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

Jerry **SEKAYUMPTTEWA**, Sr., Monica KAHE, :
 Dale SINQUAH, Celestino YOUVELLA, Leroy : **PLAINTIFFS' MOTION FOR**
 LEWIS, Alvin CHACA, Leon KORUH, Archie : **PRELIMINARY INJUNCTION**
 DUWAHOYEOMA, Owen NUMKENA, Jr., : **AND MEMORANDUM IN**
 Gerald NUMKENA, Velma KALYESVA, Philip : **SUPPORT THEREOF**
 QUOCHYTEWA, Wallace YOUVELLA, Sr.; :
 MISHONGNOVI VILLAGE; and FIRST MESA : **ORAL ARGUMENT REQUESTED**
 CONSOLIDATED VILLAGES, :
 Plaintiffs, : Civil Case No. _____

vs. :

Kenneth **SALAZAR**, U.S. Secretary of the Interior :
 in his official capacity; Bryan BOWKER, Western :
 Regional Director, Bureau of Indian Affairs in his :
 official capacity; the HOPI TRIBE; and the HOPI :
 TRIBAL COUNCIL, LeRoy SHINGOITEWA, :
 Chairman of the Hopi Tribe in his official capacity; :
 and Herman HONANIE, Vice Chairman of the :
 Hopi Tribe in his official capacity, :

Defendants. :

CIV 11 800 5 PCT PGR

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs move the Court to preliminarily enjoin Defendants from conducting an election scheduled for January 27, 2011, on the "Proposed Constitution of the Hopi Tribe", and to preserve the status quo until this matter can be adjudicated.

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1 **I. INTRODUCTION**

2 An election has been scheduled by the Secretary of Interior for January 27, 2011, to allow
3 registered voters of the Hopi Tribe to vote on a document entitled "Proposed Constitution of the
4 Hopi Tribe." The Secretary scheduled the election after receiving a Resolution purportedly
5 passed by the Hopi Tribal Council on August 4, 2010. The Resolution, H-053-2010 was passed
6 by a vote of eight in favor, six opposed, two abstaining, with the Chairman of the Hopi Tribe also
7 in attendance. The Chairman votes only in case of a tie, but is a member of the Tribal Council
8 pursuant to the existing Hopi Constitution and By-Laws. The voting accounts for 15 members of
9 the Tribal Council, but there were actually at least 16 members of the Council on August 4, 2010.
10 One member was absent from the meeting.

11 The existing Hopi Constitution and By-Laws mandates that any proposed change to the
12 Constitution be approved by a majority vote of the Council. Resolution H-053-2010 failed to
13 pass by a majority vote of the Hopi Tribal Council, and therefore cannot be deemed to be a
14 "tribal request" for an election as required by federal law. Because the Resolution upon which the
15 election has been scheduled is invalid, the election scheduled for January 27, 2011, will be illegal
16 and invalid.

17 There were seven members of the Hopi Tribal Council that were summarily suspended and
18 removed by Chairman Shingoitewa and Vice Chairman Honanie on March 1, 2010. Neither
19 Chairman Shingoitewa or Vice Chairman Honanie had any authority under the Hopi Constitution
20 and By-Laws to suspend, remove, exclude, or otherwise determine the qualifications or right of
21 Plaintiff Representatives to sit as Council members. These removed members should also be
22 counted in the vote tally for Resolution H-053-2010.

23 The Proposed Constitution violates provisions of the existing Constitution with regard to
24 the villages of First Mesa and Mishongnovi. The Proposed Constitution destroys their traditional
25 village organization that is specifically protected by the existing Constitution. The Proposed
26 Constitution also splits First Mesa into three distinct villages, again in contravention of the
27 existing Constitution.
28

1 A preliminary injunction halting the scheduled election is necessary to preserve the status
2 quo. The Plaintiffs are likely to prevail on the merits. Absent injunctive relief, the scheduled
3 election will be an illegal and futile enterprise.

4 **II. FACTS.**

5 1. On August 4, 2010, the Hopi Tribal Council purportedly adopted Hopi Tribal Council
6 Resolution H-053-2010. The Certification to the Resolution indicates that the vote was “in 8
7 favor, [sic] 6 opposed, 0 abstaining (Chairman presiding and not voting).” (Exhibit A in the
8 Exhibit packet.)

9 2. As of August 4, 2010, there were at least 16 duly recognized and seated members of the
10 Hopi Tribal Council: the Chairman, the Vice Chairman, and 14 Representatives from various
11 villages, for a total of 16 members. (Affidavit of Phillip Quochoytewa, ¶12; Aff. of Velma
12 Kalyesva, ¶11; Printout from the official website of the Hopi Tribal Council listing Tribal
13 Council Members for 2010, (Exhibit E in Exhibit packet.))

14 3. The Certification indicates that there was a vote of eight in favor, six opposed, and zero
15 abstaining, and the Chairman present and presiding. The Certification only accounts for 15 of
16 the 16 Representatives. The Certification fails to disclose that there was one council member that
17 was absent. (Aff. of Quochoytewa, ¶13; Aff. of Kalyesva, ¶12.)

18 4. A vote of the Hopi Tribal Council of eight in favor did not constitute a vote of the
19 majority of the Council as required by Article X of the Hopi Constitution and By-Laws. (Aff. of
20 Quochoytewa, ¶ 17; Aff. of Kalyesva, ¶16; Exhibit B in Exhibit packet.)

21 5. Plaintiffs Dale Siquah, Celestino Youvella, Leroy Lewis, Alvin Chaca, Leon Koruh,
22 Archie Duwayoyeoma, and Owen Numkena, Jr., (Plaintiff Representatives) were members of the
23 Hopi Tribal Council on March 1, 2010.

24 6. On March 1, 2010, Defendant Shingoitewa, as Chairman of the Hopi Tribe, and
25 Defendant Honanie, as Vice Chairman of the Hopi Tribe, acting in their capacities as officers of
26 the Hopi Tribe, summarily “suspended” the Plaintiff Representatives, from sitting as members of
27 the Hopi Tribal Council. (Aff. of Siquah, ¶ 6; Aff. of Koruh, ¶ 6.)
28

1 7. On March 1, 2010, Defendant Shingoitewa, as Chairman of the Hopi Tribe, and
2 Defendant Honanie, as Vice Chairman of the Hopi Tribe, issued a "MEMORANDUM" placing
3 Plaintiff Representatives on "Indefinite Leave of Absence, as Tribal Council Representatives
4 effective March 1, 2010 at approximately 10 AM." (Exhibit D in Exhibit packet.)

5 8. Chairman Shingoitewa and Vice Chairman Honanie continued to exclude Plaintiff
6 Representatives from sitting as Hopi Tribal Council Representatives up to and including the
7 Tribal Council meeting on August 4, 2010, at which Resolution H-053-2010 was considered.
8 (Aff. of Siquah, ¶ 8; Aff. of Koruh, ¶ 8.)

9 9. Including Plaintiff Representatives in the number of Hopi Tribal Council members
10 would result in 23 members as of August 4, 2010, and would require a vote of at least 12 in favor
11 of submitting a tribal request to the Secretary for an election.

12 10. Plaintiffs Mishongnovi Village and First Mesa Villages are recognized under Article
13 III, Section 1 of the Hopi Constitution and By-Laws as self-governing Hopi villages. (Aff. of
14 Siquah, ¶¶ 9-10; Aff. of Koruh, ¶¶ 9-10.)

15 11. Neither First Mesa nor Mishongnovi have ever adopted a village constitution under
16 Article III, Section 4 of the Constitution. Therefore First Mesa and Mishongnovi are under the
17 traditional Hopi organization, with a Kikmongwi as their respective leaders. Aff. of Siquah, ¶
18 9; Aff. of Koruh, ¶ 9.)

19 12. The Proposed Constitution (Article VII) eliminates from Article III, Section 3 of the
20 current Constitution the second sentence, i.e.: "Until a village shall decide to organize in
21 another manner, it shall be considered as being under the traditional Hopi organization, and
22 the Kikmongwi of such village shall be recognized as its leader." (*Compare* Exhibit B, page 2,
23 *with* Exhibit C, page 9.)

24 13. The Proposed Constitution (Article VII) also dissolves currently constitutionally
25 recognized First Mesa into three separate villages, in violation of Article III of the current
26 Constitution. (*Compare* Exhibit B, p. 2 *with* Exhibit C, page 8.)

27 14. There is an action pending in the Hopi Tribal Court challenging Plaintiff
28 Representatives summary removal as Tribal Council Representatives on March 1, 2010.

1 (*Hopi Tribal Council Representatives, et al., v. Leroy Shingoitewa, et al.*, Hopi Tribal Court
 2 Case No. 2010-CV-0053, filed April, 2010.) (Counsel for Plaintiffs in the present case is
 3 counsel for plaintiffs in that case.)

4 15. There is an action pending in the Hopi Tribal Court seeking a determination if the
 5 three Council Representatives currently serving on the Council as representatives from
 6 Sipaulovi Village, and who voted on August 4, 2010, on Resolution H-053-2010, are legally
 7 appointed representatives. (*Sipaulovi Village Board, et. al. v. Numkena and Koeyahongva*,
 8 Hopi Tribal Court Case No. 2010-CV-0006, filed January 13, 2010.) (Counsel for Plaintiffs in
 9 the present case is counsel for defendants in that case.)

10 16. Each of these cases has the potential of determining that the membership of the
 11 Council on August 4, 2010, was defective or improper.

12 17. A letter was sent by counsel for Plaintiffs to Defendant Bryan Bowker on December
 13 24, 2010, describing the issue with Resolution H-053-2010 and requesting that the election be
 14 cancelled. No response has yet been received. (Exhibit F in the Exhibit packet.)

15 **II. FEDERAL STATUTORY & REGULATORY FRAMEWORK GOVERNING** 16 **TRIBAL ELECTIONS.**

17 The Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act
 18 of June 15, 1935 (49 Stat. 378) authorized Native American Tribes to adopt governing
 19 documents or constitutions via an election process. (Codified generally as Title 25 U.S.C. §
 20 476, *et seq.*)

21 “Indian tribes enjoy important attributes of sovereignty, but in some key respects they
 22 are under the control of the federal government. Such is the case with elections to adopt,
 23 revoke, or amend tribal constitutions. Although these elections lay the very foundation
 24 for tribal self-government, they must be called, held, and approved by the United States
 25 Secretary of the Interior, 25 U.S.C. sec. 476.” *Thomas v. United States*, 189 F.3d 662,
 26 (7th Cir. 1999).

27 At its base, this lawsuit is a challenge to the way certain federal officials administered
 28 an election for which they were both substantively and procedurally responsible. It bears
 emphasizing that Secretarial elections, such as the one at issue here, are federal – not
 tribal – elections. 25 C.F.R. § 81.1(s). Tribes are sovereign only to the extent that their
 sovereignty has not been qualified by statutes or treaties. *Iowa Mut. Ins. Co. v. LaPlante*,
 480 U.S. 9, 14, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987). The IRA explicitly reserves to the
 federal government the power to hold and approve elections that adopt or alter tribal
 constitutions. 25 U.S.C. § 476. As the Eighth Circuit explained “[i]t is not merely the

1 number or type of federal involvements which characterize these elections as federal . . .
 2 . Rather, it is the source of the Secretary's regulatory authority over these elections, such
 3 authority having congressional[,] and not tribal origin." [quoting *Cheyenne River Sioux*
Tribe v. Andrus, 566 F.2d 1085, 1088 (8th Cir.1977).] *Thomas, supra*, at 667.

4 The authority to conduct an election involving amendments to a Native American tribal
 5 constitution or governing document is delegated to the Secretary of Interior under 25 U.S.C.
 6 §476(c)(1)(A) (The Secretary shall call and hold an election "within one hundred and eighty
 7 days after the receipt of a tribal request for an election to ratify a proposed constitution and
 8 By-Laws, or to revoke such constitution and By-Laws ... "). Previous Secretaries
 9 promulgated rules governing such elections, found at 25 C.F.R. part 81, "Tribal
 10 Reorganization Under a Federal Statute." Section 81.5(d) provides: "The Secretary shall
 11 authorize the calling of an election on the adoption of amendments to a constitution and
 12 bylaws or a charter when requested pursuant to the amendment article of those documents."

13 The meaning of the phrase "tribal request" was addressed in *Split Family Support Group*
 14 *v. Moran*, 232 F.Supp.2d 1133, 1136 (D.Mont.2002):

15 ... The meaning of "tribal request" is not defined in the statute as codified in 25 U.S.C. §
 16 476(c). However, P.L. 100-581 §102(2), which is the law codified as § 476, reads
 17 "'appropriate tribal request' means receipt in the Area Office of the BIA having
 18 administrative jurisdiction over the requesting tribe, of a duly enacted tribal resolution
 19 requesting a secretarial election." I understand 25 U.S.C. § 476(c), by its plain language
 20 as illuminated by the Public Law, to mean a resolution passed by an official tribal body,
 21 not a petition signed by tribal members. Consequently, there is little likelihood that
 22 Plaintiff would win on the merits of the statutory claim.

23 Finally, tribal governing bodies are not necessary parties to an action in federal court
 24 involving federal officials responsible for elections on tribal constitutions. *Thomas, supra*, at
 25 667.

26 **III. HOPI CONSTITUTIONAL & REGULATORY FRAMEWORK.**

27 In September 1936, the Secretary of the Interior at the time approved an election for a
 28 proposed Hopi Constitution and By-Laws. On October 24, 1936, the proposed Hopi
 Constitution and By-Laws was voted upon and passed by a vote of 651 for and 104 against.
 On December 14, 1936, the Secretary of Interior approved the Hopi Constitution and By-Laws.
 The Certification of Adoption provides in part: "All rules and regulations heretofore
 promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may

1 be incompatible with any of the provisions of the said Constitution and By-Laws are hereby
2 declared inapplicable to these Indians. All officers and employees of the Interior Department
3 are ordered to abide by the provisions of the said Constitution and By-Laws.”

4 The Preamble to the Hopi Constitution and By-Laws provides:

5 PREAMBLE

6 This Constitution, to be known as the Constitution and By-Laws of the Hopi Tribe,
7 is adopted by the self-governing Hopi and Tewa Villages of Arizona to provide a way
8 of working together for peace and agreement between the villages, and of preserving
9 the good things of Hopi life, and to provide a way of organizing to deal with modern
10 problems, with the United States Government and with the outside world generally.

11 The Hopi Constitution and By-Laws, Article III, provides:

12 ARTICLE III - ORGANIZATION

13 SECTION 1. The Hopi Tribe is a union of self-governing villages sharing common
14 interests and working for the common welfare of all. It consists of the following
15 recognized villages:

16 First Mesa (consolidated villages of Walpi, Shitchumovi, and Tewa).
17 Mishongnovi.
18 Sipaulavi.
19 Shungopavi.
20 Oraibi.
21 Kyakotsmovi.
22 Bakabi.
23 Hotevilla.
24 Moenkopi.

25 SECTION 2. The following powers which the Tribe now has under existing law or
26 which have been given by the Act of June 18, 1934 (48 Stat. 984), and acts amendatory
27 thereof or supplemental thereto, are reserved to the individual villages:

- 28 (a) To appoint guardians for orphan children, and incompetent members.
- (b) To adjust family disputes and regulate family relations of members of the villages.
- (c) To regulate the inheritance of property of the members of the villages.
- (d) To assign farming land, subject to the provisions of ARTICLE VII.

SECTION 3. Each village shall decide for itself how it shall be organized. Until a
village shall decide to organize in another manner, it shall be considered as being under
the traditional Hopi organization, and the Kikmongwi of such village shall be recognized
as its leader.

SECTION 4. Any village which does not possess the traditional Hopi self-government,
or which wishes to make a change in that government or add something to it, may adopt a
Village Constitution in the following manner: A Constitution, consistent with this
Constitution and By-Laws, shall be drawn up, and made known to all the voting members
of such village, and a copy shall be given to the Superintendent of the Hopi jurisdiction.
Upon the request of the Kikmongwi of such village, or of 25% of the voting members
thereof, for an election on such Constitution, the Superintendent shall make sure that all
members have had ample opportunity to study the proposed Constitution. He shall then
call a special meeting of the voting members of such village, for the purpose of voting on
the adoption of the proposed Constitution, and shall see that there is a fair vote. If at such
referendum, not less than half of the voting members of the village cast their votes, and if
a majority of those voting accepts the proposed Constitution, it shall then become the
Constitution of that village, and only officials chosen according to its provisions shall be
recognized.

1 In a recent Hopi Appellate Court opinion, "Final Answer and Opinion, "*In the Matter of*
 2 *Certified Question of Law Re: Matter of Village Authority to Remove Tribal Council*
 3 *Representatives*, Hopi Appellate Court Case No. 2008-AP-0001 (02/11/2010), pp. 4-5,
 4 (Exhibit F in Exhibit packet), the Hopi Appellate Court explained the unique nature of the
 5 Hopi Constitution:

6 Prior to the initial drafting and adoption of the Hopi Constitution in 1936 there was no
 7 central Hopi government. Rather, the people comprising the Hopi Tribe lived in 12 self-
 8 governing Villages, each of which retained its own aboriginal sovereignty. Each was an
 9 autonomous, sovereign city-state. The historical letters and records filed with this Court as
 10 part of the record in this case demonstrate that the creation of a central Hopi government
 11 and the drafting of the Constitution, significantly promoted by the federal government
 12 through Oliver La Farge, was highly controversial, a fact well understood by Mr. La Farge.
 13 Accordingly, unlike many of the tribal constitutions drafted pursuant to section 16 of the
 14 Indian Reorganization Act of 1934 (IRA), codified as amended at 25 U.S.C. § 476, the
 15 Hopi Constitution avoided boilerplate legal clauses and was carefully drafted to preserve
 16 the Hopi way of life. In particular, the Hopi Constitution advances a very different theory
 17 of the source of power of the Hopi Tribe than most of the tribal constitutions drafted
 18 during this period. While most of the tribal constitutions drafted at the same time suggest
 19 the source of power of the central tribal government rests with delegation from the people
 20 of the affected tribe, [fn.1] the Hopi Constitution expressly rejects that approach. Instead,
 21 the Preamble of the Hopi Constitution states: [quoting the Preamble.]

22 Furthermore, the entire structure of the Hopi Constitution indicates that the authority
 23 of the central government of the Hopi Tribe rests on the bedrock of the aboriginal
 24 sovereignty of the Hopi and Tewa villages. The Villages delegated limited powers to the
 25 central Hopi government. . . .

26 Thus, unlike most tribal governments adopted under section 16 of the Indian
 27 Reorganization Act of 1934, which, according to the express language of their
 28 constitutions, owe their authority to powers delegated by their people, the authority of the
 29 central government of the Hopi Tribe, according to the express provisions in the Preamble
 30 of the Constitution, derives exclusively from power delegated to it by the Hopi and Tewa
 31 Villages. In this respect, as early noted by Olive La Farge, the legal theory of the Hopi
 32 Constitution is far closer to the Article[s] of Confederation employed by the federal
 33 government from 1781 until 1789 than the current legal theory of the United States
 34 Constitution.[fn. 3]. The bedrock constitutional authority upon which the tribal
 35 sovereignty of the Hopi Tribe therefore rests is the inherent aboriginal sovereignty of the
 36 Hopi and Tewa Villages that comprise the Hopi Tribe. As in the Articles of Confederation,
 37 the Hopi Villages retain all aspects of their inherent aboriginal sovereignty not exclusively
 38 delegated by the Constitution to the central government of the Hopi Tribe.

39 The composition of the Hopi Tribal Council is set forth in Article IV, Section 1, of the
 40 Hopi Constitution and By-Laws:

41 ARTICLE IV- THE TRIBAL COUNCIL

42 SECTION 1 The Hopi Tribal Council shall consist of a Chairman, Vice Chairman,
 43 and representatives from the various villages. ... [the number from each village is then
 44 given.]

1 Article X of the Hopi Constitution and By-Laws has remained unchanged since its
2 adoption, and provides in full:

3 ARTICLE X- AMENDMENT

4 Any Representative may propose an amendment to this Constitution and By-Laws at
5 any meeting of the Council. Such proposed amendment may be discussed at that
6 meeting, but no vote shall be taken on it until the next following meeting of the
7 Council. If the Council shall then approve such proposed amendment by a majority
8 vote, it shall request the Secretary of the Interior to call a referendum for accepting or
9 rejecting such amendment. It shall then be the duty of the Secretary of the Interior to
10 call such referendum, at which the proposed amendment may be adopted subject to the
11 Secretary's approval in the same manner as provided for the adoption and approval of
12 this Constitution and By-Laws.

13 IV. STANDARDS FOR INJUNCTIVE RELIEF IN ELECTIONS.

14 Plaintiffs seeking a preliminary injunction must establish that they are likely to succeed on
15 the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief,
16 that the balance of equities tips in their favor, and that an injunction is in the public interest.

17 *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 129 S.Ct. 365, 374 (2008); *Am.*
18 *Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009); *Sierra*
19 *Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir.2009).

20 Preliminary injunctions can issue in election cases. *Chisom v. Roemer*, 853 F.2d 1186,
21 1189 (5th Cir.1988):

22 It cannot be gainsaid that federal courts have the power to enjoin state elections.
23 *Watson v. Commissioner's Court of Harrison County*, 616 F.2d 105 (5th Cir.1980; *Hamer*
24 *v. Campbell*, 358 F.2d 215 (5th Cir.), *cert den.*, 385 U.S. 851, 87 S.Ct. 76, 17 L.Ed.2d 79
25 (1966). But, "intervention by the federal courts in state elections has always been a
26 serious business" *Oden v. Brittan*, 396 U.S. 1210, 90 S.Ct. 4, 24 L.Ed.2d 32 (1969)
27 (Black, J., opinion in chambers), not to be lightly engaged in.

28 In *Lucas v. Townsend*, 486 U.S. 1301, 108 S.Ct. 11763, 1765, 100 L.Ed.2d 586 (1988),
Justice Kennedy, Circuit Justice, enjoined a scheduled bond referendum election pending in
Bibb County, Georgia. He opined as follows on irreparable harm.

I am further persuaded that irreparable harm will likely flow from a denial of
injunctive relief. Permitting the election to go forward would place the burdens of inertia
and litigation delay on those whom the statute was intended to protect, despite their
obvious diligence in seeking an adjudication of their rights prior to the election. Even if
the election is subsequently invalidated, the effect on both the applicants and respondents
likely would be most disruptive. Further, although an injunction would doubtless place
certain burdens on respondents, such burdens can fairly be ascribed to the respondent's
own failure to seek preclearance sufficiently in advance of the date chosen for the election.
On balance, I conclude that the equities favor the applicants. Today I have entered an order
enjoining the election, pending the timely docketing of an appeal.

1 **V. ARGUMENT.**

2 The Secretary can call an election to amend an existing tribal constitution or governing
3 document upon receipt of a “tribal request,” which must be adopted, according to the
4 Secretary’s own rules, “pursuant to the amendment article of those documents.” The “tribal
5 request” has to be a duly enacted tribal resolution. *Split Family Support Group, supra*.

6 The Secretary should have determined the validity of Resolution H-053-2010 before
7 scheduling the election for January 27, 2010. Whether he investigated the Resolution before
8 scheduling the election is unknown. Perhaps he was misled by the Certification, which fails
9 to disclose the total number of Council Representatives on the Council at the time. It is
10 undisputable, however, that Resolution H-053-2010 was not passed by a majority vote of the
11 Hopi Tribal Council no matter how the council was constituted on August 4, 2010. Thus, there
12 was no valid tribal request upon which the Secretary could call the election.

13 In addition, the Proposed Constitution violates the existing Constitution in several
14 respects. First, it changes the organization of traditional villages (eliminates the Kikmongwi as
15 its leader) without allowing “each village shall decide for itself how it shall be organized.”
16 Second, it eliminates the self-governing and independent status of the villages of First Mesa
17 and Mishongnovi. Third, it dissolves the currently constitutionally recognized village of First
18 Mesa into three separate villages. The scheduled election on the Proposed Constitution, if the
19 proposal passes, will allow a few voting Hopi to change the traditional form of government of
20 the independent and sovereign Hopi villages such as First Mesa and Mishongnovi.

21 The Certification adopting the existing Constitution and By-Laws requires all officers and
22 employees of the Interior Department to abide by its provisions. The Secretary cannot legally
23 schedule an election on a proposed constitution that violates the existing one.

24 Plaintiffs satisfy the requirements for issuance of a preliminary injunction. They will likely
25 prevail on the merits because there is no question that there were at a minimum 16 members
26 of the Council and that Resolution H-053-2010 did not pass by a majority vote of the Council.

27 Plaintiffs will suffer Irreparable harm. They have already incurred costs and attorney’s fees
28 in an attempt to get the Secretary to halt the election. They will continue to incur such

1
2
3 expenses, which will become very significant if they have to challenge the election after it has
4 occurred. Passage of the Proposed Constitution will utterly destroy the traditional village
5 organization of Firs Mesa and Mishongnovi (and other villages not parties to this action),
6 something that was specifically addressed and preserved in the original Constitution.

7 The equities favor Plaintiffs. They had nothing to do with creating the existing problem.
8 That was done entirely by the Defendants.

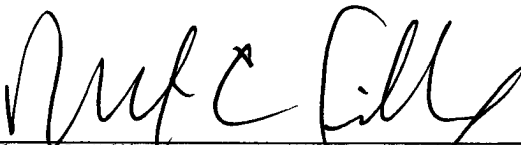
9 The taxpaying public of the United States undoubtedly have no desire to waste federal
10 funds on an election that is based on invalid authorizing documents. And, the Hopi certainly
11 have no interest in voting in an illegally called election.

12 VI. CONCLUSION.

13 Federal law does not authorize the Secretary to conduct an election to amend a tribal
14 constitution where the underlying tribal request is defective or invalid. To allow the
15 Secretary's to proceed with the election scheduled for January 27, 2010, would multiply the
16 Secretary's error in authorizing the election in the first place. In the alternative, the election
17 should be enjoined until such time as the Hopi Tribal Court determines the correct
18 composition of the Hopi Tribal Council for 2010.

19 Plaintiffs satisfy all of the prerequisites for the issuance of a preliminary injunction halting
20 the election. The Court should enter a preliminary injunction halting the election until the
21 matter can be fully heard.

22 January 10, 2011

23
24 
25 Robert C. Fillerup, Attorney for Plaintiffs