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10
11 **SUPERIOR COURT OF ARIZONA**
COUNTY OF APACHE

12
13 Navajo Nation on behalf of themselves and
all others similarly situated,

14 **Plaintiff,**

15 v.

16 Larry Noble in his official capacity as
Apache County Recorder; Angela Romero
17 in her official capacity as Apache County
Elections Director; Apache County Board of
Supervisors; and Katie Hobbs in her official
18 capacity as Arizona Secretary of State,

19 **Defendants.**

Case No.:

**APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

1 Plaintiff Navajo Nation (“Plaintiff”) respectfully moves this Court for an order to
2 show cause, temporary restraining order, and preliminary injunction, to order Defendants
3 Apache County Recorder Larry Noble; Apache County Elections Director Angela C.
4 Romero; Apache County Board of Supervisors, and Secretary of State Katie Hobbs
5 (collectively “Defendants”) to keep open the Apache County Many Farms polling site for
6 two additional hours (*i.e.* until 9:00 p.m.), so as to keep the polls open for the period of time
7 specified under A.R.S. § 16-565(A).

8 Unless this Court grants the requested injunctive relief, Defendants will close this
9 polling site without providing the requisite number of hours of voting and opportunity to
10 vote as required by A.R.S. § 16-565(A), causing immediate and irreparable harm to Plaintiff
11 and those similarly situated, who have been deprived of their fundamental right to vote in
12 the November 8, 2022 election, in violation of A.R.S. § 16-565(A). Because all such rights
13 protected by federal and state law are at risk, Plaintiff seek immediate relief from this Court.
14 This Application is supported by the following memorandum of points and authorities.

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. STATEMENT OF FACTS

17 In addition to the facts outlined herein, Plaintiff respectfully refers this Court to, and
18 incorporates by reference herein, the facts as alleged in their Complaint in this action and
19 the accompanying declarations.

20 Defendants’ unlawful late opening of the following polling site on November 8, 2022:

- 21 • Many Farms Senior Center, Hwy 191 of N. Route 59, Many Farms, AZ
86538.

Voters in Apache County can only vote at their assigned polling locations because Apache
County has elected to have polling place voting. *See* Arizona Clean Election Commission,

1 2022 General Election, Apache County, available at,
2 <https://www.azcleelections.gov/arizona-elections/november-8-election/apache>; *see also*
3 <https://www.apachecountyaz.gov/Elections>. Because voters must vote at assigned polling
4 locations for their ballots to be valid and counted, without this Court's immediate
5 intervention, Defendants will continue to inflict irreparable injury upon Plaintiff and
6 potentially hundreds of other lawfully registered voters.

6 **A. Parties**

7 Plaintiff Navajo Nation is a federally recognized Indian Tribe with a government-to-
8 government relationship with the United States. The Navajo Reservation was established by
9 the Treaty of 1868 and was thereafter expanded by successive executive orders. The
10 Reservation consists of approximately 27,000 square miles of sovereign territory. The
11 Reservation is located in Apache, Navajo, and Coconino counties in Arizona, and 8 counties
12 in Utah and New Mexico. The Navajo Nation has over 400,000 enrolled members. A
13 majority of the members who reside on the Reservation live in Arizona. Out of the three
14 counties that the Reservation occupies in Arizona, Apache County has the highest population
15 of Navajo members.

14 The Navajo Nation has associational standing to bring this lawsuit. The Navajo Nation
15 helps to coordinate federal and state elections on the Navajo Reservation including,
16 government-to-government meetings with the Arizona counties and the Arizona Secretary
17 of State. The Navajo Nation assists in voter outreach and education on the Nation. The
18 Nation also asserts the right to bring this claim on behalf of its members *parens patriae*.

18 There are 1,974 Navajo Nation members who are registered Arizona voters that live in
19 the Many Farms area. At least some of these members are unlawfully having their right to
20 vote severely burdened as the result of the failure of the Many Farms polling location to
21 open on time, and would have standing to sue in their own right. The interests at stake in

1 this action are germane to the purposes of Plaintiff Navajo Nation because the Navajo Nation
2 has a strong and demonstrated interest in ensuring its members are able to exercise their right
3 to vote on Election Day. If Navajo Nation members are unable to vote, the collective power
4 and voice of the Navajo Nation is reduced. The Navajo Nation advocates on behalf of all its
5 members to local, state, and federal representatives. If some of its members are unable to
6 vote, the Navajo Nation's overall ability to advocate effectively for critical resources for the
Navajo Nation is jeopardized.

7 Neither the claims asserted herein nor the relief requested requires the individual
8 participation of any members in this action

9 Apache County is a large and rural geographic area, and does not have public
10 transportation infrastructure. Many of Plaintiff's members have to travel long distances to
11 reach they polling places. It is not easy for them to return to their polling places a second
12 time to vote. Additionally, many of the Plaintiff's members have family and work
13 obligations that make it impossible for them to wait indefinitely this morning for the polling
14 place to open.

15 Plaintiff's members who missed their opportunity to vote when they arrived at the
16 unopened polling place before 8 a.m. would be able to return later this evening and vote if
17 the polling places where open for an additional hour.

18 **B. Defendants' Actions**

19 Arizona law explicitly details the minimum hours polls should be open. A.R.S. §
20 16-565(A) requires that voting places be open at 6:00 a.m. and close at 7:00 p.m. The
21 statute further provides that anyone "who is physically in line at the moment of closing the
polls" must be allowed to vote. A.R.S. § 16-565(C). Yet, the following polling site in
Apache County were not open by the statutorily prescribed time of 6:00 a.m.:

- 1 • Many Farms Senior Center, Hwy 191 of N. Route 59, Many Farms, AZ
2 86538.

3 Plaintiff's members like many other voters, attempted to vote first thing in the
4 morning but were barred from doing so because the polling location was not open for
5 approximately two hours after 6:00 a.m. when it was supposed to be open.

6 On November 8, 2022, counsel for Plaintiff reached out Michael Whiting, Apache
7 County Attorney, and Angela Romero, Apache County Elections Director to ask that they
8 address the problem of the polling location failing to open on time. Neither Defendant
9 Romero nor Mr. Whiting responded to this inquiry. Defendants refusal to address the late
10 opening of the polling place deprived Plaintiff of its members' right to vote in today's federal
11 election in violation of Arizona law detailed in the Complaint.

12 As a result, Plaintiff, Plaintiff's members, and those similarly situated have been
13 deprived of the fundamental right to vote. All other in-person voters throughout Arizona in
14 Apache County and Arizona can participate in the November 8, 2022 federal election
15 without such a burden, as election officials have provided the required hours of voting.
16 Defendants' actions therefore constitute violations of A.R.S. § 16-565.

17 **II. ARGUMENT**

18 Arizona courts consider four factors in deciding whether to grant a TRO or
19 preliminary injunction: "(1) A strong likelihood that he will succeed at trial on the merits;
20 (2) The possibility of irreparable injury to him not remediable by damages if the requested
21 relief is not granted; (3) A balance of hardships favors himself; and (4) Public policy favors
the injunction." *Shoen v. Shoen*, 804 P.2d 787, 792 (Ariz. Ct. App. 1990).

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

1 balance of hardships tip sharply' in his favor." *Id.*

2 **A. This Court Should Enter A Temporary Restraining Order And/Or Issue**
3 **A Preliminary Injunction.**

4 1. Plaintiff Have a Substantial Likelihood of Succeeding on the Merits
5 on Their Claim under A.R.S. § 16-565(A).

6 Defendants have deprived Plaintiff and similarly situated voters of the right to vote
7 by failing to keep open for the hours required under A.R.S. § 16-565(A) the following
8 polling site:

- 9 • Many Farms Senior Center, Hwy 191 of N. Route 59, Many Farms, AZ
10 86538.

11 Because such practices amount to a clear violation of A.R.S. § 16-565(A), Plaintiff has a
12 strong or substantial likelihood of success on the merits, thereby warranting preliminary
13 relief.

14 Arizona law requires that "the polls shall be opened in every precinct at 6:00 a.m. on
15 the day of election and shall be closed at 7:00 p.m." A.R.S. § 16-565(A). Yet, three polling
16 sites in Apache County failed to open by 6:00 a.m. The direct consequence is that eager and
17 eligible voters, like Plaintiff's members, are foreclosed from casting their ballot during a
18 period of time expressly made available to them under Arizona state law. Defendants'
19 attempts to justify these unlawful closures are unavailing.

20 Because Defendants have failed to open this polling site at 6:00 a.m. and keep it open
21 until 7:00 p.m., Defendants cannot identify any exception permitting these shortened hours,
and Plaintiff and similarly situated voters stand to lose their right to vote in the November
8, 2022 federal election as a result, Plaintiff has shown a strong or substantial likelihood of
success on the merits of its A.R.S. § 16-565(A) claim, thereby warranting preliminary relief.

"Arizona's Constitution recognizes that 'governments derive their just powers from
the consent of the governed,' and provides that "[a]ll elections shall be free and equal, and

1 no power, civil or military, shall at any time interfere to prevent the free exercise of the right
2 of suffrage.” *City of Tucson v. State*, 229 Ariz. 172, 179 (2012) (quoting Ariz. Const. art. 2,
3 §§ 2, 21). “[A] ‘free and equal’ election as one in which the voter is not prevented from
4 casting a ballot by intimidation or threat of violence, or any other influence that would deter
5 the voter from exercising free will, and in which each vote is given the same weight as every
6 other ballot.” *Chavez v. Brewer*, 222 Ariz. 309, 319–20 (Ct. App. 2009) (“We conclude that
7 Arizona’s constitutional right to a ‘free and equal’ election is implicated when votes are not
8 properly counted.”).

8 2. Absent Preliminary Relief, Plaintiff Will Suffer Irreparable Injury.

9 An irreparable injury is one that is “not remediable by damages.” *IB Prop. Holdings,*
10 *LLC v. Rancho Del Mar Apartments Ltd. P’ship*, 263 P.3d 69, 73 (Ariz. Ct. App. 2011)
11 (citing *Shoen*, 804 P.2d at 792). “Monetary damages may provide an adequate remedy at
12 law. *Id.* (citing *Cracchiolo v. State*, 660 P.2d 494, 498 (Ariz. Ct. App. 1983)). “However,
13 where a loss is uncertain, monetary damages may be inadequate.” *Id.* (citing *Phoenix*
14 *Orthopaedic Surgeons, Ltd. v. Peairs*, 790 P.2d 752, 757 (Ariz. Ct. App. 1989), *overruled*
15 *on other grounds by Valley Med. Specialists v. Farber*, 982 P.2d 1277, 1280 (Ariz. 1999)).
16 “To determine whether damages would be an adequate remedy at law, the court should
17 consider ‘the difficulty of proving damages with reasonable certainty.’” *Id.* (citing
18 Restatement (Second) of Contracts § 360 (1981)).

19 “No right is more precious in a free country than that of having a voice in the election
20 of those who make the laws.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Indeed, in
21 *Arizona Democratic Party v. Arizona Republican Party*, the court found that the right to vote
is fundamental, and that “it is clear that abridgement of the right to vote constitutes
irreparable injury.” No. CV-16-03752-PHX-JJT, 2016 WL 8669978, at *11 (D. Ariz. Nov.
4, 2016). Thus, if potential voters, such as Plaintiff, are victims of Defendants’ actions that

1 abridge their right to vote, they have suffered irreparable injury. The actions of Defendants
2 in failing to open polling site by 6:00 a.m. pursuant to Arizona statute subjects Plaintiff to
3 irreparable injury, under A.R.S. § 16-565(A).

4 The election will be held before a final ruling on the merits in this action. In the
5 absence of interim injunctive relief, Defendants are likely to carry out their plans to restrict
6 the amount of time Plaintiff are able to vote, which places undue burdens on Plaintiff's ability
7 to vote. As a result, Plaintiff are likely to be harmed by being unable to exercise their right
8 to vote and the loss of votes for Plaintiff's supported candidates.

8 3. Plaintiff's Injury Outweighs Whatever Damage an Injunction Might Cause to Defendants.

9 This factor requires a comparison of the hardships suffered by Plaintiff if preliminary
10 relief is denied with any burdens imposed on Defendants if such relief is ordered. "[T]he
11 [P]laintiffs' interest in their opportunity to exercise the core democratic right of voting" can
12 hardly be overstated. *Jones v. Governor of Fla.*, 950 F.3d 795, 829 (11th Cir. 2020); see *Yick*
13 *Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (observing that the right to vote "is regarded as a
14 fundamental political right, because [it is] preservative of all rights"). The Constitution
15 guarantees the right of voters "to cast their ballots and have them counted," *United States v.*
16 *Classic*, 313 U.S. 299, 315 (1941), and the denial of relief here would render that promise
17 empty for Plaintiff and similarly situated voters.

18 On the other side of the ledger are the modest, and to some extent, illusory, burdens
19 imposed on Defendants in complying with their constitutional and other legal duties. All
20 that Plaintiff seeks is to keep the Many Farms polling site in Apache County open until 9:00
21 p.m. Any "difficulty and cost of administering compliance with [a] court's order" is
"unavailing as compared to [a voter's] interest in [his] opportunity to exercise the core
democratic right of voting." *Jones v. Governor of Fla.*, 950 F.3d 795, 829 (11th Cir. 2020);
see *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247–48 (4th Cir.

1 2014) (balance of hardships favors injunction even when state has “little time to implement
2 the relief” granted, which included significant changes to “same-day registration and out-of-
3 precinct voting”); *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, (N.D. Fla. 2016)
4 (holding that it would be “nonsensical to prioritize” a state’s interest in “administrative
5 convenience” over “the fundamental right to vote”); *Action N.C. v. Stratch*, 216 F. Supp. 3d
6 597, 647 (M.D.N.C. 2016) (requiring significant changes to provisional ballot process where
7 there was no proof “that such relief would disrupt the administration of the 2016 General
8 Election”). Defendants cannot in good faith claim that they are “unable to cope” with this
9 modest request. *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

10 To be sure, Arizona has interests in enforcing its laws, but such interests are
11 implicated any time a law is challenged, so any suggestion that such an interest is controlling
12 “would prove too much—hardly any preliminary injunction could ever issue” if so. *Jones v.*
13 *Governor of Fla.*, 950 F.3d 795, 829 (11th Cir. 2020). While Arizona has, as a general
14 matter, valid interests in protecting the integrity of the voting process, none are implicated
15 here. Any suggestion that an emergency extension order could sway an election without full
16 review would be baseless and ignorant of the fact that any votes cast under this Court’s order
17 would be provisional and segregated. *See* 52 U.S.C. § 21082(c) (requiring that any ballots
18 cast under an “order extending the time established for closing the polls by a State law in
19 effect 10 days before the date of that election” be a “provisional” and “separated and held
20 apart from other provisional ballots cast by those not affected by the order”).

21 Further, there is no risk of voter fraud by ensuring Plaintiff and similarly situated
voters can cast their vote in the allotted time promised under Arizona law. *See Tex.*
Democratic Party v. Abbott, 961 F.3d 389, 2020 WL 2982937, at *18 (5th Cir. 2020) (Ho.,
J., concurring); *cf. Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1180
(11th Cir. 2008) (“[N]ot only must the government make sure that individuals are not voting

1 fraudulently, but the government must not fraudulently deprive its citizens of their lawful
2 right to vote.”). Nor does requiring Defendants to comply with state law in any way affect
3 or interfere other voters’ access to the ballot. Even if Defendants could hypothesize some
4 conceivable (negative) effect on other voters, “no substantial harm to others can be said to
5 inhere in [the] enjoinder” of a challenged law when, as here, a “plaintiff shows a substantial
6 likelihood that [it] is unconstitutional.” *Deja Vu of Nashville, Inc. v. Metro. Gov’t of*
7 *Nashville & Davidson Cty.*, 274 F.3d 377, 400 (6th Cir. 2001). Finally, even when
8 Defendants have to “quickly communicate the changed rules to local election officials and
9 voters, those burdens do not outweigh the irreparable injury the individual Plaintiff and
10 similarly-situated voters could incur by foregoing their right to vote.” *People First of Ala. v.*
11 *Merrill*, No. 2:20-cv-00619-AKK, 2020 WL 3207824, at *28 (N.D. Ala. June 15, 2020); *see*
12 *also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 248 (4th Cir. 2014)
13 (balance of hardships tips in favor of voters even though the state “will have little time to
14 implement the relief,” because “for some of the challenged changes, . . . systems have
15 existed, do exist, and simply need to be resurrected,” and others will merely require “the
16 counting of a relatively small number of ballots”); *Ga. Coalition of the People’s Agenda v.*
17 *Kemp*, 347 F. Supp. 3d 1251, 1268–69 (N.D. Ga. 2018) (finding the administrative burden
18 of “disseminating information about who may check proof of citizenship and training poll
19 managers how to do so” right before election to be “minimal compared to the potential loss
20 of a right to vote altogether”); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1340 (N.D. Ga. 2018)
21 (rejecting argument that it would be “unduly burdensome to employ a new [absentee ballot]
procedure [so] close to the election” and that such change would “imperil the integrity of
the election process,” instead finding that “assuring that all eligible voters are permitted to
vote strengthens [the integrity of the voting process]”).

Because Plaintiff members and similarly situated voters stand to lose the opportunity

1 to exercise their most fundamental political right, and keeping polling sites open a bit longer
2 imposes no cognizable harm on Defendants or other voters, the balance of hardships weigh
3 decidedly in favor of Plaintiff. This factor weighs in favor of preliminary relief.

4 4. Protecting The Right To Vote Is the Highest Public Interest.

5 Ensuring that eligible voters can effectively participate in the electoral process is
6 *always* in the public interest. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006); *Sw. Voter*
7 *Registration Educ. Project v. Shelley*, 344 F.3d 914, 91 (9th Cir. 2003) (finding that because
8 of public interest concerns, the “law recognizes that election cases are different from
9 ordinary injunction cases.”); *Feldman v. Arizona Sec’y of State’s Office*, 843 F.3d 366, 395
10 (9th Cir. 2016). Because of the extremely high public interest in fair voting, “whenever any
11 possible remedy which can be suggested is inconsistent with the highest public interests,
12 they are remediless.” *Babnew v. Linneman*, 740 P.2d 511, 514 (Ariz. Ct. App. 1987).
13 Extending a deadline to ensure “that every individual is entitled to vote on equal terms, and
14 each individual’s vote carries the same value as every other vote” is likewise in the public
15 interest. *Doe v. Walker*, 746 F. Supp. 2d 667, 682 (D. Md. 2010); *see Obama for Am. v.*
Husted, 697 F.3d 423 437 (6th Cir. 2012) (public interest weighs in favor of injunctive relief
expanding early voting, where many voters’ “work schedules” make it difficult to vote on
election day).

16 Crucially, these concerns do not just implicate the Plaintiff and other voters unable
17 to participate in the November 8, 2022 federal election—they affect other all voters in
18 Arizona, even those who can successfully vote themselves, and the entire country. Without
19 the requested relief, “public knowledge that legitimate votes” could not be cast “due to no
20 fault of the voters would be harmful to the public’s perception of the election’s
21 legitimacy”—a serious issue given that “public confidence in elections is deeply
important—indeed, critical—to democracy.” *Democratic Exec. Comm. of Fla. v. Lee*, 915

1 F.3d 1312, 1327 (11th Cir. 2019). And it hardly needs stating that “state and local officials
2 serve the public interest when they conform their conduct to [the] law’s requirements”—
3 which is all that Plaintiff seek here. *Madera v. Detzner*, 325 F. Supp. 3d 1269, 1283 (S.D.
4 Fla. 2018).

5 Because the public interest would be served by ordering Defendants to keep open
6 these polling sites until 9:00 p.m., and ensuring Plaintiff’s members are not deprived of a
7 meaningful and equal opportunity to vote, this factor weighs in favor of preliminary relief.

8 **III. CONCLUSION**

9 For the reasons set forth above, Plaintiff requests that this Court grant its Motion for
10 a Temporary Restraining Order and/or Preliminary Injunction.

11 DATED this 8th day of November, 2022.

12 AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF ARIZONA

13 By: /s/Jared G. Keenan
14 ACLU of Arizona

15 Katherine Belzowski Frances Sjoberg
16 Navajo Nation Department of Justice

17 *Attorneys for Plaintiff*

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ARIZONA SUPERIOR COURT
APACHE COUNTY

Navajo Nation on behalf of itself and all
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Larry Noble in his official capacity as
Apache County Recorder; Angela Romero
in her official capacity as Apache County
Elections Director; Apache County Board of
Supervisors; and Katie Hobbs in her official
capacity as Arizona Secretary of State,

Defendants.

NO.

COMPLAINT

(Expedited Election Matter)

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1 Plaintiff, for their Complaint against Defendants Arizona Secretary of State Katie
2 Hobbs; Apache County Board of Supervisors; Apache County Recorder Larry Noble;
3 and Apache County Elections Director Angela C. Romero (collectively “Defendants”),
4 allege as follows”

5 PRELIMINARY STATEMENT

6 1. Plaintiff has filed this action to respectfully move this Court for emergency
7 injunctive relief to halt the ongoing, irreparable denial of Plaintiff’s right to vote under
8 the laws of and constitutions of the United States of America and Arizona as a result of
9 Defendants’ unlawful late opening of the Many Farms polling site on November 8, 2022.

10 2. The Many Farms site did not open until after 8:00 a.m. *See* Ex. A, Decl. of
11 Kee Allan Begay Jr.

12 3. As described below, upon information and belief, Defendants have
13 engaged and continue to engage in an organized effort to deny Plaintiff and similarly
14 situated voters the voting hours they need and to which they are entitled.

15 4. Voters in Apache County can only vote at their assigned polling locations
16 because Apache County has elected to have polling place voting. *See* Arizona Clean
17 Election Commission, 2022 General Election, Apache County, available at,
18 <https://www.azcleanelections.gov/arizona-elections/november-8-election/apache>; *see*
19 *also* <https://www.apachecountyaz.gov/Elections>.

20 5. Because voters must vote at assigned polling locations for their ballots to
21 be valid and counted, without this Court’s immediate intervention, Defendants will
22 continue to inflict irreparable injury upon Plaintiff and potentially hundreds of other
23 lawfully registered voters.

24 6. “Arizona’s Constitution recognizes that ‘governments derive their just
25 powers from the consent of the governed,’ and provides that “[a]ll elections shall be free
26 and equal, and no power, civil or military, shall at any time interfere to prevent the free
27 exercise of the right of suffrage.” *City of Tucson v. State*, 229 Ariz. 172, 179 (2012)
28 (quoting Ariz. Const. art. 2, §§ 2, 21). “[A] ‘free and equal’ election as one in which the

1 voter is not prevented from casting a ballot by intimidation or threat of violence, or any
2 other influence that would deter the voter from exercising free will, and in which each
3 vote is given the same weight as every other ballot.” *Chavez v. Brewer*, 222 Ariz. 309,
4 319–20 (Ct. App. 2009) (“We conclude that Arizona’s constitutional right to a ‘free and
5 equal’ election is implicated when votes are not properly counted.”).

6 JURISDICTION AND VENUE

7 7. This Court has subject matter jurisdiction over this action and the parties
8 under Article VI, section 14 of the Arizona Constitution.

9 8. Venue in this Court is proper because a substantial portion of the events
10 giving rise to the Plaintiff’s claims has occurred in this county and because one or more
11 Defendants reside in this county. *See* Ariz. Rev. Stat. § 12-401.

12 PARTIES

13 9. Plaintiff Navajo Nation is a federally recognized Indian Tribe with a
14 government-to-government relationship with the United States. The Navajo Reservation
15 was established by the Treaty of 1868 and was thereafter expanded by successive
16 executive orders. The Reservation consists of approximately 27,000 square miles of
17 sovereign territory. The Reservation is located in Apache, Navajo, and Coconino
18 counties in Arizona, and 8 counties in Utah and New Mexico. According to the 2010
19 census, the population of the Reservation is 173,667 of whom 101,835 live in the
20 Arizona portion of the Reservation. The Navajo Nation has a voting age population of
21 67, 252 living within the Arizona portion of the Reservation.

22 10. The Navajo Nation has associational standing to bring this lawsuit. The
23 Navajo Nation helps to coordinate federal and state elections on the Navajo Reservation
24 including, government-to-government meetings with the Arizona counties and the
25 Arizona Secretary of State. The Navajo Nation assists in voter outreach and education on
26 the Nation. The Nation also asserts the right to bring this claim o behalf of its members
27 *parens patriae*.
28

1 17. A.R.S. § 16-565(A) requires that polling places in Arizona be open at 6:00
2 am, yet the Defendants failed comply with this requirement as to the Many Farms
3 polling location.

4 18. On or about November 8, 2022, Plaintiff Navajo Nation reached out
5 Michael Whiting, Apache County Attorney, and Angela Romero, Apache County
6 Elections Director to ask that they advise how they are addressing the problem of this
7 polling location failing to open on time. Neither Defendants Romero nor Mr. Whiting
8 responded to any of these inquires.

9 19. Plaintiff then promptly filed this action.

10 20. Apache county is a large and rural geographic area, and does not have
11 public transportation infrastructure. Many of Plaintiffs' members have to travel long
12 distances to reach their polling places. It is not easy for them to return to their polling
13 places a second time to vote. Additionally, many of the Plaintiffs' members have family
14 and work obligations that make it impossible for them to wait indefinitely this morning
15 for the polling place to open.

16 21. Plaintiff believes that Plaintiff's members who missed their opportunity to
17 vote in the morning when they arrived at the polling places that was not open on time
18 would be able to return later this evening and vote if the polling place is open for an
19 additional two hours.

20 22. Under to the Help America Votes Act, Plaintiffs' members and similarly
21 situated voters casting ballots in Arizona during extended voting hours mandated by an
22 order of this Court would "vote . . . by casting a provisional ballot," which would "be
23 separated and held apart from other provisional ballots cast by those not affected by the
24 order." 52 U.S.C. § 21082(c).

25 23. Defendants know or reasonably can be expected to know that their conduct
26 of failing to timely open a polling site in Apache County has had the effect of severely
27 burdening, and in some cases, denying outright, the right to vote for Plaintiffs' members
28 and those similarly situated.

1 33. A.R.S. § 16-565(A) requires that election officials open voting places at
2 6:00 a.m. and keep them open until 7:00 p.m.

3 34. On or about November 8, 2022, upon information and belief, Plaintiff
4 became aware that the Many Farms polling site did not open at 6 a.m. and still was not
5 open and available for voting at 8:00 a.m.

6 35. The Defendants' actions in failing to open the polling places on time
7 violates A.R.S. § 16-565(A).

8 36. Unless this Court orders Defendants to extend the polling place hours at
9 the impacted polling place, Defendants will unlawfully continue to severely burden and,
10 in some cases, deprive the right to vote in the November 8, 2022 federal election, in
11 violation of A.R.S. § 16-565(A).

12 37. Arizona Revised Statutes Section 16-565 provides a private right of action.
13 *See Chavez*, 222 Ariz. at 317–18 (“Arizona case law, which unlike the federal rule that
14 generally prohibits recognition of a private right of action . . . , more broadly implies
15 such a right when consistent with ‘the context of the statutes, the language used, the
16 subject matter, the effects and consequences, and the spirit and purpose of the law.’”);
17 *see also McCarthy*, 409 F. Supp. 3d at 820 (“Arizona law implies a private right of
18 action more broadly than federal law.” (citation omitted)).

19 38. Unless polling hours are extended Plaintiff, Plaintiff’s members, and other
20 voters in Apache County will be denied their state constitutional right to uniform access
21 to vote in the electoral process.

22 39. Alternatively, Plaintiff seeks a writ of mandamus, pursuant to Arizona
23 Revised Statutes Section 12-2021, to compel Defendants to perform official duties
24 required by law. *McClennen*, 238 Ariz. at 377 (“The mandamus statute reflects the
25 Legislature’s desire to broadly afford standing on members of the public to bring
26 lawsuits to compel officials to perform their ‘public duties.’”); *Chavez*, 222 Ariz. at 320
27 (“[A]ppellants may be entitled to injunctive and/or mandamus relief if they can establish
28 that a significant number of votes . . . will not be properly recorded or counted.”); *see*

1 *Welch*, 2020 WL 5988198 (“[A] superior court may issue a writ of mandamus to a
2 person or board ‘to compel, when there is not a plain, adequate and speedy remedy at
3 law, performance of an act which the law specially imposes as a duty resulting from an
4 office.’”).

5 40. Absent injunctive relief, Plaintiff will suffer irreparable harm because there
6 is no other opportunity to vote in this election. Plaintiff has no adequate remedy at law.

7 41. Plaintiff hereby incorporate all other paragraphs of this Complaint as if
8 fully set forth in this claim.

9 42. Article II, Section 21 and Article VII, Section 2 of the Arizona
10 Constitution guarantee the right to vote. Article II, Section 21 states, “All elections shall
11 be free and equal, and no power, civil or military, shall at any time interfere to prevent
12 the free exercise of the right of suffrage.” Ariz. Const. art. 2 § 21. Article VII, Section 2
13 states, “No person shall be entitled to vote at any general election . . . unless such person
14 be a citizen of the United States of the age of eighteen years.” Ariz. Const. art. 7 § 2.

15 43. Additionally, Arizona Revised Statutes Section 16-565 provides that polls
16 shall remain open from 6:00 a.m. to 7:00 p.m. A.R.S. § 16-565. Unless polling hours are
17 extended, Plaintiff’s members and other voters in Apache will be denied their state
18 constitutional right to uniform access to vote in the electoral process.

19 44. Absent injunctive relief, Plaintiffs will suffer irreparable harm. Plaintiff
20 has no adequate remedy at law.

21 **PRAYER FOR RELIEF**

22
23 Enter a Temporary Restraining Order or Writ of Mandamus that:

24 Orders Defendants to take all necessary steps to keep the polling place in Apache
25 County Precinct at Many Farms open until 9:00 p.m. and orders Defendants to take all
26 necessary steps to ensure that any voters who arrive at the above polling places after
27 7:00 p.m. and until 9:00 p.m. are permitted to vote provisionally and have their votes
28 counted pursuant to Section 302(c) of the Help America Vote Act of 2002, 52 U.S.C. §

1 21082(c);

2 Directing Defendants to take such other measures as are necessary to ensure that
3 Plaintiff and similarly situated qualified voters may engage in the lawful exercise of the
4 franchise;

5 Orders Defendants to provide public notice of these extended voting opportunities by
6 notifying all local media and by posting sufficient notices of these opportunities at all
7 affected poll locations and on Apache County's website;

8 Award attorney's fees and costs associated with this litigation; and

9 Provide any additional relief in favor of Plaintiffs and against Defendants that the
10 Court deems just and proper.

11 DATED THIS 8th day of November, 2022.

12
13
14 AMERICAN CIVIL LIBERTIES UNION
15 FOUNDATION OF ARIZONA

16 By: /s/Jared G. Keenan

Jared G. Keenan
ACLU of Arizona

17
18 Katherine Belzowski
19 Frances Sjoberg
Navajo Nation Department of Justice

20 *Attorneys for Plaintiff*
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28

Voter Declaration

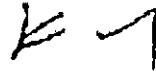
I, Kee Allan Begay Jr., declare as follows:

1. I, Kee Allan Begay Jr, am over the age of 18 years old and fully competent to make the following declaration.
2. I am a resident of Apache County, Arizona. I reside 4 miles North of the Many Farms Store and have lived in Many Farms since my birth.
3. I meet all requirements to vote in in the November 8, 2022 election.
4. I am a registered voter in Apache County, Arizona and assigned to vote in Precinct 39 in Apache County.
5. I am a duly-elected Navajo Nation Council Delegate representing the Arizona based Navajo Tribal Communities of Many Farms, Low Mountain, Tachee, Blue Gap, Tselani, Cottonwood, and Nazlini.
6. I have personal knowledge of the facts set forth below and would be prepared to testify as to the matters set forth in this declaration.
7. I arrived at Many Farms, a polling place in Many Farms, Arizona, at 8:00 AM on November 8, 2022 with the intent to drop off my ballot. When I went to get in line to vote at 8:00 AM. I was told that the polling location was not open and not set up yet. There were many voters in line waiting to vote.
8. I was not able to drop off my ballot, and I did not receive or cast a ballot at the Many Farms polling location.
9. Today is also Navajo Nation Elections, and I am running for a Council Delegate position, so my plan for the rest of the day is to campaign throughout the Nation.

10. I dropped my early ballot off at the post office since the Many Farms polling location was not open. However, I now realize that my ballot may not be received by the county in time for it to be counted.
11. I now realize that I need to vote at my polling location in order for my vote to be counted.
12. The Many Farms precinct is my assigned precinct. Apache County is precinct-based, therefore, I have no alternative location where I can vote in person.
13. I submit this affidavit in support of the accompanying request asking this court to extend time that the Many Farms polling location is open by 2 hours and set the poll to close at 9:00 PM.

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

Executed on November 8, 2022.



Signature

Print name: Wesley Allen Boggs

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SUPERIOR COURT OF ARIZONA
APACHE COUNTY

JUDGE: GARRETT L WHITING, JUDGE PRO TEM

BY: RKK, DEPUTY CLERK

CASE NUMBER: S0100CV202200246

DATE: 11/08/2022

START: 07:19 PM

END: 07:31 PM

NAVAJO NATION ON BEHALF OF ITSELF AND
ALL OTHERS SIMILARLY SITUATED, PLAINTIFF

VS

LARRY NOBLE IN HIS OFFICIAL CAPACITY AS
APACHE COUNTY RECORDER; ANGELA
ROMERO IN HER OFFICIAL CAPACITY AS
APACHE COUNTY ELECTIONS DIRECTOR;
APACHE COUNTY BOARD OF SUPERVISORS;
AND KATIE HOBBS IN HER OFFICIAL CAPACITY
AS ARIZONA SECRETARY OF STATE,
DEFENDANTS.

APACHE COUNTY ATTORNEY'S OFFICE [EM]
KATHERINE BELZOWSKI [EM]
FRANCES SJOBERG [EM]
JARED KEENAN [EM]
NAVAJO NATION DEPARTMENT OF JUSTICE [EM]
APACHE COUNTY RECORDER'S OFFICE [EM]
APACHE COUNTY ELECTIONS DIRECTOR [EM]
APACHE COUNTY BOARD OF SUPERVISORS [EM]
ARIZONA SECRETARY OF STATE'S OFFICE [EM]

MINUTE ENTRY: HEARING ON MOTION FOR TEMPORARY RESTRAINING ORDER

PRESENT: JARED KEENAN, ATTORNEY FOR ACLU FOUNDATION OF ARIZONA / PLAINTIFF;
KATHERINE BELZOWSKI, ATTORNEY FOR NAVAJO NATION DEPARTMENT OF JUSTICE /
PLAINTIFF; FRANCES SJOBERG, ATTORNEY FOR NAVAJO NATION DEPARTMENT OF JUSTICE,
/ PLAINTIFF; CELESTE ROBERTSON, DEPUTY COUNTY ATTORNEY.

LET THE RECORD SHOW this is the date and time set for a/n Hearing on Motion for Temporary
Restraining Order in the above-captioned matter.

The Court has received a Complaint and an Application for Temporary Restraining Order and
recognizes the importance of timeliness in these matters.

Mr. Keenan informs the Court that there are still people waiting in line to vote at the Many Farms
location. The Court's Order would be effective in allowing those individuals who are still waiting to vote.

The State informs the Court that it has been in contact with the Elections Director, Angela Romero, and
has instructed her to keep polling staff onsite, on standby and to not turn any voters away that were
waiting in line in the event that the Court does Order that the polling location remain open. The State
has confirmed that the polling location was opened this morning at approximately 7:40 a.m.; about an
hour and forty minutes after the statutory time that is required to open the polling location.

The Court notes that there were references to other locations; although, it was clearly focused on the
Many Farms voting precinct.

Mr. Keenan clarifies that any other reference to another polling station was submitted in error.

The State informs that it has briefly reviewed the Complaint, including an attached Voter Declaration signed by Kee Allen Begay Jr.

The Court understands the position of the Plaintiffs. For the purposes of tonight, the Court believes the individual electors have the right to bring this matter before the Court.

The State informs the Court that it takes no position regarding the extension of time for the Many Farms polling location to remain open.

Mr. Keenan requests that the Many Farms polling location remain open until 9:00 p.m.

IT IS HEREBY ORDERED based upon the arguments made primarily in writing and upon the interest of all electors, including those in the Many Farms area or voting precinct, granting the request for a Temporary Restraining Order. The Defendants in this matter, including Ms. Romero in her official capacity as Elections Director for the county, the Board of Supervisors and especially agents, employees and representatives of them at the Many Farms voting precinct, keep that precinct open until 9:00 p.m. tonight. They must make whatever efforts they are able to provide notice of that extension of time through all available means, including but not limited to: the Apache County website; any social media outlets that those Defendants and Plaintiffs have access to; and any local news outlets, so that word can be spread.

The State further informs the Court that they will contact the Elections Director, keep the polling location open until 9:00 p.m. and use all of those outlets to notify the public.

The Court further notes that the Complaint mentioned the votes taken after 7:00 p.m. should be identifiable in case any challenge was later made.

The Court directs Ms. Romero and through her channels, the people at Many Farms, to be able to identify those, not individually but collectively, those who were able to exercise their right to vote after 7:00 p.m. this evening.

Hearing concludes.


GARRETT L. WHITING JUDGE PRO TEM