

1 **Navajo Nation Department of Justice**  
2 Economic/Community Development Unit  
3 Katherine Belzowski (State Bar No. 031473)  
4 Email: [kbelzowski@nndoj.org](mailto:kbelzowski@nndoj.org)  
5 Frances Sjoberg (State Bar No. 029112)  
6 Email: [fsjoberg@nndoj.org](mailto:fsjoberg@nndoj.org)  
7 P.O. Box 2010  
8 Window Rock, Navajo Nation (AZ) 86515  
9 Phone: 928.871.6933

10 Jared G. Keenan (027068)  
11 ACLU FOUNDATION OF ARIZONA  
12 3707 North 7th Street, Suite 235  
13 Phoenix, AZ 85014  
14 Telephone: (602) 650-1854  
15 [jkeenanacluaz.org](mailto:jkeenanacluaz.org)  
16 *Attorneys for Plaintiff*

17  
18 **ARIZONA SUPERIOR COURT**  
19 **APACHE COUNTY**

20 Navajo Nation on behalf of itself and all  
21 others similarly situated,

22 Plaintiff,

23 v.

24 Larry Noble in his official capacity as  
25 Apache County Recorder; Angela Romero  
26 in her official capacity as Apache County  
27 Elections Director; Apache County Board of  
28 Supervisors; and Katie Hobbs in her official  
capacity as Arizona Secretary of State,

Defendants.

NO.

**COMPLAINT**

**(Expedited Election Matter)**

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.azcleelections.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           11.     The Navajo Nation has many members who are registered voters who live  
2 in the Many Farms area and are assigned to vote at the precinct at Many Farms.

3           12.     At least some of these members are unlawfully having their right to vote  
4 severely burdened as the result of the failure of this polling location to open on time, and  
5 would have standing to sue in their own right. The interests at stake in this action are  
6 germane to the purpose of the Plaintiff Navajo Nation because of their strong interest in  
7 ensuring its members are able to exercise their constitutional right to vote. The Navajo  
8 Nation has a strong and demonstrated interest in ensuring its members are able to exercise  
9 their right to vote on Election Day. If Navajo Nation members are unable to vote, the  
10 collective power and voice of the Navajo Nation is reduced. The Navajo Nation  
11 advocates on behalf of all its members to local, state, and federal representatives. If some  
12 of its members are unable to vote, the Navajo Nation's overall ability to advocate  
13 effectively for critical resources for the Navajo Nation is jeopardized.

14           13.     Defendants Arizona Secretary of State Katie Hobbs; Apache County  
15 Recorder Larry Noble and Apache County Elections Director Angela C. Romero have  
16 acted at all relevant times under color of law and are sued in their official capacities for  
17 all purposes in this action.

18           14.     Defendants Arizona Secretary of State Katie Hobbs; Apache County Board  
19 of Supervisors; Apache County Recorder Larry Noble; and Apache County Elections  
20 Director Angela C. Romero are persons who, upon information and belief, are presently  
21 acting to interfere with lawfully registered voters in the free exercise of their right to  
22 vote in the November 8, 2022 federal election.

### **GENERAL ALLEGATIONS**

24           15.     A.R.S. § 16-565(A) requires that election officials keep voting places open  
25 from 6:00 a.m. to 7:00 p.m.

26           16.     Yet, on or about November 8, 2022, Plaintiff became aware that, upon  
27 information and belief, Defendants failed to open at least one polling site in Apache  
28 County—Many Farms—by the statutorily prescribed opening time.

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 24. As of the filing of this Complaint, Defendants continue to refuse to extend  
2 the polling hours for this location.

3 25. These actions of Defendants violate Plaintiff’s members’ fundamental  
4 right to vote and other crucial rights guaranteed by federal and state law.

5 26. The right to vote in an election is guaranteed by, *inter alia*, Article II,  
6 Sections 4 and 21 of the Arizona Constitution; and Article VII, Section 2 of the Arizona  
7 Constitution, the First and Fourteenth Amendments to the United States Constitution;  
8 Plaintiff Navajo Nation has standing to enforce these rights and all rights asserted herein.

9 27. Arizona Revised Statutes Section 16-565 provides that on Election Day the  
10 polls shall be opened at 6:00 a.m. and shall be closed at 7:00 p.m. A.R.S. § 16-565.  
11 Arizona Revised Statutes Section 16-565 further provides that “[a]ny qualified voter  
12 who at the moment of closing is in the line of waiting voters shall be allowed to vote.”

13 28. Furthermore, Arizona election laws must be construed in favor of allowing  
14 citizens to exercise their fundamental right to vote. *See Lemons v. Superior Court of*  
15 *Gila Cty.*, 141 Ariz. 502, 505 (1984) (“[T]he Legislature has directed that all statutes  
16 shall be liberally construed to effect their objects and to promote justice.” (citing A.R.S.  
17 § 1–211(B))).

18 29. The harm to Plaintiff, their members, and similarly situated voters who  
19 live in Apache county in being prevented or deterred from voting in the November 8,  
20 2022 federal election is irreparable, imminent, and substantial.

21 30. The hardships incurred by Plaintiff and those similarly situated in being  
22 prevented or deterred from voting in the November 8, 2022 federal election far outweigh  
23 any modest burden on Defendants in complying with federal and state law.

24 31. The actions of Defendants are contrary to the public interest and  
25 unsupported by any legitimate interest.

26 **COUNT 1 (A.R.S. § 16-565)**

27 32. Plaintiff incorporates by reference the allegations contained in in the  
28 preceding paragraphs, as though fully set forth herein.

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*  
21  
22  
23  
24  
25  
26  
27  
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:* Wes Allen Begay JR