



September 25, 2020

F. Ann Rodriguez
Pima County Recorder
240 N. Stone Ave.
Tucson, AZ 85701

BY EMAIL

Dear Recorder Rodriguez:

Campaign Legal Center (“CLC”) writes on behalf of the Pascua Yaqui Tribe (the “Tribe”) to respectfully urge you to reinstate the Early Voting site on the Pascua Pueblo Yaqui Reservation (the “Pascua Yaqui reservation”) as a vote center with access to the Pima County voter registration database and a ballot-on-demand printer; or with access to a paper roster and paper-ballots. In the alternative, we request that you provide access to and support for a ballot-on-demand printer and access to the Pima County voter registration database for the purpose of operating an emergency vote center on the Pascua Yaqui reservation. Additionally, we request a ballot drop-off site on the reservation, preferably located at the early/emergency voting site. Your failure to do so thus far is contrary to the policy judgment of both the Secretary of State and the Pima County Board of Supervisors and runs afoul of federal voting protections.

Without access to in-person early voting at the Pascua Yaqui reservation, tribal members with limited access to transportation and unreliable mail service will have no method by which to cast a ballot prior to Election Day. And given the severe impact of the COVID-19 pandemic on the Tribe, forcing the Tribe to travel en masse to a single in-person polling place on Election Day would impose a significant burden on the tribal members’ fundamental constitutional right to vote, while simultaneously presenting an unacceptable risk to the Tribe’s health as well as that of the public. The disproportionate impact of this decision on Native American voters is plain and violates the Voting Rights Act.

CLC urges you to reconsider your decision not to allow either a full-service or limited-access early voting site on the Pascua Yaqui reservation. As the Pima County Recorder, you have the authority to rectify this injury and ensure that Yaqui voters have an equal opportunity to vote safely in the upcoming election.

I. Voters on the Pascua Yaqui Reservation Have Been Denied Equal Access to Safe and Accessible Early Voting Sites.

As you know, the Pascua Yaqui Tribe is a federally recognized tribe with a reservation located outside of Tucson. The Pascua Yaqui reservation is home to between 3,600 and 4,000 people, of whom more than 93% are Native American.

Like other Native communities in Arizona and across the country, the Tribe has been hard hit by COVID-19, which has claimed the lives of more than 11 members in the Tucson area.¹ Due to systemic socioeconomic inequities, tribal residents are

¹ See Pascua Yaqui Tribe, Latest COVID-19 Information, <https://covid19.pascuayaqui-nsn.gov> (last accessed Sept. 24, 2020); see also Emma Gibson, *Analysis: Native Americans infected with COVID-19 at higher rates in Arizona*, ARIZONA PUBLIC MEDIA (Jul. 10, 2020), <https://news.azpm.org/p/coronavirus/2020/7/10/176298-analysis-native-americans-infected-with-covid-19-at-higher-rates-in-arizona>.

disproportionately at higher risk of severe illness from COVID-19.² More than a quarter of tribal residents are medically uninsured.³ The median income on the reservation is half that of Pima County, and the unemployment rate is 26 percent.⁴

These factors, among others, will make it particularly hazardous for tribal residents to vote in person in large numbers on Election Day. Given historical problems with mail service on Native American reservations, it is unsurprising that many Yaqui voters have not historically voted by mail and are unfamiliar with the process of requesting a mail ballot.⁵ Thus, to avoid dangerous overcrowding at the polls in November, tribal residents must have ready access to early voting sites.

From 2010 to 2018, the Tribe had an early voting site on the Pascua Yaqui reservation that was open eight hours daily for four days before Election Day. However, one month before the August 2018 primary, and midway through the Tribe's campaign to increase voter turnout, your office abruptly relocated the site to a different location off reservation. The nearest early voting site is now eight miles away at the Mission Library. The distance may not seem far in absolute terms, but for Yaqui people without access to a private vehicle, it will make utilizing the early voting site an impossible endeavor. Roughly one in five tribal residents lack access to a car and must rely on public transportation to reach the site.⁶ It will take these residents *two to three hours* roundtrip by public bus to vote early in person. This disparity is unacceptable in ordinary times and indefensible during a global pandemic.

The Tribe and its members have repeatedly alerted your office to the lack of early voting options on the Pascua Yaqui reservation. As early as November 5, 2019, the Tribal Council requested that you reinstate the reservation early voting site for the 2020 elections. That request was denied. The Tribe has since gathered more than 1,000 petition signatures in support of restoring the early voting site.⁷

On August 26, 2020, members of the Tribal Council wrote to the Pima County Board of Supervisors (the "Board") requesting an early voting site, emergency voting, and ballot drop off location, and appeared at the Board's September 1 meeting to voice their concerns. Recognizing the lack of early voting opportunities and the unique barriers faced by Yaqui voters, the Board passed a resolution on September 15, 2020 authorizing your office to make full-service early voting and ballot drop-off available in the Pascua Yaqui Reservation Tribal Chambers from Monday, October 26 to Friday, October 30.⁸ The resolution also authorized emergency voting on Saturday, October 30 and Monday, November 2.⁹ As noted by the County Administrator in a September 8 letter, operation of these sites would require access to a voter registration database and a ballot on-demand printer, which you have refused to provide.¹⁰

² See Richard A. Oppel Jr. et al., *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. TIMES (Jul. 5, 2020), <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html> (noting systemic inequities unrelated to health issues as a driver of heightened risk).

³ Pascua Yaqui Primary Care Area (PCA) 2019 Statistical Profile, Arizona Department of Health Services, <https://azdhs.gov/documents/prevention/health-systems-development/data-reports-maps/primary-care/pima/117.pdf> (last accessed Sept. 24, 2020).

⁴ *Id.*

⁵ See Rob Arthur & Allison McCann, *How the gutting of the Voting Rights Act led to 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. Indeed, the census tract encompassing the Pascua reservation has the lowest rate of voting by mail of all census tracts in Pima County. See Center for Inclusive Democracy, Siting Tool for Pima County, Demographic and Voter Data, <https://az.cidsitingtool.org/county.html?county=019> (last accessed Sept. 24, 2020).

⁶ See Center for Inclusive Democracy, *supra* note 5; U.S. Census Bureau, American Community Survey 2018 5-Year Estimates, Table B25044, <http://data.census.gov>.

⁷ See Pascua Yaqui Tribal Council, *Pascua Yaqui Tribal Council: We need early voting site on the reservation, especially amid COVID-19*, TUCSON.COM (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.

⁸ Resolution No. 2020-75, Pima County Board of Supervisors (Sept. 15, 2020).

⁹ *Id.*

¹⁰ Memorandum from C.H. Huckleberry, County Administrator, to Pima County Board of Supervisors (Sept. 8, 2020), https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Administration/CHHmemosFor%20Web/2020/September/September%208%20,%202020%20-

Your response to the Tribe's requests has been disappointing. On August 26, you issued a press release¹¹ disparaging the Tribe's efforts to mobilize Yaqui voters. Your response thus far has not acknowledged the current health risks inherent in traveling two to three hours by bus to vote. You even called on the Tribe to pay for an "Uber"-like service to transport its members to early voting sites, rebuffing the simple and obvious solution of reinstating the reservation's early voting site. On September 16, in response to the Tribe's recent request to confer in light of the Board's resolution, you responded: "My suggestion to you at this point would be to contact the [Supervisors] to determine exactly how THEY plan on implementing THEIR resolution."¹² These responses evince, at best, a callous indifference to Yaqui voters' equal right to safe, accessible early voting.

You have also stated that it is "too late in the election year to . . . provide a secure voting site" on the Pascua Yaqui reservation.¹³ But the Board's authorization for an early voting site on the reservation begins no earlier than October 26, more than a month away.¹⁴ In addition, the Arizona Secretary of State has indicated that there are available state funds to operate the site.¹⁵ There are sufficient time and resources to provide safe early voting opportunities to Yaqui people in Pima County, and you have the authority to do so. As we explain below, federal law demands action.

II. Your Refusal to Allow an Early Voting Site on the Pascua Yaqui Reservation Violates Federal Law

"Section 2 of the [Voting Rights Act] prohibits all forms of voting discrimination that lessen opportunity for minority voters." *Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989, 1011 (9th Cir. 2020) (internal quotations omitted). Under the Voting Rights Act, a county election official illegally abridges the right to vote of minority voters when (1) a challenged standard, practice or procedure results in a disparate burden on members of the protected class and (2) under the "totality of the circumstances," there is a relationship between the challenged practice and the "social and historical conditions" of the group. *Id.* at 1012.

Arizona law further provides that a qualified voter "is entitled to and shall be allowed to vote" at any state or local election without discrimination because of race, color, religion, sex, ancestry or national origin. A.R.S. § 41-1421.

Your denial of a safe and accessible early voting site diminishes the ability of Yaqui people on the Pascua Yaqui reservation to vote safely in the November elections, especially in light of the COVID-19 crisis. The long history of discrimination faced by Yaqui people, and the present inequities borne of that history, establish a clear relationship between the tribe's lack of access to early voting sites and their status as a racial minority. As a result, your failure to provide an early voting site on the Pascua Yaqui reservation violates the Voting Rights Act and Arizona law.

First, as a result of your decision, tribal residents are denied an equal opportunity to participate in the November election. *See Navajo Human Rights Commission v. San Juan County*, 281 F. Supp.3d 1136, 1165 (D. Utah 2017) (denying summary judgment on the claim alleging that unequal access to early voting for a Navajo reservation violated Section 2 of the Voting Rights Act). Here, as in *Navajo*, the absence of an early voting location, and "the relative availability of certain voting services" to Yaqui voters compared to other voters, violates Section 2 of the Voting Rights Act. *Id.* In particular, the denial of an early voting site during the pandemic

%20Pascua%20Yaqui%20Tribe%20Request%20for%20Early%20Voting%20Sites%20on%20the%20Pascua%20Yaqui%20Reservation.pdf.

¹¹ See Press Release: Recorder Statement on Pascua Yaqui Request for Early Voting Site, Pima County Recorder (Sept. 1, 2020),

<https://www.recorder.pima.gov/PressRelease/2020/200901%20Pascua%20Yaqui.pdf>.

¹² Letter from F. Ann Rodriguez, County Recorder, to Peter Yucupicio, Chairman of Pascua Yaqui Tribe (Sept. 16, 2020).

¹³ *Id.*

¹⁴ See Resolution No. 2020-75, *supra* note 8.

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

lessens the options for voters on the Pascua Yaqui reservation to vote safely. Voting by mail is not a reliable option for tribal residents given unreliable access to postal services. The nearest early voting site is a two-to-three-hour round trip bus ride, and many tribal residents lack reliable access to private transportation. The lack of accessible early voting sites will force many Yaqui voters to vote on Election Day, leading to unsafe crowding, which will in turn place Yaqui voters at severe risk of contracting or spreading COVID-19. Tribal residents who are at high risk of serious illness or death from COVID-19 will face an impossible choice: abstain from voting to stay safe, brave the polls on Election Day, or spend several hours on public buses to vote early. These choices fall disproportionately on Yaqui voters and therefore result in an unlawful abridgment of their equal right to vote.

Second, under the totality of the circumstances, “there is a legally significant relationship between the disparate burden on minority voters and the social and historical conditions affecting them.” *Democratic Nat’l Comm.*, 948 F.3d at 1012. As the Ninth Circuit has recognized, “Arizona has a long history of race-based discrimination against” Native American citizens and “[m]uch of that discrimination is directly relevant to those citizens’ ability to register, to vote, or otherwise to participate in the democratic process.” *Id.* at 1107 (internal quotations omitted). Yaqui voters were not spared the deterrent effects of literacy tests and outright intimidation. *See id.* at 1019-22.

Yaqui voters continue to endure discrimination and its impacts in the present day. The census tract encompassing the Pascua Yaqui reservation, which is more than 90 percent Native American, has a poverty rate of 43 percent, among the highest in Pima County and substantially higher than surrounding non-Native communities.¹⁶ Twenty percent of people in that tract report lack of access to a private vehicle.¹⁷ The tribal area also has the lowest vote-by-mail rate in the County.¹⁸ Surrounding non-Native American communities, on the other hand, are wealthier, enjoy higher rates of car access, and primarily vote by mail.¹⁹ With the relocation of the Tribe’s only early voting site, these surrounding communities now have greater access to in-person early voting despite having more resources to overcome barriers to early voting access. The sudden closure of the Tribe’s early voting site in 2018 not only reduced Native American access to early voting, but also disrupted the Tribe’s years-long effort to encourage voter participation.

Finally, your interactions with the Tribe and the Tribal Council on this issue exhibit a concerning disregard for Yaqui voters’ access to equal voting services. You have refused to meaningfully address the Tribe’s concerns about voting during the COVID-19 pandemic. Indeed, when the Board issued a resolution authorizing early and emergency voting on the reservation, your response to the announcement was dismissive at best.²⁰ These actions and your decision to deny the Tribe an early voting location “interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by minority and white voters to elect their preferred representatives.” *Navajo Nation Human Rights Comm’n v. San Juan Cty.*, 281 F. Supp. 3d at 1165 (quoting *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)). Accordingly, as a result of your actions, Pima County will likely face liability under the Voting Rights Act in denying the Pascua Yaqui tribe the early voting location.

Your denial of an early voting site also imposes an unconstitutional burden on tribal members’ right to vote in violation of the First and Fourteenth Amendments. “There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014). The removal of early voting locations may violate the Constitution when the action disproportionately burdens racial minority voters’ fundamental right to vote. *See Common Cause Indiana v. Marion Cty. Election Bd.*, 311 F. Supp. 3d 949, 954 (S.D. Ind. 2018). This is especially true when, as may be the case here, minority voters disproportionately vote less as a result of the change. *Id.* To rationalize this burden,

¹⁶ *See* Center for Inclusive Democracy, *supra* note 5.

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ Letter from F. Ann Rodriguez, County Recorder, to Peter Yucupicio, Chairman of Pascua Yaqui Tribe (Sept. 16, 2020).

you have raised various concerns, including, for example, your inability to identify where Yaqui voters live; your office's inability to ensure ballot security and chain of custody at sites on the reservation; and your desire to use county-owned facilities.²¹ Even if these concerns were legitimate, they are far from insurmountable. An early voting site on the reservation can, if necessary, be limited to local residents only;²² the reservation has suitable locations to ensure ballot security; and your office has approved early voting sites in non-county buildings.²³ Moreover, the concerns you raise do not justify the comparatively severe burden on tribal residents' fundamental right to vote.

In sum, your failure to reinstate an early voting location on the Pascua Yaqui reservation runs afoul of both the Voting Rights Act and the First and Fourteenth Amendments, as well as Arizona law.

III. Demand

Fortunately, the potential legal violations we identify above can be easily remedied through swift action by your office. In order to ensure safe and equal access to voting for members of the Tribe, we request that your office:

- Reinstatement of the early voting site on the Pascua Yaqui reservation, either at its previous location or at another suitable site on the reservation, with access to the Pima County voter registration database and a ballot on-demand printer, to be maintained and operated under the supervision of the Director of Elections; or
- Reinstatement of the early voting site on the Pascua Yaqui reservation, either at its previous location or at another suitable site on the reservation, using a paper roster and paper ballots; or
- In the alternative, provide the Director of Elections, Board and Tribal Council with the resources to conduct emergency voting at the Pascua Yaqui Reservation Tribal Chambers, including access to the Pima County voter registration database and a ballot on-demand printer, to be maintained and operated under the supervision of the Director of Elections; and
- Provide a ballot drop off location within the Pascua Yaqui reservation, preferably at the same location as the emergency/early voting site.

CLC and the Tribal Council are prepared to assist with this process, including by coordinating with the Secretary of State's office to secure resources for early voting on the Pascua Yaqui reservation. In addition, the Tribe is more than able and willing to meet all security needs. If we are unable to reach a resolution that provides the Tribe with adequate access to early voting, we will consider all available legal options.

Respectfully submitted,

/s/ Jonathan Diaz

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CC:

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²¹ Memorandum from F. Ann Rodriguez, Pima County Recorder, to Members of Pima County Board of Supervisors (Sept. 3, 2020).

²² The County's current list of early voting and emergency voting locations includes a site limited to local residents at the Salazar-Ajo Library. *See* Early Voting Sites, Pima County Recorder's Office, <https://www.recorder.pima.gov/EarlyVotingSites> (last accessed Sept. 24, 2020).

²³ Your office has approved sites, for example, at churches and university buildings. *See id.*

Ramón Valadez, Pima County Board of Supervisors, District 2
Sharon Bronson, Pima County Board of Supervisors, District 3
Steve Christy, Pima County Board of Supervisors, District 4
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