

1 David B. Rosenbaum, 009819
2 Joshua J. Messer, 035101
3 OSBORN MALEDON, P.A.
4 2929 North Central Avenue, 20th Floor
5 Phoenix, Arizona 850123
6 (602) 640-9000
7 drosenbaum@omlaw.com
8 jmesser@omlaw.com

9 *Additional Counsel Listed on Signature Page*

10 Attorneys for Plaintiffs Tohono O’odham
11 Nation, Gila River Indian Community, Keanu
12 Stevens, Alanna Siquieros, and Ladonna
13 Jacket

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mi Familia Vota, et al.,
Plaintiffs,
v.
Adrian Fontes, in his official capacity as
Arizona Secretary of State, et al.,
Defendants.

No. 2:22-cv-00509-PHX-SRB
(Consolidated)

**REPLY IN SUPPORT OF
CROSS-MOTION FOR
SUMMARY JUDGMENT (DOC.
390) BY TOHONO O’ODHAM
NATION, GILA RIVER INDIAN
COMMUNITY,
KEANU STEVENS, ALANNA
SIQUIEROS, AND LADONNA
JACKET**

AND CONSOLIDATED CASES

The State of Arizona and Attorney General Mayes (collectively “the State”) either endorse, or do not oppose, each item of relief requested by the Tohono O’odham Plaintiffs in their Cross-Motion for summary judgment (Doc. 390) (“the Cross-Motion”). No other defendant opposes that relief. With no genuine issue of fact to be tried, the Tohono O’odham Plaintiffs request that the Court rule as a matter of law that:

- 1 · Application of A.R.S. § 16-123 to people who register to vote using the
2 “Federal Form¹ to register for federal elections is preempted by the
3 requirement in Section 6 of the NVRA², that states “accept and use” the
4 Federal Form.
- 5 · A.R.S. § 16-123 references A.R.S. § 16-579(A)(1) for a list of documents
6 that satisfy the documentary proof of location of residence requirement
7 in A.R.S. § 16-123. The reference to 16-579(a)(1) provides examples of
8 documents, but is not an exhaustive list of the documents, that can be used
9 to satisfy A.R.S. § 16-123.
- 10 · A.R.S. § 16-123 does not require tribal members or other Arizona
11 residents to have a standard street address for their home to satisfy A.R.S.
12 § 16-123.
- 13 · In addition to the documents listed in A.R.S. § 16-579(A)(1), the
14 following documents satisfy the requirement in A.R.S. § 16-123:
 - 15 ○ A valid unexpired Arizona driver license or nonoperating ID
16 (“AZ-issued ID”), regardless of whether the address on the AZ-
17 issued ID matches the address on the ID-holder’s voter registration
18 form and even if the AZ-issued ID lists only a P.O. Box.
 - 19 ○ Any Tribal identification document, including but not limited to a
20 census card, an identification card issued by a tribal government,
21 or a tribal enrollment card, regardless of whether the Tribal
22 identification document contains a photo, a physical address, a
23 P.O. Box, or no address.
 - 24 ○ Written confirmation signed by the registrant that they qualify to
25 register pursuant to A.R.S. § 16-121(B), regarding registration of

26 ¹ The federal mail voter registration form prescribed by the Election Assistance
27 Commission pursuant to 52 U.S.C. § 20508(2).

28 ² National Voter Registration Act, 52 U.S.C. § 20502(a)(1).

1 persons who do not reside at a fixed, permanent, or private
2 structure.

3 These rulings align with the State’s requested rulings on the same issues and
4 fully resolve Count 1 of Tohono O’odham Plaintiffs’ Amended Complaint. On Count
5 2, the State and Tohono O’odham Plaintiffs agree there are no factual disputes about
6 the above issues as they concern Count 2 and entry of the requested rulings as a matter
7 of law will “clarify the legal dispute” between them. Doc. 364 at 17; Doc. 390 at 3 n.1.
8 Left for trial will be the fact-intensive question of whether § 16-123 imposes an undue
9 burden on the ability of Native Americans to participate in the electoral process.

10 **ARGUMENT**

11 **I. The Court should enter summary judgment in favor of Tohono O’odham**
12 **Plaintiffs on Count 1 of their Amended Complaint.**

13 No defendant opposes Tohono O’odham Plaintiffs’ argument that they “are
14 entitled to judgment as a matter of law on their claim that the DPOR requirement
15 violates Section 6 of the (NVRA) as it applies to Federal Form applicants registering
16 for federal elections[,]” and the State has no objection to Tohono O’odham Plaintiffs’
17 requested ruling. Doc. 390 at 5:23-6:8 (requested ruling); Doc. 436 at 14 (“The State
18 does not object to this revised ruling.”). The Court should therefore rule that application
19 of A.R.S. § 16-123 to people who register to vote using the Federal Form to register for
20 federal elections is preempted by the requirement in Section 6 of the NVRA that states
21 “accept and use” the Federal Form. Doc. 390 at 6:6-8.

22 **II. The Court should enter rulings consistent with Tohono O’odham Plaintiffs’**
23 **proposed language regarding documentary proof of residence (“DPOR”).**

24 “The State agrees with the revised requested ruling[s,]” proposed by Tohono
25 O’odham Plaintiffs, that (1) “A.R.S. § 16-123 references A.R.S. § 16-579(A)(1) for a
26 list of documents that satisfy the documentary proof of location of residence
27 requirement in A.R.S. § 16-123. The reference to 16-579(a)(1) provides examples of
28 documents, but is not an exhaustive list of the documents that can be used to satisfy

1 A.R.S. § 16-123” and (2) “A.R.S. § 16-123 does not require tribal members or other
2 Arizona residents to have a standard street address for their home to satisfy A.R.S.
3 § 16-123.” Doc. 436 at 46:22-47:7.

4 The State “generally does not oppose” the third ruling (or its subparts) requested
5 by the Tohono O’odham Plaintiffs regarding DPOR. *Id.* at 48:1-2. No specific areas
6 of disagreement are identified; instead, the State explains why its positions are in
7 harmony with the requested rulings. *Id.* at 48:3-50:4. Tohono O’odham Plaintiffs have
8 no issues with those explanatory positions from the State as far as the Cross-Motion is
9 concerned.

10 Given there is no opposition to any of these proposed rulings by any other party,
11 they are appropriate for summary judgment.

12 **CONCLUSION**

13 For the foregoing reasons, the Tohono O’odham Plaintiffs respectfully request
14 that the Court grant their Cross-Motion by entering the rulings requested therein.

15 DATED this 19th day of July, 2023.

16 OSBORN MALEDON, P.A.

17
18 By s/Joshua J. Messer
David B. Rosenbaum
19 AZ No. 009819
Joshua J. Messer
20 AZ No. 035101
2929 North Central Avenue, 20th Floor
21 Phoenix, Arizona 85012
(602) 640-9000
22 drosenbaum@omlaw.com
jmesser@omlaw.com

23 GILA RIVER INDIAN COMMUNITY
24 Thomas L. Murphy
AZ No. 022953
25 Javier G. Ramos
AZ No. 017442
26 Post Office Box 97
Sacaton, Arizona 85147
27 (520) 562-9760
thomas.murphy@gric.nsn.us
javier.ramos@gric.nsn.us

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

*Representing Gila River Indian
Community Only*

NATIVE AMERICAN RIGHTS FUND

Allison A. Neswood*
CO No. 49846
neswood@narf.org
Michael S. Carter
AZ No. 028704, OK No. 31961
carter@narf.org
Matthew Campbell*
NM No. 138207, CO No. 40808
mcampbell@narf.org
Jacqueline D. DeLeon*
CA No. 288192
jdeleon@narf.org

NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80301
(303) 447-8760 (main)

Samantha B. Kelty
AZ No. 024110, TX No. 24085074
kelty@narf.org

NATIVE AMERICAN RIGHTS FUND
950 F Street NW, Suite 1050,
Washington, D.C. 20004
(202) 785-4166 (direct)

Ezra D. Rosenberg*
DC No. 360927, NJ No. 012671974

Jim Tucker
AZ No. 019341
Ryan Snow*
DC No. 1619340
Lawyers' Committee for Civil Rights
Under Law
1500 K Street NW, Suite 900
Washington, DC 20005
(202) 662-8600 (main)
erosenberg@lawyerscommittee.org
jtucker@lawyerscommittee.org
rsnow@lawyerscommittee.org

TOHONO O'ODHAM NATION

Howard M. Shanker (AZ Bar 015547)
Attorney General, Tohono O'odham
Nation
Marissa L. Sites (AZ Bar 027390)
Assistant Attorney General, Tohono
O'odham Nation
P.O. Box 830

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sells, Arizona 85634
(520) 383-3410
Howard.Shanker@tonation-nsn.gov
Marissa.Sites@tonation-nsn.gov
*Representing Tohono O'odham Nation
Only*

**Admitted Pro Hac Vice*

Attorneys for Plaintiffs Tohono
O'Odham Nation, Gila River Indian
Community, Keanu Stevens, Alanna
Siquieros, and Ladonna Jacket