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17
18 **IN THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF ARIZONA
19 **TUCSON DIVISION**

20 Pascua Yaqui Tribe,

21 Plaintiff,

22 vs.

23 F. Ann Rodriguez, in her official
capacity as Pima County Recorder,

24 Defendant.

**COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF**

Case No. _____

25 Plaintiff, by and through undersigned attorneys, alleges as follows:

26 **INTRODUCTION**

27 1. This action challenges the Pima County Recorder's decision to close the
28

1 only in-person early voting site on the Pascua Yaqui Pueblo Reservation (“Pascua
2 Yaqui Reservation” or the “Reservation”), which greatly diminishes the opportunity for
3 members of the Pascua Yaqui Tribe to exercise their right to vote relative to non-Native
4 residents of Pima County.

5 2. The Pascua Yaqui Tribe has advocated for the reinstatement of the early
6 voting location in every election since the County Recorder removed the site in 2018.
7 Still, Pima County Recorder F. Ann Rodriguez has ignored every call on her to reinstate
8 the early voting site on the Reservation, including now from the Pascua Yaqui Tribal
9 Council, the Pima County Board of Supervisors, the Mayor of Tucson, and the
10 Secretary of State. The Pascua Yaqui Tribe brings this suit only after exhausting every
11 advocacy option available, including the unexpected rebuffing of a Pima County Board
12 of Supervisors’ action authorizing an early voting location on the Pascua Yaqui
13 Reservation for the final week of early voting prior to Election Day.

14 3. The County Recorder has time to implement the early voting location
15 before the last week of early voting begins, as the Secretary of State stands ready to
16 provide all the necessary resources and other counties continue to add early voting
17 locations across the state. The Secretary of State has offered to mitigate all costs of
18 implementation.

19 4. The need for increased access to in-person early voting on the Pascua
20 Yaqui Reservation is paramount, particularly in light of the devastating impact of the
21 COVID-19 pandemic on tribal communities and the fact that mail voting is not an
22 available or adequate substitute for many Native voters.

23 5. After the County Recorder closed the early voting sites on the Pascua
24 Yaqui reservation, the Pascua Yaqui Tribal Council and Native American voters
25 engaged in both public and private advocacy and prevailed upon the County Recorder
26 to reverse her decision and reinstate the early voting sites on tribal lands. Their
27 advocacy efforts culminated in the successful issuance of a resolution by the Pima
28

1 County Board of Supervisors authorizing early and emergency voting sites on the
2 Reservation.

3 6. The Secretary of State has made clear that resources and support are
4 available to the counties to expand early voting and increase ballot access in Native
5 American communities. With assistance from the state, the Pascua Yaqui early voting
6 site can be reinstated at no cost to the county or the County Recorder. And yet, the
7 County Recorder still refuses to allow the early voting site to be reinstated on the
8 Reservation.

9 7. Residents of the Pascua Yaqui Reservation have limited access to private
10 and public transportation. And members of the Tribe have been severely impacted by
11 the COVID-19 pandemic, which makes traveling long distances to vote at early voting
12 sites infeasible options for many tribal members.

13 8. Without access to in-person early voting on the Pascua Yaqui
14 Reservation, Yaqui voters will be forced to travel en masse to a single in-person polling
15 place on Election Day, risking their health and safety and that of the public.

16 9. The County Recorder's closure of early voting sites on tribal lands and
17 subsequent refusal to reinstate or provide any additional early voting sites amid
18 pandemic denies Native American residents in Pima County equal access to early
19 voting sites, violates federal law, and imposes unconstitutional burdens on their
20 fundamental right to vote.

21 **JURISDICTION AND VENUE**

22 10. This Court has jurisdiction over the subject matter of this action pursuant
23 to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

24 11. This Court has personal jurisdiction over Defendants, who reside in this
25 district, in their official capacities.

26 12. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because all
27 the events relevant to this action occurred in the District of Arizona.

28

1 13. This Court has jurisdiction to grant both declaratory and injunctive relief
2 pursuant to 28 U.S.C. §§ 2201 and 2202.

3 **PARTIES**

4 14. Plaintiff Pascua Yaqui Tribe (the “Tribe”) is a federally recognized Tribe
5 with approximately 23,000 enrolled members. The Yaqui have lived and traveled
6 throughout the Gila and Santa Cruz River Valleys for hundreds of years. The Pascua
7 Yaqui Tribe has nine communities in Pima and Maricopa Counties. In 1964 a bill was
8 passed for the transfer of 202 acres of land for the Yoeme in Pima County. This new
9 land, the Pascua Yaqui Reservation, also known as New Pascua, is located southwest
10 of Tucson, Arizona. The Tribe has now added over 2,000 acres to its reservation land
11 base.

12 15. The Tribe has standing to bring this lawsuit. Tribal members would have
13 standing to sue in their individual capacities for the allegations set forth in the
14 complaint. The Tribe coordinates voter outreach and education for Tribal members to
15 participate in state and federal elections, both on and off the Pascua Yaqui Reservation.
16 The Tribe also asserts the right to bring this claim on behalf of its members *parens*
17 *patriae*. The Tribe has a strong interest in ensuring that all Tribal members are able to
18 exercise their right to vote on Election Day. If Tribal members are unable to vote, the
19 collective power and voice of Native American voters is reduced.

20 16. Defendant F. Ann Rodriguez is the Pima County Recorder. She is sued
21 in her official capacity. As the Pima County Recorder, Ms. Rodriguez’s responsibilities
22 include maintaining the conduct of elections in the county. See A.R.S. § 16-407.

23 **FACTS**

24 **A. Access to Safe and Accessible Early Voting Sites Is Essential to Native
25 American Voter Access in Pima County.**

26 17. Arizona permits voters to vote in person before Election Day at early
27 voting or emergency voting sites. The county recorder must provide in-person early
28

1 voting sites at the recorder’s offices starting on the day the county begins mailing
2 absentee ballots and may establish additional in-person early voting sites throughout
3 the county. Arizona Election Procedures Manual 63 (Dec. 2019) (“EPM”) (citing
4 A.R.S. §§ 16-246(C), 16-542(A)). In selecting early voting sites, the recorder must
5 “ensure that all voters may reasonably access at least one early voting location.” *Id.*

6 18. Upon a specific resolution, the county board of supervisors may also
7 authorize the county recorder or any other officer in charge of elections to establish and
8 operate emergency voting sites at specified locations and times. A.R.S. § 16-511(B)(5);
9 EPM at 65. Counties may also establish one or more ballot drop-off locations or drop
10 boxes where voters can return mail ballots in person. EPM at 60.

11 19. Early voting has become integral to exercising the franchise in Pima
12 County. Between 2012 and 2018, Pima County closed 11 percent of its Election Day
13 polling locations.¹ Since the U.S. Supreme Court’s decision in *Shelby County v. Holder*,
14 570 U.S. 529 (2013), Pima County closed more polling locations than all but eight
15 counties in the country.² In 2018, 70 percent of Pima County voters voted early, either
16 by mail or at an early voting site.³

17 20. The availability of in-person early voting sites is especially important for
18 Native American voters in Pima County, many of whom live in large concentrations on
19 or near tribal lands, including the Pascua Yaqui Reservation.

20 21. The Pascua Yaqui Reservation is the social, cultural and political center
21 of the Tribe. The Reservation and the surrounding off-reservation tribal trust land
22 encompass about 3 square miles. The Reservation is home to at least 3,607 residents,
23

24 ¹ The Leadership Conference Education Fund, *Democracy Diverted: Polling Place*
25 *Closures and the Right to Vote*, at 59 (Sept. 2019),
<http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

26 ² *Id.* at 16.

27 ³ Rob Arthur & Allison McCann, *How the Gutting of the Voting Rights Act Led to*
28 *Hundreds of Closed Polls*, VICE NEWS (Oct. 16, 2018),
https://news.vice.com/en_us/article/kz58qx/how-the-gutting-of-the-voting-rights-act-led-to-closed-polls.

1 of whom more than 93 percent are Native American.⁴

2 22. Like other Native American communities in Arizona and across the
3 country, Pima County's Native American communities have been disproportionately
4 hard hit by COVID-19. As of October 10, 2020, the Pascua Yaqui Tribe has reported
5 532 confirmed positive cases and 12 confirmed deaths in the Tucson area alone.

6 23. Native American voters have long endured systemic socioeconomic
7 inequities which also put them at disproportionately high risk of severe illness from
8 COVID-19. Indeed, even before the COVID-19 pandemic, Native Americans had the
9 highest rate of infectious disease severity and death of any racial or ethnic group, as
10 well as high rates of immunocompromising diseases and underlying conditions that
11 make COVID-19 particularly dangerous. Native American healthcare infrastructure is
12 also chronically underfunded.

13 24. On the Pascua Yaqui Reservation, more than a quarter of residents are
14 medically uninsured.⁵ The median household income on the Reservation is \$31,241,
15 roughly half that of Pima County, and the unemployment rate is 26 percent, not taking
16 into account the 2020 spike in unemployment due to the COVID-19 pandemic.⁶ The
17 rate of disability on the Reservation is also far higher than in the surrounding area.

18 25. The severe risks from COVID-19 among Native American communities
19 will make it hazardous for tribal residents to vote in person in large numbers on Election
20 Day.

21 26. In addition, for many Native American residents of Pima County, voting
22 by mail is not a trusted or viable option. Only 18 percent of Native American voters in
23 Arizona have home mail service; white voters have home mail service at a rate over
24

25 _____
26 ⁴ Ariz. Dep't of Health Services, Pascua Yaqui Tribe Primary Care Area 2019
27 Statistical Profile (Feb. 25, 2020),
<https://www.azdhs.gov/documents/prevention/health-systems-development/data-reports-maps/primary-care/pima/117.pdf> ("Pascua Yaqui Statistical Profile").

28 ⁵ *Id.*

⁶ *Id.*

1 350 percent higher than Native Americans.⁷ Native American voters in Arizona
2 generally have a low level of trust that their ballot will be counted; a recent report found
3 that only 29.2 percent of Native American voters in Arizona have complete trust that
4 their mail-in ballot will be counted.⁸ Given historical problems with and mistrust of
5 mail service on tribal lands, many Native Americans strongly prefer to vote in person,
6 and for many communities, voting on Election Day has historically been a civic and
7 community event.⁹ Indeed, the Pascua Yaqui Reservation has the lowest vote-by-mail
8 rate in Pima County, and many Native American voters on the Reservation remain
9 unfamiliar with the process of requesting, casting, and returning a mail ballot.

10 27. To avoid dangerous overcrowding at the polls in November amid
11 COVID-19, tribal communities must have ready access to in-person early voting sites.

12 28. Recognizing this reality, the Arizona Secretary of State has encouraged
13 counties to increase access to in-person early voting sites, “where crowds tend to be
14 smaller,” especially in communities that have historically faced barriers to voting by
15 mail.¹⁰ Additionally, the Secretary of State has released specific recommendations for
16 voters in tribal communities: “If you did not receive a ballot-by-mail or otherwise
17 choose to vote in-person, we encourage you to vote early.”¹¹

18 **B. The County Recorder Abruptly Closed the Only Early Voting Site on the**
19 **Pascua Yaqui Reservation.**

20 29. Beginning in 2010 and up through the 2016 general election, the Pascua
21 Yaqui Tribe had one early voting site on the Reservation. The site was located in voting

22 ⁷ *Hobbs*, 948 F.3d at 1006.

23 ⁸ The Native American Voting Rights Coalition, *Survey Research Report: Voting*
24 *Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada and*
25 *South Dakota*, at 102 (Jan. 2018), [https://vote.narf.org/wp-](https://vote.narf.org/wp-content/uploads/2018/10/2017NAVRCsurvey-full.pdf)
26 [content/uploads/2018/10/2017NAVRCsurvey-full.pdf](https://vote.narf.org/wp-content/uploads/2018/10/2017NAVRCsurvey-full.pdf)

25 ⁹ Ariz. Sec’y of State, 2020 AZVoteSafe Guide for Native Americans, ([last accessed](https://azsos.gov/sites/default/files/AZSOS_2020_Native_American_Vote_Guide.pdf)
26 [Oct. 8, 2020](https://azsos.gov/sites/default/files/AZSOS_2020_Native_American_Vote_Guide.pdf)),
https://azsos.gov/sites/default/files/AZSOS_2020_Native_American_Vote_Guide.pdf.

27 ¹⁰ Ariz. Sec’y of State, Guidance for Reducing COVID-19 Risks at In-Person Voting
28 Locations (last accessed Oct. 8, 2020),
https://azsos.gov/sites/default/files/AZSOS_Polling_Place_Guidance_2020.pdf

¹¹ 2020 AZVoteSafe Guide for Native Americans, *supra* note 9.

1 precinct 110 at the Tribe's radio station, adjacent to the Casino of the Sun on the
2 northeastern edge of the Reservation. The County Recorder operated the site as a
3 limited-access early voting site, which means the site was stocked with paper ballots
4 only from certain precincts.

5 30. After the 2016 election, in which 44 people voted at the Reservation's
6 early voting site, the Tribe launched a get-out-the-vote campaign in the lead up to the
7 2018 elections. The Tribe held more than 40 voter outreach and registration events that
8 year, and a key part of the campaign was to encourage Yaqui voters to vote early.

9 31. On July 18, 2018, shortly before the August 2018 primary and midway
10 through the get-out-the-vote campaign, the County Recorder's office informed the
11 Tribe that it was closing the only early voting site on the Pascua Yaqui Reservation and
12 opening a new site off-reservation.

13 32. That new site, which remains the nearest early voting site to the
14 Reservation, is located at the Mission Library. The Mission Library is at least eight
15 miles away from the Reservation in a neighborhood that is less than 10 percent Native
16 American.

17 33. The 8-mile distance may not seem far in absolute terms, but for Yaqui
18 people without access to a private vehicle, it makes voting early in person severely
19 burdensome. Roughly one in five residents of the Reservation lack access to a car and
20 must rely on public transportation. The only public transportation available to leave the
21 Reservation is a bus, which takes at least sixty to ninety minutes to travel from the
22 Reservation to the Mission Library early voting site. Thus, to vote early in person, many
23 Tribal residents must travel at least *two to three* hours roundtrip. The burden here is not
24 immaterial especially when you take into account the conditions particular to Tribal
25 voters. *See Sanchez v. Cegavske*, 214 F. Supp. 3d 961, 976 (D. Nev. 2016) (finding that
26 traveling to a polling location 16 miles away is unduly burdensome).

27 34. Traveling for hours by bus to vote during the COVID-19 pandemic is
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1 dangerous. According to the United States Centers for Disease Control and Prevention,
2 traveling by bus “for any length of time” involves sitting or standing within six feet of
3 others, which increases the risk of getting COVID-19.¹² The dangers inherent in bus
4 travel will deter many Tribal residents from voting early, many of whom face
5 heightened risk of serious illness or death from COVID-19. *See supra* ¶¶ 22-25.

6 35. After the closure of the Tribe’s only accessible early voting site in 2018,
7 the Pascua Yaqui Tribal Council immediately advocated to have the site reinstated. The
8 Tribal Council wrote a letter to the County Recorder on July 25, 2018 voicing concerns
9 about the lack of accessible in-person early voting on the Reservation and explaining
10 that many Native American voters lack access to private transportation. The Tribal
11 Council also offered its assistance to reestablish the site.

12 36. On July 12, 2019, the Tribal Council met with the County Recorder to
13 reiterate its concerns. The County Recorder’s office refused to provide additional early
14 voting options.

15 37. On June 20 and September 12, 2019, the Tribal Council sent two
16 additional letters to the County Recorder explaining the need for more early voting
17 options on the Pascua Yaqui Reservation.

18 38. On November 6, 2019, the Tribal Council sent a fourth letter to the
19 County Recorder’s office requesting she reinstate the Reservation’s early voting site
20 for the 2020 presidential preference election, the August primary election, and the
21 upcoming general election. In a letter dated December 31, 2019, the County Recorder
22 refused to reopen the site for the presidential preference election citing alleged limited
23 funding and restrictions on the number of precincts and polling places imposed by the
24 state for that election. She also refused to operate an early voting site on the Reservation
25 for the 2020 primary and general elections, citing low turnout at the early voting site in
26

27 ¹² U.S. Center for Disease Control, *Travel during the COVID-19 Pandemic* (Oct. 6,
28 2020), <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html>.

1 2016.

2 39. But the number of Tribal residents who would utilize an in-person early
3 voting site on the Reservation in the 2020 election has dramatically increased due to
4 COVID-19 and the Tribe's concerted efforts during the last ten years to increase voter
5 turnout. For example, in the Tribe's June 1, 2020 tribal council elections, more than
6 454 Tribal members participated in early voting on the Pascua Yaqui Reservation,
7 which is a *182 percent increase* from the 2016 tribal council election early voting
8 turnout. In that election, which occurred after the onset of the COVID-19 pandemic,
9 the Tribe offered eleven days of early voting on the Reservation.

10 40. Indeed, the Tribe's efforts to restore early voting on the Reservation have
11 rapidly accelerated and increased in urgency since the start of the pandemic. On July
12 17, 2020, the Tribal Council published an op-ed calling for restoration of the early
13 voting site on the Reservation in light of the risks posed by COVID-19.¹³ The Tribe
14 also gathered more than 1,000 petition signatures in support of restoring the early voting
15 site.¹⁴ One member of the Pima County Board of Supervisors cited receiving more than
16 200 emails advocating for reinstatement of early voting on the Reservation.¹⁵

17 41. On August 26, 2020, the members of the Tribal Council wrote to the
18 Board of Supervisors requesting an early voting site, an emergency voting site, and a
19 ballot drop-off location, and appeared at the Board of Supervisor's September 1, 2020
20 meeting to voice their concerns.

21 42. On September 1, 2020, the County Recorder issued a press release about
22 the Tribe's request to the Board of Supervisors. The press release did not justify the

23 ¹³ The Pascua Yaqui Tribal Council, *Pascua Yaqui Tribal Council: We need early*
24 *voting site on the reservation, especially amid COVID-19*, ARIZONA DAILY STAR
25 TUCSON (Jul. 17, 2020), https://tucson.com/opinion/local/pascua-yaqui-tribal-council-we-need-early-voting-site-on-the-reservation-especially-amid-covid/article_90b1b034-a9e6-5cf1-826b-9c323d69a4c7.html.

26 ¹⁴ *Id.*

27 ¹⁵ Calah Schlabach, *From showdown to stalemate, Pascua Yaqui voting site feud*
28 *continues*, CRONKITE NEWS (Sept. 22, 2020), <https://www.indianz.com/News/2020/09/22/cronkite-news-pascua-yaquitribe-denied-early-voting-site>.

1 County Recorder’s decision to remove the Tribe’s only on-reservation early voting site.
2 Nor did it acknowledge the current health risks inherent in traveling two to three hours
3 by bus to vote. Instead, it offered a litany of “recommendations which the Pascua Yaqui
4 leadership have not considered,” compared the Pascua Yaqui Tribe’s burden to those
5 of Tohono O’odham Nation residents who must “drive 63 miles (over on hour) to reach
6 the [only early voting] site” on the Tohono O’odham Reservation, and even called on
7 the Tribe to establish and pay for an “Uber”-like service to transport its members to
8 early voting sites.

9 43. On September 3, 2020, the County Recorder followed the press release
10 with a memorandum to the Board of Supervisors offering various reasons for the
11 closure of the Reservation’s only early voting site. These purported justifications
12 included the County Recorder’s alleged inability to identify where Yaqui voters live;
13 her office’s alleged inability to ensure ballot security and chain of custody at sites on
14 the Reservation; and her personal desire to use county-owned facilities for full-service
15 early voting sites with ballot on-demand printers and hardwired access to the county’s
16 voter registration database rather than limited-access sites.

17 44. On September 8, 2020, the County Administrator informed the Board of
18 Supervisors that operation of any emergency voting sites authorized by the Board
19 would require access to a voter registration database and a ballot on-demand printer.
20 The County Administrator noted that these resources are within the custody and control
21 of the County Recorder, and she has refused to provide them to any entity outside her
22 office.

23 45. On September 15, 2020, recognizing the absence of early voting options
24 on the Reservation, the lack of car access on the Reservation, and the unique hazards
25 faced by Yaqui voters in light of the pandemic, the Board of Supervisors passed a
26 resolution authorizing the County Recorder to make early voting and ballot drop-off
27 locations available on the Reservation at the Pascua Yaqui Tribal Council Chambers
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1 from Monday, October 26 to Friday, October 30, 2020. The resolution also authorized
2 emergency voting at that location on Saturday, October 30 from 9:00 a.m. to 3:00 p.m.
3 and on Monday, November 2 from 9:00 a.m. to 5:00 p.m.

4 46. That day, the Tribal Council wrote to the County Recorder requesting to
5 confer about the implementation of the Board of Supervisor's authorization for an early
6 voting, emergency voting, and ballot drop-off location on the Reservation.

7 47. On September 16, the County Recorder sent a letter to the Tribe claiming
8 that the resolution was "drafted, introduced and adopted without [her] knowledge or
9 consent," and offering only the following response to the Tribe's request to confer: "My
10 suggestion to you at this point would be to contact [the Board of Supervisors] to
11 determine exactly how THEY plan on implementing THEIR resolution." Since then,
12 she has steadfastly refused to open the sites authorized by the Board of Supervisors or
13 even provide access to the resources necessary to operate an emergency voting site
14 during the three days prior to Election Day.

15 48. On September 25, the Tribe sent a legal demand letter, through counsel,
16 to the County Recorder requesting that she establish an early and emergency voting site
17 and ballot drop-off location on the Reservation. The Tribe requested a response by
18 October 7.

19 49. On October 8, the County Recorder responded via counsel, and notified
20 the Tribe that she had just learned that the Azul Room in the Tribal Wellness Center
21 will be used as an Election Day polling place, and might feasibly serve as an early in-
22 person voting site.

23 50. Although the Tribal Wellness Center had already been vetted and
24 approved by the Pima County Elections Department, the County Recorder insisted on
25 conducting a site inspection with her own staff. A site inspection of both the Tribal
26 Wellness Center and the Tribal Council Chambers was conducted by the County
27 Recorder's staff on October 9.

28

1 51. In advance of the site inspection, the Tribe provided the County Recorder
2 with floorplans for the Tribal Wellness Center and Azul Room and information on the
3 technology capabilities for the facility. The Tribe also made members of the Tribal
4 Council, facilities staff, information technology staff, and police department available
5 to respond to any questions during the site inspection.

6 52. On the evening of October 9, after the site inspection had concluded, the
7 County Recorder's counsel notified the Tribe's counsel that the Tribal Council
8 Chambers did not meet the County Recorder's requirements for an early in-person
9 voting location, but that the Azul Room in the Tribal Wellness Center could potentially
10 serve as an in-person voting location—provided that certain security and accessibility
11 concerns could be addressed.

12 53. The County Recorder's staff identified a number of security and
13 accessibility concerns during the site inspection, including the number of entry and exit
14 points in the Azul Room, the distance from accessible parking to the entrance to the
15 Tribal Wellness Center, the functioning of a handicap-accessible door at the main
16 entrance to the Tribal Wellness Center, and the security and supervision of the facility
17 while the early voting site is not in use.

18 54. The Tribe committed, both during the site inspection and later via
19 counsel, to addressing any security and accessibility concerns the County Recorder had
20 about the proposed site. The Tribe notified the County Recorder that they are willing
21 and able to change the locks on the entry and exit points for the Azul Room to ensure
22 that only the County Recorder and her staff will have access to the site during early
23 voting. The Tribe also committed to ensure that the handicap-accessible door is
24 functioning and offered to provide overnight supervision of the site by an off-duty
25 police officer or periodic security patrols. The Tribe also offered to set up temporary
26 seating or a rest area between the accessible parking and main entrance of the facility.

27 55. On October 10, 2020, the Tribe followed up with the County Recorder
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1 via counsel in an attempt to reach an agreement about the proposed early voting site
2 and address any of the County Recorder's security and accessibility concerns. As of the
3 time of this filing, the Tribe has not received confirmation from the County Recorder
4 as to whether her concerns are surmountable or whether she is willing to move forward
5 with establishing an early in-person voting site on the Reservation.

6 **C. The County Recorder's Closure of and Refusal to Reinstate an Early**
7 **Voting Site on the Pascua Yaqui Reservation Places a Disparate Burden**
8 **on Native American Voters.**

9 56. The County Recorder's decision to close the *only* early voting site on the
10 Pascua Yaqui Reservation, and her continued refusal to provide any accessible early
11 voting options on the Reservation, imposes a severely disparate burden on Native
12 American voters.

13 57. Native American voters must travel farther, longer, and amid more
14 dangerous COVID-19 conditions to access early voting sites in Pima County as
15 compared to non-Native American voters.

16 58. The average driving distances and travel times to early voting sites in
17 Pima County are greater for Native American voters than for any other racial or ethnic
18 group. Indeed, the in-person early voting sites that the County Recorder has established
19 for the 2020 election are primarily clustered in predominantly white areas of the Tucson
20 metropolitan area.

21 59. Native American communities in Pima County disproportionately face
22 barriers or impediments to accessing early voting sites in addition to living a greater
23 distance from early voting sites. Native American communities have the lowest rate of
24 car access of any racial or ethnic group in Pima County, which makes traveling even
25 short distances in absolute terms impossible without ready access to public
26 transportation.

27 60. Public transportation is less available on tribal lands than in urban and
28 suburban areas with smaller Native American populations, requiring Native American
voters to spend far more time on public transportation to access early voting sites than

1 any other racial or ethnic group. Because of the extra time spent on transit to access
2 early voting sites, Native American voters also have fewer total hours when they can
3 access early voting sites, which are open only certain hours, compared to voters whose
4 travel distance is shorter or than more affluent voters who can drive themselves.

5 61. And given the heightened risk from COVID-19 among Native American
6 communities, long trips by public transportation to early voting sites impose a
7 disproportionately dangerous risk to Native American voters' physical health and safety
8 and the health and safety of their communities.

9 62. For Native American voters on the Pascua Yaqui Reservation, the
10 confluence of these factors makes for an especially severe burden not shouldered by the
11 surrounding communities, which are more than 95 percent non-Native. The nearest
12 early voting site is a two- to three-hour bus ride, and many more Tribal residents lack
13 reliable access to private transportation than voters in surrounding neighborhoods. The
14 vote-by-mail rate on the Reservation is the lowest in the county. And Native American
15 voters on the Reservation are at greater risk of contracting or spreading COVID-19,
16 forcing on them an impossible choice: abstain from voting to stay safe, brave the
17 crowded polls on Election Day, or spend hours on public buses to vote early. This
18 choice falls disproportionately on Native American voters of the Pascua Yaqui
19 Reservation compared to surrounding communities.

20 63. The County Recorder's denial of early voting locations follows a storied
21 history of discrimination against Native American voters in Arizona generally,
22 including Yaqui voters. "For over a century, Arizona has repeatedly targeted its
23 American Indian, Hispanic, and African American citizens, limiting or eliminating their
24 ability to vote and to participate in the political process." *Democratic Nat'l Comm. v.*
25 *Hobbs*, 948 F.3d 989, 998 (9th Cir. 2020). Yaqui voters, like other Native American
26 voters in the state, were subject to literacy tests, voter intimidation, and outright
27 disenfranchisement for much of their history. *See id.* at 1019-22.

1 64. Yaqui voters have faced persistent barriers to the polls. Prior to 1924,
2 Native Americans were not American citizens and could not vote in state and federal
3 elections. After the passage of the Indian Citizenship Act of 1924, Native Americans
4 were prohibited from registering to vote.¹⁶ Native Americans were first disenfranchised
5 because they were considered “wards of the nation.” James Thomas Tucker et. al.,
6 *Voting Rights in Arizona: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 283, 285 (2008).

7 65. After Native Americans secured the right to vote in 1948,¹⁷
8 discriminatory literacy tests prevented most Native American voters from registering
9 to vote. The Voting Rights Act Amendments in 1970 included a nationwide ban on
10 literacy tests. Arizona challenged the ban on literacy tests. In upholding the ban, the
11 United States Supreme Court found that Arizona had a “serious problem of deficient
12 voter registration among Indians.”¹⁸ The Court noted that tribal voters may use
13 resources in their native language in order to cast a ballot.¹⁹ As a result, the federal
14 government covered the state of Arizona by Section 5 of the Voting Rights Act in 1975,
15 requiring preclearance for its election laws to prevent the implementation of racially
16 discriminatory voting practices against Native American voters in the state. The Pascua
17 Yaqui language was covered under the Section 203 language minority provisions of the
18 Voting Rights Act because of the non-English speakers on their reservations. In 1988,
19 Arizonans passed Proposition 106, mandating that state employees speak only English
20 on the job.²⁰

21 66. Native Americans in Pima County continue to bear the impacts of a long
22 history of oppression, as evidenced by disparate socioeconomic outcomes and
23 persistent discrimination in areas such as health and education.

24 67. Native American residents of the Pascua Yaqui Reservation still suffer
25

26 ¹⁶ *Porter v. Hall*, 34 Ariz. 308, 271 P. 411 (Ariz. 1928).

27 ¹⁷ *Harrison v. Laveen*, 67 Ariz. 337, 196 P.2d 456 (Ariz. 1948).

28 ¹⁸ *Oregon v. Mitchell*, 400 U.S. 112, 117, 132, 153 (1970).

¹⁹ *Id.* at 146.

²⁰ *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997).

1 from disproportionately harsh socioeconomic conditions compared to the white
2 community. Many residents on the Reservation live below the poverty line, and 24.5
3 percent have less than a ninth-grade education, as compared to 4.6 percent for the
4 county. The Tribe also has limited access to healthcare and a high rate of multi-
5 generational households, resulting in an increased rate of infection of COVID-19
6 compared to other communities.

7 68. These socioeconomic disparities faced by Native American residents are
8 connected to their decreased opportunity to vote. Tribal members have fewer
9 opportunities to vote early in-person than their white counterparts. From 2010 to 2016,
10 the Pascua Yaqui Tribe had one early voting site on the reservation. And even when the
11 site was open in 2016, it was open for 8 hours for 4 days of early voting, a total of 32
12 hours, whereas off-reservation sites not in county buildings offered an average of 95
13 hours of in-person early voting.

14 69. In addition to the closure of the Pascua Yaqui early voting site, County
15 Recorder has closed three of the four early voting sites on the Tohono O'odham Nation.
16 Thus, the County Recorder has closed four of the five early voting sites on tribal land
17 since 2018.

18 70. These disparities have resulted in lower turnout among Native American
19 voters compared to their white counterparts. In the 2018 general election, the voter
20 turnout rate was 39 percent among voters on the Pascua Yaqui Reservation, compared
21 to 70.55 percent for the county.

22 71. These burdens also disrupt the ability of Native American voters to elect
23 candidates of their choice. Indeed, in this very election, a Native American candidate is
24 running for Pima County Recorder. Yet Native American voters will have fewer
25 opportunities than any other group in Pima County to ensure that their candidate of
26 choice is elected, disrupting their ability to vote for candidates they believe will protect
27 their equal right to vote.

28

1 **D. The County Recorder Has the Time and Resources to Ensure Equal**
2 **Access to Safe and Accessible Early Voting for Native American Voters**

3 72. In her communications with the Tribe, the Board of Supervisors, and the
4 press, the County Recorder has offered various reasons for closing and now refusing to
5 provide early voting sites on tribal lands amid pandemic.

6 73. With respect to the closure on the Pascua Yaqui Reservation, the County
7 Recorder has stated, for example, that her office was unable to find a location with
8 sufficient security to ensure safe handling of ballots.

9 74. But the Tribe has offered the Pascua Yaqui Wellness Center to the County
10 Recorder as an option for an early voting site, which has already been approved by the
11 Pima County Elections Department as a suitable location to host a polling site on
12 Election Day. And the County Recorder's office operated an early voting site on the
13 Pascua Yaqui Reservation for several election cycles. Upon information and belief,
14 there were no reports of security breaches at that location or any early voting site on
15 tribal land. Moreover, the Board's September 15 resolution authorized early and
16 emergency voting and a ballot drop-off at the Pascua Yaqui Tribal Council Chambers,
17 which has sufficient facilities to ensure ballot security.

18 75. The County Recorder has also stated that she will not place an early
19 voting site on the Reservation due to its lack of county-owned buildings, citing a
20 preference to use county-owned facilities because they offer hardwire access to the
21 county's voter registration database and secure Internet access for ballot on-demand
22 printers. The County Recorder has not indicated whether this is a mere preference or an
23 official policy of her office.

24 76. Regardless, the County Recorder has deviated from this preference in
25 establishing an early voting and emergency voting site at the Good Shepherd UCC
26 Church in Sahuarita, Arizona. The area surrounding the Good Shepherd UCC Church
27 is majority non-Hispanic white and less than 3 percent Native American and has high
28

1 rates of car access and voting by mail. The Good Shepherd UCC Church site will also
2 offer curbside ballot drop off starting October 19.

3 77. The County Recorder has also established an early voting site at the
4 University of Arizona Student Union, which is not a county-owned building.

5 78. In addition, the County Recorder has stated that she could operate a
6 limited-access early voting site on the Reservation, as was done for many election
7 cycles, but refuses to do so in 2020 due to her preference for full-service early voting
8 sites.

9 79. But the County Recorder has made an exception to this “rule” as well by
10 establishing a limited-access early voting site at Salazar-Ajo Library in Ajo, Arizona
11 on the rural far-western side of Pima County. The site will be available for Ajo residents
12 only.

13 80. The County Recorder has also stated that it is too late in the election cycle
14 to add any more early voting sites due to alleged resource constraints and an alleged
15 poll-worker shortage.

16 81. But there is adequate time to an establish early voting site on the Pascua
17 Yaqui Reservation for the last five days of early voting which has been authorized by
18 the Board of Supervisors.

19 82. In addition, the Arizona Secretary of State has repeatedly offered funding
20 and resources to counties for establishing early voting sites, especially on tribal lands.
21 The Secretary of State has publicly stated that she supports “any increase in early voting
22 statewide, including the request by Pascua Yaqui tribal leaders” and that the office can
23 support any expenses needed to grant the Tribe’s request.²¹ The Secretary of State’s
24 Office has also allocated \$1.5 million to increasing early voting options in tribal
25

26 ²¹ Calah Schlabach, From showdown to stalemate, Pascua Yaqui voting site feud
27 continues, CRONKITE NEWS (Sept. 18, 2020),
28 <https://cronkitenews.azpbs.org/2020/09/18/from-showdown-to-stalemate-pascua-yaqui-voting-site-feud-continues/>.

1 communities.²² Many counties have used these funds to implement early voting
2 locations on tribal reservations. The Secretary of State has even offered to hire
3 temporary staff, procure necessary supplies, and reimburse the County Recorder for
4 any and all costs associated with staffing and equipment.

5 83. The Tribe, as well as other local officials including the Mayor of Tucson,
6 have urged the County Recorder to take advantage of statewide resources to ensure
7 adequate early voting options on the Pascua Yaqui Reservation.²³

8 84. The County Recorder has refused to provide such access to Native
9 American voters exclusively at virtually every turn.

10 85. The County Recorder's justifications for removing the polling sites on
11 Native American reservations appear pretextual. She provides no excuse that could not
12 be mitigated by the Secretary of States' offers, and she has already made exceptions to
13 the rules she suggests to non-Native communities.

14 86. The County Recorder's communications with and about the Pascua Yaqui
15 Tribe and Native Americans are dismissive and disrespectful, invoking harmful
16 stereotypes about Native Americans. In 2018, for example, the County Recorder stated
17 that "They [the Pascua Yaqui] just don't like to go to the early voting site. They like to
18 vote by mail, or they're traditionalists," invoking stereotypes of Native Americans as
19 backward and orthodox.²⁴ In her September press release, the County Recorder
20 dismissed the Tribe's sovereign and constitutional right to privacy in its internal affairs
21 and accused the Tribe of being overly "protective of its list of members."

22 **CAUSES OF ACTION**

23 **FIRST CLAIM FOR RELIEF**

24 **(Violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301)**

25 ²² Governor Ducey, Secretary Hobbs Announce \$9 Million Investment For Safe
26 Elections Plan (Jul. 2, 2020),
[https://azgovernor.gov/governor/news/2020/07/governor-ducey-secretary-hobbs-
announce-9-million-investment-safe-elections](https://azgovernor.gov/governor/news/2020/07/governor-ducey-secretary-hobbs-announce-9-million-investment-safe-elections).

27 ²³ Regina Romero, TWITTER (Sept. 1, 2020),
<https://twitter.com/TucsonRomero/status/1300821029426692101>.

28 ²⁴ Arthur & McCann, *supra* note 2.

1
2 87. Plaintiffs reallege and incorporate by reference the allegations in the
3 preceding paragraphs.

4 88. Section 2 of the Voting Rights Act of 1965 prohibits any “standard,
5 practice, or procedure” which results in a “denial or abridgement of the right of any
6 citizen of the United States to vote on the account of race or color. 52 U.S.C.A. §
7 10301(a).

8 89. A vote denial in violation of Section 2 is established when (1) a
9 challenged standard, practice or procedure results in a disparate burden on members of
10 the protected class and (2) under the “totality of the circumstances,” there is a
11 relationship between the challenged practice and the “social and historical conditions”
12 of the group. *See Hobbs*, F.3d 989 at 1012; *see also Navajo Nation Human Rights*
13 *Comm'n v. San Juan Cty.*, 281 F. Supp. 3d at 1165 (quoting *Thornburg v. Gingles*, 478
14 U.S. 30, 47 (1986)).

15 90. Defendant Rodriguez’s 2018 removal of the early voting site on the
16 Pascua Yaqui Reservation, and subsequent denial of an early voting site on the
17 Reservation in subsequent elections, is a “standard, practice, or procedure” of the
18 County Recorder which lessens the opportunity for Native American voters to vote
19 safely.

20 91. Yaqui voters continue to endure discrimination and its impacts in the
21 present day. The County Recorder’s denial of an early voting site on the Reservation is
22 a vestige of that discrimination, as her refusal to implement the early voting site results
23 in the diminished opportunity for Native American voters to access the polls compared
24 to neighboring white voters.

25 92. This denial violates Section 2 of the Voting Rights Act, 52 U.S.C.A. §
26 10301(a), because, under the totality of the circumstances, Native American voters are
27 denied an equal opportunity to meaningfully participate in the political process.
28

1
2 **SECOND CLAIM FOR RELIEF**
3 **(Deprivation of the Fundamental Right to Vote in Violation of the First and**
4 **Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1983)**

5 93. Plaintiffs reallege and incorporate by reference the allegations in the
6 preceding paragraphs.

7 94. “There is no right more basic in our democracy than the right to
8 participate in electing our political leaders.” *McCutcheon v. FEC*, 134 S. Ct. 1434,
9 1440-41 (2014). The Supreme Court has recognized that “voting is of the most
10 fundamental significance under our constitutional structure.” *See Burdick v. Takushi*,
11 504 U.S. 428, 433-44 (1992).

12 95. When analyzing the constitutionality of a restriction on voting, the Court
13 “must weigh ‘the character and magnitude of the asserted injury to the rights protected
14 by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against
15 ‘the precise interests put forward by the State as justifications for the burden imposed
16 by its rule,’ taking into consideration ‘the extent to which those interests make it
17 necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson*
18 *v. Celebrezze*, 460 U.S. 780, 789 (1983)).

19 96. The removal of early voting locations may violate the Constitution when
20 the action disproportionately burdens racial minority voters’ fundamental right to vote.
21 *See Common Cause Indiana v. Marion Cty. Election Bd.*, 311 F. Supp. 3d 949, 954
22 (S.D. Ind. 2018). This burden is particularly concerning when, as could be the case here,
23 voters are disenfranchised by the refusal to provide more accessible early voting. *See*
24 *Common Cause*, 311 F. Supp. at 954; *Sanchez*, 214 F. Supp. 3d at 975-76 (finding that
25 Native American voters lacked equal access to in-person early voting as compared to
26 white voters).

27 97. The Defendant’s refusal to implement an early voting site on the
28 Reservation is a burden on Native American voters’ right to vote because they are
provided fewer options to vote safely than other voters who do not live on reservations.

1 Because there is no longer an early voting location on the Reservation, Native American
2 voters who live on the Reservation must travel two to three hours to get to the closest
3 early voting location. Voters with no car must rely on public transportation to make the
4 trip, which is particularly dangerous in the present public health crisis.

5 98. Tribal residents who are high-risk for COVID-19 in particular face an
6 impossible choice because of the burden imposed by the Defendant: abstain from voting
7 to stay safe, brave the polls on Election Day, or spend several hours on public transit to
8 vote early and risk infection.

9 99. Any interest that the County Recorder proffers does not suffice to justify
10 this immense burden placed on Native American voters. Any cost or staffing would be
11 reimbursed or otherwise mitigated by the Secretary of State, and many locations on the
12 Reservation have or can be equipped with suitable security to ensure ballot security.
13 Perhaps more importantly, the County Recorder, the Tribe, and the Pima County
14 Elections Department have implemented early voting on the Reservation in the past
15 with no issues.

16 100. Because the burden on the right to vote is far greater than any government
17 interest that the County Recorder could proffer, the denial of an early voting location
18 imposes an unconstitutional burden on the right to vote in violation of the First and
19 Fourteenth Amendments.

20 **REQUESTED RELIEF**

21 WHEREFORE, Plaintiffs request that this Court:

- 22 1. Enter a declaratory judgment that Defendant's actions violate the First
23 and Fourteenth Amendments, as well as Section 2 of the Voting Rights
24 Act;
- 25 2. Enter preliminary and permanent injunctions ordering Defendant to
26 reestablish an early voting site and a ballot drop-off location within the
27 Pascua Yaqui Reservation;

- 1 3. Award Plaintiffs their costs and reasonable attorneys’ fees incurred in this
2 action, as authorized by the Voting Rights Act and the Civil Rights
3 Attorneys Fees Awards Act, 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988;
4 and
5 4. Grant such other relief the Court may deem just and proper.

6
7 Dated this 11th day of October, 2020.

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28 * Motions for admission *pro hac*
 vice pending

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