 (9th
5 Cir. 1993) (“[M]andatory preliminary relief is subject to heightened scrutiny.”).

6 II. Analysis

7 In support of their request for a preliminary injunction, Plaintiffs claim the Receipt
8 Deadline violates section 2 of the Voting Rights Act and their rights under the federal and
9 state constitutions. Plaintiffs must show they are likely to succeed on these claims or at
10 least raise serious questions going to their merits to proceed in the preliminary injunction
11 analysis. For the following reasons, the Court finds Plaintiffs have not met this burden.

12 A. Section 2 of the Voting Rights Act of 1965

13 Section 2(a) of the Voting Rights Act prohibits states from imposing any voting
14 qualifications that “results in a denial or abridgement of the right of any citizen of the
15 United States to vote on account of race or color.” 42 U.S.C. § 1973(a). “A violation . . .
16 is established if, based on the totality of the circumstances, it is shown that the political
17 processes leading to nomination or election in the State or political subdivision are not
18 equally open to participation” by racial minorities, in that they “have less opportunity than
19 other members of the electorate to participate in the political process and to elect
20 representatives of their choice.” 52 U.S.C. § 10301(b). A Section 2 violation can “be
21 established by proof of discriminatory results alone.” *Chisom v. Roemer*, 501 U.S. 380,
22 404 (1991).

23 In evaluating a vote-denial challenge, such as the case here, the Ninth Circuit
24 employs a two-step process. *Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989, 1012 (9th
25 Cir. 2020). The first question is whether the “challenged standard, practice or procedure
26 results in a disparate burden on members of the protected class.” *Id.* “[P]roof of [a] causal
27 connection between the challenged voting practice and a prohibited discriminatory result
28 is crucial.” *Gonzalez v. Arizona*, 677 F.3d 383, 405 (9th Cir. 2012) (internal quotation

1 marks omitted). A “bare statistical showing” of a disparate impact on a racial minority,
2 alone, is insufficient to show a disparate burden. *See Smith v. Salt River Project Agric.*
3 *Improvement & Power Dist.*, 109 F.3d 586, 595 (9th Cir. 1997).

4 If a court finds that the challenged practice results in a disparate burden, the next
5 step is to ask whether, under the totality of the circumstances, “there is a relationship
6 between the challenged standard, practice, or procedure, on the one hand, and social and
7 historical conditions on the other.” *Hobbs*, 948 F.3d at 1012 (internal quotation marks
8 omitted). This step is not required if a court finds that the challenged voting practices do
9 not impose a disparate burden on minority voters. *See Ohio Democratic Party v. Husted*,
10 834 F.3d 620, 638 (6th Cir. 2016).

11 Plaintiffs argue the Receipt Deadline results in a disparate burden because the
12 deadline leads to disenfranchisement, Navajo voters have less time to consider their ballots
13 than non-Native voters, and Navajo voters have less access to vote by mail in general
14 because of socioeconomic factors. (Doc. 9 at 19–20.) To make this showing,¹ Plaintiffs
15 compared mail delivery times from five locations on the Navajo Nation reservation to their
16 respective county recorder’s office with mail delivery times from off-reservation Arizona
17 cities, including Scottsdale, Flagstaff, Holbrook, and St. John’s, to their county recorder’s
18 office. (Doc. 9-3 at 32, 53-6 at 6–7.) According to Plaintiffs’ study, Certified First-Class
19 mail sent from the off-reservation cities arrived within one to two days while mail from the
20 reservation locations took between four and ten days. Plaintiffs then compared this data
21 with the time frame Arizonans have to send in their vote by mail ballots to meet the Receipt
22 Deadline. Arizona starts mailing out ballots to voters on the permanent early voting list on
23 October 7, 2020. (Doc. 53-3 at 1.) The last day Arizona voters can request a vote by mail

24
25 ¹ In addition to her Motion in Limine, Defendant objected to other evidence presented at
26 the September 22 hearing. As this Court is denying Plaintiffs’ Motion for Preliminary
27 Injunction and finds that Plaintiffs’ evidence, as conditionally admitted, does not change
28 the outcome, it admits the evidence offered at the hearing. As for the Motion in Limine,
in the end Plaintiffs’ proposed expert principally testified to facts that he had observed or
supervised. Plaintiffs acknowledged that he offered no opinion testimony. Thus, there
seems to be no necessity at present to certify the witness as an expert pursuant to Fed. R.
Ev. 702 for the purpose of offering opinions. Thus, the Motion in Limine is denied without
prejudice to its later reassertion if indicated.

1 ballot is October 23, 2020. (Doc. 9-3 at 27.) With this data, Plaintiffs estimated that a
2 Scottsdale voter on the permanent early voting list will have 25 days to consider their ballot
3 and meet the Receipt Deadline while a Dennehotso voter, where mail may take 10 days to
4 deliver, only has seven days to consider their ballot. (Doc. 53-3 at 1.) Plaintiffs further
5 showed that a Scottsdale voter that requests a ballot on October 23 has nine days to consider
6 their ballot, while a Dennehotso voter does not have enough time to mail their ballot at all.
7 *Id.* at 2.

8 Plaintiffs also compared the number of ballot drop-off locations per square mile in
9 Navajo Nation versus in Scottsdale, Flagstaff, Holbrook, and St. John's. (Doc. 53-5 at 1.)
10 Plaintiffs showed great discrepancies in this comparison. For instance, in Scottsdale there
11 is one election day polling location per 13.14 square miles whereas in Navajo Nation there
12 is only one location per 306 square miles.

13 In addition, Plaintiffs argue that several other factors make it difficult for Navajo
14 members living on-reservation to meet the Receipt Deadline. These factors include that it
15 is difficult for many Navajo Nation members to access the postal service because of lack
16 of home mail delivery, the lengthy distance it takes to get to the post office on-reservation,
17 and the fact that many Navajo Nation members have insufficient funds to travel to a post
18 office. (Doc. 9-3 at 16.) Additionally, post offices are generally not open for as many
19 hours on-reservation as they are off-reservation. (Doc. 53-6 at 7.)

20 Taken together, Plaintiffs' showing fails to demonstrate that the Receipt Deadline
21 results in a disparate burden on Navajo Nation members living on-reservation. Plaintiffs
22 present no evidence that Navajo voters' ballots are disproportionately thrown out because
23 of the Receipt Deadline. As Arizona's Receipt Deadline has been in law for 23 years, the
24 Court is entitled to expect such evidence. *Ariz. Laws 1997, 2nd Spec. Sess. Ch. 5 (S.B.*
25 *1003)*. Additionally, the evidence Plaintiffs do present does not show whether the Receipt
26 Deadline disproportionately impacts Navajo voters *as a protected class*. Plaintiffs only
27 compare mail delivery times and distance to ballot drop-off locations on the reservation to
28 cities, not to other rural areas of Arizona. Therefore, it is not clear whether Plaintiffs'

1 evidence shows disparities as to Navajo voters, a protected class, versus rural voters, a non-
2 protected class.

3 To the extent Plaintiffs' evidence can be construed as showing disparities faced by
4 Navajo voters, Plaintiffs still have not shown that the Receipt Deadline results in a disparate
5 burden. Plaintiffs' evidence, if accurate, shows that some Navajo voters have, at worst,
6 only seven days to consider their ballots and still send them in on time. This showing,
7 however, does not take into consideration that mailing a ballot is not the only way to submit
8 a vote by mail ballot. Navajo voters may drop their ballot off at a county recorder's office,
9 ballot drop-box, in-person early voting location, or a voting location on election day. (Doc.
10 48-1 at 48.) Therefore, even if a Navajo voter waits until October 23 to request a ballot
11 and does not have time to mail the ballot in, that Navajo voter still has several options to
12 get their ballot in on time. In addition, Navajo voters do not necessarily have less time to
13 consider their vote than other voters. Before ballots are sent out, Arizona sends a voter
14 education guide to voters with statements from each candidate, which allows voters to
15 begin considering their vote early. *Id.* at 51. Navajo voters can also utilize the alternative
16 options for returning ballots to optimize their time to consider their ballots.

17 As Navajo voters have access to several voting options that allow them to turn their
18 ballots in later than the return posting of their ballot allows, Plaintiffs have not shown a
19 disparate burden. Plaintiffs' showing is far weaker than the showings made in successful
20 and unsuccessful Section 2 lawsuits. *Compare Democratic Nat'l Comm.*, 948 F.3d at 1014
21 (finding a disparate burden where Native American, Hispanic, and African American
22 voters were twice as likely to have their out-of-precinct votes not counted), and *League of*
23 *Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 245 (4th Cir. 2014) (finding
24 a disparate burden where the state eliminated a voting option that black voters used
25 disproportionately more than white voters), with *Gonzalez*, 677 F.3d at 406, 443 (finding
26 no disparate burden, despite statistical evidence that Latino voters were overrepresented in
27 uncounted ballots, because no expert testified to the causal connection between the law at
28 issue and Latino voting rates).

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1 Plaintiffs argue the alternative forms to mailing a ballot are not adequate remedies
2 because there are far less early voting locations, ballot drop boxes, and election day polling
3 locations per square mile on the Navajo Nation reservation than other Arizona cities.
4 Again, Plaintiffs only compare Navajo Nation, a rural area, to cities, making it unclear
5 whether the distance Navajo voters must travel to access these alternative forms on the
6 reservation is any more severe than other rural parts of Arizona. Regardless, although
7 access to the postal service and these alternative forms may not be as simple for Navajo
8 voters as it is for Scottsdale voters, the Voting Rights Act is not intended to “sweep away
9 all election rules that result in a disparity in the convenience of voting.” *Lee v. Va. State*
10 *Bd. of Elections*, 843 F.3d 592, 601 (4th Cir. 2016). Finding a Section 2 violation for every
11 disparate inconvenience would mean, for example, that every polling place “would need
12 to be precisely located such that no group had to spend more time traveling to vote than
13 did any other.” *Id.* Although Plaintiffs certainly show that meeting the Receipt Deadline
14 is more *inconvenient* for Navajo voters than it is for certain voters, for the reasons already
15 discussed Plaintiffs do not make an adequate showing of a disparate burden.

16 This lawsuit is about whether a deadline for receiving ballots is unlawful. Many of
17 the issues Navajo voters face in accessing the postal service are not a result of the Receipt
18 Deadline and will not be remedied no matter when the deadline to receive ballots is. As
19 for any time pressure Plaintiffs uniquely face because of the Receipt Deadline, Arizona has
20 measures in place to alleviate that pressure. Consequently, Plaintiffs have not
21 demonstrated they are likely to succeed on this claim nor have they raised serious questions
22 as to its merits. As Plaintiffs do not make the requisite showing as to the first step in the
23 Section 2 analysis, the Court does not address the totality of the circumstances test.²

24 ² Plaintiffs’ last-minute request for a preliminary injunction also raises serious *Purcell*
25 concerns. In *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006), the Court cautioned against
26 injunctions right before elections, noting that court orders affecting elections “can
27 themselves result in voter confusion and consequent incentive to remain away from the
28 polls.” The Court reaffirmed this principle in *Republican Nat’l Comm. v. Democratic Nat’l*
Comm., 140 S. Ct. 1205, 1207 (2020) where the Court stated that it has “repeatedly
emphasized that lower federal courts should ordinarily not alter the election rules on the
eve of an election.” Here, Plaintiffs waited less than three months before the general
election to challenge a law that has been in place for 23 years. Defendant presented
evidence that a change to the Receipt Deadline for only a subset of the Arizona population

1 **B. Equal Protection under the Fourteenth Amendment**

2 “The Equal Protection Clause of the Fourteenth Amendment commands that no
3 State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’
4 which is essentially a direction that all persons similarly situated should be treated alike.”
5 *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457
6 U.S. 202, 216 (1982)). A plaintiff alleging denial of equal protection under 42 U.S.C.
7 § 1983 based on race must plead intentional or purposeful unlawful discrimination.
8 *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1026 (9th Cir. 1998). Evidence
9 of discriminatory impact is relevant to this inquiry, but this evidence alone is insufficient
10 except in the rare circumstance where the discriminatory impact is “unexplainable on
11 grounds other than race.” *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252,
12 266 (1977); *see, e.g., Gomillion v. Lightfoot*, 364 U.S. 339 (1960), *Yick Wo v. Hopkins*, 118
13 U.S. 356 (1886).

14 Plaintiffs argue the Receipt Deadline violates the Fourteenth Amendment because
15 the deadline, in conjunction with Arizona’s history of discrimination against Navajo voters,
16 limits voting by mail opportunities for Plaintiffs. (Doc. 9 at 21.) However, Plaintiffs have
17 provided no evidence on the reasons why Arizona enacted the Receipt Deadline.
18 Furthermore, as already discussed, Plaintiffs have provided no evidence that ballots from
19 Navajo voters living on-reservation are disproportionately rejected as compared to other
20 rural voters and have not made a strong showing that Plaintiffs are likely to be
21 disproportionately impacted by the Receipt Deadline. As Plaintiffs fall far below the
22 showing of discriminatory intent required by *Arlington Heights*, Plaintiffs have not
23 demonstrated that they will likely succeed on this claim or raised serious questions as to its
24 merits.

25
26 _____ will cause voter confusion about which deadline applies to them, complicate ballot
27 processing, and clash with the mandated timelines for other election laws. (Doc. 48-1 at
28 39–43.) They also presented evidence that the remedy sought would not be feasible and
would, itself, be unfair to other voters. Because of the disruption Plaintiffs’ proposed
remedy would likely cause and the timing of Plaintiffs’ suit, *Purcell* further counsels
against the issuance of a preliminary injunction.

1 **C. Free and Equal Elections Clause under the Arizona Constitution**

2 Article 2, Section 21 of the Arizona Constitution states that “elections shall be free
3 and equal, and no power, civil or military, shall at any time interfere to prevent the free
4 exercise of the right of suffrage.” In interpreting what protections Arizona’s framers
5 intended by this clause, the Arizona Court of Appeals considered how other states interpret
6 their similar constitutional provisions. *Chavez v. Brewer*, 222 Ariz. 309, 319, 214 P.3d
7 397, 407 (Ct. App. 2009). The court noted that other states generally interpret such clauses
8 to mean that a “free and equal” election is one where “the voter is not prevented from
9 casting a ballot by intimidation or threat of violence, or any other influence that would
10 deter the voter from exercising free will, and in which each vote is given the same weight
11 as every other ballot.” *Id.* Based on this review, the court did not delineate the entire scope
12 of what Arizona’s election clause covers but did conclude that the “free and equal” clause
13 is implicated when votes are not properly counted. *Id.* at 320, 408.

14 Plaintiffs argue Defendant violated Article 2, Section 21 because “Plaintiffs do not
15 have equal access to [voting by mail] procedures.” (Doc. 9 at 22.) However, Plaintiffs
16 have not presented evidence that aligns with the precedent from Arizona courts concerning
17 the interpretation of Article 2, Section 21 of the Arizona Constitution. Plaintiffs have
18 provided no evidence that, because of the Receipt Deadline, Navajo voters are unable to
19 cast a vote because of intimidation or lack of free will. Furthermore, Plaintiffs have
20 provided no evidence that Defendant selectively enforces the Receipt Deadline. As a
21 result, Plaintiffs will not likely succeed on the merits of this claim nor have Plaintiffs raised
22 serious questions as to the merits.

23 **CONCLUSION**

24 Because Plaintiffs have failed to establish that they are likely to succeed on any of
25 their claims, or even raise serious questions going to the merits of their claims, the Court
26 need not consider the existence of an irreparable injury. *Germon v. Times Mirror Co.*, 520
27 F.2d 786, 788 (9th Cir. 1975).

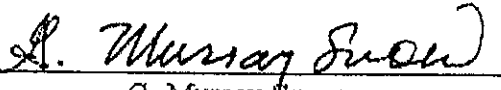
28 **IT IS HEREBY ORDERED** that Plaintiffs Darlene Yazzie, Caroline Begay, Leslie

1 Begay, Irene Roy, Donna Williams, and Alfred McRoy's Motion for Preliminary
2 Injunction (Doc. 9.) is **DENIED**.

3 **IT IS FURTHER ORDERED** that Defendant Katie Hobbs' Motion in Limine
4 (Doc. 51) is **DENIED** without prejudice.

5 **IT IS FURTHER ORDERED** that the Court will hold a telephonic status
6 conference **October 9, 2020 at 2:30 p.m.** Mountain Standard Time (Pacific Daylight
7 Time) to discuss the timeline for responses to Defendant's Motion to Dismiss. Defendant's
8 counsel shall set up a call-in number on or before **Noon, October 6, 2020** and disseminate
9 it to all parties, including the Court.

10 Dated this 25th day of September, 2020.

11 
12 _____
13 G. Murray Snow
14 Chief United States District Judge

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10 IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA

11
 12 BOBBY D. SANCHEZ, *et al.*,
 Plaintiffs,
 13 v.
 14 BARBARA K. CEGAVSKE, in her official
 capacity of Secretary of State for the State of
 15 Nevada, *et al.*,
 Defendants.
 16

Case No. 3:16-CV-00523 (MMD-WGC)

**STATEMENT OF INTEREST
 OF THE UNITED STATES
 OF AMERICA**

17
 18 The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C.
 19 § 517, which authorizes the Attorney General to attend to the interests of the United States in any
 20 pending lawsuit. This matter implicates the interpretation and application of Section 2 of the
 21 Voting Rights Act, 52 U.S.C. § 10301 (“Section 2”), a statute over which Congress accorded the
 22 Attorney General broad enforcement authority. *See* 52 U.S.C. § 10308(d). The United States has
 23 a substantial interest in ensuring Section 2’s proper interpretation and uniform enforcement around
 24 the country.
 25

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA- 1

1 The United States respectfully submits that Defendants' Responses in Opposition to
2 Plaintiffs' Emergency Motion for Preliminary Injunctive and Declaratory Relief misstate portions
3 of the established legal standard under Section 2.¹ Accordingly, the United States submits this
4 Statement for the limited purpose of articulating the appropriate legal standard.

5
6 **I. BACKGROUND**

7 On September 7, 2016, Plaintiffs—members of the Pyramid Lake Paiute Tribe and the
8 Walker River Paiute Tribe—sued the Nevada Secretary of State, Washoe and Mineral Counties,
9 and their respective officials (collectively “Defendants”), alleging, among other claims, that the
10 location of sites for in-person voter registration and in-person early voting in both Defendant
11 counties, and election-day voting in Washoe County (collectively “election sites”), discriminates
12 against Native Americans in violation of Section 2. Compl. ¶¶ 115-19 (ECF No. 1); Amend.
13 Compl. ¶¶ 114-18 (ECF No. 10). On September 20th, Plaintiffs filed an emergency motion for
14 preliminary injunctive relief and declaratory relief (“Motion”), seeking satellite election sites in
15 Schurz and Nixon, located on their respective reservations. Pls.' Mot. 37 (ECF No. 26). Plaintiffs
16 argue that absent relief, Native Americans living in Washoe and Mineral Counties will continue to
17 have less opportunity to participate in the November 8, 2016 general election compared to other
18 members of the electorate, in violation of the Voting Rights Act. Pls.' Mot. 2 (ECF No. 26).
19 Defendants filed their briefs in opposition to the Motion on September 29, 2016. Defs.' Mem.
20 (ECF Nos. 37, 38, 39).

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24 ¹ The Secretary of State, the Washoe County Defendants, and the Mineral County Defendants all filed briefs in
25 opposition to the Motion. Hereinafter, collectively they will be cited as “Defs.' Mem.” and individually cited as “Sec.
Mem.” (ECF No. 37), “Washoe Mem.” (ECF No. 38), and “Mineral Mem.” (ECF No. 39).

1 **II. SECTION 2 OF THE VOTING RIGHTS ACT**

2 Section 2 of the Voting Rights Act prohibits any state or political subdivision from
3 imposing or applying a “voting qualification,” “prerequisite to voting,” or “standard, practice, or
4 procedure” that “results in a denial or abridgement of the right of any citizen of the United States
5 to vote on account of race or color” or membership in a language minority group. 52 U.S.C.
6 § 10301(a). In 1982, Congress amended Section 2 to make clear that a violation can be established
7 by showing a discriminatory purpose or a discriminatory result. *See Thornburg v. Gingles*, 478
8 U.S. 30, 34-37, 43-45 (1986); S. Rep. No. 97-417, at 27-28 (1982)(Senate Report). Section 2(b)
9 provides that a violation:
10

11 is established if, based on the totality of circumstances, it is shown
12 that the political processes leading to nomination or election in the
13 State or political subdivision are not equally open to participation by
14 members of a [protected class] in that its members have less
15 opportunity than other members of the electorate to participate in
16 the political process and to elect representatives of their choice.

15 52 U.S.C. § 10301(b).

16 Courts have used a two-step analysis to determine whether the location of election sites or
17 limitations to early voting and voter registration result in denial or abridgment of the right to vote
18 under Section 2.² First, the reviewing court assesses whether the practices amount to material
19 limitations that bear more heavily on minority citizens than nonminority citizens. This assessment
20 incorporates both the likelihood that minority voters will face the burden and their relative ability
21

22
23 ² Most Section 2 cases address vote dilution: election structures that render even eligible voters who are fully able to
24 cast valid ballots without the equitable opportunity to elect representatives of choice. *See, e.g., LULAC v. Perry*, 548
25 U.S. 399 (2006). Nonetheless, “Section 2 prohibits all forms of voting discrimination, not just vote dilution.” *Gingles*,
478 U.S. at 45 n.10 (citing S. Rep. No. 97-417, at 30). This case concerns vote denial or abridgment.

1 to overcome that burden. *See, e.g., Veasey v. Abbott*, 830 F.3d 216, 2016 WL 3923868, at *17 (5th
2 Cir. 2016) (en banc); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 245 (4th
3 Cir. 2014), *stay granted*, 135 S. Ct. 6 (2014), *cert. denied*, 135 S. Ct. 1735 (2015); *see generally*
4 *Ohio State Conference of the NAACP v. Husted*, 768 F.3d 524, 550-51, 555-56 (6th Cir. 2014)
5 (hereinafter “NAACP”), *stay granted*, 135 S. Ct. 42 (2014), *vacated on other grounds*, 2014 WL
6 10384647, at *1 (6th Cir. Oct. 1, 2014); *Poor Bear v. Cnty. of Jackson*, No. 5:14-cv-5059, 2015
7 WL 1969760, at *6 (D.S.D. May 1, 2015); *Spirit Lake Tribe v. Benson Cnty.*, No. 2:10-cv-095,
8 2010 WL 4226614, at *3 (D.N.D. Oct. 21, 2010).³ Second, if a disparity is established, the
9 reviewing court engages in an “intensely local appraisal” of the “totality of the circumstances” in
10 the jurisdiction at issue to determine whether the challenged practice works in concert with
11 historical, social, and political conditions to produce a discriminatory result. *See League of*
12 *Women Voters*, 769 F.3d at 240-41; *Smith v. Salt River Project Agric. Improvement. & Power*
13 *Dist.*, 109 F.3d 586, 591 (9th Cir. 1997) (“[the Section 2] examination is intensely fact-based and
14 localized”); *Veasey*, 2016 WL 3923868, at *17; *Poor Bear*, 2015 WL 1969760, at *7 n.9; *Spirit*
15 *Lake Tribe*, 2010 WL 4226614, at *3.⁴

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18 The answer to this second question is informed in part by “the ‘typical’ factors that
19 Congress noted in Section 2’s legislative history,” generally known as the Senate Factors,⁵
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21 ³ *See also Gonzalez v. Arizona*, 677 F.3d 383, 406 (9th Cir. 2012) (en banc), *aff’d on other grounds sub nom. Arizona*
22 *v. Inter Tribal Council of Ariz.*, 133 S. Ct. 2247 (2013); *Miss. State Chapter, Operation PUSH v. Mabus*, 932 F.2d
23 400, 413 (5th Cir. 1991).

24 ⁴ *See also NAACP*, 768 F.3d at 556-57; *Gonzalez*, 677 F.3d at 407; *Operation PUSH*, 932 F.2d at 405.

25 ⁵ These “Senate Factors” are distinct from the three threshold factors the Supreme Court and subsequent courts have
used in vote dilution analyses — often called “Gingles factors”: that the applicable minority group can constitute a
single-member district, that the group is politically cohesive, and that bloc voting by the white majority usually defeats
(continued...)

1 although ““there is no requirement that any particular number of factors be proved, or that a
2 majority of them point one way or the other.”” *League of Women Voters*, 769 F.3d at 245 (quoting
3 *Gingles*, 478 U.S. at 45); *see also Veasey*, 2016 WL 3923868, at *17-19; *NAACP*, 768 F.3d at 554;
4 *Gonzales*, 677 F.3d at 405. These factors include:

- 5 1. the extent of any history of official discrimination in the state or political
6 subdivision that touched the right of the members of the minority group to register,
7 to vote, or otherwise to participate in the democratic process;
- 8 2. the extent to which voting in the elections of the state or political subdivision is
9 racially polarized;
- 10 3. the extent to which the state or political subdivision has used unusually large
11 election districts, majority vote requirements, anti-single shot provisions, or other
12 voting practices or procedures that may enhance the opportunity for discrimination
13 against the minority group;
- 14 4. if there is a candidate slating process, whether the members of the minority group
15 have been denied access to that process;
- 16 5. the extent to which members of the minority group in the state or political
17 subdivision bear the effects of discrimination in such areas as education,
18 employment and health, which hinder their ability to participate effectively in the
19 political process;
- 20 6. whether political campaigns have been characterized by overt or subtle racial
21 appeals;
- 22 7. the extent to which members of the minority group have been elected to public
23 office in the jurisdiction[;]
- 24 [8.] whether there is a significant lack of responsiveness on the part of elected officials
25 to the particularized needs of the members of the minority group[; and]
- [9.] whether the policy underlying the state or political subdivision’s use of such voting
qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

(...continued)

the minority’s preferred candidate. These *Gingles* factors are not required to be shown as part of the Section 2 vote denial analysis. *See Gingles*, 478 U.S. at 48-51; *Veasey*, 2016 WL 3923868, at *17-18.

1 *Gingles*, 478 U.S. at 36-37 (citing S. Rep. No. 97-417, at 28-29). The Senate Factors are “neither
2 comprehensive nor exclusive,” and “other factors may also be relevant and may be considered.”
3 *Gingles*, 478 U.S. at 45 (quoting S. Rep. No. 97-417, at 29); *see also Montes v. City of Yakima*, 40
4 F. Supp. 3d 1377, 1388 (E.D. Wash. 2014) (noting non-exclusivity). These factors are not limited
5 to considering the relevant jurisdiction’s conduct but also that of other governmental entities and
6 private individuals. *See, e.g., Gingles*, 478 U.S. at 80; *cf. White v. Regester*, 412 U.S. 755, 765-70
7 (1973). Examining the Senate Factors helps the court to determine whether the challenged
8 practice, in light of current social and political conditions in the jurisdiction, results in a
9 discriminatory denial or abridgement of the right to vote through less opportunity for the allegedly
10 affected group to participate in the political process relative to other voters.
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12 The existence of a “facially neutral” law, or the absence of a showing of animus, also does
13 not alter the Section 2 inquiry. *See Washoe Mem.* 3, 18-19. Section 2 prohibits “facially neutral”
14 voting practices that nonetheless lead to the discriminatory result of members of a minority group
15 as a class having “less opportunity than other members of the electorate to participate in the
16 political process.” 52 U.S.C. § 10301(b). As the Supreme Court has explained, the “essence” of a
17 Section 2 claim is that a challenged law, even when facially neutral, “interacts with social and
18 historical conditions to cause an inequality in the opportunities enjoyed by [minority] and
19 [nonminority] voters” to participate in the political process and elect their preferred
20 representatives. *Gingles*, 478 U.S. at 47; *Veasey*, 2016 WL 3923868, at *19 (“We conclude that
21 the two-part framework and *Gingles* factors together serve as a sufficient and familiar way to limit
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1 courts' interference with "neutral" election laws to those that truly have a discriminatory impact
2 under Section 2 of the Voting Rights Act.").

3 **III. DEFENDANTS' ERRONEOUS LEGAL STANDARD**

4 Defendants' briefs inaccurately state portions of the Section 2 standard. For example,
5 Defendants argue that (1) certain types of voting are not protected under Section 2 (i.e., describing
6 various voting methods as "convenience" voting); (2) Plaintiffs must show outright denial of the
7 ability to vote or participate; (3) Plaintiffs must show inability to elect candidates of their choice;
8 and (4) socioeconomic disparities are relevant to the totality-of-circumstances analysis only if
9 those disparities result from official discrimination by the jurisdiction at issue. For the reasons that
10 follow, these arguments are without merit and should be rejected.

11 **A. Section 2 applies to the location of Election Day, late registration, and early voting sites.**

12 Defendants suggest that access to in-person early voting and in-person voter registration
13 opportunities are merely a "voting convenience" and therefore lack protection under Section 2 of
14 the Voting Rights Act. Sec. Mem. 17; Washoe Mem. 3, 16, 19-20, 22-23; Mineral Mem. 15-16.
15 Not so. Section 14(c)(1) of the Act defines the terms "vote" and "voting" to include "all action
16 necessary to make a vote effective in any primary, special, or general election, including, but not
17 limited to registration, . . . casting a ballot, and having such ballot counted properly and included in
18 the appropriate totals of votes cast." 52 U.S.C. § 10310(c)(1). Courts have found that access to
19 polling places, to voter registration, and to opportunities for absentee and early voting are
20 protected by Section 2. *See, e.g., NAACP*, 768 F.3d at 552-53 ("[T]he plain language of Section 2
21 does not exempt early-voting systems from its coverage Nor has any court held that the
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1 Voting Rights Act does not apply to early-voting systems.”); *League of Women Voters*, 769 F.3d at
2 238-39 (applying Section 2 to various practices including procedures for late registration and early
3 voting, and noting that “courts have entertained vote-denial claims regarding a wide range of
4 practices”); *Veasey*, 2016 WL 3923868, at *43 (registration and polling place locations covered by
5 Section 2) (Higginson, J., concurring)); *Wandering Medicine v. McCulloch*, No. 12-cv-135, at *16
6 (D. Mont. Mar. 26, 2014) (order denying defendants’ motion to dismiss in part because plaintiffs
7 presented a viable Section 2 claim based on defendants’ refusal to establish a satellite registration
8 and absentee voting office); *Brooks v. Gant*, No. 12-cv-5003-KES, 2012 WL 4482984, at *7
9 (D.S.D. Sept. 27, 2012) (denying a defendant’s motion to dismiss in part because plaintiffs’
10 allegations of burdens accessing in-person absentee voting office suffice to show “less
11 opportunity” under Section 2); *Spirit Lake Tribe*, 2010 WL 4226614, at *1-6 (granting preliminary
12 injunction in Section 2 challenge alleging unequal access to polling place locations); *Miss. State*
13 *Chapter, Operation PUSH v. Allain*, 674 F. Supp. 1245 (N.D. Miss. 1987), *aff’d sub nom. Miss.*
14 *State Chapter, Operation PUSH v. Mabus*, 932 F.2d 400 (5th Cir. 1991); *Brown v. Dean*, 555 F.
15 *Supp.* 502 (D.R.I. 1982).

18 Defendants assert that even if minority voters are disproportionately burdened by the
19 location of early voting, voter registration, and election-day voting sites, this Court should not
20 entertain Plaintiffs’ Section 2 claims because ““inconvenience does not result in a denial of
21 “meaningful access” to the political process.”” Washoe Mem. 19-20 (quoting *Jacksonville Coal.*
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1 *for Voter Prot. v. Hood*, 351 F. Supp. 2d 1326, 1335 (M.D. Fla. 2004)).⁶ However, in
2 *Jacksonville*, the court expressly declared that “polling places constitute a ‘standard, practice, or
3 procedure with respect to voting’ under Section 2, and that placing voting sites in areas removed
4 from African–American communities can have the effect of abridging the right to vote.” 351 F.
5 Supp. 2d at 1334 (citing *Perkins v. Matthews*, 400 U.S. 379, 387 (1971)). To be sure, plaintiffs in
6 *Jacksonville* were unsuccessful, but not because Section 2 did not apply to their claims. Rather,
7 they were unsuccessful because they had failed to establish a likelihood that the early-voting
8 practices at issue would have the discriminatory effect that Section 2 requires plaintiffs to
9 establish. See *Ohio Democratic Party v. Husted*, No. 16-3561, 2016 WL 4437605, at *13 (6th Cir.
10 2016) (rejecting Section 2 claims on basis of no showing of disparate impact); *Brown v. Detzner*,
11 895 F. Supp. 2d 1236, 1254-55 (M.D. Fla. 2012).⁷ In sum, no court has held that any voter
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15 ⁶ Defendants also incorrectly claim that in the Section 2 analysis, a court must balance the burdens of the affected
16 minority voters against the interests of the Defendants. Mineral Mem. 14-15, Sec. Mem. 7. This conflates two distinct
17 legal claims. A constitutional claim assessing whether a challenged practice imposes an unjustified burden (whether
18 or not that burden amounts to a discriminatory effect on a racial or language minority) requires evaluating the burden
19 of the law against the precise interests put forward by the State as justification. *Crawford v. Marion Cnty. Election*
20 *Bd.*, 553 U.S. 181, 190 (2008) (plurality opinion) (citing *Burdick v. Takushi*, 504 U.S. 428 (1992), and *Anderson v.*
21 *Celebrezze*, 460 U.S. 780 (1983)). Under Section 2 of the Voting Rights Act, by contrast, the touchstone comparison
22 is “whether members of a protected class have ‘less opportunity’ to exercise their right to vote *than other groups of*
23 *voters*,” *NAACP*, 768 F.3d at 552 (emphasis added). See also *Veasey*, 2016 WL 3923868, at *20, *41 (distinguishing
24 the Section 2 and *Anderson-Burdick* frameworks) (Higginson, J., concurring).

25 ⁷ Defendants propose that Plaintiffs have not stated a valid Section 2 claim because they failed to provide quantitative
statistical evidence of disparate impact. Washoe Mem. 17 (quoting *Feldman v. Arizona Sec’y of State’s Office*, No.
CV-16-01065-PHX-DLR, 2016 WL 5341180, at *5 (D. Ariz. 2016)). Although typical of Section 2 cases, statistical
analyses are but one possible means to show disparate impact. For example, in *Veasey v. Perry*, 71 F. Supp. 3d 627,
633, 636-37 (S.D. Tex. 2014), the court also relied on lay testimony regarding the ability of African Americans to
participate. In the context of a vote dilution claim under Section 2, courts have relied on both statistical and non-
statistical proof to establish the *Gingles* preconditions regarding racial bloc voting. See, e.g., *Westwego Citizens for*
Better Gov’t v. City of Westwego, 946 F.2d 1109, 1118 n.12 (5th Cir. 1991) (“*Gingles* allows plaintiffs to prove
cohesion even in the absence of statistical evidence of racial polarization.”); *Monroe v. City of Woodville*, 897 F.2d
763, 764 (5th Cir. 1990) (“Statistical proof of political cohesion is likely to be the most persuasive form of evidence,
although other evidence may also establish this phenomenon.”).

1 registration procedure or ballot-casting issue is outside of Section 2’s purview, and there is no
2 basis for the Court to decide differently here.

3 **B. Section 2 does not require proof that a jurisdiction has “denied” citizens the right to**
4 **vote.**

5 Defendants several times suggest that Plaintiffs must show an outright denial of access to
6 voting opportunities. Sec. Mem. 13; Washoe Mem. 10, 21; Mineral Mem. 15, 17. This ignores the
7 plain text of the Act. Section 2 prohibits the “abridgment” as well as the outright “denial” of the
8 right to vote. 52 U.S.C. § 10301(a). This prohibition does not require that a challenged practice
9 deprive minority voters completely of the ability to vote. *See, e.g., Veasey*, 2016 WL 3923868, at
10 *29 (quoting *Black’s Law Dictionary* (10th ed. 2014) (defining “Abridgement” as the “reduction
11 or diminution of something”). It requires only that Plaintiffs establish they have “less
12 opportunity” to participate relative to other voters. 52 U.S.C. § 10301(b). All electoral practices
13 with a material disparate “effect on a person’s ability to exercise [the] franchise” implicate the
14 Voting Rights Act. *Cf. Perkins*, 400 U.S. at 387 (addressing Section 5); *see also League of Women*
15 *Voters*, 769 F.3d at 243 (holding that Section 2 is not limited to practices that render voting
16 “completely foreclosed” to the minority community); *Poor Bear*, 2015 WL 1969760, at *7
17 (concluding that Section 2 protects equal opportunity to cast a ballot via in-person absentee
18 voting); *Spirit Lake Tribe*, 2010 WL 4226614, at *3, *6 (enjoining polling place closures under
19 Section 2); *Chisom v. Roemer*, 501 U.S. 380, 408 (1991) (Scalia, J., dissenting) (explaining that
20 Section 2 would be violated if a county limited voter registration hours to one day a week, and
21 “that made it more difficult for blacks to register than whites”).
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1 Defendants further assert that Plaintiffs' argument must fail because Native Americans in
2 Defendant counties can still participate by mail. Sec. Mem. 13; Washoe Mem. 21. However,
3 mail-in voting is not the equivalent of in-person voting, and a court must consider the
4 circumstances of each case and the impact a challenged practice has on opportunity to vote. *See*
5 *Veasey*, 2016 WL 3923868, at *26 (concluding that "mail-in voting for specific subsets of Texas
6 voters does not sufficiently mitigate the burdens imposed [by the challenged law]"). Here,
7 Plaintiffs have alleged a valid Section 2 "abridgment" claim—that Native Americans in Defendant
8 counties, despite living in "mailing" precincts, make up a sizeable population of minority voters
9 who have fewer opportunities and greater difficulty than nonminority voters in registering and
10 reaching existing early voting sites, due to the travel distances involved, the socioeconomic
11 disparities limiting the ability to travel, the lack of required identification documents, the lack of
12 internet access, and the monetary and temporal costs involved in attempting to overcome such
13 hurdles; and that these difficulties exacerbate and are exacerbated by discrimination and the
14 lingering effects of discrimination. Pls.' Mot. 20, 25, 26; Amend. Compl. ¶ 94. Thus, according to
15 Plaintiffs, the current location of registration and early voting sites interacts with social and
16 historical conditions to cause an inequality in the opportunities for Native Americans to participate
17 in the franchise. *See Veasey*, 2016 WL 3923868, at *17 (explaining the causal link required to
18 prove discriminatory effect).

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22 **C. Section 2 does not require Plaintiffs to prove an inability to elect their preferred
23 candidates.**

24 Defendants also contend that Section 2 requires Plaintiffs to demonstrate an inability to
25 elect their preferred representatives. Sec. Mem. 7, 9, 13; Mineral Mem. 8, 16-17. Defendants'

1 argument misconceives the nature of Plaintiffs' challenge to the Defendant counties' practices.
2 Because Defendants' interpretation of Section 2 conflicts with the plain language of the statute as
3 well as Supreme Court precedent, their argument fails as a matter of law.

4 The plain text of Section 2(b) requires Plaintiffs to show only that the political process is
5 not equally open to Native Americans because the practice at issue results in their having "less
6 opportunity than other members of the electorate to participate in the political process and to elect
7 representatives of their choice." 52 U.S.C. § 10301(b). Defendants, by contrast, would require
8 Plaintiffs to show that they "have been unable to elect the candidates of their choice." Mineral
9 Mem. 16. Defendants' formulation fundamentally alters the statutory test.

10 Section 2 contains a comparative standard: minority voters cannot be given "less
11 opportunity" than other voters to participate and elect their preferred candidates. It does not, in
12 this context, require proof that minority voters lack an opportunity to elect.⁸ Justice Scalia
13 explained this concept in dissent in *Chisom*:

14 If, for example, a county permitted voter registration for only three hours one day a
15 week, and that made it more difficult for blacks to register than whites, blacks
16 would have less opportunity *to participate* in the political process than whites and
17 Section 2 would therefore be violated—even if the number of potential black voters
18 was so small that they would on no hypothesis be able *to elect* their own candidate.

19 501 U.S. at 408 (emphasis in original) (internal quotation marks and citations omitted).

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22 ⁸ Section 2 vote dilution claims—for example, challenges to district lines—do not usually depend on allegations that a
23 practice makes it more difficult to participate in the political process by casting a valid ballot. In that context, the
24 district lines' imposition of an inability to elect candidates of choice becomes the more important touchstone in
25 establishing injury. *See Gingles*, 478 U.S. at 51 (holding that plaintiffs must show, *inter alia*, that the majority group
votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate). By contrast, in a Section
2 claim focused on an abridgment of the right to cast valid ballots, that abridgment alone amounts to injury necessarily
impairing electoral opportunity.

1 In support of their argument, Defendants cite *Chisom*, 501 U.S. at 397, for the proposition
2 that “to make out a § 2 VRA claim . . . Plaintiffs must prove *both* (1) that the members of the
3 protected class have less opportunity to participate in the political process; *and* (2) the minority
4 class members’ inability to elect representatives of their choice.” Mineral Mem. 16. But this is
5 not a proper reading of *Chisom*. Rather, the Court held there that where a plaintiff shows that
6 minority voters have less opportunity than other voters to participate in the political process, the
7 plaintiff necessarily also establishes that members of that group have less opportunity to elect
8 candidates of their choice. *Chisom*, 501 U.S. at 397 (“Any abridgement of the opportunity of
9 members of a protected class to participate in the political process inevitably impairs their ability
10 to influence the outcome of an election.”). *Chisom*, which itself concerned a vote dilution claim,
11 thus stands neither for an “inability” standard nor for the proposition that Section 2 challenges to
12 ballot-casting procedures require two separate showings.
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15 Moreover, because Section 2 requires a totality-of-the-circumstances analysis, *see* 52
16 U.S.C. § 10301(b), the election of a few minority candidates is not dispositive of a plaintiff’s
17 opportunity, relative to other members of the electorate, to elect representatives of choice. *See*
18 *Gingles*, 478 U.S. at 75 (“[T]he language of § 2 and its legislative history plainly demonstrate that
19 proof that some minority candidates have been elected does not foreclose a § 2 claim.”).
20

21 A plain reading of the statutory language and Supreme Court precedent establishes that
22 plaintiffs in a Section 2 lawsuit are not required to show an inability to elect candidates of choice.
23 Accordingly, the Court should reject Defendants’ argument.
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1 **D. Effects of past discrimination that hinder minority voters' ability to participate**
2 **effectively in the political process are relevant to a Section 2 claim.**

3 Defendants erroneously argue that the totality of circumstances inquiry requires Plaintiffs
4 to allege that voter-related discrimination against Native Americans be “directly attributable to the
5 defendants,” Sec. Mem. 10, and that general prior history is not relevant in the totality of the
6 circumstances analysis. *Id.* at 4, 10-11; Washoe Mem. 3, 9, 24 (citing *Shelby Cnty. v. Holder*, 133
7 S.Ct. 2612, 2628 (2013)); Mineral Mem. 3, 19. Nothing in Section 2’s text or legislative history
8 limits the Senate Factor analysis of the relevant social and political conditions to official, state-
9 sponsored discrimination by the jurisdiction in question.

10 Congress’ intent to take the result of both public and private conduct into account is
11 evident from several Senate Factors. Senate Factor one, which directs courts to consider “the
12 extent of any history of *official* discrimination,” *Gingles*, 478 U.S. at 36 (emphasis added), is not
13 confined to discrimination by the defendant jurisdiction. *See United States v. Blaine Cty.*, 363
14 F.3d 897, 913 (9th Cir. 2004) (rejecting argument that the first Senate Factor “could only look at
15 official discrimination by [the defendant jurisdiction], not the state or federal government”). Many
16 other Senate Factors—the extent of racially polarized voting, the existence of a candidate slating
17 process, and the use of overt or subtle racial appeals in political campaigns—all reflect Congress’
18 intent for the totality-of-circumstances analysis to examine far more than official, state-sponsored
19 discrimination. *See Gingles*, 478 U.S. at 36-37. And Senate Factor five directs courts to consider
20 the extent to which members of a minority group “bear the effects of discrimination,” from
21 whatever source. *Gingles*, 478 U.S. at 69. “[T]he literal language of the fifth Senate factor does
22 not even support the reading that only discrimination by [the defendant jurisdiction] may be
23 24 25

1 considered; the limiting language describes the people discriminated against, not the
2 discriminator.” *Gomez v. City of Watsonville*, 863 F.2d 1407, 1418 (9th Cir. 1988).
3 Socioeconomic disparities that result from past discrimination may mean that current practices
4 impede minority voters’ ability to participate equally in the electoral process; those disparities need
5 not be the direct product of particular public defendants’ past action in order for the defendants’
6 present practices to implicate the Act. *See, e.g., Whitfield v. Democratic State Party of Ark.*, 890
7 F.2d 1423, 1430-31 (8th Cir. 1989).⁹ Ultimately, it is the intensely local analysis of all factual
8 circumstances existing within a jurisdiction, regardless of source, that will determine whether the
9 jurisdiction’s challenged standard, practice, or procedure results in a Section 2 violation.¹⁰ Thus,
10 this Court should follow well-established precedent in considering all past or present
11 discrimination, public and private, when assessing whether a challenged voting practice violates
12 Section 2.
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15 IV. CONCLUSION

16 For the preceding reasons, this Court should apply the established legal standard under
17 Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, to resolve Plaintiffs’ motion for
18

19 ⁹ *See also Buckanaga v. Sisseton Indep. Sch. Dist. No. 54-5*, 804 F.2d 469, 474-75 (8th Cir. 1986) (holding that the
20 district court erred by failing to address evidence of broad socioeconomic disparities, without reference to their
21 sources); *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1018-34, 37-41 (D.S.D. 2004) (recounting the history of
22 official and unofficial discrimination and setting out socioeconomic disparities without concern for their cause); *but*
23 *see Veasey*, 2016 WL 3923868, at *20 (declining to decide the question of whether plaintiff must show “state action
24 caused the social and historical conditions begetting discrimination” because the district court found evidence of such
25 state-sponsored discrimination).

¹⁰ Of course, Plaintiffs have also alleged a history of official discrimination against Nevadan Native Americans
generally, and with respect to voting in particular. *See* Pls.’ Motion 20-22; Amended Compl. ¶¶ 80-93; *see also, e.g.*,
Decree and Permanent Injunction, *Mickel v. Wolff*, No. CIV-R-79-239 (D. Nev. Dec. 23, 1980) (permanently enjoining
the Nevada State Prison from continuing to deny access to certain Native American religious activities).

1 preliminary injunction, particularly with regard to the detailed findings of fact necessary in a
2 Section 2 analysis.

3 Date: October 3, 2016

4 Respectfully submitted,

5 VANITA GUPTA
6 Principal Deputy Assistant Attorney General
7 Civil Rights Division

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Statement of Interest of the United States of America was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to all attorneys of record.

Dated: October 3, 2016.

By: /s/George E. Eppsteiner
George E. Eppsteiner

Declaration of Sambo (Bo) Dul

SAMBO (BO) DUL declares as follows:

1. I am the State Elections Director in Secretary of State Katie Hobbs' Office. In this role, I oversee the Election Services Division in the Department of State. I have served in this role since January 2019.

2. On October 7, 2020, early in-person voting will begin for the 2020 General Election, and counties will begin mailing ballots to voters on that date.

3. Under A.R.S. § 19-123, the Secretary of State's Office is responsible for publishing a statewide publicity pamphlet that includes general election information, information on judicial retention candidates, and information on statewide initiatives and referenda that will appear on the ballot. The publicity pamphlet must be mailed to all households with a registered voter, unless every registered voter in the household opts for email delivery. Mailed pamphlets must be delivered to households before early voting begins on October 7, 2020.

4. In order to meet the statutory delivery timelines, all versions of the publicity pamphlet (English, Spanish, and large print) have gone to print. Almost 2.3 million copies of the publicity pamphlet will be printed. Further, the Secretary of State's Office has received confirmation from our vendor that initial shipments are starting to be sent out and the first copies should be arriving at households by September 14, 2020, if not earlier.

5. The publicity pamphlet prominently states in multiple places that ballots must be received by 7:00 p.m. on Election Day to be counted. The publicity pamphlet also states that the recommended last day to mail back ballots is 7 days before the election (October 27, 2020)

1 and that voters who still have their ballots after October 27, 2020 are encouraged to drop-off
2 their ballots at their County Recorder's Office or any ballot drop-box, early voting location, or
3 Election Day voting location in their county to ensure timely receipt by election officials.
4

5 6. The Secretary of State's Office has also published and will be distributing an
6 AZVoteSafe Guide for Native American Voters, which highlights the Election Day receipt
7 deadline and encourages voters to drop-off their ballots at any voting location in their county
8 if they still have it on Election Day.
9

10 7. The Secretary of State's one-stop voter information website, Arizona.Vote, states
11 that ballots must be received by 7:00 p.m. on Election Day to be counted. This information is
12 also listed on the Citizens' Clean Elections Commission website, County Recorders' websites,
13 and county Elections Departments' websites.
14

15 8. The Secretary of State's voter information website also includes an online portal
16 that allows voters who mailed their ballots to track the ballot, including when the ballot was
17 processed, whether the ballot was counted, and if it was not counted, the reason it was not
18 counted.
19

20 9. Further, in fulfillment of the Secretary's obligations under the settlement in *Voto*
21 *Latino v. Hobbs*, which also challenged the Election Day receipt deadline, the Secretary has
22 engaged in an extensive and ongoing statewide voter outreach and education campaign, with a
23 projected budget of close to \$1.5 million. The campaign aims to ensure voters understand the
24 options available for voting and the requirements to ensure their vote is counted, including the
25 requirement that mail ballots be received by election officials by 7:00 p.m. on Election Day. It
26 includes print advertisements, radio ads (including radio ads in Navajo on the Navajo Nation),
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1 press releases, town halls, and numerous media interviews and other public appearances by the
2 Secretary and Elections Division staff.

3
4 10. Also pursuant to the settlement in *Voto Latino v. Hobbs*, the Secretary of State's
5 Office secured \$1.5 million in funding to increase access to early voting and ballot drop-off
6 options in tribal and rural communities. Those funds have been used to, among other things,
7 purchase over 80 secure ballot drop boxes, including 38 to be installed in Coconino, Navajo,
8 and Apache Counties. The funds are also being used to rent, at the request of county recorders,
9 mobile voter outreach and early voting trailers/vehicles for use in tribal and rural communities.

10
11 11. Since taking office in January 2019, the Secretary has diligently worked to
12 develop good working relationships with Native American stakeholders, including the Navajo
13 Nation. The Secretary has sought to work collaborative with tribal stakeholders to address
14 barriers their voters may face. For example, the Secretary's staff, along with staff from the
15 Coconino, Navajo, and Apache Counties, meet regularly with Navajo Nation stakeholders to
16 discuss election planning, including ensuring sufficient voting locations on the Navajo Nation,
17 and coordinate efforts to address issues facing Navajo voters. Further, in response to concerns
18 expressed by tribal stakeholders, the Secretary of State's Office implemented technical
19 upgrades to the state's online voter registration system, ServiceArizona, to allow voters with
20 nonstandard residential addresses to register to vote online using a description of residence
21 location, latitude/longitude, or Google Plus Code.

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26 12. Because we understand mail in certain parts of the state travel long distances to
27 processing facilities, including out of state, resulting in slower delivery times, the Secretary of
28 State's Office is also actively coordinating with United States Postal Service (USPS)

1 representatives in Arizona and the County Recorders of Coconino, Navajo, and Apache
2 Counties to develop and implement a plan for USPS to hold ballots at designated USPS
3 facilities in Coconino, Navajo, and Apache Counties for direct pick-up by authorized County
4 Recorder staff on a regular basis beginning at least seven days before the 2020 General
5 Election. The designated USPS facilities where ballots will be held will be selected in
6 consultation with the County Recorders of Coconino, Navajo, and Apache Counties, with the
7 objective of ensuring more ballots mailed within seven days of the election in and around the
8 Navajo Nation are received by the relevant County Recorder by 7:00 p.m. on Election Day.

11 13. Based on prior coordination and information provided in recent litigation
12 regarding printing deadlines, I understand that all 15 Arizona counties have already sent final
13 ballot files, ballot envelopes, and early ballot instructions to print. Ballot envelopes and
14 instructions tell voters that ballots must be received by 7:00 p.m. on Election Day to be counted.
15 Under the federal Uniformed & Overseas Citizens Absentee Voting Act, counties must mail
16 ballots to overseas and military voters by September 17, 2020.

19 14. The Secretary of State's Office is also encouraging voters to utilize the multiple
20 ballot drop-off options available for returning their mail ballots. In addition to returning their
21 ballot by mail, voters can also drop their ballot off at the County Recorder's Office or any ballot
22 drop-box, in-person early voting location, or Election Day voting location in their county,
23 without having to wait in line.

26 15. Not all counties provide multiple in-person early voting locations, but Apache,
27 Coconino, and Navajo Counties do, including one in Teec Nos Pos. Graham County, for
28 example, only allows in person early voting at the County Recorder's office.

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

3 DATED this 14th day of September, 2020.
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032

Arizona PEVL (Permanent Early Voting List) Comparison***Scottsdale***

Mail speed, days			1		
Date Ballot Mailed Out	Date Ballot Received	Days to Consider	Date to Mail back	Date Received By Recorder	
10/7/20	10/8/20	25	11/2/20	11/3/20	

Hypothetical based on AZ SOS guidance or Dennehotso Priority Express

Mail speed, days			7		
Date Ballot Mailed Out	Date Ballot Received	Days to Consider	Date to Mail back	Date Received By Recorder	
10/7/20	10/14/20	13	10/27/20	11/3/20	

Dennehotso Navajo Nation Member

Mail speed, days			10		
Date Ballot Mailed Out	Date Ballot Received	Days to Consider	Date to Mail back	Date Received By Recorder	
10/7/20	10/17/20	7	10/24/20	11/3/20	

<i>Summary</i>	<i>Scottsdale Voter</i>	<i>AZ SOS Hypothetical</i>	<i>Dennehotso Navajo Member</i>
<i>Days to consider</i>	25	13	7

Data derived from report by Dr. Schroedel and Mr. Healy and Exhibit by Secretary Hobbs

Arizona Request Mail Ballot on Oct 23

Scottsdale

Mail speed, days	1								
Date Ballot Requested/Mailed Out	10/23/20	Date Received	10/24/20	Days to Consider	9	Date to Mail back	11/2/20	Date Received By Recorder	11/3/20
									11/3/20
									11/3/20
									Succeed

Hypothetical based on AZ SOS guidance or Dennehotso Priority Express

Mail speed, days	7								
Date Ballot Mailed Out	10/23/20	Date Received	10/30/20	Days to Consider	-3	Date to Mail back	10/27/20	Date Received By Recorder	11/3/20
									11/6/20
									Failed

Dennehotso Navajo Nation Member

Mail speed, days	10								
Date Ballot Mailed Out	10/23/20	Date Received	11/2/20	Days to Consider	-9	Date to Mail back	10/24/20	Date Received By Recorder	11/3/20
									11/12/20
									Failed

Summary

Scottsdale AZ SOS Dennehotso

Days to consider 9 -3 -9

Succeed/Failed Failed Failed

Data derived from report by Dr. Schroedel and Mr. Healy and Exhibit by Secretary Hobbs

Comparison of area (in square miles) per location of various options to return a mail ballot

Item	Scottsdale	Flagstaff	Holbrook	St. John's	Navajo Nation
Area, sq. miles	184	63.86	15.40	26.10	18,382
Postal Provider locations #	12	3	1	1	27
Early Voting Locations #	11	2	1	1	12
Ballot Drop Boxes #	2	6	1	1	1
Election Day polling locations #	14	22	1	1	60

Area/location, square miles	Scottsdale	Flagstaff	Holbrook	St. John's	Navajo Nation
Postal Provider locations	15.33	21.29	15.40	26.10	681
Early Voting Locations	16.73	31.93	15.40	26.10	1,532
Ballot Drop Boxes	92.00	10.64	15.40	26.10	18,382
Election Day polling locations	13.14	2.90	15.40	26.10	306

Area per Location on Navajo Nation as % of Other Locations

	Scottsdale	Flagstaff	Holbrook	St. John's
Postal Provider locations	4440%	3198%	4421%	2608%
Early Voting Locations	9158%	4797%	9947%	5869%
Ballot Drop Boxes	19980%	172709%	119364%	70429%
Election Day polling locations	2331%	10554%	1989%	1174%

Data derived from report and report addendum by Dr. Schroedel and Mr. Healy

Addendum to Expert Report¹²

September 18, 2020

A. Introduction

This addendum has a twofold purpose: 1. To provide additional evidence supporting the arguments put forth in the expert report and 2. To show that the existence of other forms of voting do not provide a means for overcoming the inequalities in the voting-by-mail, particularly in light of the current pandemic. The addendum begins with a section discussing the disparate impact of COVID-19 on the Navajo Nation, before turning to sections comparing mail service on the Navajo Nation Reservation and off-reservation communities. The next section provides evidence that the disparate mail service has a negative effect on electoral participation, drawing upon a recent study of voting-by-mail, which isolates the effects of mail service from other possible factors that have been found to impact turnout. The final sections of addendum consider whether other voting modalities, such as early voting centers, drop boxes and Election Day polling places, can be used to reduce inequities in electoral access.

B. Disparate Impact of COVID-19

The coronavirus is the worst public health threat that the nation has faced in more than 100 years, and the fact that it spread by close contact makes having safe ways to vote an essential

¹ The following individuals provided research assistance in preparing this addendum: Dr. Joseph Dietrich (Ph.D. University of Pittsburgh, MA Claremont Graduate University), Jamaica Baccus-Crawford (MAPP Claremont Graduate University), and Kara Mazareas (MSc London School of Economics and Political Science).

² There are three small revisions to the expert witness report. One postal provider office was mis-classified as being off-reservation, but it was just within the boundaries of the Navajo Nation, so there are 16 postal provider offices instead of 15 (page 15), which means there are 27 places on the Navajo Nation, where people can post and receive mail or one place for every 687 miles instead of 707 miles (page 18). The disparities is 45 times greater on the Navajo Nation versus Scottsdale. The Pinon example incorrectly stated that the letter was posted at 3:32 when it was posted at 4:10 (page 24).

consideration. But this is an even greater issue for voters on the Navajo Nation. Even before the coronavirus, Native Americans had the highest rate of infectious disease severity and death of any group in country.³ The risk factors associated with COVID-19 as they relate to immunocompromising diseases and other underlying conditions have above average prevalence among Native Americans.⁴ As such, the American Indian/Alaska Native mortality rate compared to that of all other races in the U.S. is higher the areas of heart disease, cancer, cerebrovascular diseases, diabetes, chronic lower respiratory diseases, and essential hypertension diseases.⁵

A major contributing factor - and one which highlights an additional layer of vulnerability among Native American communities during the pandemic – is the shortage of healthcare resources and infrastructure on reservations.⁶ A report by the U.S. Commission on Civil Rights described Native American healthcare as “chronically underfunded,” demonstrating that in 2016, the federal government spent \$9,990 on healthcare per capita nationally compared to \$2,834 per capita on healthcare through the Indian Health Service (IHS). Although this gap did narrow by a small margin in the year 2017 (to \$9,207 per capita nationally and \$3,332 per capita for the IHS),⁷ the ramifications of this funding discrepancy are being realized during the pandemic, especially in terms of a lack of intensive-care capacity. *NBC News* reported on August

³ Johns Hopkins Bloomberg School of Public Health. 2020. *Programs – COVID-19 Response*. Center for American Indian Health. <https://caih.jhu.edu/programs/category/covid-19-response>.

⁴ Doshi, Sahir, Allison Jordan, Kate Kelly and Danyelle Solomon. 2020. *The COVID-19 Response in Indian Country*. Center for American Progress. June 18. <https://www.americanprogress.org/issues/green/reports/2020/06/18/486480/covid-19-response-indian-country/>.

⁵ U.S. Department of Health and Human Services. 2019. *Disparities: Fact Sheets*. Indian Health Service. October. <https://www.ihs.gov/newsroom/factsheets/disparities/>.

⁶ Doshi, Sahir, Allison Jordan, Kate Kelly and Danyelle Solomon. 2020. *The COVID-19 Response in Indian Country*. Center for American Progress. June 18. <https://www.americanprogress.org/issues/green/reports/2020/06/18/486480/covid-19-response-indian-country/>.

⁷ U.S. Commission on Civil Rights. 2018. *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*. December. <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>. Page 68.

3, 2020 that there were only about 40 ICU beds among the health facilities of Navajo Nation (which has an estimated population of 172,875 people⁸), according to Dr. Loretta Christensen, the IHS¹ Chief Medical Officer for Navajo Nation.⁹

Other conditions on reservations also heighten the risk of COVID-19 among Native American communities. Native Americans often live in “crowded, multi-generational homes,” which can pose difficulties for physical distancing and isolation.¹⁰ A 2011 consulting report on housing needs and demographic analysis prepared for the Navajo Housing Authority found that Navajo Nation homes had an overcrowding rate (defined as 2 or more persons per bedroom) of 39%, compared to a rate of 6% for the country as whole.¹¹ The same report showed that approximately one third of homes on Navajo Nation lack access to a public water supply and require water hauling for domestic use.¹² An analysis of Census data, conducted by DigDeep and the US Water Alliance, found that race is the strongest predictor of “the water access gap,” with Native American households being 19 times more likely than white households to lack access to complete plumbing. This is the highest likelihood of any racial group.¹³ Given the importance of frequent handwashing in accordance with Center for Disease Control (CDC) guidelines, this

⁸ U.S. Census Bureau. 2017. *My Tribal Area*. Census.gov. March 7. <https://www.census.gov/tribal/?st=04>.

⁹ Abou-Sabe, Kenzi, Cynthia McFadden, and Didi Martinez. 2020. *Vulnerable Navajo Nation fears a second COVID-19 wave*. NBCNews. August 3. <https://www.nbcnews.com/specials/navajo-nation-fears-second-covid-19-wave/index.html>.

¹⁰ Johns Hopkins Bloomberg School of Public Health. 2020. *Programs - COVID-19 Response*. Center for American Indian Health. <https://caih.jhu.edu/programs/category/covid-19-response>.

¹¹ RPI Consulting, The Jones Payne Group, Native Home Capital Housing & Finance Consulting, & Alternative Marketing Solutions Cultural Liaison. 2011. *Phase II Housing Needs Assessment and Demographic Analysis*. August. https://www.navajohousingauthority.org/wp-content/uploads/2015/08/Navajo_Nation_Housing_Needs_Assessment_091311-1-PAGE-1-50.pdf. Page 16.

¹² RPI Consulting, The Jones Payne Group, Native Home Capital Housing & Finance Consulting, & Alternative Marketing Solutions Cultural Liaison. 2011. *Phase II Housing Needs Assessment and Demographic Analysis*. August. https://www.navajohousingauthority.org/wp-content/uploads/2015/08/Navajo_Nation_Housing_Needs_Assessment_091311-1-PAGE-1-50.pdf. Page 18.

¹³ DigDeep, & US Water Alliance. (2019, November). *Closing the Water Access Gap in the United States: A National Action Plan*. http://uswateralliance.org/sites/uswateralliance.org/files/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States_DIGITAL.pdf. Page 22.

provides an additional challenge in terms of the susceptibility of Native American populations to the spread of COVID-19.¹⁴

These dynamics in part illustrate how and why the pandemic has affected Native Americans in particularly severe ways. According to the CDC, Native American rate ratios are 2.8 times higher for the number of COVID-19 cases, 1.4 times higher for COVID-19 related deaths, and 5.3 times higher for COVID-19 related hospitalizations compared to the national rates for non-Hispanic whites.¹⁵ A July 2020 *New York Times* analysis of CDC data, collected through May 28, 2020, analyzed the racial inequities related to the spread of coronavirus. In Arizona specifically, there were significantly higher rates of COVID-19 cases among Native American Indians in all counties where the group comprised at least 1 percent of the population and race and ethnicity data were available.¹⁶ This data is summarized in the table below:

COVID-19 Cases in Arizona

Arizona County	White population: COVID-19 cases per 10,000 people	Native American population: COVID-19 cases per 10,000 people
Mojave	10	106
Coconino	13	182
Navajo	10	193
Apache	4	67
Yavapai	7	25
Maricopa	12	43
Pima	14	22

¹⁴ Johns Hopkins Bloomberg School of Public Health, 2020. *Programs - COVID-19 Response*. Center for American Indian Health. <https://caih.jhu.edu/programs/category/covid-19-response>.

¹⁵ Centers for Disease Control and Prevention. 2020. *COVID-19 Hospitalization and Death by Race/Ethnicity*. August 18. <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

¹⁶ Oppel, Richard A., Robert Gebeloff, and Rebecca, K. K. Lai. 2020. "The Fullest Look Yet at the Racial Inequity of Coronavirus." *The New York Times*. July 5. <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>.

Notably, the number of cases per 10,000 people was 10.6 times higher among the Native American population than among white population in Mojave county, 14 times higher in Coconino County, 16.75 times higher in Apache County, and 19.3 times higher in Navajo County. In May of 2020, Navajo Nation had the highest per-capita infection rate of anywhere in the United States, including the hardest-hit state, New York.¹⁷

What this shows is that the Native American populations face a disproportionate risk and impact related COVID-19 due to a multitude of factors. As such, many tribes in Arizona have instituted lockdowns, stay at home orders, curfews, and other measures at various points in recent months to protect the health and safety of their members.^{18 19 20} The ability to vote safely is more imperative now than ever, given the vulnerability of Native American populations to the pandemic and the structural conditions that created these inequities.

C. Mail Service Times to Delivery

In the report, we provided evidence that the times for letters posted from some places on the Navajo Nation far exceeded U.S.P.S delivery time standard of “1-3 business days.” For comparison purposes, we include the following examples of certified first-class mail from

¹⁷ Silverman, Holly, Konstantin Toropin, and Sara Sidner. 2020. *Navajo Nation surpasses New York state for the highest Covid-19 infection rate in the US*. CNN. May 18. <https://www.cnn.com/2020/05/18/us/navajo-nation-infection-rate-trnd/index.html>.

¹⁸ Hualapai Tribe. 2020. *Notice of Community Lockdown*. <http://hualapai-nsn.gov/wp-content/uploads/2020/07/Lockdown-2-Info.pdf>.

¹⁹ White Mountain Apache Tribe. 2020. *Press Release: White Mountain Apache Tribe Enters Phase One of its Re-Opening Plan For the Tribal Government and Business*. August 6. <http://whitemountainapache.org/wp-content/uploads/2020/08/Updated-Press-Release-2020-1.pdf>.

²⁰ *Public Emergency Order No. 2020-022*. Navajo Department of Health. 2020. September 1. <https://www.navajonnsn.gov/News%20Releases/NDOH/2020/Sep/NDOH%20Public%20Health%20Emergency%20Order%202020-022%20Dikos%20Ntsaagii-19.pdf>.

Scottsdale, Flagstaff, Holbrook and St. Johns; all of which arrived within the stated delivery times.

Scottsdale Certified 1st Class: 70192970000082112722

8/5/20 1:55 p.m. Scottsdale
7:21 p.m. Depart
9:11 p.m. Arrive USPS Phoenix
11:36 p.m. Depart
8/6/20 6:58 a.m. Arrive Phoenix unit
7:43 a.m. Delivered Maricopa County Recorder

Total Time: 17 hours and 48 minutes

Flagstaff Certified 1st Class: 70192280000142528887

8/3/20 2:30 p.m. Flagstaff
4:35 p.m. Depart
11:31 p.m. Arrive USPS Phoenix
8/5/20 12:36 p.m. Depart
8/6/20 5:33 a.m. Arrive Flagstaff unit
10:13 a.m. Delivered Coconino County Recorder Office

Total Time: Two days, 19 hours and 43 minutes

St. Johns Certified 1st Class: 70180680000156855682

8/3/20 1:11 p.m. St. Johns
2:46 p.m. Depart
10:10 p.m. Arrive USPS Phoenix
8/4/20 6:16 p.m. Depart
8/5/20 10:31 a.m. Arrive St. Johns
10:34 a.m. Delivered Apache County Recorder Office

Total Time: One day, 21 hours and 23 minutes

Holbrook Certified 1st Class: 70190160000114545037

8/3/20	11:53 a.m. Holbrook
	3:36 p.m. Depart
8/4/20	7:44 a.m. Arrive Holbrook unit
	9:15 a.m. Delivered Navajo County Recorder Office

Total Time: 21 hours and 22 minutes

D. Mail Services in Apache, Coconino and Navajo Counties

The following is additional information about the access to mail services on the Navajo Reservation compared to off-reservation locations in Apache, Coconino and Navajo Counties. The post office hours were verified by telephone calls that Dr. Joseph Dietrich made on July 7-8, 2020, but we recognize that changes may occur at any point, particularly in the midst of the pandemic. We include both the hours for retail service and lobby hours. The lobby hours are very important for having access to post office boxes, but the retail hours are essential for individuals getting mail through general delivery. On every measure, the mail service on the Navajo Nation Reservation is found to be inferior to what is typically provided in off-reservation communities.

Apache County: The county's geographic territory is 11,218 square miles; of which 7,667 square miles are reservation lands.²¹ The reservation lands comprise 68.34% of the territory, but the post offices are equally divided between reservation and non-reservation post offices. Most of the reservation lands are part of the Navajo Nation, but there also are White Mountain Apache and Zuni lands in the county.²² While we strongly suspect that the mail service on other reservation populations is also less good than in non-reservation communities, the material here

²¹ <https://www.census.gov/quickfacts/apachecountyarizona>.

²² See the map of Arizona tribal lands prepared by EPA Region 9. <https://www.aanativearts.com/arizona-indian-reservations-map-LG.jpg>.

is simply divided between post offices and postal provider offices that are either on or off the Navajo Nation.

It also is worth noting that none of the Navajo Nation post offices offer 7 day a week, 24-hour access to post office boxes, while nearly all of the off-reservation post offices do. The Window Rock Post Office has the longest hours of the reservation posts offices, allowing 53.5 total hours of access. All but one (Chambers) provide 168 hours of access to the post office boxes. Moreover, much of the mail service on the Navajo Nation is provided through non-U.S.P.S. contractors in postal provider offices, which offer significantly fewer services and shorter hours. These average 30.3 hours of access to post office boxes during the week.

The post offices and postal provider offices with their hours are listed below. The first times are for retail hours (e.g., when someone is available to provide services). If there are additional hours when people can access their post office boxes, there will be a double slash (//) followed by the additional times. The ones that list 24-hours are post offices that allow people to have access to post office boxes at any time.

Post Offices

McNary (Apache)	M-F 12:30-4:30/ M-F 12:30-4:30, S 9-11:00
Chinle (Navajo)	M-F 8:30-2:00, 3-5:00// M-F 8-5:30, S 8:30-1:30
Teec Nos Pos (Navajo)	M-F 8-11:00, 12-4:45, S 10-12:00// M-F 8:15-4:30
Ganadao (Navajo)	M-F 8:30-12:00, 1-4:30, S 11-1:00
Ft. Defiance (Navajo)	M-F 8:30-1:00, 2-5:00, S 11-1:00
St. Michaels (Navajo)	M-F 8-5:00, S 8:30-12:00
Window Rock (Navajo)	M-F 8-5:30, S 8-2:00
Sanders (Navajo)	M-F 8-5:00, S 9-12:00
St. Johns	M-F 8:30-4:00// 24 hours
Concho	M-F 8-12:30, 1:30-4:45// 24 hours

Vernon	M-F 9-12:00, 1-4:00// 24 hours
Springerville	M-F 8-4:15// 24 hours
Greer	M-F 8:30-noon// 24 hours
Eager	M-F 8-4:30, S 9:30-11:00// 24 hours
Nutrios	M-F 9:15-11:15// 24 hours
Chambers	M-F 9-12:30, 1:30-4:30, S 8-12:00

Postal Provider Offices

Many Farms (Navajo)	M-F 10-5:00
Tsaile (Navajo)	M-F 11-1:00, 2-5:00// M-F hours 9:30-5:00
Lukachukai (Navajo)	M-F 11-4:00
Blue Gap (Navajo)	M-F 10-4:00
Nazlini (Navajo)	M-F 10-2:00// M-F 8-5:00
Speedway Rock Pt (Navajo)	M-F 12-4:00
Red Valley (Navajo)	M-F 10-3:00
Dennehotso (Navajo)	M-F 12-5:00

Coconino County: The county's geographic territory is 18,661 square miles; of which 7,142 square miles are reservation lands.²³ The reservation lands comprise 38.27% of the county's land mass, but only three of the post offices are located on reservations (one on Havasupai tribal lands and two on Navajo Nation lands). Most of the reservation land is part of the Navajo Nation.²⁴ The county also includes Hualapai, Hopi and Kaibab Reservation lands. As was true in Apache County, the off-reservation post offices provide greater access to post office boxes than is true on the reservation post offices.

²³ <https://www.census.gov/quickfacts/coconinocountyarizona>.

²⁴ See the map of Arizona tribal lands prepared by EPA Region 9. <https://www.aaanativearts.com/arizona-indian-reservations-map-LG.jpg>.

All of the post offices with 24-hour access to post office boxes are off-reservation, which means there are 168 hours per week when a person can access their post office boxes. Unlike Apache County, many of the postal provided offices in Coconino County are located off-reservation. It is worth noting that three of the off-reservation postal provider sites provide 24-hour (168 hours per week) access to post office boxes. The four Navajo Nation postal provider sites have post office box access for 65 to 92 hours per week.

The post offices and postal provider offices with their hours are listed below. The first times are for retail hours (e.g., when someone is available to provide services). If there are additional hours when people can access their post office boxes, there will be a double slash (//) followed by the additional times. The ones that list 24-hours are post offices that allow people to have access to post office boxes at any time.

Post Offices

Supai (Havasupai)	M-F 8-11:00 and 1:30-4:30// 8:00-4:30.
Tuba City (Navajo)	M-F 9-5:00// M-Su 6-8:00
Cameron (Navajo)	M-F 9-1:00, 2-4, S 9-11:00// M-Su 7:15-7:15
Page	M-F 7:30-4:00// 24 hours
Fredonia	M-F 9-2:00, 2:30-4:30// 24 hours
Grand Canyon	M-F 8:30-3:30// M-Su 5a.m.-10:00 p.m.
Williams	M-F 8:30-3:3// 24 hours
Sedona	M-F 9-4:30, S 9-1:00// 24 hours
Flagstaff	M-F 9-5:00, S 9-2:00// 24 hours
Downtown Flagstaff	M-F 10-4:00, S 9-1:00// M-Su 6-9:00
Seligman	Closed at this time. ²⁵

²⁵ The following statement appears online; "Seligman Post Office NOTICE: The Postal Service is an essential government service and will remain open whenever possible." This is followed by the address and a phone number. There was no response when the number was called.

Ash Fork Closed at this time.²⁶

Postal Provider Offices

Gap Trading Post (Navajo) M-S 8-5:00// M-Su 8-8:00
Tonalea (Navajo) M-F 6-8:00, S 6-6:00, Su 6-4:00
Kaibito (Navajo) M-F 8-1:00, 2-5:00// M-F 7-8:00
Leupp (Navajo) M-F 10-3:00, S 10-2:00// M-S 8-5:00
North Rim M-F 8-12:00, 1-5:00
Tusayan Gen Store M-F 9:30-3:00// M-Su 8-8:00
Silver Saddle Center M-F 8-6:00, S 9-6:00, Su 11-6:00// M-F 8-7:00, S 9-7:00, Su 11-6:00
Lake Powell Travel Plaza M-S 8-4:00// 24 hours
Northern AZ Univ M-F 8:30-5:00
Parks M-F 8-1:00// M-S 7-6:00, Su 1-8:00
Munds Park M-F 9:30-noon, 1-4:15, S 9:30-11:45// 24 hours
Mormon Lake M-F 9-1:00, S 9-noon// M-Su 7:30-5:00
Marble Canyon M-F 9-11:15// 24 hours

Navajo County: The county's geographic territory is 9,960 square miles; of which 6,633 square miles are reservation lands.²⁷ The reservation lands comprise 66.68% of the county's land mass; more than of this is comprised of Navajo Nation land.²⁸ There are 21 post offices; of which 9 are

²⁶ The following statement appears online; "Ash Fork Post Office NOTICE: The Postal Service is an essential government service and will remain open whenever possible." This is followed by the address and a phone number. There was no response when the number was called.

²⁷ <https://www.census.gov/quickfacts/navajocountyarizona>.

²⁸ See the map of Arizona tribal lands prepared by EPA Region 9. <https://www.aaanativearts.com/arizona-indian-reservations-map-LG.jpg>.

located on reservations (2 Navajo, 5 Hopi, and 2 Apache). At this point, there are three open postal provider offices on the reservation in Navajo County.²⁹

While some of the off-reservation post offices have limited hours for retail, they offer much longer hours of access to the lobby and post office boxes, ranging from 72-91 hours per week). All of the post offices with 24-hour access to post office boxes are off-reservation. The two Navajo Nation post offices provide access to post office boxes for 45 and 42 hours per week.

The post offices and postal provider offices with their hours are listed below. The first times are for retail hours (e.g., when someone is available to provide services). If there are additional hours when people can access their post office boxes, there will be a double slash (//) followed by the additional times. The ones that list 24-hours are post offices that allow people to have access to post office boxes at any time.

Post Offices

Kayenta (Navajo)	M-F 8:30-5:00, S 10:30-1:00
Pinon (Navajo)	M-F 8-1:00, 2-5:00
Second Mesa (Hopi)	M-F 8-5:00, S 10-2:00
Polacco (Hopi)	M-F 8-5:00, S 10-2:00
Keams Cyn (Hopi)	M-F 9-1:30, 2:30-4:30
Hoteville (Hopi)	M-F 8-5:00, S 10-2:00
Kykotsmovi Village (Hopi)	M-F 8-5:00, S 10:30-12:30
White River (Apache)	M-Th 8:30-4:30, F 8:30-4:00// M-F 8:30-5:00, S 8:30-noon
Ft. Apache (Apache)	M-F 10-2:00, 2:30-4:30// M-F 8:30-4:45, S 9-12:00
Winslow	M-F 7:45-3:30, S 9-1:30// M-Su 6-6:00
Joseph City	M-F 8-1:30, 2-3:00// M-S 6-7:00

²⁹ There used to be a postal provider office at Indian Wells, but it is listed as permanently closed. Also the Leupp postal provider office was closed temporarily during the summer due to COVID, but it has re-opened. This does, however, illustrate the uncertainty with respect to whether one can access contract mail services.

Holbrook	M-F 9-3:00, S 10-12:00// M-S 6-6:00
Snowflake	M-F 9-4:30// 24 hours
Taylor	M-F 8:30-4:30// 24 hours
Heber	M-F 9-12:00, 1-3:45// 24 hours
Overgaard	M-F 8:30-4:00// M-Su 6-7:00
Pinedale	M-F 12-4:00, S 7:30-9:30// 24 hours
Show Low	M-F 8-4:30, S 9:00-noon// 24 hours
Lakeside	M-F 9-5:00// 24 hours
Pinetop	M-F 8:30-4:30, S 11:30-2:30// 24 hours

Postal Provider Offices

Shonto (Navajo)	M-F 9-5:00
Teesto Chapter House (Navajo)	M-F 1-5:00// M-F 8-5:00
Sun Valley	M-F 10-1:00
Petrified Forest Natl Park	M-F 11-1:00// M-F 10-1:00

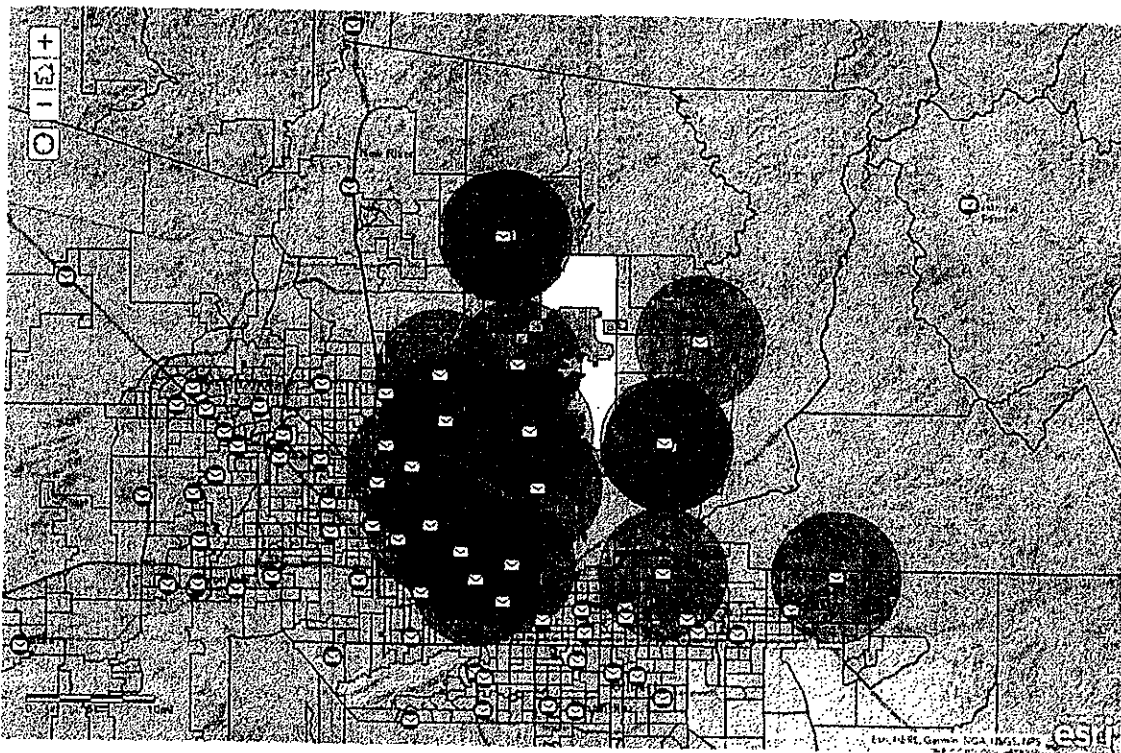
E. A Comparison of Geographic Postal Service Areas

There is an average of one Post Office every 687 square miles on the Navajo Nation as opposed to an average of one Post Office every 15.3 miles in Scottsdale, which means on the average a Post Office on the reservation services a geographic area that is 45 times larger. A key additional difference is that voters in Scottsdale also have residential mail delivery, but those living on the Navajo Nation do not.

We used GIS to map the distances that people living in Scottsdale, Flagstaff, Holbrook and St. Johns have to travel to visit a Post Office. Scottsdale is a geographically large city (184 square miles), while the others are much smaller: Flagstaff 63.9 square miles, Holbrook 15.4 square miles and St. Johns 26.1 square miles. As expected there are more postal locations in the

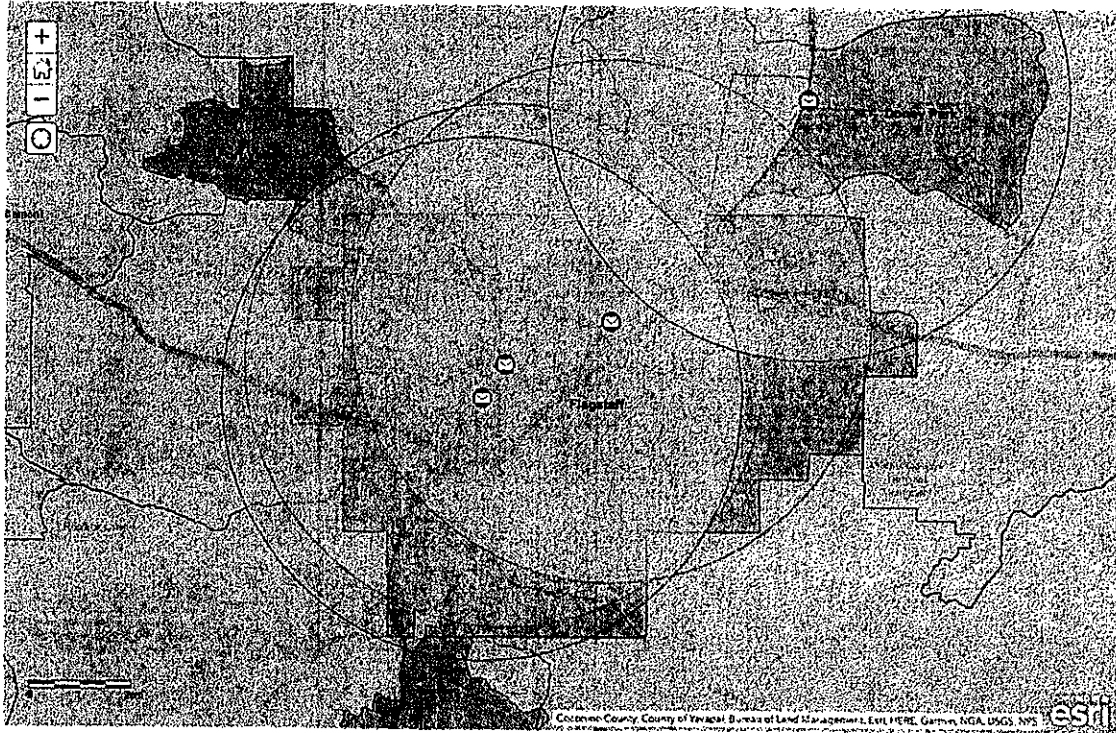
larger geographic areas. Scottsdale, Flagstaff and Holbrook residents also can have residential mail delivery. As the attached GIS maps show, most residents of Scottsdale and Flagstaff live within a five-mile radius of a Post Office, while nearly all of those living in Holbrook and St. Johns are within a three-mile radius.

Scottsdale Geographic Information System Map of Postal Locations



Scottsdale, AZ Municipal Boundary in Purple. Scottsdale's McDowell Sonoran Nature Preserve is Yellow. Local Scottsdale Post Offices and Postal Providers are symbolized by Blue Mail Icon and have a 5-Mile Buffer Radius around them.

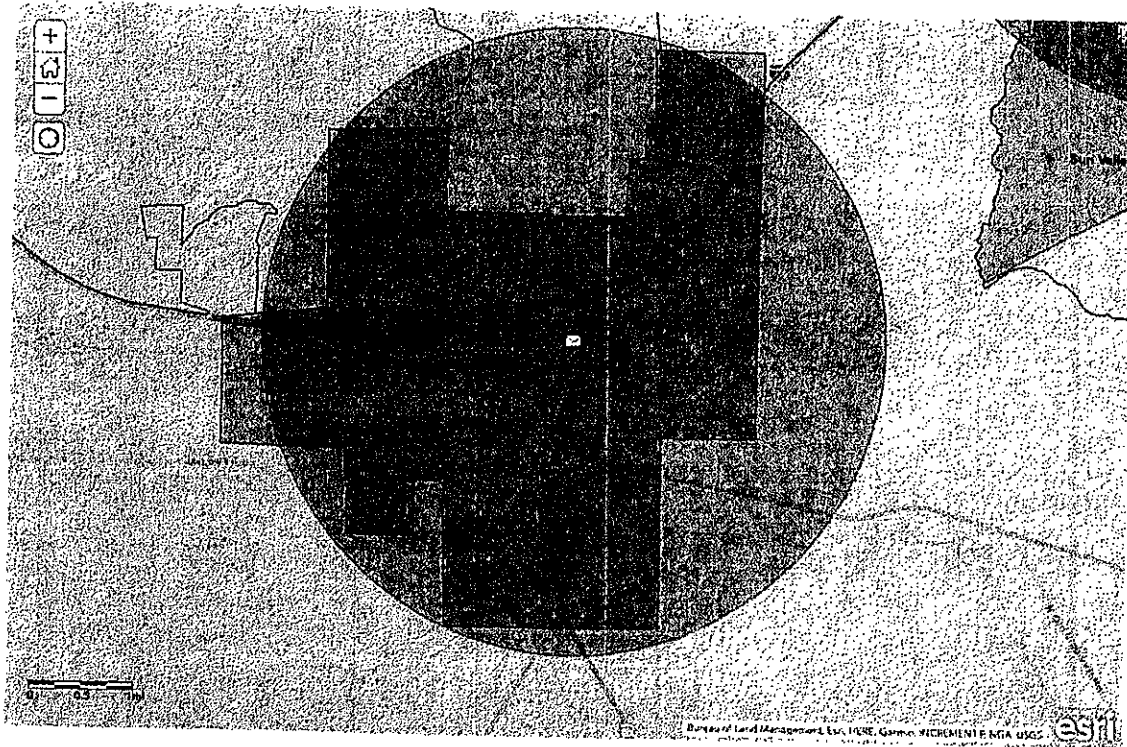
Flagstaff Geographic Information System Map of Postal Locations



Flagstaff, AZ Municipal Boundary in Purple. Local Flagstaff Post Offices and Postal Providers are symbolized by Blue Mail Icon and have a 5-Mile Buffer Radius around them.

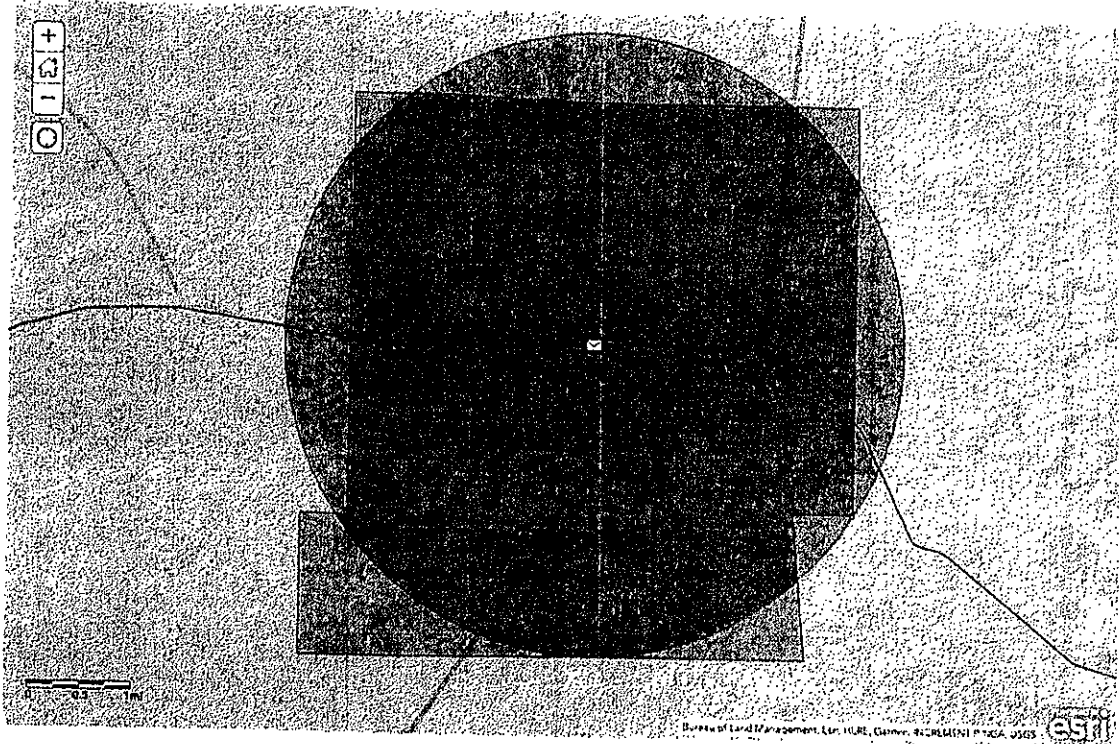
050

Holbrook Geographic Information System Map of Postal Locations



Holbrook, AZ Municipal Boundary in Purple. Local Holbrook Post Offices and Postal Providers are symbolized by Blue Mail Icon and have a 3-Mile Buffer Radius around them.

St. Johns Geographic Information System Map of Postal Locations



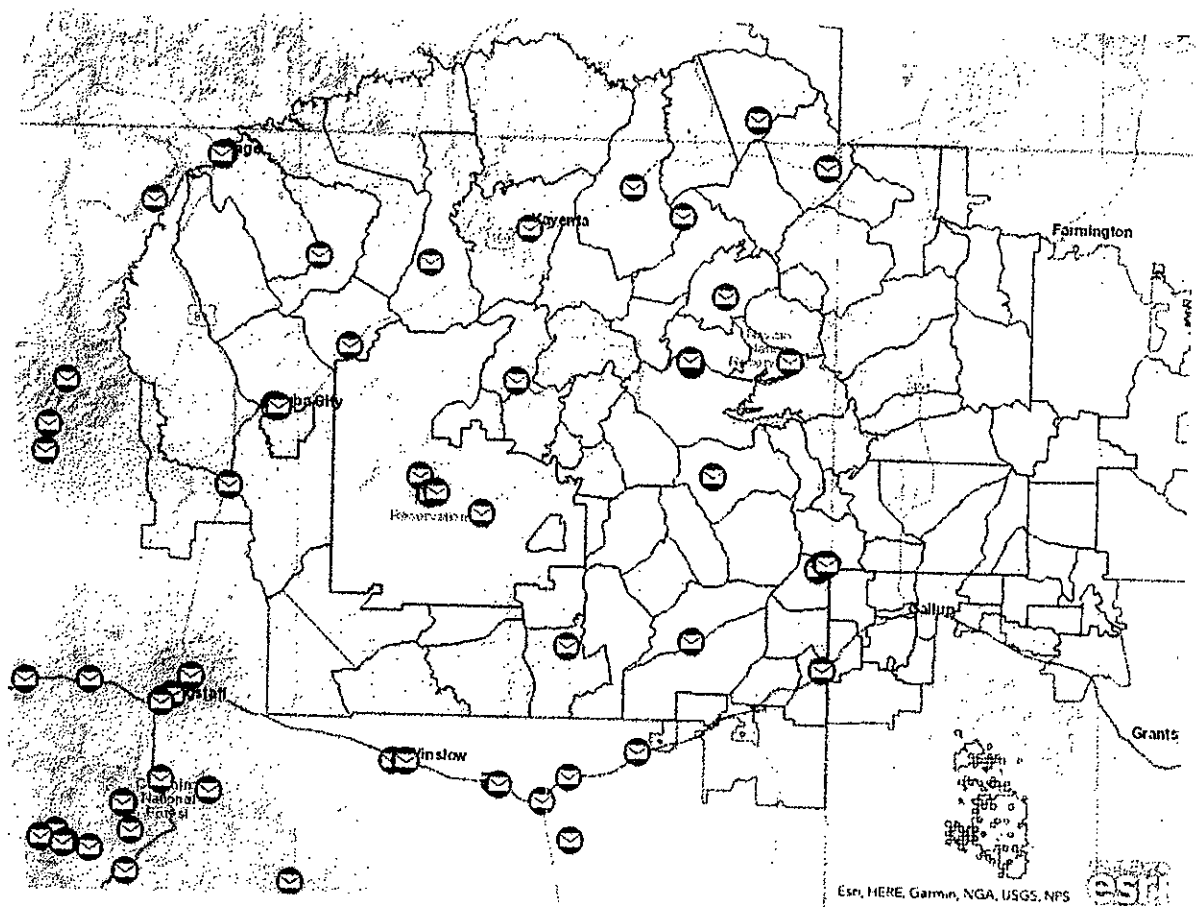
St. Johns, AZ Municipal Boundary in Purple. Local St. Johns Post Offices and Postal Providers are symbolized by Blue Mail Icon and have a 3-Mile Buffer Radius around them.

For comparison purposes, the entire Navajo Nation Reservation, including the parts in New Mexico and Utah, as well as those in Arizona, only have 40 places that people can post and receive letters---an area slightly larger than West Virginia that has 725 post offices and postal provider offices. We have included a GIS map showing the postal locations on the Navajo Nation in Arizona. To get a sense of the distances on the reservation, it is worth considering the following illustrative example. There is not a single Post Office and only two limited service postal provider sites in the following Apache County precincts: 013---Dennehotso, 041---

Mexican Water, and 054---Rock Point, which together encompass an 870.7 square mile territory.

Moreover, none of the voters on the reservation have residential mail service.

Geographic Information System Map of Postal Locations on the Navajo Reservation



053

F. An Analysis of the Impact of Mail Service on Turnout

As noted in our expert report (pages 6-9), there is a large body of academic research showing the following interconnected factors---“voter costs,” “accessibility,” “voter habituation,” and “demographics”---are important predictors of electoral participation. Although the early voting models assumed that the cost of voting was negligible and could be discounted,³⁰ Sanders in 1980 was the first to establish that the cost of voting was not a uniform amount, but that it varied depending upon accessibility to polling places and the ability of individual voters to bear that cost, which in turn was a function of their resources (e.g., socio-demographic factors and economic situation).³¹ In discussing what she must do to vote, a resident of Navajo Mountain Chapter stated, “You do not set out across the parched desert and mountains of Monument Valley [Navajo County] without tuning up your vehicle, filling the tank, checking the tires, stocking up on food and water, and making certain you have enough money for emergencies.”³²

Although the academic literature has recognized that voters may experience difficulties in obtaining information about candidates and election procedures, this too, is an area where Native Americans bear a greater cost than the average citizen due to the lack of reliable broadband access. Navajo Nation President Jonathan Nez recently described the Navajo Nation as being “at the bottom of a digital chasm” as opposed to being on the “wrong side of the digital divide.” President Nez then went on to note that more than half of the 110 Navajo communities do not

³⁰ Downs, Anthony. 1957. *An Economic Theory of Democracy*. New York: Harper & Collins.

³¹ Sanders, Elizabeth. 1980. “On the Costs, Utilities, Simple Joys of Voting.” *Journal of Politics* 42(3): 854-863.

³² Woodard, Stephanie 2018. *American Apartheid: The Native American Struggle for Self-Determination and Inclusion*. New York: IG Publishing, page 75.

have any broadband access and that many of the remainder have only partial access and that the speed is “slow and unreliable.”^{33 34}

A recent study of voter access on the Navajo Nation drew upon this academic research and developed a resource-based model that posits that whether an individual chooses to vote is affected by whether he/she has political resources (e.g., time, money, and civic skills) to bear the costs of voting, given the higher costs associated with voting by mail when the voter must travel long distances to collect their mail.³⁵ The author of this study, Jason Chavez, is particularly well positioned to evaluate the disparities in electoral access. He has both academic qualifications (MA in Political science from Virginia Technology University) and experience as an election official in the Pima County Recorder Office.

As we did in the expert report, Chavez outlines the resource disparities between the American Indian/Alaska Native populations and the non-Native populations before moving on to consider the disparities in access to mail services. Chavez then did a comparison between turnout among voters in reservation and non-reservation precincts, in the 2012 and 2016 general elections.³⁶ He found that individuals voting in non-reservation precincts were much more likely than those on reservations to use early voting/voting by mail. The difference was roughly 35 points in each election.³⁷

³³ President Jonathan Nez, July 8, 2020 testimony before the United States House of Representatives, Committee on Energy and Commerce, page 4.

³⁴ See also Donnellan, Emily S. 2017. “No Connection: The Issue of Internet on the Reservation.” *American Indian Law Journal* 5(2): 347-375.

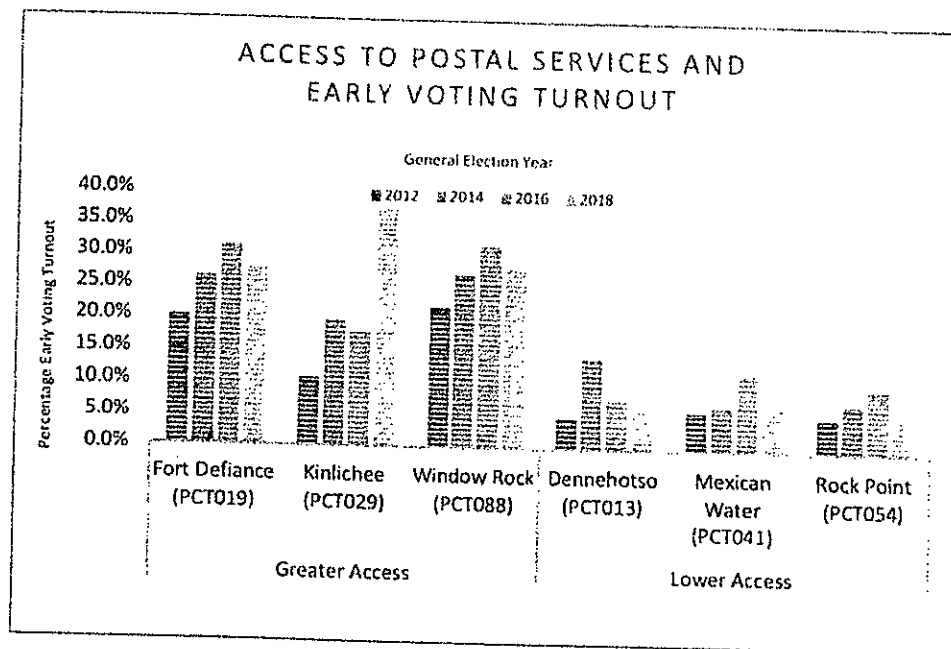
³⁵ Chavez, Jason Nathaniel. May 13, 2020. “Inconvenient Voting: Native Americans and the Cost of Early Voting.” MA Thesis. Blacksburg, VA: Virginia Technology University, 4-5.

<https://viechworks.lib.vt.edu/handle/10919/98924>. In discussing the travel distance barrier, Chavez cites an earlier work that found some voters on the Navajo Nation Reservation had to travel upwards of 400 miles round trip to get to assigned polling locations. See Woodard, Stephanie. 2018. *American Apartheid: The Native American Struggle for Self-Determination and Inclusion*. New York: IG Publishing, 45.

³⁶ Chavez, pages 60-65.

³⁷ The counties do not distinguish between early voting and voting by mail. Chavez, page 70.

In order to control for the other resource factors (e.g., non-postal service factors) that contribute to disparities between reservation and non-reservation voters, Chavez did a micro-analysis of reservation precinct voting. To isolate the effects of differences in postal access, he did a comparison between reservation precinct with the least and greatest access to mail access. The three with the least access, as mentioned above, are Precincts 013-Dennehotso, 041-Mexican Water and 054-Rock Point, which are located in northwest Apache County and cover an 870.7 square mile territory. The three precincts with the most access to Post Offices are: 019-Fort Defiance, 029-Kinlichee, and 088-Window Rock, have access to three post offices in their shared 362.3 square miles of land for an average of one post office for every 120.8 miles. As hypothesized, early voting/voting by mail in the precincts with the greatest access to mail services was far higher in each of the elections (2012-2018).³⁸ See figure below from the Chavez study.



³⁸ Chavez, pages 67-70.

An appropriate conclusion to this section is the following statement by Chavez, “Although early voting turnout is increasing among reservation voters, turnout varies depending on access to postal services. Reservation precincts with a greater ability to receive and return an early ballot by mail have higher early voting turnout compared to those reservation precincts with less access to postal services. Yet early voting turnout among reservation voters is still much lower compared to non-reservation voters. Thus, this analysis suggests that the early voting methods designed to make political participation more convenient do not have the same effect throughout the electorate.”³⁹

G. Alternatives to Voting-by-Mail

State Elections Director Sambo Dul in her Declaration notes that the Secretary of State’s Office is “encouraging voters to utilize the multiple ballot drop-off options available for returning their mail ballots” before going on to mention that Apache, Navajo and Coconino Counties provide “multiple in-person early voting locations.”⁴⁰ As such, it makes sense to consider whether these alternative forms of voting/returning ballots provide Navajo Nation voters with a viable alternative to voting-by-mail. If, however, as we will argue, those alternatives also provide unequal access, they cannot be considered as a mechanism for overcoming the slowness of mail delivery for Navajo voters and the limited access to mail services on the Navajo Nation Reservations.

In what follows, we examine the availability early voting sites, drop box locations and in-person polling locations. In every case, voters on the reservation are at a disadvantage when

³⁹ Chavez, page 73.

⁴⁰ Dul, Sambo. September 14, 2020. Exhibit D. Declaration of Sambo Dul. Case No. 3:20-CV-08222-GMS. Document 42-1. Paragraphs 14 and 15.

compared with off-reservation voters. Given the impact of the coronavirus on people, living in the Navajo Nation, it is desirable that voters not have to congregate as is typical at Election Day polling places. We examine the availability of the different option in Scottsdale, as in Coconino, Navajo and Apache Counties.

Early Voting Sites:

Maricopa County: As of September 17, the county had not identified all of its early voting sites, although it is scheduled to be finalized within the next week (40 days prior to the election).⁴¹

The plan is for there to be 145-160 voting centers that will be open for weekend voting prior to Election Day with some opening on weekend of October 24th.

The intent is for voting centers to be geographically dispersed and their opening will occur in five phases, with the final phase being vote centers that are only open on Election Day, so cannot be considered early vote centers. According to this plan, Maricopa County will have a minimum of 150 early voting center (e.g., those that open prior to Election Day). Since the county is committed to geographically dispersing the sites, this would mean an average of one early voting center per 57.7 to 61.5 miles. For Election Day voting, there would be 170-180 open voting centers (averaging one for every 51-54 miles).

Phase 1: 6 early vote centers (28-day sites) open starting 10/7/2020

Phase 2: 44 additional early vote centers (13-day sites) opening 10/22/2020

Phase 3: 40 additional early vote centers (7-day sites) opening 10/28/2020

Phase 4: 60-70 additional early vote centers (2-day sites) opening on 11/2/2020

Phase 5: 20 additional Election Day only vote centers

⁴¹ Early Voting Plan - November General Election - Office of Maricopa County Recorder Adrian Fontes& the Maricopa County Elections Department, PDF, http://www.fourdirectionsvote.com/wp-content/uploads/2020/09/GENERAL_ELECTION_2020_EARLY_VOTING_PLAN_FINAL.PDF.pdf

The following is a listing of the Election Day vote centers in Scottsdale, with start dates as of September 18, 2020.⁴² The final three on the list are only open on Election Day, but the others have earlier start dates. The Maricopa County Recorder's website lists a total of 171 vote centers.

<u>Site</u>	<u>Availability</u>
City of Scottsdale	10/12 start date
Scottsdale Plaza	10/7 start date
Mini Social	10/22 start date
Thunderbird Adventist Academy	10/28 start date
Scottsdale Worship Center	10/28 start date
Florence Ely Nelson	10/28 start date
Scottsdale McCormick Ranch	10/28 start date
Venue 8600	10/28 start date
Salt River Pima	10/31 start date
Dream City Church Scottsdale Campus	11/2 start date
MVD Scottsdale	11/2 start date
Salt River Native Community Ctr	11/3 start date
For McDowell Indian Community Ctr.	11/3 start date
Mountain View Park Rec Ctr	11/3 start date

Coconino County:⁴³

<u>Non-Navajo Nation Sites</u>	<u>Availability</u>
Flagstaff/Elections Office	Full period, M-F, 8:00 a.m.-5:00 p.m.
Flagstaff Mall	Full period, M-F, 12:00-7:00 p.m.

⁴² Maricopa County Elections Department – Election Day Vote Centers as of 9/16/2020 PDF, <https://recorder.maricopa.gov/pollingplace/>

⁴³ Coconino County Elections Department, Early Voting Sites, PDF, <https://www.coconino.az.gov/DocumentCenter/View/37870/Early-Voting-Sites-2020-General?bidId=>

Williams City Hall	Full period, M-F, 9:00 a.m.-5:00 p.m.
Sedona City Hall	Full period, M-Th, 8:00 a.m.-noon
Page City Hall	Full period, M-Th, 7:00 a.m.-5:30 p.m.
Fredonia City Hall	Full period, M-Th, 7:30 a.m.-5:30 p.m.
Grand Canyon	By appointment
<u>Navajo Nation Sites</u>	
<u>Availability</u>	
Tuba City	Full period, M-F and S 8:00 a.m.- noon
Leupp ⁴⁴	1 day/week for 3 weeks
Inscription House	1 day/week for 3 weeks
Cameron	1 day/week for 3 weeks

Navajo County: There are four sites on the Navajo Nation and seven other sites.⁴⁵

<u>Non-Navajo Nation Sites</u>	
<u>Availability</u>	
Holbrook/Elections Office	10/7-10/30, 8:00 a.m.-5:00 p.m.
Hopi Elections Parking Lot	10/8, 10:00 a.m.-3:00 p.m.
Show Low City Hall	10/13-10/14, 10:00 a.m.-3:00 p.m.
Snowflake	10/15, 10:00 a.m.-3:00 p.m.
Heber	10/21, 10:00 a.m.-3:00 p.m.
Cibecue	10/22, 10:00 a.m.-3:00
Whitewater	10/23, 10:00 a.m.-3:00 p.m.
<u>Navajo Nation Sites</u>	
<u>Availability</u>	
Shonto	10/9 7 10/16, 10:00 a.m.-3:00 p.m.
Kayenta ⁴⁶	M-F 10/7-10/20, 10:00 a.m.-3:00 p.m.
Dilkon Chapter House	M-F 10/7-10/20, 10:00 a.m.-3:00 p.m.

⁴⁴ The Leupp, Inscription House and Cameron early voting sites were part of the settlement in *The Navajo Nation, et. al. v. Hobbs, et. al.* 2018. No. CV-18-08329-PCT-DwL (D. Ariz.)

⁴⁵ Navajo County Recorder's Office, Early Voting Sites, PDF, <https://navajocountvaz.gov/Portals/0/Departments/Recorder/Documents/2020%20General%20Election%20Early%20Voting%20Sites.pdf?ver=2020-09-09-100243-817×tamp=1599671025584>

⁴⁶ The early voting sites at Kayenta, Dilkon Chapter House, and Pinon were part of the settlement in *The Navajo Nation, et. al. v. Hobbs, et. al.* 2018. No. CV-18-08329-PCT-DwL (D. Ariz.).

Pinon

M-F 10/7-10/20, 10:00 a.m.-3:00 p.m.

Apache County: As of July, 2020, the only non-reservation site for early voting in the county is at the county recorder office in St. Johns.⁴⁷ The other four locations are on the Navajo Nation.⁴⁸ The hours in Fort Defiance and Chinle could be shortened.

<u>Non-Navajo Nation Site</u>	<u>Availability</u>
St. Johns/Elections Office	full period 6:30 a.m.-5:30 p.m.
<u>Navajo Nation Sites</u>	<u>Availability</u>
Fort Defiance ⁴⁹	M-F full period 8:30-4:30 (caveat)
Chinle	M-F full period 8:30-4:30 (caveat)
Teec Nos Pos	1 day 10:00 a.m.-3:00 p.m.
Sanders	1 day 10:00 a.m.-3:00 p.m.

Drop Box Locations

The Secretary of State has announced there will be 80 drop box locations in the state for the general election; 38 of these will be in the Apache, Coconino and Navajo Counties.⁵⁰ Only one of these thus far is designated for the Navajo Nation---in Tuba City. There are 37 drop box locations slated for Maricopa County; two of which are in Scottsdale.⁵¹

⁴⁷ Phone Call to Apache County Recorder's Office, 9/17/2020

⁴⁸ Arizona Clean Elections, My Voting Dashboard, <https://www.azcleanelections.gov/voter-dashboard?addr=%201700%2027th%20P%20S%2C%20Saint%20Johns%2C%20AZ%20>.

⁴⁹ The Fort Defiance and Chinle early voting sites were part of the settlement in *The Navajo Nation, et. al. v. Hobbs, et. al.* 2018. No. CV-18-08329-PCT-DwL (D. Ariz.)

⁵⁰ See Declaration of State Elections Director Sambo (Bo) Dal, who oversees the Election Services Division in the Arizona Secretary of State's Office. Dal, Sambo. September 14, 2020. Exhibit D, Case 3:20-cv-08222-GMS, Document 42-1, paragraph 10.

⁵¹ Maricopa County Elections Department, November 2020 General Election, Exhibit D-Secure Drop Box Locations.

Maricopa County: As of September 18, the county had a list of 37 drop box sites, although some were still pending approval and site visit.⁵² Three Scottsdale drop box sites are listed, but only one has been approved. The county's sites have start dates that vary from October 7 through Election Day.⁵³ Some will be drive through locations, so people can drop off early votes without leaving their vehicles, which limits the likelihood of exposure to the coronavirus. See below for a listing of the sites, which have been approved.

<u>Site</u>	<u>Availability</u>
Elections Dept., Phoenix	10/7, 24 hours/daily
Elections Dept. Mesa	10/12, M-TH/ 8 a.m.-5:00 p.m.
Avondale, City of	10/12, M-Th/ 7:00 a.m.-6:00 p.m.
El Mirage, City of	10/12, M-Th/ 7:00 a.m.-6:00 p.m.
Glendale, City of	10/12, M-F/ 8:00 a.m.-5:00 p.m.
Goodyear, City of	10/12, M-F/ 8:00 a.m.-5:00 p.m.
Paradise Valley, Town of	10/12, M-F/ 7:00 a.m.-4:00 p.m.
Peoria, City of	10/12, M-Th/ 7:00 a.m.-6:00 p.m.
Phoenix, City of	10/12, M-F/ 8:00 a.m.-5:00 p.m.
Scottsdale, City of	10/12, M-F/ 9:00 a.m.-4:00 p.m.
Youngtown, Town of	10/12, M-Th/ 7:00 a.m.-6:00 p.m.
Buckeye, Town of	10/19, M-Th/ 8:00 a.m.-5:00 p.m.
Carefree, Town of	10/19, M-F/ 8:00 a.m.-4:30 p.m.
Cave Creek, Town of	10/19, M-Th/ 7 a.m.-5:00 p.m.
Chandler, City of	10/19, M-F/ 8:00 a.m.-5:00 p.m.
Gila Bend, Town of	10/19, M-F/ 8:00 a.m.-4:00 p.m.

⁵² The following is a list of the places still pending: Town of Fountain Hills, City of Tolleson, State Farm Stadium, Surprise Stadium, Tempe Diablo Stadium, Salt River Fields at Talking Stick, Turf Paradise, American Family Fields, Goodyear Stadium, Peoria Sports Complex, Sloan Park, Hohokam Stadium, and Salt River Native American Community Center.

⁵³ Maricopa County Elections Department - Drop Box Locations PDF, <https://recorder.maricopa.gov/pollingplace/>

Litchfield, City of	10/19, M-F/8:00 a.m.-5:00 p.m.
Mesa, City of	10/19, M-Th/ 7:00 a.m.-6:00 p.m.
Wickenburg, Town of	10/19, M-Th/ 7:00 a.m.-6:00 p.m.
Queen Creek Library	10/19, M-F/ 8:00 a.m.-5:00 p.m.
Sun City Library	10/19, M-F/ 8:00 a.m.-5:00 p.m.
Anthem, North Valley Regional	10/19, M-F/ 8:00 a.m.-5:00 p.m.
Fountain Hills Library	10/19, M-F/ 8:00 a.m.-5:00 p.m.
Veterans Memorial Coliseum	10/24, no times yet

Coconino County: As of September 18, the county had listed 10 drop box locations, with only 1 being on the reservation in Tuba City with limited hours.⁵⁴ Ballots can be dropped off at any of the early voting sites in the county prior to Election Day during the hours the site is open. On Election Day ballots can be dropped off at any polling place or vote center in the county between 6 am to 7 pm (local time). Note: More locations will be announced soon. See below for a listing of these sites.

<u>Site</u>	<u>Availability</u>
Coconino County Flagstaff Office	24 hours, 7 days a week
Coconino County Public Library	24 hours, 7 days a week
Coconino County Drive-Up Window	24 hours, 7 days a week
Coconino County HHS Building	24 hours, 7 days a week
Coconino County Community Development	24 hours, 7 days a week
Flagstaff Mall	12-7pm, 7 days a week
Sedona City Hall	24 hours, 7 days a week
Page City Hall	City Hall Hours, Mon-Thurs

⁵⁴ Coconino County Elections Department, Drop Box Locations, PDF, <https://www.coconino.az.gov/DocumentCenter/View/37870/Early-Voting-Sites-2020-General?bidId=>
<https://www.coconino.az.gov/DocumentCenter/View/37871/Coconino-County-Ballot-Drop-Box-Locations-2020-General?bidId=>

Coconino County Probation Office – Page 24 hours, 7 days a week
 Tuba City Elections Office 8am-5pm, Mon-Thurs

Navajo County: The Navajo County Recorder’s Office has purchased, with the help of a grant, ballot drop boxes. These boxes allow voters to drop their ballots (24) hours a day, (7) days a week during early voting through 7:00 PM on Election Day. As of September 18, the county had 6 drop boxes set up, with none being on the Navajo Nation.⁵⁵ See below for a listing of these sites. The county is not planning on adding any more drop boxes at this time.⁵⁶

<u>Site</u>	<u>Availability</u>
Heber/Overgaard - North County Complex	24 hours, 7 days a week
Holbrook Justice Court	24 hours, 7 days a week
Pinetop-Lakeside Town Hall	24 hours, 7 days a week
Show Low Health Dept	24 hours, 7 days a week
Snowflake Justice Court	24 hours, 7 days a week
Winslow Justice Court	24 hours, 7 days a week

Apache County: As of September 18, 2020, the Apache County Recorder Office only have 2 drop boxes up right now, one in St. Johns at their office and one in Springerville.⁵⁷ They are planning on adding 9 more.⁵⁸ They don't have the additional boxes yet. but are working on it, and planning to have them all set up by the first week in October.

⁵⁵ Navajo County Recorder’s Office, Secure Ballot Drop Box Information, <https://www.navajocountyaz.gov/Departments/Recorder/Secure-Ballot-Drop-Box-Information>

⁵⁶ Phone call to Navajo County Recorder's Office, 9/15/2020

⁵⁷ Arizona Clean Elections, My Voting Dashboard, <https://www.azcleanelections.gov/voter-dashboard?addr=%20Springerville%2C%20AZ%20>

⁵⁸ Phone call to Apache County Recorder's Office, 9/15/2020

<u>Site</u>	<u>Availability</u>
Apache County Recorder Office	24 hours, 7 days a week
Springerville	24 hours, 7 days a week

Election Day Polling Locations

Most Arizona voters choose to use voting by mail,⁵⁹ but there still are Election Day polling locations.

Maricopa County: Nearly all of the voting centers in Maricopa County, which are listed above, will be open for in-person voting on Election Day. The previously cited research by Chavez noted a major difference between voters in Navajo Nation precincts and those from non-Navajo Nation precincts, one might expect that county election officials might respond by providing greater Election Day precinct voting on the Navajo Nation than in other precincts.

Apache County: Only in Apache County are there more polling locations on the Navajo Reservation than outside of the Navajo Nation. The county has 44 precincts,⁶⁰ each of which has a single Election Day polling location and no two precincts share a polling location. Of these locations, 32 are within the boundaries of the Navajo Nation. The only community with more than a single location is Ganado, which has two polling places. On county's master list, there is only one St. Johns location---the Apache County Annex-Pera Gym.

Navajo County: There are fourteen precincts within Navajo County, numbered 01-14 in the master file, but each has precinct includes multiple polling locations. Sixteen of the Election Day polling locations are located within the boundaries of the Navajo Nation, while 22 are

⁵⁹Ferguson-Bohnee, Patty and James T. Tucker. 2020. "Voting During a Pandemic: Vote-By-Mail Challenges for Native Voters." *Arizona Attorney* July/August, page 28.

⁶⁰ These are numbered 02, 03, 05, 09, 10, 11, 12, 13, 16, 17, 19, 22, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 46, 48, 51, 52, 54, 56, 58, 59, 61, 65,67, 70, 74, 76, 78, 80, 82, 84, 86, and 88.

located outside of the Navajo Nation. Two precincts (02 and 08) list the Holbrook-Machusak Recreation Center as a polling place for Election Day, but the county recorder office is not listed.

Coconino County: There are 71 precincts in Coconino County⁶¹ and 50 different Election Day polling locations. Twelve polling locations are on the Navajo Nation and 38 are located outside of its boundaries. Flagstaff is particularly well served with 22 locations, leaving aside the county recorder office, while the Navajo Nation has 12 polling places in Coconino County.

When one examines the availability of Election Day polling places for in-person voting, which historically has been the preferred mode of voting among Navajo citizens, it would be hard to not decide that the population, within Arizona, is vastly under-served. There are only 60 polling places on the 18,382 square miles of the Navajo Nation, which averages out to one polling location for every 306 square miles. Flagstaff on the other hand has 22 polling locations for an average of one for every 2.9 miles.

Conclusion: The total land mass of the Navajo Nation Reservation is slightly larger than the West Virginia, although the roughly two-thirds of the territory in Arizona is smaller than the aforementioned state. It is, however, still a land mass that is larger than nine states (Maryland, Virginia, New Hampshire, New Jersey, Hawaii, Connecticut, Delaware and Rhode Island) and as we have shown citizens on the reservation have much less access to mail services than is typical off-reservation. Without residential mail delivery, voters are much more dependent upon there being an adequate number of post offices, but that is not the case on the reservation. The disparity is not simply a shortage of post offices, although that is severe and people must travel long distances to get to sites, the hours of service and access post office boxes is substantially

⁶¹ These are numbered 1-26, 40-43, 47, 48, 50-53, 55, 56, 58-75, 79, 80, 82-86, 88, 90, 92-95, 97-99.

less than in post offices off-reservation. We also have shown that letters posted on the reservation travel often travel long distances and move slower than is the norm for those in Scottsdale, Flagstaff, Holbrook and St. Johns. As such, we agree with former Pima County election official Jason Chavez, who states that his research demonstrated, "...a relationship between the high costs of voting and low voting turnout among reservation voters on the Navajo Nation compared to low costs and high turnout among non-reservation voters in Apache, Navajo, and Coconino Counties."⁶²

Moreover, the alternative forms of electoral access do not provide a remedy for the disparities in voting-by-mail. Instead each of those purported remedies is also unequal in terms of the opportunities available for voters on the Navajo Nation Reservation. As of September 18, 2020, there are only plans for a total of twelve early voting sites spread across the reservation--- again keeping in mind that the Arizona portion of the reservation is roughly 100 times larger than the city of Scottsdale, which has more early voting sites, as well as a much higher level of mail service. The situation with drop boxes is, if anything even worse, with only single drop box (Tuba City) planned for the entire reservation and it has shorter hours than most. And there are only 60 Election Day polling locations or one location for every 306 square miles.



\s\ Bret Healy

⁶² Chavez, page 87.

DECLARATION OF DR. JEAN SCHROEDEL AND BRET HEALY

A. Qualifications: Jean Schroedel

I am the Thornton F. Bradshaw Professor of Public Policy at Claremont Graduate University, where I have served four terms as department chair and one term as an academic dean. Prior to moving to Claremont Graduate University in 1991, I was an assistant professor in the Political Science Department at Yale University, and before that I was a lecturer in the Business, Government and Society Program at the University of Washington. I also spent the summer of 2004 as a visiting professor at the University of Kerala in Trivandrum, India, as part of a U.S. government funded exchange program. My formal education includes a BA (1981) in Political Science from the University of Washington and a Ph.D. (1990) in Political Science from the Massachusetts Institute of Technology, where my fields of concentration were American politics, public policy, and political economy.

My primary research and teaching interests are in American politics and public policy. I have written four single authored scholarly books, including *Is the Fetus a Person? A Comparison of Policies Across the Fifty States* (Cornell University Press), which was given the Victoria Schuck Book Award by the American Political Science Association, as well as two co-edited books funded by the Russell Sage Foundation. I have authored or co-authored more than 50 refereed journal articles and book chapters, and nearly 40 other publications. In addition to the previously mentioned book award, I have garnered a best paper award from the Western Political Science Association, the most cited article recognition from *State and Local Government Review*, and the Diversity in Teaching Award from the Claremont Colleges

Consortium. My research has been supported by grants from numerous foundations, including the aforementioned support from the Russell Sage Foundation.

Throughout my academic career, much of my research has examined the political representation of traditionally marginalized groups. Over the past decade, my primary research interest has been Native American political incorporation (eight journal articles and nine other publications). My most recent book, *Voting in Indian Country: The View from the Trenches* (University of Pennsylvania Press), which is an in-depth look at voting rights issues involving Native Americans, is due to be published in early September. I served as an expert witness in the *Wandering Medicine v McCulloch* (2014) case, which was settled. The conclusions that I reached in that report, as well as this one, are mine not related and/or endorsed by my university and were reached through an independent research and inquiry. Assistance on this report was provided by Dr. Joseph Dietrich (Ph.D. University of Pittsburgh, MA, Claremont Graduate University) and Ms. Jamaica Baccus-Crawford (MAPP, Claremont Graduate University).

B. Qualifications: Bret Healy

I have a Bachelor of Science degree in Animal Science from South Dakota State University and a Master of Science degree in Animal Science from Kansas State University. I worked for U.S Representative Tim Johnson as a senior legislative aide and for Senator Tim Johnson as a senior legislative aide and international trade director. At the request of Senator Johnson, I served as the Executive Director of the South Dakota Democratic Party (SDDP), overseeing SDDP's get-out-the-vote efforts in 2000 and 2002. Since that time, I have worked as a government relations and public affairs consultant with clients in the biofuels, government contracting, medical device, and finance industries.

I assist Tribes and tribal members pursuing equal opportunities to participate in federal and state elections starting in 2003 up to the current day. My experience includes:

- 1) Securing by persuasion or assisting the pursuit of litigation, to get state and local authorities to site satellite, in-person, early voting locations on tribal lands for tribal members of: Oglala Sioux Tribe, Rosebud Sioux Tribe, Crow Creek Sioux Tribe, Cheyenne River Sioux Tribe, Red Lake Nation, White Earth Nation, Leech Lake Band of Ojibwe, Crow Nation, Northern Cheyenne Tribe, Fort Belknap Indian Community (Assiniboine and Gros Ventre), Pyramid Lake Paiute Tribe, Walker River Paiute Tribe, and the Navajo Nation.

vote drives for tribal members of the Tribal Nations in item 1, and for tribal members of: Lower Brule Sioux Tribe, Yankton Sioux Tribe, Sisseton-Wahpeton Oyate, Te-Moak Band of Western Shoshone, Fallon Paiute-Shoshone Tribe, Blackfeet Nation, Turtle Mountain Chippewa, Standing Rock Sioux Tribe, Flandreau Santee Sioux Tribe, Reno-Sparks Indian Colony, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, Washoe Tribe of Nevada and California, Yerington Paiute Tribe, and Lumbee Tribe of North Carolina.
- 3) Assisted in the rewrite of South Dakota's Help America Vote Plan in 2013-2014, at the request of then South Dakota Secretary of State Gant, achieving the stated goals of the Oglala Sioux Tribe, Crow Creek Sioux Tribe, Cheyenne River Sioux Tribe, and the Great Plains Tribal Chairman's Association (GPTCA). GPTCA's membership is the Tribal Chairmen of all Tribes in North Dakota, South Dakota, and Nebraska.

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- 4) Assisting in the design and training of activists, law students, and lawyers for election protection activities for state and federal elections. Specific examples include polling locations on all nine South Dakota Indian Reservations from 2004 through 2018, Pyramid Lake Paiute Tribe and Walker River Paiute Tribe in 2016 and 2018, Blackfeet Nation in 2012, Standing Rock Sioux Tribe in 2018, and Navajo Nation in 2010 and 2018.
- 5) Assisting the Standing Rock Sioux Tribe and the United Tribes of North Dakota in developing a fail-safe method of assigning tribally authorized voting addresses in 2018 in response to the efforts by the State of North Dakota to reject tribal ids without a physical address. Member Tribes of the United Tribes of North Dakota include: Mandan, Hidatsa, and Arikara Nation, Turtle Mountain Band of Chippewa Indians, Spirit Lake Sioux Tribe, Standing Rock Sioux Tribe, and Sisseton Wahpeton Oyate.
- 6) Advising Tribal Organizations on voting issues in state and federal elections. Tribal organizations include: Great Plains Tribal Chairman's Association, Rocky Mountain Tribal Leaders Council (includes Tribes in Montana, Wyoming, and Idaho), Inter-Tribal Council of Nevada (27 Tribes in Nevada), Coalition of Large Tribes (includes Mandan, Hidatsa, and Arikara Nation, Oglala Sioux Tribe, Rosebud Sioux Tribe, Blackfeet Nation, Cheyenne River Sioux Tribe, Ute Indian Tribe, Eastern Shoshone Tribe, Spokane Tribe of Indians, Fort Belknap Indian Community, Sisseton Wahpeton Oyate, Shoshone Bannock Tribes, and Navajo Nation), and National Congress of American Indians.
- 7) Testifying in voting rights litigation. I was declared an expert witness for plaintiffs at the District Court hearing in *Wandering Medicine, et al. v McCulloch, et al.* by Chief Federal District Judge Richard Cebull, testified at the hearing in *Sanchez, et al., v. Cegavske, et al.*, testified via affidavit in *Brooks, et al. v Gant, et al.*, testified via affidavit and

deposition in *Poor Bear, et al. v. County of Jackson*, and testified via declaration in *Navajo Nation, et al., v. Hobbs, et al.*

C. Research Questions

The plaintiffs, through their attorney Chris McClure, have asked us to address the following research questions in the context of the state of Arizona's possible response to the unprecedented conditions created by the COVID-19 pandemic:

1. Do Navajo Nation Tribal Members ("Tribal Members") have less days than non-Indian voters to cast their mail-in ballots because of slower postal service than affluent areas like Scottsdale, Arizona?
2. Do Tribal Members living on the Arizona portion of the Navajo Nation have less access to voting-by-mail than non-Indian voters in Arizona, including St. John's, county seat of Apache County, Holbrook, county seat of Navajo County, Flagstaff, county seat of Coconino County and Scottsdale in Maricopa County?
3. Does requiring mail-in ballots to be returned---rather than postmarked---on or by Election Day lead to the disenfranchisement of Tribal Member voters when their overdue ballots are rejected?

D. Qualitative Methods

In this report we utilize a "Qualitative Methods" methods approach, which is one of the most widely employed methods in the social sciences.¹ The 2001 creation of the Consortium on Qualitative Research Methods is evidence of the methods widespread use and status within academia.² Two years later, the American Political Science Association created an organized

¹ For more on qualitative methods within academic research, see Denzin, Norman K. and Yvonna S. Lincoln, eds. 2000, 2011. *The SAGE Handbook of Qualitative Research*, 1st ed, 4th ed., Thousand Oaks, CA: SAGE Publications.

² Consortium on Qualitative Research Methods. n.d. https://www.maxwell.syr.edu/moynihanqcqm/About_CQRM/.

section on qualitative methods.³ Another indication of the method's importance within political science is its widespread use in scholarly political science articles.⁴

Qualitative methods use data and information gleaned from multiple and overlapping sources. For this report we relied primarily upon the political science literature focusing on voting behavior and the design of electoral systems. An important strength of qualitative methods is that it can be used to analyze complex and multi-dimensional phenomena, in particular those that involve a large number of variables that change over time.⁵ This method has been widely used in research involving identities, such as race, gender and class.⁶

II. RESEARCH ON "VOTER COSTS," "ACCESSIBILITY," "VOTER HABITUATION" AND DEMOGRAPHICS

Within political science, there is a large body of research into the many factors and variables that affect voter behavior and voter turnout. Among this very large body of scholarship, the most relevant to this research are those examining "voter costs," "accessibility," "voter habituation," and "demographics." Although these are being treated here as separate categories, it is important to recognize they are inter-connected and may reinforce tendencies towards participation or non-participation in elections. Probably the final category, that we have labeled as "demographics," but which encompasses a broad range of human capital/socio-demographic

³ American Political Science Association, section on Qualitative Methods. n.d. https://www.apsanet.org/content_57139.cfm.

⁴ By 2003, nearly half of all peer-reviewed articles in political science journals, used qualitative methods. Bennett, Andrew, Aaron Barth and Kenneth Rutherford. 2003. "Do We Preach What We Practice? A Survey of Methods in Journals and Graduate Curriculum." *PS: Political Science and Politics*, 36(3): 372-376.

⁵ Bartolini, Stefano. 2013. "The Temporal Dynamics of the Franchise Expansion: Timing, Tempo, and Reversals." *Qualitative & Multi-Method Research* 11(2): 3-7.

⁶ Lamont, Michele and Patricia White. 2009. Workshop on Interdisciplinary Standards for Systematic Qualitative Research. Washington, DC: National Science Foundation, Cultural Anthropology, Law and Social Science, Political Science and Sociology Programs. www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf.

and economic factors, plays a very important role in either mitigating or exacerbating all of the effects of the others.

The basic voting calculus, which was developed more than sixty years ago, is expressed in a simple model ($R = PB - C$) where R , the reward that one gets from voting, is a function of PB , the perceived difference in benefits from the two parties, minus C , the cost of voting.⁷ But not all citizens are equally equipped to bear the costs of voting. Rosenstone and Hansen write, “Participation in politics, that is has a price, a price that is some combination of money, time, skill, knowledge, and self-confidence,” and then go on to note that wealthy and educated individuals with a sense of political efficacy are better able to bear the cost of participation.⁸ As Brady, Verba and Schlozman note, “time, money and civil skills” are “essential to political activity” (1995: 271).⁹ Moreover, state election laws and procedures differ across the state and those difference in electoral systems can increase, or decrease, those costs, which in turn affect electoral participation.¹⁰ Thus, if the goal is to increase participation, inclusivity, and turnout, then voter costs should be minimized.

The second theme in the academic literature is accessibility (e.g., how difficult it is to access registration and voting). Probably no area of research related to voting costs has generated more attention than the question of how much accessibility affects whether one votes or not votes. According to Gimpel and Schuknecht, accessibility is a function of two factors:

⁷ Downs, Anthony. 1957. *An Economic Theory of Democracy*. New York: Harper and Row.

⁸Rosenstone, Steven J. and John Mark Hansen. 1993. *Mobilization, Participation, and Democracy in America*. New York: MacMillan Publishing Company, 12-14.

⁹ Brady, Henry, Sidney Verba, and Kay Schlozman. 1995. “Toward SES: A Resource Model of Political Participation.” *American Political Science Review* 89(2): 271-294, 271. See also Berensky, Adam. 2005. “The Perverse Consequences of Electoral Reform in the United States.” *American Politics Research* 33: 471-491; and Brady, Henry and John McNulty. 2011. “Turning Out to Vote: The Costs of Finding and Getting to the Polling Place.” *American Political Science Review* 105(1): 115-134.

¹⁰ Li, Quan, Michael J. Pomantell, and Scott Schraufnagel. 2018. “Cost of Voting in the American States.” *Election Law Journal L Rules, Politics and Policy* 17(3): Published online 18 September. <https://doi.org/10.1089/ej.2017.0478>.

distance and impedance. While distance is a relatively straightforward concept to understand, impedance----“whatever stands in the way of getting from point A to point B”----can be affected by things, such as speed limits, traffic congestion, road quality, topographical barriers and so on. The study, which used geographical information system (GIS) to spatially locate voters’ residences and polling places, found that both of the factors affected voting accessibility.¹¹

A third theme in the literature concerns voting as a habituated behavior.¹² Voters are creatures of habit, and when accustomed forms of voting are disrupted, it tends to decrease turnout. As one study put it, “Voting may be habit-forming.”¹³ Another study noted that the outcome of elections can be changed by the “extensive manipulation of polling place locations.”¹⁴ Making changes to polling locations, new limits on “convenience voting,” and changes in voter criteria, deadlines or election schedules can reduce turnout. The impact of these changes that adversely impact turnout are not equally distributed across all sectors of the voting populations. Instead the greatest negative effects tend to be the greatest on those for whom the cost of voting already is higher than the average.

¹¹ They also found small changes in distance had a strong negative impact in urban areas, but that battling traffic congestion in the suburban ring was more of an impediment than somewhat longer distances. They also found the expected negative relationship between the percentage of female headed households and voting, as well as the positive relationship between education levels and voting. Gimpel, James G. and Jason E. Schuknecht. 2003. “Political Participation and the Accessibility of the Ballot Box.” *Political Geography* 22: 471-488, 476.

¹² Gerber, Alan, Donald Green and Ron Sachar. 2013. “Voting May Be Habit Forming: Evidence from a Randomized Field Experiment.” *American Journal of Political Science* 47(3): 540-550; Kwak, Nojin, Dhavan Shah and Lance Holbert. 2004. “Connecting, Trusting, and Participating: The Direct and Interactive Effects of Social Associations.” *Political Research Quarterly* 57(4): 643-652.

¹³ Gerber, Alan, Donald Green and Ron Sachar. 2013. “Voting May Be Habit Forming: Evidence from a Randomized Field Experiment.” *American Journal of Political Science* 47(3): 540-550. The role habit formation is important in explaining why voting increases with age. In the previously mentioned study by Gimpel and Schuknecht (2003) there was a negative relationship between the percentage of young voters and turnout further highlights the importance of habituation in voting.

¹⁴ Brady, Henry and John McNulty. 2011. “Turning Out to Vote: The Costs of Finding and Getting to the Polling Place.” *American Political Science Review* 105(1): 115-134, 115.

The final theme, which is interconnected with the other factors, is the human capital/socio-demographic and economic characteristics of the population base. In the late 1990s, researchers identified younger people, racial minorities, women, and those with lower incomes as having a statistically significant inverse relationship with voting.¹⁵ Twenty years later, McNulty, Dowling and Ariotti reiterated that socio-demographic and economic status affect political participation.¹⁶ A Task Force of the American Political Science Association emphasizes the interconnection between demographic categories, in particular race, ethnicity, education, economic class and gender, in predicting voter participation.¹⁷ Several studies found that early voting, which typically involves voting by mail, advantages those with socio-economic resources, thereby exacerbating existing biases within the electorate.¹⁸ The ability to bear the cost of voting, overcome accessibility challenges and become habituated to voting is much higher among those with resources, and those who do not have to overcome the historical effects of discrimination.

III. DO NAVAJO NATION TRIBAL MEMBERS (“TRIBAL MEMBERS”) HAVE LESS DAYS THAN NON-INDIAN VOTERS TO CAST THEIR MAIL-IN BALLOTS BECAUSE OF SLOWER MAIL SERVICE THAN THOSE IN AFFLUENT AREAS LIKE SCOTTSDALE, ARIZONA?

A. Logistical and Processing Issues with Voting by Mail

¹⁵ Timpone, Richard J. 1998. “Structure, Behavior, and Voter Turnout in the United States.” *American Political Science Review* 92(1): 145-158.

¹⁶ McNulty, John, Conor Dowling, and Margaret Ariotti. 2009. “Driving Saints to Sin: How Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters.” *Political Analysis* 17(Autumn): 435-455.

¹⁷ Williams, Linda Faye. 2004. “The Issue of Our Time: Economic Inequality and Political Power in America.” *Perspectives on Politics* 2(4): 683-689.

¹⁸ Berinsky, Adam. 2005. “The Perverse Consequences of Electoral Reform in the United States.” *American Politics Research* 33: 471-491; Meredith, Mary and Neil Malhotra. 2011. “Convenience Voting Can Affect Election Outcomes.” *Election Law Journal* 10(3): 227-253.

Well before the current pandemic, academics raised concerns about the “lost” votes problem in voting by mail systems. Ten years ago, Charles Stewart III from the CalTech/MIT Voting Technology Project analyzed national data and concluded that the “pipeline that moves mail ballots between voters and election officials is very leaky” and can result in more than 20% of ballots being lost at some point in the pipeline.¹⁹ A more limited Minnesota study of the 2008 election found many mail-in ballots were lost due to problems including minor voter errors, such as failure to sign, signing in the wrong place, and problems with the packaging of the ballot--- primarily including more than one family member’s ballot in the same envelope, that would not occur with in-person voting. Administrative processing errors by election officials resulted in at least 13% of Minnesota mail-in ballots being mistakenly rejected and there were numerous cases of postal system loss of ballots.²⁰

At this time, reliance on the United States Postal Service (U.S.P.S.) to perform its Constitutionally (Article I, Sec. 8, Clause 7) and statutorily (39 U.S.C. §101(a)) mandated functions has never been higher. The pandemic has triggered an extraordinary increase in voting by mail. For example, the use of mail-in voting increased 1,000% in the recent Iowa primary and just under 500% in South Dakota.²¹ This increase has occurred at the absolutely worst moment in terms of the U.S.P.S.’ capacity to handle increased demand.²² The U.S.P.S. has been cutting back on delivery and services and closing post offices and processing centers since 2011.

¹⁹ Stewart, Charles III. 2010. “Losing Votes by Mail.” *Journal of Legislation and Public Policy* 13: 573-602, 575.

²⁰ Yasinsac, Alec. 2012. “Did Your Mailed Ballot Count: The Unrecognized Unreliability of Voting by Mail.” *Systemics, Cybernetics and Informatics* 10(5) 55-60.

²¹ Greenwood, Max. 2020. “Turnout Surges After States Expand Mail-In Voting.” *The Hill*, June 7. <https://thehill.com/omenews/campaigns/501384/turnout-surges-after-states-expand-mail-in-voting>

²² According to GAO figures, the USPS was financially profitable until Congress in 2006 passed the Postal Accountability and Enhancement Act that required the USPS prefund health and retirement benefits. This requirement, combined with declines in first class mail over the past fifteen years, has left them with a \$160.9 billion deficit. Bogage, Jacob. 2020. “The Postal Service Needs a Bailout, Congress is Partly to Blame.” *Washington Post*, April 15.

There have been numerous complaints from voters that requested absentee ballots never arrived.²³ Many state processing centers are also simply unprepared to handle the mass influx of mailed ballots when they arrive.²⁴ During the Wisconsin and Ohio primaries, mail processing errors and other problems resulted in more than 2,000 otherwise valid ballots not being counted²⁵ and it took a court order for another 79,000 late Wisconsin ballots to be counted.²⁶ In short, there appears to be a mis-match between demand and capacity. Even before the recent upsurge in voting by mail due to COVID-19, the Bipartisan Policy Center was warning there would be “inevitable clogs” that might result in votes not being counted, particularly in rural states with a single center.²⁷

According to U.S.P.S. employees, recent actions by the new Postmaster General Louis DeJoy are causing additional delays in processing the mail. American Postal Workers Union President Mark Dimondstein, has received reports of slowed mail delivery and “degraded” service. This is consistent with an internal U.S.P.S. memo stating that postal workers are to stop making late trips and extra trips that did not originate at postal service headquarters.²⁸ There also are reports that under Postmaster General DeJoy the U.S.P.S. has begun removing more than 670 high speed mail sorting machines, which will further slow the delivery of mail, including

²³ Halper, Evan. 2020. “Election Officials Fear Disaster in the Fall.” *Los Angeles Times*. August 1: A4.

²⁴ Rakich, Nathaniel. “Few States Are Prepared To Switch To Voting By Mail. That Could Make For A Messy Election.” <https://fivethirtyeight.com/features/few-states-are-prepared-to-switch-to-voting-by-mail-that-could-make-for-a-messy-election>.

²⁵ Wilson, Reid. 2020. “Mail Ballot Surge Places Postal Service Under Spotlight.” *The Hill*. May 27. https://thehill.com/homenews/campaign/4999640-mail-ballot-surge-places-postal-service-under-spotlight?utm_source=&utm_medium=email&utm_campaign.

²⁶ Timm, Jane C. 2020. “States Reject Tens of Thousands of Mail Ballots in this Year’s Primaries, Setting Off Alarm Bells for November.” *NBC News*. July 18. <https://www.nbcnews.com/politics/2020/election/states-reject-thousands-of-mail-ballots-in-this-years-primaries-setting-alarm-bells-for-november>.

²⁷ Bipartisan Policy Center. 2016. “The New Realities of Voting by Mail in 2016.” June. <https://bipartisanpolicy.org/wp-content/uploads/2019/03/BPC-Voting-By-Mail.pdf>.

²⁸ Dean, Jessica, Jessica Schneider, and Caroline Kelly. 2020. “Postal Services Says It Has ‘Ample Capacity’ to Handle Election After Trump Casts Doubt.” *CNN*. August 3. <https://www.cnn.com/2020/08/03/politics/postal-service-says-it-has-ample-capacity-to-handle-election-after-trump-casts-doubt>.

ballots.²⁹ The U.S.P.S. is now recommending that voters request mail-in ballots at least fifteen days prior to Election Day in order to ensure that their ballots will be returned by state deadlines.³⁰ Voting by mail requires the U.S.P.S. to take on an even greater role in gathering votes, just as many believe it is most threatened and least able to do so.

B. The Slowness of Non-Standard Mail Service

Voting by mail systems rest upon the premise that all citizens have equal mail service. According to Senator Tom Carper (D-DE), the United States Post Office is the one government entity that treats all Americans equally, delivering mail six days a week to everyone's mailbox.³¹ While largely true for the 84% of the country's population,³² who live in urban and suburban areas, it is not true for many people living in rural areas. Hundreds of thousands of rural Americans have non-standard mail service, which encompasses a range of service limits---mail not being delivered on a daily basis, issues with reliability in service, no residential delivery, post offices and postal provider sites located distant from people's homes and that have limited hours of operation and shortages of post office boxes.

According to the U.S.P.S., sixty percent of U.S. counties are classified as "rural" and at least 43 million households ("delivery points" in U.S.P.S. terminology), or 27% of the total

²⁹ Bogage, Jacob and Joseph Marks. 2020. "House Accelerates Oversight of Postal Service as Uproar Grows, Demanding Top Officials Testify at 'Urgent' Hearing." *Washington Post*. August 16. [Washingtonpost.com/business/2020/08/16/postal-service-mail-democrats-hearing-dejoy/?utm_campaign=wp_main&utm_medium=social&utm_source=facebook](https://www.washingtonpost.com/business/2020/08/16/postal-service-mail-democrats-hearing-dejoy/?hpid=hp_hp-top-table-main-democrats%3Apost-office%3Ahomepage%2Ft&hpid=hp_hp-top-table-main-democrats%3Apost-office%3Ahomepage%2Ft&utm_campaign=wp_main&utm_medium=social&utm_source=facebook).

³⁰ Panetta, Grace. 2020. "The US Postal Service is Urging Voters to Request Their November Mail-In Ballots at Least 15 Days Before Election" *Business Insider*. July 28. <https://www.msn.com/en-us/news/world/the-us-postal-service-is-urging-voters-to-request-their-november-mail-in-ballots-15-days-before-the-election>.

³¹ Wilson, Reid, 2020. "Mail Ballot Surge Places Postal Service Under Spotlight." *The Hill*. May 27. https://thehill.com/homenews/campaign/4999640-mail-ballot-surge-places-postal-service-under-spotlight?utm_source=&utm_medium=email&utm_campaign=

³² University of Michigan Center for Sustainable Systems. N.d. "US Cities Fact Shett." <https://bit.ly/2BfSBsl>.

delivery points in the United States, are on rural carrier routes.³³ While some of these delivery points are residences, many are not, requiring people get their mail at post offices, which have limited hours and limited numbers of available PO boxes. Another roughly 1.6 million delivery points are classified as “without a regular postal route” or “without any scheduled mail delivery” that means any mail service in these places is handled by private contractors, such as occurs with postal provider offices. The U.S.P.S. classifies people as having “non-standard address” when they have no fixed address or use a PO box. The U.S.P.S. also allows “general delivery” for “non-standard addresses,” meaning that mail is sent to the Post Office address in the name of a person. The local post office holds onto the mail for 30 days. If it is not picked up, the mail is either disposed of or returned to the sender.

Among the most impacted by the lack of standard mail service and non-standard addresses are Native Americans, living on reservation lands. The Inter-Tribal Council of Arizona is opposed to all voting by mail elections because it imposes barriers to access for Native populations, particularly those living in rural areas.³⁴ See also for example, the Utah voting rights case, *Navajo Human Rights Commission v. San Juan County*, 2016).³⁵ There is additional evidence from the 2020 primaries that rural Native American populations with non-standard mail service and/or non-standard addressing are ill-served by voting by mail systems. In Montana, which had its first ever all mail-in voting in the primary, there was record high turnout,

³³ As of September 30, 2017, there were 31,000 post offices, states and branches in the United States, as well as 4,000 contract postal unites that includes 476 community post offices, and 821 village post offices and a network of places located in commercial buildings. Of its 229,000 routes, 75,000 were rural routes.

³⁴ Native American Rights Fund. 2020. *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters*. (quoting Travis Lane). <https://bit.ly/2CcreAc>.

³⁵ *Navajo Nation Human Rights Commission v. San Juan County*, 2016. Case No. 2:16-Cv-00154JNP-BCW (D. Utah).

but reservation counties, such as Big Horn County lagged far behind the more urban areas.³⁶ The MIT Election and Science Lab analyzed New Mexico data from the 2016 election when mail in ballots were sent out to all registered voters in the state. They discovered an enormous disparity across urban and rural parts of the state. In urban Santa Fe and Bernalillo, only 5% of the ballots were not returned, but in rural Cibola County, which includes the Laguna Indian Reservation, not a single ballot was returned.³⁷ The largest population group (43.9%) in Cibola County, according to Census data, is American Indian/Alaska Natives.³⁸

Arizona has allowed a version of mail in voting (early voting) since 1998 and currently approximately 80% of Arizona voters cast their ballots by mail.³⁹ The relevant language in Arizona's election law is as follows: "Any election called pursuant to the laws of this state shall provide for early voting. Any qualified voter may vote by early ballot."⁴⁰ While appearing to treat all potential voters equally, voters on the Navajo Reservation face greater barriers, due to the ways that non-standard mail service interacts with other conditions on the reservation.

IV. DO TRIBL MEMBERS LIVING ON THE ARIZONA PORTION OF THE NAVAJO NATION HAVE LESS ACCESS TO VOTING-BY-MAIL THAN NON-INDIAN VOTERS IN ARIZONA, INCLUDING ST. JOHNS, COUNTY SEAT OF APACHE, HOLBROOK,

³⁶ Mayer, Audrey. 2020. "Big Horn County has High Voter Turnout in Mail-In Only Primary Election." *KURL8 News*. June 3. https://www.kulr8.com/news/big-horn-county-has-high-voter-turnout-in-mail-in-primary-election/article_27b86a18-a610-11ea-8a7a-032f42e0b18b.html

³⁷ Curiel, John. 2020. "Voting by Mail in the US: Past, Present and Future Advancements." May 20. MIT Election Data and Science Lab. <https://storymaps.arcgis.com/stories/c3b3473262abc43a8a3f29c42a9174a75>.

³⁸ United States Census Bureau. 2020. "Quick Facts, New Mexico." <https://census.gov/quickfacts/fact/table/socorrocountynewmexico,cibolacounty,nsc Mexico,NM/PST045219>.

³⁹ Ferguson-Bohnee, Patty and James T. Tucker. 2020. "Voting During a Pandemic: Vote-By-Mail Challenges for Native Voters." *Arizona Attorney*. July/August: 24-34, 28.

⁴⁰ A.R.S. 16-541(A).

COUNTY SEAT OF NAVAJO COUNTY, FLAGSTAFF, COUNTY SEAT OF COCONINO COUNTY AND SCOTTSDALE IN MARICOPA COUNTY?

A. Accessibility to Voting by Mail on the Navajo Reservation in Arizona

The Navajo Nation Reservation encompasses 27,425 square miles (or slightly larger than West Virginia). The reservation is located in Apache, Coconino and Navajo Counties in Arizona, as well as five counties in New Mexico and Utah. More than two-thirds of the land mass is in the three Arizona counties. The reservation's population, according to the 2010 Census, is 173,667; nearly 60% of whom live in Arizona and the Arizona voting age population is 67,252. The people are very dispersed across the reservation. The population density is 6.33 persons per square mile as opposed to the U.S. average of 345 persons per square mile.⁴¹ There is non-standard mail service, which means most residents do not have access to at home delivery and must travel from their homes to get their mail. There are eleven reservation post offices and fifteen postal provider offices to service the Arizona portion of the Navajo Nation Reservation and another thirteen in Utah and New Mexico, but the rural state of West Virginia, which has a slightly smaller land mass, has 725 post offices and postal provider sites.⁴²

In determining whether Navajo voters have fewer days to cast their mail-in ballots than do voters in affluent areas, a key factor is accessibility. As noted earlier, accessibility is comprised of two elements---travel distance and impedance; both of which are relevant to assessing the quality of mail service on the Navajo Nation Reservation. There are two aspects of travel distance that are relevant to this research: 1. The distance that Navajo voters must travel to pick up and return ballots to the post offices/postal provider offices and 2. The distance that

⁴¹ This data was compiled from the following report: Navajo Division of Health and Navajo Epidemiology Center. 2013. *Navajo Population Profile 2010 U.S. Census*. December. <https://www.nec.navajonnsn.gov/Portals/0/Reports/NN2010PopulationProfile.pdf>.

⁴² <https://www.postalallocations.com/wv>.

mail-in ballots must travel from the post offices/postal provider office on the distant corners of the reservations to the mail processing centers and then from those centers to the election official's office. Each of these aspects of travel distance will be considered.

The first aspect of travel distance, the challenges that Navajo on the reservation face in getting mail, was recently discussed in an article, written by Patty Ferguson-Bohnee and James Tucker and published in *Arizona Attorney*: "...traveling to the PO box to pick up your ballot and then returning it can be an all-day task; without a car, it may be impossible. The distances Native voters must travel to obtain mail ins compounded by the socioeconomic factors faced by Natives because of decreased access to public transportation, or requisite funds to travel such distances to obtain or return a ballot."⁴³

Among the most relevant of the socioeconomic factors are median household income for Navajo tribal members (\$25,827), which is roughly half of the median household income in Arizona and roughly 30% of the median household income in Scottsdale.⁴⁴ Even more troubling is the high number of people, whom the Census Bureau classifies as "severely poor," which means their income is less than half of the income designated as delineating between the "poor" and "near poor." On the Arizona part of the Navajo Nation Reservation, 21.8% have incomes below the 0.5 of the poverty threshold and another 19.3% are between 0.5 and 0.99 of the poverty threshold, while another 8.4% meet the criteria for near poor (1.0 to 1.24% of the poverty threshold).⁴⁵ Public transportation is minimal,⁴⁶ which makes having access to a vehicle

⁴³ Ferguson-Bohnee, Patty and James T. Tucker, 30.

⁴⁴ Combrink, Thomas. n.d. *Demographic Analysis of the Navajo Nation Using 2011-2015 Census and 2010 American Community Survey Estimates*, Arizona Rural Poverty Institute, 27. https://gotr.azgovernor.gov/sites/default/files/navajo_nation0.pdf.

⁴⁵ Combrink, 35.

⁴⁶ Horning, Megan. *Border Town Bullies: The Bad Auto Deal and Subprime Lending Problem Among Navajo Nation Car Buyers*. May 16, 2017. <https://www.nlg.org/nlg-review/article/border-town-bullies-the-bad-auto-deal-and-subprime-lending-problem-among-navajo-nation-car-buyers/>

extraordinarily important for gaining regular access to mail. For impoverished Navajo, traveling to a place to get mail is not just a burden in terms of travel distance and time, but also a financial cost either to pay for gasoline or pay a person to take them to the post office or postal provider site.

To identify the areas where large percentages of people living on the Navajo Nation Reservation have no vehicles, we performed a hot spot analysis, using geographic information systems (GIS). Looking at census tract-level data, we identified statistically significant spatial clusters of high values (hot spots) that showed where the percentage of residents who do not own cars was more pronounced than in a random distribution. This analysis demonstrates where the levels of car ownership are the most limited. Many of the hot spots found in the analysis were on the Navajo Nation Reservation. The average percentage of residents in a census tract in Arizona that do not own a vehicle is 6.72%. However, we were able to identify at least six reservation hot spots, with a statistical significance of 95%, where more than 25% of households do not own a vehicle. This is summarized in the following table.⁴⁷

Navajo Nation Census Tract Analysis: Households Without Vehicle

Census Tract	County	Percentage No Vehicle
9400.14	Navajo	30.5
9422.02	Coconino	26.78
9423	Navajo	30.62
9449.01	Apache	30.99
9449.02	Apache	28.39
9449.02	Apache	26.98

⁴⁷ United States Census Bureau. Arizona_ACS_2018_BlockGroup. For hotspot analysis, see <https://arcg.is/1WLKCX0>.

In addition, Navajo tribal members face the additional cost of renting a Post Office box, which can be a considerable amount if one is poor or even near poor. For example, the fees at the Leeup Post Office are as follows: \$6.00 key fee for new box, \$9.00 for replacement of a key, and \$136.00 rental for a year.⁴⁸ Without a post office box, a person has to rely on general delivery, where mail is discarded or returned to sender after 30 days. All of this means that Navajos face very significant barriers---both travel and financial ones---that do not apply to voters living off-reservation. If the voter lives closer to a drop box location, the cost of travel to post the ballot may be lessened, but there still is significant cost in collecting the ballot and then traveling to a drop box location.

Non-Indian voters living in affluent areas, such as Scottsdale (median household income \$84,601),⁴⁹ do not face a significant travel distance barrier in obtaining and casting a mail-in ballot. For most of these voters, the total travel distance is the walk from their front door to their mail box, which may be attached to their house or is down their driveway. In other words, it is measured in steps. If the person is uncomfortable leaving the filled-out ballot in their mail box, they have easy access to post offices. Scottsdale is a geographically large city, encompassing 184 square miles, but there are twelve post offices, which ensure that no resident has to travel far to conduct post business. What this translates into is one Post Office for every 15.3 square miles in Scottsdale versus one Post Office every 707 square miles on the Navajo Nation Reservation in Arizona. The area served by a single postal location on the Navajo Nation Reservation is thus 46

⁴⁸ <https://leupp.navajochapters.org/post-office.aspx>.

⁴⁹ According to the most recent Census Bureau data, the population in Scottsdale is 258,069: only 0.8% of the Scottsdale population is American Indian/Alaska Native and 80.3% is white alone, not Hispanic. United States Census Bureau. 2019. "Quick Facts: Scottsdale city, Arizona." <https://www.census.gov/quickfacts/fact/table/table/scottsdalecityarizona/INC110818>.

times larger than that in Scottsdale. Phoenix, which is located adjacent to Scottsdale has another twenty post offices.⁵⁰

Predominantly non-Indian voters, in towns that are less affluent than Scottsdale, do not face a significant travel distance barrier in obtaining and casting a mail-in ballot. Consider the county seats of Navajo County and Coconino County: Holbrook and Flagstaff. As was true in Scottsdale, there is home mail delivery available in these towns, as well access to post offices. There are 3,500 people in St. Johns, where the median household income is \$47,857⁵¹ and a single post office. Holbrook, which is slightly larger with a population of 5,005 and a median household income of \$44,348,⁵² also has a single post office. The largest county seat is Flagstaff, which has population 69,903. It also is the most affluent with a median household income of \$51,758.⁵³ There are three post offices in Flagstaff, as well as home mail delivery. While the median household incomes in all of these cities are below that of Scottsdale, as well as Arizona as a whole, those incomes are substantially higher than what is typical on the Navajo Nation Reservation. But these voters have easy access to voting by mail, whether at home or at their local post offices.

In assessing the second type of travel distance, how far a ballot must travel from the reservation postal locations to the county recorder office, where votes are tabulated, the first step is to understand the way that mail moves through the postal system. In 2012, as part of the cutbacks in mail services, the mail processing center (“sectional center facility” or “SCF” in U.S.P.S. terminology) in Flagstaff was closed, which meant that all mail, originating in the

⁵⁰ <https://www.postofficelocations.net/scottsdale-az/>; <https://www.postofficelocations.net/phoenix-az/>.

⁵¹ <https://data.io/profile/geo/st-johns-az/>.

⁵² <https://data.io/profile/geo/holbrook-az/>.

⁵³ <https://data.io/profile/geo/flagstaff-az/>.

northern part of Arizona, is now processed in the sectional center facility in Phoenix.⁵⁴ At the facility, mail is sorted and rerouted for the destination zip codes. If the zip code is for a location outside of the SCF service area, the mail is transferred via truck to the processing center serving those zip codes, where it would again go through sorting before being sent out for delivery to the addressee.⁵⁵ The further the distance, the more likely it is for mail to be misplaced or delivered late.

What this means is that an assessment of travel distance for a ballot, starting at either the election office (county recorder office in Arizona) or at the voter's post office/postal provider office, must account for the distance to and from the processing center in Phoenix. The county recorder offices that handle voting on the Navajo Nation Reservation are those in Apache, Navajo and Coconino Counties.⁵⁶ To get a sense of the total distance, we picked post offices/postal provider offices in each of the three counties and then calculated the total driving distances, using the most direct and modern routes. These distances are summarized below.

Direct Distance: Travel Mileage to County Recorder Office

Apache County

Teec Nos Pos: **664 miles** via US160 and I-17 then I-17 and I-40 and US180

Dinnehots: **616 miles** via US160 and I-17 then I-17 and I-40 and US180

Ganado: **585 miles** via US191 and I-17 then I-17 and I-40 and US180

Rock Point: **648 miles** via US191, US160, and I-17 then I-17 and I-40 and US180

Navajo County

Kayenta: **539 miles** via US160, US89 and I-17 then I-17, I-40

Pinon: **514 miles** via AZ264, Navajo15, I-17 then I-17, I-40

⁵⁴ The Phoenix sectional center facility is located at 4949 East Van Buren Street, Phoenix, AZ 85026.

⁵⁵ To access a link describing the process, go to https://about.usps.com/news/state-release/az/2011/az_2011_0804.html.

⁵⁶ The Apache County Recorder Office is located at 75 West Cleveland Street, St. John's AZ 85936. The Navajo County Recorder Office is located at 100 Code Talkers Drive, Holbrook, AZ 86025. The Coconino County Recorder Office is located at 110 East Cherry Avenue, Flagstaff, AZ 86001.

Shonto: **518 miles** via Navajo221, US160, US89, I-17 then I-17, I-40

Coconino County

Cameron: **352 miles** via US89 and I-17

Tonalea: **400 miles** via US160, US89, and I-17

Kaibito: **421 miles** via US160, US89, and I-17

Navajo Mtn: **467 miles** via Navajo16, US160, US89, I-17 (Despite technically being just across the line into Utah, the local Arizona zip code is serviced by the SCF in Phoenix.)

As a next step, we calculated the total driving distances from the off-reservation post offices in St. Johns, Holbrook and Flagstaff, to the processing center in Phoenix and then back to the county recorder office in each of the counties. This provided us with a sense of the distance that an off-reservation ballot had to travel, again using the most direct and modern routes. In Apache County, the total distance from the one post office in St. Johns to the processing center and back to the county recorder office in St. Johns was 420.8 miles. While a substantial distance, mail posted in Teec Nos Pas, Dinnehotso, Ganado and Rock Point on the reservation have to travel 164-244 miles further. In Navajo County, the total distance from the post office in Holbrook to the processing center and back to the county recorder office in Hobrook is 356.1 miles, again a substantial distance, but 158 to 183 miles less than the reservation locations in Kayenta, Pinon and Shonto. There are three post offices in Flagstaff and the total travel distance for mailed posted there is from 298.5 miles to 301.5 miles. Using the 301.5 miles distance for comparison purposes, the travel distance difference for reservation locations in Cameron, Tonalea, Kaibito, and Navajo Mountain is from 50.6 to 165.5 miles further.

The distances that are outlined above are for the most direct routes between each of the locations, keeping in mind the need for the mail to go through the processing center in Phoenix, but what if the mail does not follow the most direct routes. Donna Semans from Four Directions sent different classes of mail (first class, certified first class, priority and priority express) from

reservation post offices to county recorder offices. What we discovered is that the mail actually goes much longer distances and follows different routes. Consider the example of mail sent from Teec Nos Pos to Apache County Recorder in St. Johns. The most direct route, as we showed earlier, would have a letter traveling 664 miles, but none of the letters sent by Donna Semans on August 8, 2020 followed the most direct route. We were able to track the certified first class, priority and priority express letters and discovered all followed different routes and took different lengths of time. But it is possible that the travel distances that are presented below understate the actual distances because in our measurements we used the most direct routes from each location to the next. It is possible that the actual mail followed more circuitous routes.

Mail Routing & Time from Teec Nos Pos to Apache County Recorder in St. Johns

Priority Mail: Six Days⁵⁷

August 7	3:32 p.m.	Letter Posted in Teec Nos Pos, but Not Date-Stamped ⁵⁸	
August 8	10:07 a.m.	Teec Nos Pos Post Office Date-Stamped Letter	
	10:10 a.m.	Depart	
	10:20 p.m.	Arrive Albuquerque Post Office	228 miles
August 9	3:41 a.m.	Depart	
August 12	1:48 p.m.	Flagstaff Post Office	320 miles
	8:58 p.m.	Arrive Phoenix Facility	153 miles
August 13	9:31 a.m.	Arrive St. Johns Post Office	215 miles
	10:44 a.m.	Delivery to Apache County Recorder	0.5 miles
			916.5 Total Miles

Certified 1st Class: Four Days⁵⁹

August 7	3:32 p.m.	Letter Posted in Teec Nos Pos, but Not Date Stamped	
August 8	10:00 a.m.	Teec Nos Pos Post Office Date Stamps Letter	
	10:10 a.m.	Depart	
	7:59 p.m.	Arrive Albuquerque Post Office	228 miles
August 9	3:41 a.m.	Depart	
August 10	5:22 a.m.	Arrive Phoenix Facility	411 miles

⁵⁷ United States Postal Service tracking number 9114901075742902802137.

⁵⁸ Donna Semans obtained a receipt, with the date and time, at the Teec Nos Pos Post Office, but all classes of mail were not date stamped and put into tracking until August 8.

⁵⁹ United States Postal Service tracking number 70200090000095937706.

	6:13 p.m.	Depart	
August 11	9:58 a.m.	Arrive St. Johns Post Office	215 miles
	12:15 p.m.	Delivery to Apache County Recorder	0.5 miles
			854.5 Total Miles

Priority Express Mail: Three Days⁶⁰

August 7	3:32 p.m.	Letter Posted in Teec Nos Pos, but Not Date Stamped	
August 8	10:08 a.m.	Teec Nos Pos Post Office Date Stamps Letter	
	10:10 a.m.	Depart	
	4:29 p.m.	Arrive Gallup Post Office	118 miles
	7:52 p.m.	Arrive Albuquerque Post Office	139 miles
August 9	3:41 a.m.	Depart	
	12:53 p.m.	Arrive Phoenix Facility	411 miles
August 10	8:37 a.m.	Arrive St. Johns Post Office	215 miles
	8:53a.m.	Delivery to Apache County Recorder	0.5 miles
			883.5 Total Miles

There are several important take-aways from this experiment. First, the total distance the letters traveled is far greater than we initially expected and the routes more diverse; both of which provide many more opportunities for the mail to be delayed or mis-paced. Second, it showed that if someone in Teec Nos Pos was able to pay for priority express mail, that the time could be reduced to three days. But few Navajo tribal members in Teec Nos Pos have the resources to shrink the time for delivery.⁶¹ Third, and very importantly, this shows that mail is not always date-stamped with the day and time that it is actually posted, even when that time is within the normal hours of operation at a Post Office.

But Teec Nos Pos is not the only Post Office on the Navajo Nation Reservation, where mail may take as long as six days to reach the office of a county recorder. We found all of the letters (first class, certified first class, priority mail and priority express) mailed from the Pinon

⁶⁰ United States Postal Service tracking number EJ077813006US.

⁶¹ Not all places used for mail provide priority and priority express mail service. For example, Donna Semans found that the postal provider site in Cameron only offers first class mail as an option.

Post Office to the Navajo County Recorders Office in Holbrook took six days to arrive. The letters were posted on August 4, but were not successfully delivered until August 10th. As can be seen from the summary below, there were attempts to deliver on Saturday August 8th, but the Navajo County Recorders Office was closed, so delivery was delayed until August 10th.

Mail Routing & Time from Pinon to Navajo County Recorder in Holbrook⁶²

August 4	3:32 p.m.	Pinon Post Office ⁶³	
August 5	11:37 a.m.	Depart	
	10:41 p.m.	Arrive Albuquerque Post Office	90 miles
August 6	7:57 a.m.	Depart	
August 7	1:22 a.m.	Arrive Phoenix Facility	411 miles
August 8	7:49 a.m.	Arrive Holbrook Post Office	356 miles
	8:00 a.m.	Tried to Deliver, but Failed	
August 10	9:17 a.m.	Delivery to Navajo County Recorder	
			857 Total Miles

It is also worth considering travel distances in the much more affluent and non-rural parts of the state that are in Maricopa County, which also use the northern Arizona process center. Mail-in ballots deposited at the twelve post offices in Scottsdale have to travel from 4.5 to 26.7 miles to reach the processing center and then another eight miles to the Maricopa County Recorder Office⁶⁴ for total distances from 12.5 miles to 34.7 miles. For ballots mailed from the twenty Phoenix post offices, the total distance that mail must travel to the Maricopa County Recorder Office is 8.0 to 25.9 miles. Also the time that it takes for a letter, from Scottsdale, to reach the Maricopa County Recorder Office is very short, sometimes less than 18 hours.⁶⁵

⁶² United States Postal Service tracking number 7019297000082112661, certified 1st class mail.

⁶³ The address of the Pinon Post Office is 500 State Road, AZ 8650.

⁶⁴ The Maricopa County Recorder Office is located at 111 South 3rd Avenue, Phoenix, AZ 85003.

⁶⁵ United States Postal Service tracking number 7019297000082112722.

Exhibit A to this report summarizes other locations and classes of mail delivery times from the Four Directions field investigation with some delivery times as long as 7 and 10 days.

But the disparities in total distance are only part of what constitutes accessibility. The other piece is impedance. The degree of geographic isolation from urban America is compounded by physical features of the terrain, such as mountains and canyons, bad weather conditions and poorly maintained roads. In other words, the problem is not simply distance and isolation, but equally one of impedance. On the Arizona portion of the reservation, there are more than 10,000 miles of roads, but less than 14% are paved,⁶⁶ which makes travel slow and subject to closures, during inclement weather.⁶⁷ Most homes on the reservation are located miles away from paved roads, "accessible only by dirt roads which are highly susceptible to damage from heavy snows, floods, and washouts making roads useless for travel and pose risks for school buses and families."⁶⁸

According to Ferguson-Bohnee and Tucker, bad weather conditions can make travel impossible, during early November.⁶⁹ Postal service employees and contract providers have to travel these poorly maintained roads throughout the year, but their ability to provide their services are most compromised right at the time when absentee ballot requests are made, ballots need to be delivered to rural post offices and postal provider locations and then those filled out ballots need to be returned to election officials. Moreover, voters have to travel some of the

⁶⁶ Fiscal Year 2019 Navajo Nation Tribal Transportation Plan at 1, cited in Ferguson-Bohnee and Tucker: 28.

⁶⁷ *Governing Magazine* ran an article about the Navajo Reservation roads in Utah and described the poor condition of roads and the frequency of their becoming impassible due to heavy rain and snow as threat to human life, since emergency vehicles cannot get to people needing assistance. Vock, Daniel C. 2017. "In Navajo Nation, Bad Roads Can Mean Life or Death." *Governing Magazine* July. <https://www.governing.com/topics/transportation-infrastructure/gov-navajo-utah-raods-infrastructure.html>.

⁶⁸ Chaco, Paulson. Roads and Transportation on the Navajo Nation. February 15, 2012. <https://obamawhitehouse.archives.gov/blog/2012/02/15/roads-and-transportation-navajo-nation>

⁶⁹ Ferguson-Bohnee and Tucker, 28.

worst maintained roads and trails to get to those offices to put in their requests for absentee ballots and later return them. Exhibit B to this report presents photographic evidence of road conditions encountered by Donna Semans from Four Directions.

V. DOES REQUIRING MAIL-IN BALLOTS TO BE RETURNED---RATHER THAN POSTMARKED---ON OR BY ELECTION DAY LEAD TO THE DISENFRANCHISEMENT OF TRIBAL MEMBER VOTERS WHEN THEIR OVERDUE BALLOTS ARE REJECTED?

A. Cross-State Differences in Ballot Receipt Deadlines

Even though the first Tuesday in November (2nd through 8th) is statutorily enshrined as the date for holding elections for federal public officials---president and members of Congress, not all ballots in the United States must be received by that date to be counted. There are enormous differences in the requirements that states have with respect to when a ballot must be received in order to be counted. The most restrictive states are Louisiana and Mississippi that require mail-in ballot be received by the election official offices a day prior to Election Day. Among the thirty-one states that require ballots be received by Election Day, there still is variance about how late in the day that the ballots can arrive and still be counted. There are seventeen states that allow some ballots to be counted if they are received after Election Day, but the cross-state differences are enormous, with some requiring that ballots be postmarked by the day prior to Election Day and others accepting those with Election Day postmarks. Texas is the most stringent, requiring that the ballot be postmarked the day prior to Election Day and that it arrive one day later. In contrast, Illinois allows ballots received within fourteen days and postmarked by Election Day be counted. Utah law, which applies to those on the Navajo Nation Reservation in the state, allows ballots to

be counted seven to fourteen days after Election Day, if postmarked prior to Election Day.⁷⁰ What this means is that in reality there are quite different dates or deadlines by which people must vote, if they are choosing to vote by mail, which certainly makes sense during a pandemic.

B. Arizona's Ballot Receipt "Deadlines"

The reasoning behind having a ballot receipt "deadline" is that it is a firm and inviolate line of demarcation, a single point that applies equally to all voters, but as is clear from the cross-state summary above, there is no single deadline that applies to all voters. Arizona law, which is among the strictest, requires that mail in ballots be received by the county recorder by 7:00 on Election Day.⁷¹ But the reality is that Arizona actually does not have a single "deadline" for all voters. Instead functionally there is a second important "deadline" (e.g., the day when an absentee-ballot must be posted so that it will arrive to the county recorder office in time to be counted.) Unlike the Election Day "deadline" for receipt of the ballot, the second deadline is not a firm date, but instead it varies for different populations. Moreover, it may change with little warning, such as a post office closing due to the pandemic or newly instituted cutbacks in U.S.P.S. service due to changes in the senior leadership of the U.S.P.S. or priorities of an administration. This introduces a high level of uncertainty into the process of voting.

This report demonstrates Navajo voters on the reservation face greater challenges in meeting that deadline than do non-Indian voters living off-reservation, due to the previously described inequalities in mail service. For the upcoming general election, the last time that a voter can request a ballot-by-mail is Friday October 23 at 5:00 p.m. when the county recorder office

⁷⁰ National Conference of State Legislatures. 2020. *VOPP: Table 11: Receipt and Postmark Deadlines for Absentee Ballots*. July 31. <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-11-receipt-and-postmark-deadlines-for-absentee-ballots.aspx>.

⁷¹ A.R.S. 16-548(A).

closes for the day.⁷² October 23 is eleven days prior to Election Day on November 3, but what if the ballot does not get sent out until Monday, October 26, which is eight days prior to the election. The U.S.P.S. is now recommending that voters get their requests for voting by mail into officials at least fifteen days prior to election, which is October 19.⁷³ Secretary of State Katie Hobbs had recommended that voters send in their ballots six days prior to Election Day.⁷⁴ Her updated recommendation is now for ballots to be sent seven days prior to the election.

For off-reservation voters with standard mail service, particularly home mail delivery, those eleven or eight days to receive their ballot and return it via the mail is much less of a burden than it is for Navajo without home mail delivery. Non-Indian voters likely will get their ballots delivered to their home within a couple days. But even in the worst-case scenario that their ballots are not sent out until October 26 and take seven days to arrive, their ballot will still arrive prior to Election Day. Since these voters likely have access to vehicles, they also could easily hand deliver their ballots to county recorder offices. In short, it is not physically impossible for them to vote, whether by using the mail to return the ballot or by taking their mail-in ballots via auto to the required locations.

Moreover, those off-reservation voters have additional time to consider their vote. The time of voting interacts with campaign effects which means that those with more time have additional information, which can affect their voting choices.⁷⁵ The fast delivery times of mail in places, such as Scottsdale or Phoenix, means a voter, in those communities, could post a ballot as late as

⁷² <https://www.az.cleanelections.gov/how-to-vote/early-voting/vote-by-mail>.

⁷³ Panetta, Grace. 2020. "The US Postal Service is Urging Voters to Requests Their November Mail-In Ballots at Least 15 Days Before the Election." *Business Insider*. July 27. <https://www.msn.com/en/us/newa/world/the-us-postal-service-is-urging-voters-to-request-their-november-mail-in-ballots-at-least-15-days-before-the-election>.

⁷⁴ Bell, David. 2020. "Mail-In Ballots Should Be Sent by Wednesday." *Gila Valley Central*. July 28. <https://gilavalleycentral.net/mail-in-ballots-should-be-sent-by-wednesday>.

⁷⁵ Fournier, Patrick, Richard Nadeau, Andre Blais, Elizabeth Gidengil and Neil Nevitte. 2004. "Time-of-Voting Decision and Susceptibility to Campaign Effects." *Electoral Studies* 23 (4): 661-681.

Monday, November 2 and be reasonably confident the ballot will arrive at the Maricopa County Recorder Office by 7:00 on the following day. While not maybe the wisest course of action, it is possible, and that voter would be able to consider far more information than someone who had to mail in their ballot much earlier in order to meet the current Arizona deadline.


The situation for Navajo voters, however, is much different. We discovered that mail posted from the Teec Nos Pos and Pinon Post Offices took six days and travel distances of more than 850 miles to reach the offices of the Apache County Recorder and Navajo County Recorder. If these county recorders mail out ballots on October 23 (the last day to request one), those ballots might not arrive in Teec Nos Pos or Pinon until October 29th. Even if the Navajo voter immediately re-posted on the 29th, that ballot likely would not reach the offices of the county recorders by 7:00 p.m. on Election Day (October 29th plus 6 days means arrival on November 4th). Moreover, those ballots would have taken very long and circuitous routes, which make it more likely the ballots would be misplaced or lost, due to the “leaky pipeline.” What this means is that the Navajo voter must request an absent ballot earlier and return it much earlier than the voter in Scottsdale or Phoenix----and be sure to consider weekend delays. The Navajo voter must decide with less information than the Scottsdale or Phoenix voter, who is able to cast a vote at a later point in time.

Signature Page Follows

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Signature Page

I declare under penalty of perjury the foregoing is true and correct. Executed this 23rd day of August, 2020.



I declare under penalty of perjury the foregoing is true and correct. Executed this 23rd day of August, 2020.



Exhibits Follow

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Exhibit A

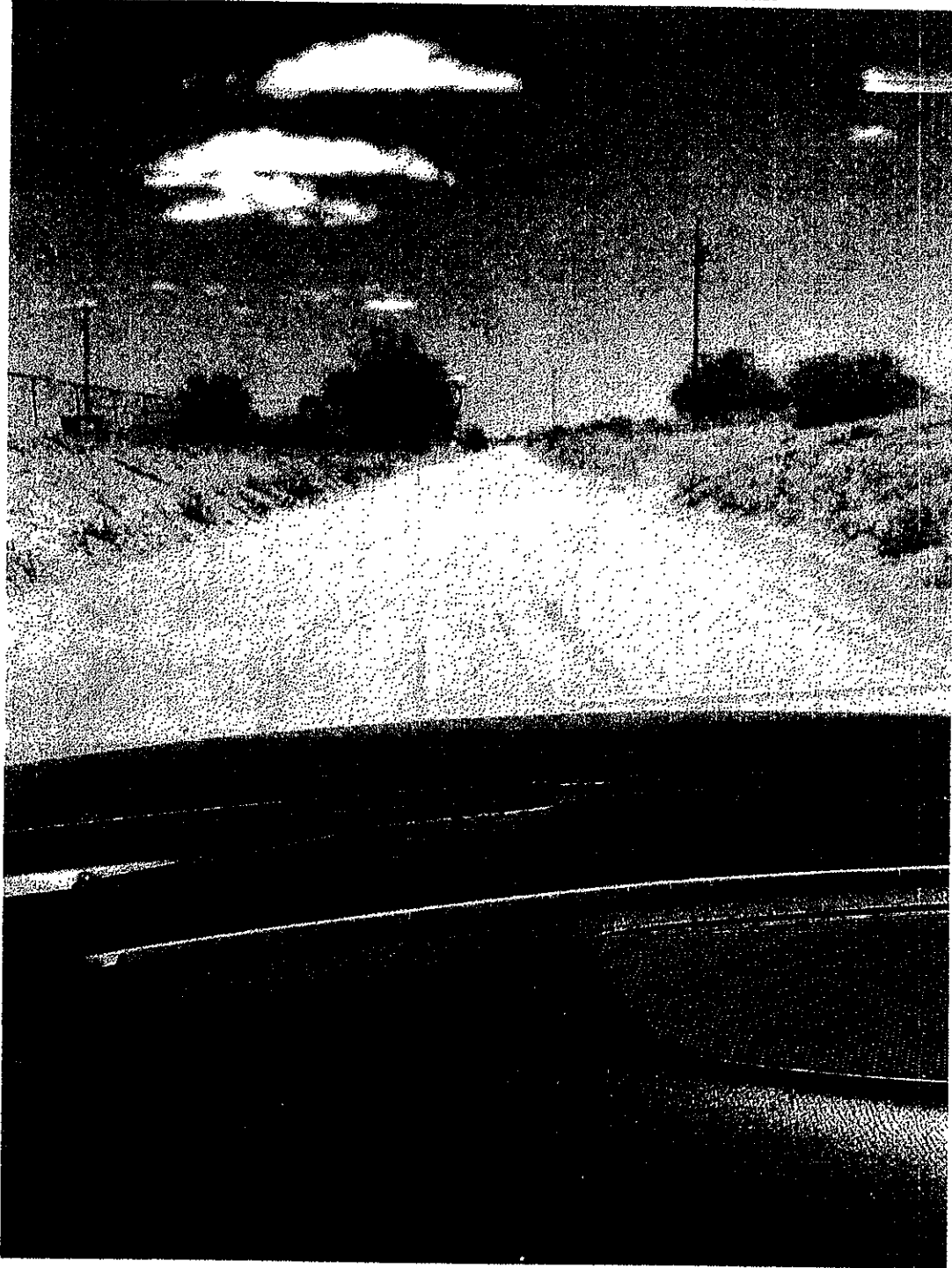
Delivery Speed Various Locations

Sent From	Date/Time	Arrived at	Date/Time	Mail Class	Delivery Speed
Scottsdale, Evans Rd	August 5/1:55 pm	Maricopa Recorder	Aug 6/7:43 am	Certified 1st	17h 38min
Teec Nos Pos	"August 7	Apache Recorder	"August 11	Certified 1st	4 days
Teec Nos Pos	"August 7	Apache Recorder	"August 13	Priority	6 days
Teec Nos Pos	"August 7	Apache Recorder	"August 10	Priority Express	3 days
Dinehotso	"August 7	Apache Recorder	"August 17	Certified 1st	10 days
Dinehotso	"August 7	Apache Recorder	"August 13	Priority	6 days
Dinehotso	"August 7	Apache Recorder	"August 14	Priority Express	7 days
Rock Point	"August 7	Apache Recorder	"August 13	Certified 1st	6 days
Rock Point	"August 7	Apache Recorder	August 13	Priority Express	6 days
Navajo Mtn	"July 31	Coconino Recorder	"August 6	Certified 1st	6 days
Navajo Mtn	"July 31	Coconino Recorder	"August 3	Priority Express	3 days
Pinon	"August 4	Navajo Recorder	"August 10	First Class	6 days
Pinon	"August 4	Navajo Recorder	"August 10	Certified 1st	6 days
Pinon	"August 4	Navajo Recorder	"August 10	Priority	6 days
Pinon	"August 4	Navajo Recorder	"August 10	Priority Express	6 days

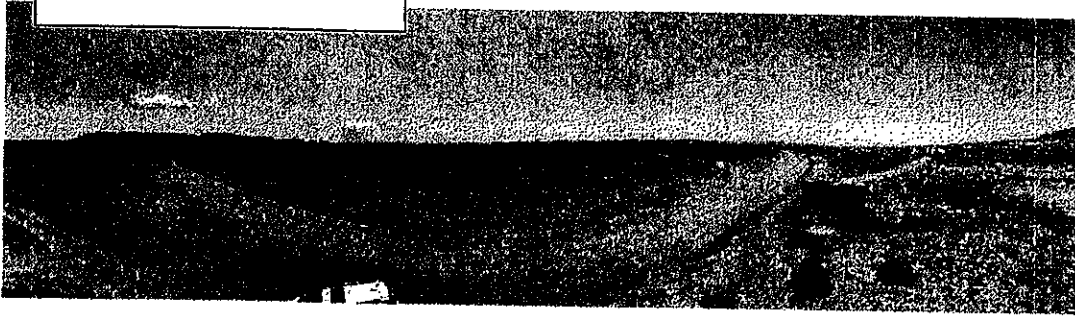
Exhibit B

**Road Conditions
Dinnehotso, Rock Point to Teec Nos Pos**

This is the road into the Donehetso post office I had gone from 25 to 5 mph and almost stopped and got stuck due to the sand.



rock point and sweet water to
Teec Nos Pos



This is the road from rock point to
Teec Nos Pos the entire 35 miles like
this or bigger ruts forgive the quality I
couldn't slow down or id be stuck and
I couldn't stop or id be there all night

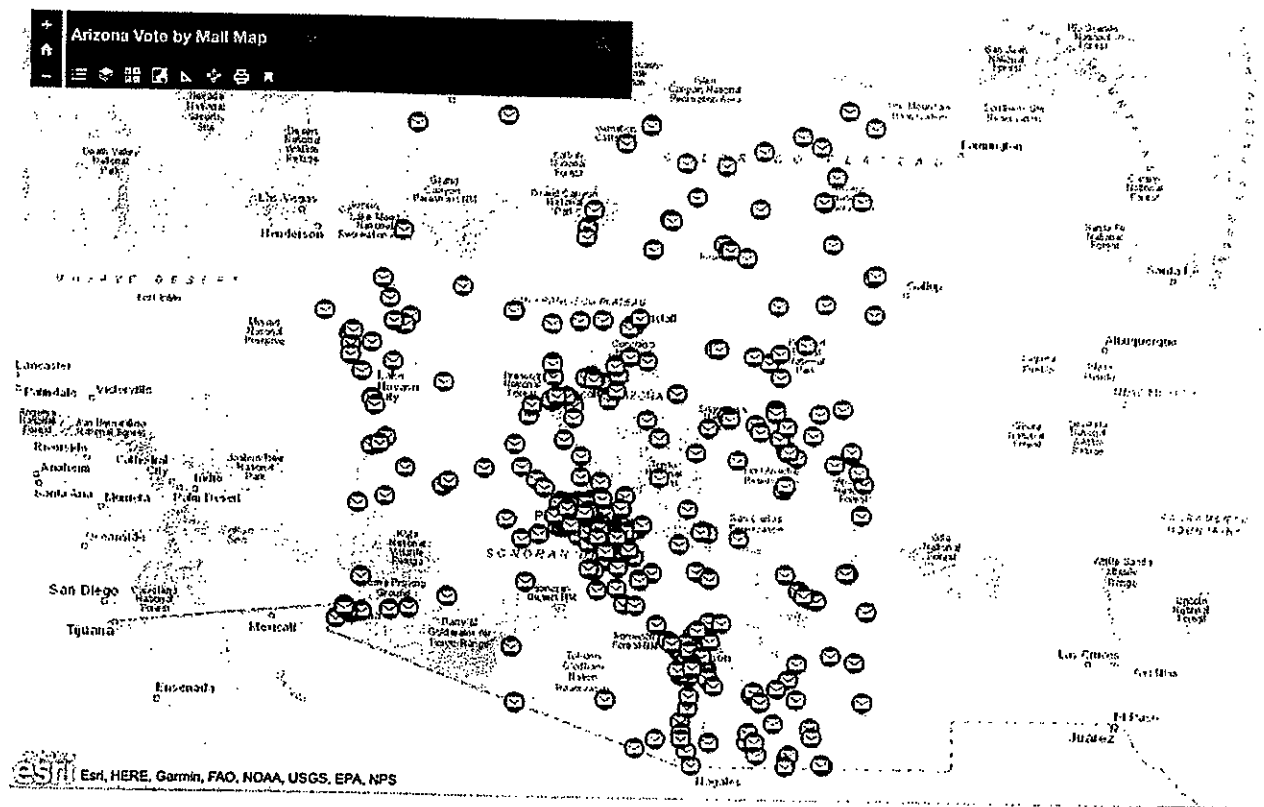


Exhibit C

Distribution of Post Offices in Arizona

8/23/2020

Image 8-23-20 at 7:24 PM.jpg





2020 AZVoteSafe Guide for Native Americans

Recommendations for Arizona Voters in Tribal Communities

Due to COVID-19, the Secretary of State's Office is encouraging all voters to request a ballot-by-mail to ensure they have a safe and reliable option for voting. Tribal members historically participate in voting on Election Day as a civic and community event, and many tribal members face challenges to voting by mail due to limited mail service and language assistance needs. However, because of current public health concerns, it's more important than ever to plan ahead and have back-up options available. Use the steps below as a quick reference guide to making your plan for voting in 2020 and ensuring your voice is heard in our democracy.

- Register to vote by filling out a voter registration form, which you can download at Arizona.Vote or call your County Recorder to request a mailed form. If you have an AZ Driver's License or ID, you can register to vote online at www.servicearizona.com.
- If you're already registered, confirm your registration status at Arizona.Vote and update your address or other information if needed.
- The deadline to register to vote or update your voter registration is October 5, 2020.

STEP 2 – REQUEST A BALLOT-BY-MAIL

- Getting a ballot-by-mail should be part of every tribal member's voting plan. It is your choice how you ultimately decide to vote. Even if you prefer or plan to vote in-person, requesting a ballot-by-mail will ensure you have a safe and secure back-up option for voting this year – an option that doesn't require waiting in line to get a ballot or needing to vote at a potentially crowded polling place.
- If you have a mailing address or P.O. Box and are not already on the Permanent Early Voting List (PEVL), request a one-time ballot-by-mail for the 2020 General Election or join the PEVL as soon as possible so you have enough time to receive the ballot, get language or other assistance if needed, vote it, and return the ballot on time.
- Call your County Recorder or go to Arizona.Vote to request a ballot-by-mail. The deadline to request a ballot-by-mail or join the PEVL is October 23, 2020.

STEP 3 – VOTE AND SIGN YOUR BALLOT-BY-MAIL

- If you need language assistance when you get your ballot-by-mail, contact your County Recorder's Office or Elections Department (listed below) to learn about available resources. Certain community organizations may also have language assistance resources.
- After voting your ballot, put your ballot in the return envelope and make sure you sign the affidavit envelope. You should also provide a phone number in the appropriate space on the envelope so elect you if there are any issues with your ballot.

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KNOW YOUR OPTIONS — MAKE SURE YOU HAVE A VOTE PLAN

STEP 4 – RETURN YOUR BALLOT BY 7:00 P.M. ON ELECTION DAY

- If you voted a ballot-by-mail, your best option is to return your voted ballot to any voting location in your county on Election Day. You can also drop off your ballot at your County Recorder's office, any early voting location in your county, or any other designated drop-off location in your county. Contact your County Recorder or visit Arizona.Vote to find all available drop-off locations.
- Ballots must be received by county election officials by 7:00 p.m. on Election Day to be counted.
- If you cannot drop off your ballot yourself for any reason, a family member, household member, caregiver, or election worker can help return your voted, sealed, and signed ballot for you.
- If you need to mail your voted ballot back, make sure you mail it early enough to arrive at the County Recorder's office by 7:00 p.m. on Election Day. The state's recommended last day to mail back a ballot is October 27, but if you live in a rural area with slower mail service, you should build in more time.

STEP 5 – VOTING IN-PERSON

- If you did not receive a ballot-by-mail or otherwise choose to vote in-person, we encourage you to vote early. To learn about in-person early voting options, contact your County Recorder's office.
- If you choose to vote in-person on Election Day, confirm your correct voting location by contacting your county elections department (see below) or visiting Arizona.Vote. Curbside voting may be available.
- Whether you're voting early or on Election Day, remember to bring valid identification to vote in-person. For information on valid identification, visit Arizona.Vote.
- In-person voters should take precautions to help protect themselves, other voters, and poll workers:
 - Come prepared. Review and mark a sample ballot so you can vote quickly and minimize the time you need to spend at the voting location.
 - Wear a face covering. If it can be safely managed, wear a cloth face covering when you go to vote to help protect yourself and those around you.
 - Bring your own pen. Bring your own pen to the voting location to minimize contact with surfaces others may have touched. Some voting locations may have single-use pens available, but bringing your own pen will help keep you safe and minimize waste.
 - Maintain physical distancing. Stay at least 6 feet away from other voters and poll workers whenever possible (except for caregivers and members of the same household).
 - Wash your hands. Wash your hands with soap and water (for at least 20 seconds) before and after voting. If facilities are not readily available, use hand sanitizer with at least 60% alcohol.
 - Don't touch your face. Avoid touching your eyes, nose, and mouth with unwashed hands.

COUNTY RECORDERS AND ELECTIONS CONTACT INFORMATION**APACHE COUNTY**

Recorder Phone: 928-337-7515
 Recorder Email: voterreg@co.apache.az.us
 Elections Phone: 928-337-7537
 Elections Email: aromero@co.apache.az.us

COCHISE COUNTY

Recorder Phone: 520-432-8358 / 888-457-4513
 Recorder Email: recorder@cochise.az.gov
 Elections Phone: 520-432-8970 / 888-316-8065
 Elections Email: lmarr@cochise.az.gov

COCONINO COUNTY

Recorder Phone: 928-679-7860
 Toll Free: 800-793-6181
 Email: ccelections@coconino.az.gov

GILA COUNTY

Recorder Phone: 928-402-8740
 Recorder Email: sbingham@gilacountyaz.gov
 Elections Phone: 928-402-8709
 Elections Email: emarisca@gilacountyaz.gov

GRAHAM COUNTY

Recorder Phone: 928-428-3560
 Recorder Email: recorder@graham.az.gov
 Elections Phone: 928-792-5037
 Elections Email: huederstadt@graham.az.gov

GREENLEE COUNTY

Recorder Phone: 928-865-2632
 Recorder Email: smilheiro@greenlee.az.gov
 Elections Phone: 928-865-2072
 Elections Email: bligueroa@greenlee.az.gov

LA PAZ COUNTY

Recorder Phone: 928-669-6136 / 888-526-8685
 Recorder Email: recorder@lapazcountyaz.org
 Elections Phone: 928-669-6149
 Elections Email: kscholl@lapazcountyaz.org

MARICOPA COUNTY

Recorder and Elections Phone: 602-506-1511
 Email: voterinfo@risc.maricopa.gov

MOHAVE COUNTY

Recorder Phone: 928-753-0701 / 888-601-0733
 Recorder Email: voterregistration@mohavecounty.us
 Elections Phone: 928-753-0733
 Elections Email: elections@mohavecounty.us

NAVAJO COUNTY

Recorder Phone: 928-524-4194
 Email: VoterRegistration@navajocountyaz.gov
 Elections Phone: 928-524-4062
 Email: Rayleen.richards@navajocountyaz.gov

PIMA COUNTY

Recorder Phone: 520-724-4330
 Email: PimaRequests@recorder.pima.gov
 Elections Phone: 520-724-6830
 Elections Email: elections@pima.gov

PINAL COUNTY

Recorder Phone: 520-866-6830
 Recorder Email: recorder@pinal.gov
 Elections Phone: 520-866-7550
 Elections Email: mchele.forney@pinal.gov

SANTA CRUZ COUNTY

Recorder Phone: 520-375-7990
 Recorder Email: voter@santacruzcountyaz.gov
 Elections Phone: 520-375-7808
 Email: hampton@santacruzcountyaz.gov

YAVAPAI COUNTY

Recorder Phone: 928-771-3244
 Email: web.voter.registration@yavapai.us
 Elections Phone: 928-771-3250
 Elections Email: web.elections@yavapai.us

YUMA COUNTY

Recorder Phone: 928-373-6034
 Email: voterservices@yumacountyaz.gov
 Elections Phone: 928-373-1014
 Email: mary.fontes@yumacountyaz.gov

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court**

Name of U.S. District Court:

U.S. District Court case number:

Date case was first filed in U.S. District Court:

Date of judgment or order you are appealing:

Fee paid for appeal? (*appeal fees are paid at the U.S. District Court*)

Yes No IFP was granted by U.S. District Court

List all Appellants (*List each party filing the appeal. Do not use "et al." or other abbreviations.*)

Is this a cross-appeal? Yes No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case? Yes No

If Yes, what is the prior appeal case number?

Your mailing address:

City: State: Zip Code:

Prisoner Inmate or A Number (if applicable):

Signature Date

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

**U.S. District Court
DISTRICT OF ARIZONA (Prescott Division)
CIVIL DOCKET FOR CASE #: 3:20-cv-08222-GMS**

Yazzie et al v. Hobbs
Assigned to: Chief Judge G Murray Snow
Case in other court: Ninth Circuit, 20-16890
Cause: 42:1983 Civil Rights Act

Date Filed: 08/26/2020
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

Plaintiff

Darlene Yazzie

represented by **Chris McClure**
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PRO HAC VICE
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Caroline Begay

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PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael James Novotny
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Leslie Begay

represented by **Chris McClure**
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LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael James Novotny
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Irene Roy

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PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael James Novotny
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Donna Williams

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PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael James Novotny
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Alfred McRoye

represented by **Chris McClure**
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LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael James Novotny
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Katie Hobbs
in her official capacity as Secretary of
State for the State of Arizona

represented by **Anuradha Sivaram**
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 Fax: 602-224-6020
 Email: rdesai@cblawyers.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/26/2020	<u>1</u>	COMPLAINT. Filing fee received: \$ 400.00, receipt number 0970-18604308 filed by Alfred McRoye, Darlene Yazzie, Irene Roy, Leslie Begay, Caroline Begay, and Donna Williams. (Novotny, Michael) (Attachments: # <u>1</u> Civil Cover Sheet)(DLC) (Entered: 08/26/2020)
08/26/2020	<u>2</u>	SUMMONS Submitted by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, and Darlene Yazzie. (Novotny, Michael) (DLC) (Entered: 08/26/2020)
08/26/2020	<u>3</u>	Filing fee paid, receipt number 0970-18604308. This case has been assigned to the Honorable Chief Judge G Murray Snow. All future pleadings or documents should bear the correct case number: CV-20-8222-PCT-GMS. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (DLC) (Entered: 08/26/2020)
08/26/2020	<u>4</u>	Summons Issued as to Katie Hobbs. (DLC). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 08/26/2020)
08/26/2020	<u>5</u>	NOTICE TO FILER OF DEFICIENCY re: <u>1</u> Complaint filed by Leslie Begay, Caroline Begay, Alfred McRoye, Irene Roy, Darlene Yazzie, Donna Williams. Pursuant to the Electronic Case Filing Administrative Policies and Procedures Manual Section II(B), attorneys are required to submit the automated Civil Cover Sheet when filing a new case. FOLLOW-UP ACTION REQUIRED: Please file correct document. Deficiency must be corrected within one business day of this notice. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (DLC) (Entered: 08/26/2020)
08/26/2020	<u>6</u>	NOTICE TO FILER OF DEFICIENCY re: <u>1</u> Complaint filed by Leslie Begay, Caroline Begay, Alfred McRoye, Irene Roy, Darlene Yazzie, Donna Williams. Document not in compliance with LRCiv 7.1(a)(3) - Party names must be capitalized using proper upper and lower case type. No further action is required. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (DLC) (Entered: 08/26/2020)
08/26/2020	<u>7</u>	ORDER: Directing the Clerk of Court to terminate any or all Defendants in this matter, without further notice, that have not been served within the time required by Fed. R. Civ. P. 4(m) on December 1, 2020. See document for further details. Signed by Chief Judge G Murray Snow on 8/26/20. (GMP) (Entered: 08/26/2020)
08/27/2020	<u>8</u>	Additional Attachments to Main Document re: <u>1</u> Complaint, <u>5</u> Notice of Deficiency (Text Only) <i>Civil Cover Sheet- US District Court Form JS-44</i> by Plaintiffs Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (Novotny, Michael) (Entered: 08/27/2020)
09/01/2020		Remark: Pro hac vice motion(s) granted for Chris McClure on behalf of Plaintiffs Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene

		Yazzie. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 09/01/2020)
09/02/2020	<u>9</u>	Emergency MOTION for Preliminary Injunction <i>AND DECLARATORY RELIEF AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF</i> by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (Attachments: # <u>1</u> Text of Proposed Order Granting Injunctive and Declaratory Relief, # <u>2</u> Affidavit Of Chris McClure in Support of Application for Preliminary Injunction, # <u>3</u> Exhibit 1, # <u>4</u> Exhibit 2)(McClure, Chris) (Entered: 09/02/2020)
09/02/2020	<u>10</u>	NOTICE of Appearance by Roopali H Desai on behalf of Katie Hobbs. (Desai, Roopali) (Entered: 09/02/2020)
09/03/2020	<u>11</u>	NOTICE TO FILER OF DEFICIENCY re: <u>9</u> Emergency MOTION for Preliminary Injunction <i>AND DECLARATORY RELIEF AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF</i> filed by Leslie Begay, Caroline Begay, Alfred McRoye, Irene Roy, Darlene Yazzie, Donna Williams. Document not in compliance with LRCiv 7.1(a)(3) – Party names must be capitalized using proper upper and lower case type. <i>No further action is required.</i> This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (GMP) (Entered: 09/03/2020)
09/03/2020	<u>12</u>	*MOTION to Intervene by Donald J. Trump for President Incorporated, Yuma County Republican Committee, Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, Maricopa County Republican Committee, Coconino County Republican Committee, Arizona Republican Party. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Text of Proposed Order)(Johnson, Brett) *Modified to correct filer per party name standards and add additional filers on 9/4/2020 (REK). (Entered: 09/03/2020)
09/03/2020	<u>13</u>	*Corporate Disclosure Statement by Arizona Republican Party. (Johnson, Brett) *Modified to correct filer on 9/4/2020 (REK). (Entered: 09/03/2020)
09/03/2020	<u>14</u>	*Corporate Disclosure Statement by Coconino County Republican Committee. (Johnson, Brett) *Modified to correct filer on 9/4/2020 (REK). (Entered: 09/03/2020)
09/03/2020	<u>15</u>	*Corporate Disclosure Statement by Donald J. Trump for President Incorporated. (Johnson, Brett) *Modified to correct filer per party name standards on 9/4/2020 (REK). (Entered: 09/03/2020)
09/03/2020	<u>16</u>	*Corporate Disclosure Statement by Maricopa County Republican Committee.(Johnson, Brett) *Modified to correct filer on 9/4/2020 (REK). (Entered: 09/03/2020)
09/03/2020	<u>17</u>	*Corporate Disclosure Statement by National Republican Congressional Committee. (Johnson, Brett) *Modified to correct filer on 9/4/2020 (REK). (Entered: 09/03/2020)
09/03/2020	<u>18</u>	*Corporate Disclosure Statement by National Republican Senatorial Committee. (Johnson, Brett) *Modified to correct filer on 9/4/2020 (REK). (Entered: 09/03/2020)
09/03/2020	<u>19</u>	*Corporate Disclosure Statement by Republican National Committee. (Johnson, Brett) *Modified to correct filer on 9/4/2020 (REK). (Entered: 09/03/2020)
09/03/2020	<u>20</u>	*Corporate Disclosure Statement by Yuma County Republican Committee. (Johnson, Brett) *Modified to correct filer on 9/4/2020 (REK). (Entered: 09/03/2020)
09/07/2020	<u>21</u>	*Emergency MOTION for Hearing on Motion re: <u>9</u> Emergency MOTION for Preliminary Injunction by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (Attachments: # <u>1</u> Text of Proposed Order)(McClure, Chris) *Modified to remove duplicative text on 9/8/2020 (GMP). (Entered: 09/07/2020)
09/09/2020	<u>22</u>	RESPONSE to Motion re: <u>12</u> MOTION to Intervene filed by Katie Hobbs. (Desai, Roopali) (Entered: 09/09/2020)
09/11/2020	<u>23</u>	ORDER: Pending before the Court are the <u>12</u> Motion to Intervene filed by Donald J. Trump for President Incorporated, Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee,

		Arizona Republican Party, Coconino County Republican Committee, Maricopa County Republican committee and Yuma County Republican Committee (collectively "Intervenors") and Defendant Arizona Secretary of State's <u>22</u> Response to Motion to Intervene. Accordingly, IT IS HEREBY ORDERED the Reply is due September 14, 2020. Signed by Chief Judge G Murray Snow on 9/11/20. (GMP) (Entered: 09/11/2020)
09/11/2020	<u>24</u>	ORDER: Granting Plaintiffs' <u>2</u> Emergency Motion for Preliminary Injunctive and Declaratory Relief and setting an expedited briefing schedule as follows: The response shall be due no later than September 14, 2020. The reply shall be due no later than September 18, 2020. IT IS FURTHER ORDERED granting Plaintiffs' <u>21</u> Motion for Emergency Hearing on Motion for Preliminary Injunction and Permanent Injunction. The hearing is set for Tuesday, September 22, 2020 beginning at 9:00 A.M. The parties will immediately inform the Court regarding whether they believe the hearing may be by video-conference or telephone, or whether it needs to be in person. Further, the parties will immediately inform the Court whether the hearing will be evidentiary, or whether it will be argument only, as well as the time necessary for such a hearing. Signed by Chief Judge G Murray Snow on 9/11/20. (GMP) (Entered: 09/11/2020)
09/11/2020	<u>25</u>	ORDER: Setting a hearing on the <u>12</u> Motion to Intervene for Tuesday, September 15, 2020 at 10:00 a.m. The parties will immediately inform the Court regarding whether they believe the hearing may be by video-conference or telephone, or whether it needs to be in person. Signed by Chief Judge G Murray Snow on 9/11/20. (GMP) (Entered: 09/11/2020)
09/11/2020	<u>26</u>	MOTION to Intervene <i>as Intervenor-Plaintiff</i> by Arizona Advocacy Network. (Attachments: # <u>1</u> Exhibit 1 - Proposed Complaint-in-Intervention, # <u>2</u> Text of Proposed Order)(Gonski, Sarah) (Entered: 09/11/2020)
09/11/2020	<u>27</u>	Corporate Disclosure Statement by Arizona Advocacy Network. (Gonski, Sarah) (Entered: 09/11/2020)
09/11/2020	<u>28</u>	NOTICE re: Regarding Hearing Logistics by Arizona Republican Party, Coconino County Republican Committee, Donald J. Trump for President Incorporated, Maricopa County Republican Committee, National Republican Congressional Committee, National Republican Senatorial Committee, Republican National Committee, Yuma County Republican Committee re: <u>24</u> Order on Motion for Hearing on Motion, Order on Motion for Preliminary Injunction . (Spencer, Eric) (Entered: 09/11/2020)
09/11/2020	<u>29</u>	ORDER re: <u>26</u> Motion to Intervene <i>as Intervenor-Plaintiff</i> filed by Arizona Advocacy Network. IT IS HEREBY ORDERED that any responses to the Motion to Intervene (Doc. <u>26</u>) are due no later than 9:00 a.m. on Tuesday, 9/15/2020. Intervenor Arizona Advocacy Network is represented by Perkins Coie LLP. One of this Court's new term law clerks has accepted employ with Perkins Coie next year. That law clerk has been walled off and prevented from any knowledge or access to this case. Should the parties have any concerns about this arrangement, they should be raised with the Court immediately. Signed by Chief Judge G Murray Snow on 9/11/2020. (KFZ) (Entered: 09/11/2020)
09/13/2020	<u>30</u>	*Amended by <u>32</u> — RESPONSE in Opposition re: <u>12</u> MOTION to Intervene <i>and Certificate of Service</i> filed by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (Attachments: # <u>1</u> Affidavit Declaration of Healy)(McClure, Chris) *Modified on 9/14/2020 (WLP). (Entered: 09/13/2020)
09/13/2020	<u>31</u>	SERVICE EXECUTED filed by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie: Proof of Service re: Summons and Complaint upon Katie Hobbs on 9/2/20. (McClure, Chris) (Entered: 09/13/2020)
09/14/2020	<u>32</u>	RESPONSE in Opposition re: <u>12</u> MOTION to Intervene <i>Amended</i> filed by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (Attachments: # <u>1</u> Affidavit Declaration of Healy)(McClure, Chris) (Entered: 09/14/2020)
09/14/2020	<u>33</u>	NOTICE re: Oral Argument and Hearing by Katie Hobbs re: <u>24</u> Order on Motion for Hearing on Motion, Order on Motion for Preliminary Injunction . (Desai, Roopali) (Entered: 09/14/2020)

09/14/2020	<u>34</u>	REQUEST re: telephonic hearing by Movants Arizona Republican Party, Coconino County Republican Committee, Donald J. Trump for President Incorporated, Maricopa County Republican Committee, National Republican Congressional Committee, National Republican Senatorial Committee, Republican National Committee, Yuma County Republican Committee. (Johnson, Brett) (Entered: 09/14/2020)
09/14/2020	<u>35</u>	ORDER: In light of General Order 20-17, the hearing currently set for September 15, 2020 at 10:00 a.m. shall be conducted telephonically by all parties. Accordingly, IT IS HEREBY ORDERED that counsel for Proposed Intervenor-Defendants shall set up a call-in number on or before 5:00 p.m. on September 14, 2020, and disseminate the number to all parties, including the Court. Signed by Chief Judge G Murray Snow on 9/14/20. (GMP) (Entered: 09/14/2020)
09/14/2020	<u>36</u>	NOTICE TO FILER OF DEFICIENCY re: <u>28</u> Notice (Other) filed by Donald J. Trump for President Incorporated, Arizona Republican Party, Yuma County Republican Committee, National Republican Congressional Committee, Coconino County Republican Committee, Maricopa County Republican Committee, Republican National Committee, National Republican Senatorial Committee. Document not in compliance with LRCiv 5.5(g) – Documents signed by an attorney shall be filed using that attorney's ECF log-in and password and shall not be filed using a log-in and password belonging to another attorney. Document(s) signed by attorney Derek Flint but submitted using the log-in and password belonging to attorney Eric Spencer. <u>No further action is required</u> . This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (GMP) (Entered: 09/14/2020)
09/14/2020	<u>37</u>	NOTICE re: Hearings by Arizona Advocacy Network . (Gonski, Sarah) (Entered: 09/14/2020)
09/14/2020	<u>38</u>	REPLY to Response to Motion re: <u>12</u> MOTION to Intervene filed by Arizona Republican Party, Coconino County Republican Committee, Donald J. Trump for President Incorporated, Maricopa County Republican Committee, National Republican Congressional Committee, National Republican Senatorial Committee, Republican National Committee, Yuma County Republican Committee. (Johnson, Brett) (Entered: 09/14/2020)
09/14/2020	<u>39</u>	RESPONSE in Opposition re: <u>26</u> MOTION to Intervene <i>as Intervenor-Plaintiff</i> filed by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (McClure, Chris) (Entered: 09/14/2020)
09/14/2020	<u>40</u>	RESPONSE in Opposition re: <u>9</u> Emergency MOTION for Preliminary Injunction <i>AND DECLARATORY RELIEF AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF</i> filed by Arizona Republican Party, Coconino County Republican Committee, Donald J. Trump for President Incorporated, Maricopa County Republican Committee, National Republican Congressional Committee, National Republican Senatorial Committee, Republican National Committee, Yuma County Republican Committee. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Johnson, Brett) (Entered: 09/14/2020)
09/14/2020	<u>41</u>	MOTION for Leave to File Excess Pages for Combined Motion to Dismiss and Response to Emergency Motion for Preliminary Injunctive and Declaratory Relief by Katie Hobbs. (Attachments: # <u>1</u> Text of Proposed Order)(Desai, Roopali) (Entered: 09/14/2020)
09/14/2020	<u>42</u>	*(Filed at doc. <u>48</u>) – LODGED Proposed Consolidated Motion to Dismiss and Response to Emergency Motion for Preliminary Injunctive and Declaratory Relief re: <u>41</u> MOTION for Leave to File Excess Pages for Combined Motion to Dismiss and Response to Emergency Motion for Preliminary Injunctive and Declaratory Relief . Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Katie Hobbs. (Attachments: # <u>1</u> Exhibit A-E)(Desai, Roopali) Modified on 9/16/2020 (GMP). (Entered: 09/14/2020)
09/15/2020	<u>43</u>	RESPONSE to Motion re: <u>26</u> MOTION to Intervene <i>as Intervenor-Plaintiff</i> filed by Katie Hobbs. (Desai, Roopali) (Entered: 09/15/2020)
09/15/2020	<u>44</u>	MINUTE ENTRY for proceedings held before Chief Judge G Murray Snow: Motion Hearing held on 9/15/2020 re Motion to Intervene <u>12</u> . Argument presented. The Court takes the motion under advisement.

		TELEPHONIC APPEARANCES: Chris McClure for Plaintiffs. Roopali Desai and Marty Harper for Defendant. Sarah Gonski and John Devaney for Proposed Intervenor Plaintiff Arizona Advocacy Network. Brett Johnson and Eric Spencer for Proposed Intervenor Defendants. (Court Reporter Charlotte Powers.) Hearing held 10:09 AM to 11:09 AM. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (KFZ) (Entered: 09/15/2020)
09/16/2020	<u>45</u>	ORDER: Arizona Advocacy Network's Motion to Intervene <u>26</u> is DENIED without prejudice. Donald J. Trump for President, Inc., Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, Arizona Republican Party, Coconino County Republican Committee, Maricopa County Republican Committee, and Yuma County Republican Committee's Motion to Intervene <u>12</u> is DENIED without prejudice. The Court will hold a telephonic status conference with the parties regarding the September 22, 2020 hearing on Friday, September 18, 2020 at 10:30 a.m. Mountain Standard Time (Pacific Daylight Time) to discuss Daubert Motions and how to proceed with the hearing. Plaintiffs' counsel shall set up a call-in number on or before Noon on Thursday, September 17, 2020 and disseminate it to all parties, including the Court. IT IS FURTHER ORDERED setting an expedited briefing schedule. Defendant's Daubert Motion shall be filed no later than Friday, September 18, 2020. Responses to Defendant's Daubert Motion shall be filed no later than Monday, September 21, 2020. Signed by Chief Judge G Murray Snow on 9/16/2020. (REK) (Entered: 09/16/2020)
09/16/2020	<u>46</u>	ORDER: The Court has received inquiries from the public who wish to listen to the September 22, 2020 hearing. Members of public or of the media seeking access are directed to email AZD-PIO@azd.uscourts.gov to obtain dialing instructions. See document for further details. Signed by Chief Judge G Murray Snow on 9/16/2020. (REK) (Entered: 09/16/2020)
09/16/2020	<u>47</u>	ORDER: Granting the <u>41</u> Motion for Leave to Exceed Page Limitation. The Secretary may file a combined and consolidated Motion to Dismiss and Response to Plaintiffs' Emergency Motion for Injunctive and Declaratory Relief not to exceed 27 pages. IT IS FURTHER ORDERED directing the Clerk of Court to file the lodged Consolidated Motion to Dismiss and Response to Emergency Motion with attachments (Doc. 42). Signed by Chief Judge G Murray Snow on 9/16/20. (GMP) (Entered: 09/16/2020)
09/16/2020	<u>48</u>	MOTION to Dismiss Case and Response to <u>9</u> Emergency MOTION for Preliminary Injunction and Declaratory Relief by Katie Hobbs. (Attachments: # <u>1</u> Exhibit A-E)(GMP) (Entered: 09/16/2020)
09/16/2020		Remark: Pro hac vice motion(s) granted for John M Devaney on behalf of Plaintiffs Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 09/16/2020)
09/16/2020		AMENDED Remark: Pro hac vice motion(s) granted for John M Devaney on behalf of Movant Arizona Advocacy Network. Counsel incorrectly listed plaintiffs on pro hac vice motion and this information has been updated and/or corrected for representation pursuant to document 26 filed 9/11/2020. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 09/17/2020)
09/17/2020	<u>49</u>	*MOTION for Clarification re: <u>45</u> Order by Movants Arizona Republican Party, Coconino County Republican Committee, Donald J. Trump for President Incorporated, Maricopa County Republican Committee, National Republican Congressional Committee, National Republican Senatorial Committee, Republican National Committee, Yuma County Republican Committee. (Johnson, Brett) *Modified to correct event on 9/18/2020 (GMP). (Entered: 09/17/2020)
09/18/2020	<u>50</u>	NOTICE re: Issues for September 18, 2020 Status Conference by Katie Hobbs . (Desai, Roopali) (Entered: 09/18/2020)
09/18/2020	<u>51</u>	*MOTION in Limine re: Exclude Schroedel and Bret Healy Testimony at Preliminary Injunction Hearing, MOTION to Strike Declaration by Katie Hobbs. (Attachments: # <u>1</u> Text of Proposed Order)(Desai, Roopali). Added MOTION to Strike on 9/21/2020 (GMP). (Entered: 09/18/2020)

09/18/2020	52	MINUTE ENTRY for proceedings held before Chief Judge G Murray Snow: Status Conference held on 9/18/2020. TELEPHONIC APPEARANCES: Chris McClure for Plaintiffs. Roopali Desai and Marty Harper for Defendant. (Court Reporter Charlotte Powers.) Hearing held 10:32 AM to 10:48 AM. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (KFZ) (Entered: 09/18/2020)
09/18/2020	<u>53</u>	*REPLY to Response to Motion re: <u>2</u> Emergency MOTION for Preliminary Injunction filed by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (Attachments: # <u>1</u> Affidavit Declaration of McClure, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F)(McClure, Chris) *Modified to correct document linkage on 9/21/2020 (GMP). (Entered: 09/18/2020)
09/21/2020		Remark: Pro hac vice motion(s) granted for Anuradha Sivaram on behalf of Defendant Katie Hobbs. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 09/21/2020)
09/21/2020	<u>54</u>	NOTICE of Appearance by Anuradha Sivaram on behalf of Katie Hobbs. (Sivaram, Anuradha) (Entered: 09/21/2020)
09/21/2020	<u>55</u>	RESPONSE in Opposition re: <u>51</u> MOTION in Limine re: Exclude Schroedel and Bret Healy Testimony at Preliminary Injunction Hearing and Motion to Strike Declaration MOTION to Strike filed by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (Attachments: # <u>1</u> Affidavit Declaration of McClure, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C)(McClure, Chris) (Entered: 09/21/2020)
09/22/2020	<u>56</u>	MINUTE ENTRY for proceedings held before Chief Judge G Murray Snow: Motion Hearing held on 9/22/2020. IT IS ORDERED taking under advisement <u>51</u> Defendant's Motion in Limine/Motion to Strike, and Plaintiffs' Motion for Preliminary Injunction. (Court Reporter Charlotte Powers.) Hearing held 9:05 AM to 1:49 PM.(KFZ) (Entered: 09/23/2020)
09/22/2020	<u>57</u>	Witness List by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (KFZ) (Entered: 09/23/2020)
09/22/2020	<u>58</u>	Witness List by Katie Hobbs. (KFZ) (Entered: 09/23/2020)
09/22/2020	<u>59</u>	Exhibit List by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (KFZ) (Entered: 09/23/2020)
09/22/2020	<u>60</u>	Exhibit List by Katie Hobbs. (KFZ) (Entered: 09/23/2020)
09/24/2020	<u>61</u>	RESPONSE to Motion re: <u>48</u> MOTION to Dismiss Case filed by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. (Attachments: # <u>1</u> Affidavit Declaration of McClure, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit D)(McClure, Chris) (Entered: 09/24/2020)
09/25/2020	<u>62</u>	ORDER – IT IS HEREBY ORDERED that Plaintiffs Darlene Yazzie, Caroline Begay, Leslie Begay, Irene Roy, Donna Williams, and Alfred McRoye's Motion for Preliminary Injunction (Doc. <u>2</u>) is DENIED. IT IS FURTHER ORDERED that Defendant Katie Hobbs' Motion in Limine (Doc. <u>51</u>) is DENIED without prejudice. IT IS FURTHER ORDERED that the Court will hold a telephonic status conference October 9, 2020 at 2:30 p.m. Mountain Standard Time (Pacific Daylight Time) to discuss the timeline for responses to Defendant's Motion to Dismiss. Defendant's counsel shall set up a call-in number on or before Noon, October 6, 2020 and disseminate it to all parties, including the Court. (See document for complete details). Signed by Chief Judge G Murray Snow on 9/25/20. (SLQ) (Entered: 09/25/2020)
09/28/2020	<u>63</u>	*NOTICE OF INTERLOCUTORY APPEAL to 9th Circuit Court of Appeals re: <u>62</u> Order by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie. Filing fee received: \$ 505.00, receipt number 0970-18714308. (Attachments: # <u>1</u> Appeal Information Representation Statement)(McClure, Chris) *Modified to correct event type on 9/28/2020 (EJA). (Entered: 09/28/2020)
09/28/2020	<u>64</u>	TRANSCRIPT REQUEST by Caroline Begay, Leslie Begay, Alfred McRoye, Irene Roy, Donna Williams, Darlene Yazzie for proceedings held on 9/22/2020, Judge G

		Murray Snow hearing judge(s) re: <u>63</u> Notice of Appeal. (McClure, Chris) (Entered: 09/28/2020)
09/28/2020	<u>66</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of <i>TELEPHONIC MOTION HEARING</i> proceedings for date of 09/22/2020 before Chief Judge G. MURRAY SNOW re: <u>63</u> Notice of Appeal. [Court Reporter: Charlotte A. Powers, RMR, FCRR, CCR, CMRS, Telephone number (602) 322-7250]. The ordering party will have electronic access to the transcript immediately. All others may view the transcript at the court public terminal or it may be purchased through the Court Reporter/Transcriber by filing a Transcript Order Form on the docket before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/19/2020. Redacted Transcript Deadline set for 10/29/2020. Release of Transcript Restriction set for 12/28/2020. (RAP) (Entered: 10/01/2020)
09/29/2020	<u>65</u>	USCA Case Number re: <u>63</u> Notice of Appeal. Case number 20-16890, Ninth Circuit. (EJA) (Entered: 09/29/2020)
10/02/2020	<u>67</u>	TRANSCRIPT REQUEST by Katie Hobbs for proceedings held on 09/22/2020, Judge G Murray Snow hearing judge(s). (Desai, Roopali) (Entered: 10/02/2020)