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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Mi Familia Vota; Arizona Coalition for
Change; and Ulises Ventura,

Plaintiffs,

v.

Katie Hobbs, in her official capacity as
Arizona Secretary of State,

Defendant.

No. _____

**PLAINTIFFS' EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

(ORAL ARGUMENT REQUESTED)

**(EXPEDITED RULING
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1 Plaintiffs Mi Familia Vota (“MFV”), Arizona Coalition for Change (“ACFC”),
2 and Ulises Ventura move the Court pursuant to Federal Rule of Civil Procedure 65 for a
3 temporary restraining order and preliminary injunction enjoining Defendant from
4 enforcing the October 5, 2020 deadline required by Ariz. Rev. Stat. § 16-120 (the
5 “Voter Registration Cutoff”) and ordering Defendant to direct the County Recorders to
6 extend the Voter Registration Cutoff to a date no earlier than 5:00 pm on October 27,
7 2020.¹

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **PRELIMINARY STATEMENT**

10 Every election year, Plaintiffs MFV and ACFC organize a grassroots campaign
11 to register people to vote. Plaintiff Ulises Ventura is a voter registration organizer for
12 MFV. Plaintiffs work tirelessly over many months to expand the franchise to as many
13 Arizonans as possible, going door-to-door and holding registration drives at busy
14 supermarkets, public schools, churches, and community centers. This year, their plan
15 was to register 55,000 voters. In just two months, between January 13 and March 20,
16 2020, they registered 16,507 new voters.

17 But then COVID-19 struck Arizona. In an effort to stop the spread of the virus,
18 the Governor took extraordinary measures. A state of emergency was declared; schools
19 were closed statewide; gatherings of ten people or more were forbidden; restaurants,
20 bars, gyms, and movie theaters were closed; and, on March 30, the Governor issued a
21 stay-at-home order and mandated social distancing in public.

22 Plaintiffs were unable to hold registration drives or do door-to-door registration
23 safely and lawfully. Plaintiffs attempted to register voters instead through online
24 advertisements and text and phone drives, but these efforts were a poor substitute for in-
25 person registration. Arizona’s online voter registration portal requires a driver’s license

26 ¹ Defendant “Secretary has the authority to promulgate rules and procedures for
27 elections, such as voter registration, which encompasses determining voter registration
28 deadlines” and the County Recorders must defer to the Secretary. *Arizona Democratic
Party v. Reagan*, No. 16. Civ. 03618, 2016 WL 6523427, at *6 (D. Ariz. Nov. 3, 2016).

(which not all voters have) and many people in the communities Plaintiffs serve lack the technology and capability to register online. MFV, for example, averaged only 193 registrations per week, a dramatic decrease from the 1,523 voters they registered the week before the shutdown. The State’s own data confirms there has been a 65% decrease in voter registrations this year as compared to 2016, the last presidential election year. After Arizona began to reopen at the end of the summer, Plaintiffs ramped up their voter registration efforts and registration numbers began to climb.

Now, Plaintiffs’ efforts face another threat. Arizona law provides that: “An elector shall not vote in an election called pursuant to the laws of this state unless the elector has been registered to vote . . . before midnight of the twenty-ninth day preceding the date of the election.” Ariz. Rev. Stat. Ann. § 16-120. This year, therefore, Arizonans must register by October 5, or lose their right to vote in the November 3 election.² The impending Voter Registration Cutoff threatens to precipitously end Plaintiffs’ voter registration efforts just weeks after they resumed. Plaintiffs brought this lawsuit as soon as they realized their revamped registration efforts were working and an extension of the Voter Registration Cutoff would allow them to register thousands of additional voters.

Registering citizens to vote involves the expression of core political speech and associational rights safeguarded by the First and Fourteenth Amendments. This year—on the heels of five months of State-imposed shutdowns and social distancing—the fast-approaching Voter Registration Cutoff severely burdens Plaintiffs’ right to register their fellow Arizonans to vote. The Voter Registration Cutoff is unconstitutional as applied under these circumstances and can be extended until October 27 without causing more

² Separate provisions provide a “mailbox rule” for registrations submitted by mail by the twenty-ninth day before the election. See Ariz. Rev. Stat. § 16-134(C)(1)–(2). Thus, while the county recorder may process registrations received by mail after this deadline, for an individual voter or for those, like Plaintiffs, who seek to aid citizens in registering to vote, the registrations must be completed and submitted by the twenty-ninth day before the election.

1 than a de minimis administrative inconvenience to the State. To avoid an irreversible
 2 constitutional injury to Plaintiffs and the disenfranchisement of thousands of voters, the
 3 Voter Registration Cutoff must be extended.

4 **ARGUMENT³**

5 A plaintiff seeking a temporary restraining order or preliminary injunction must
 6 show that: “(1) she is likely to succeed on the merits, (2) she is likely to suffer
 7 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in
 8 her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786
 9 F.3d 733, 740 (9th Cir. 2015) (quotation marks and citation omitted); *Stuhlbarg Int’l*
 10 *Sales Co. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting
 11 that the analysis for temporary restraining orders and preliminary injunctions is
 12 “substantially identical”). Although all four elements must be satisfied, the Ninth
 13 Circuit employs a “sliding scale” approach, where “a stronger showing of one element
 14 may offset a weaker showing of another.” *Corner Edge Interactive LLC v. Johnson*, No.
 15 19 Civ. 5404, 2020 WL 1548068, at *5 (D. Ariz. Mar. 5, 2020) (quoting *Alliance for the*
 16 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). “Serious questions going
 17 to the merits, coupled with a balance of hardships tipping sharply in the plaintiff’s
 18 favor,” can support issuance of preliminary relief, so long as the plaintiff also makes a
 19 showing on the two remaining elements. *Id.* (quoting *Alliance for the Wild Rockies*, 632
 20 F.3d at 1135).

21 Here, all four elements support granting emergency relief. As applied during the
 22 ongoing COVID-19 emergency, the Voter Registration Cutoff violates the First and
 23 Fourteenth Amendments and severely burdens Plaintiffs’ ability to exercise core
 24 political speech and associational rights in voter registration and get-out-the-vote
 25 (“GOTV”) campaigns. Because the State cannot claim any serious harm from the

26 ³ For a complete recitation of the facts, Plaintiffs incorporate by reference and
 27 refer the Court to Plaintiffs’ Complaint and the Declarations of Flavio Bravo (“Bravo
 28 Decl.”), Reginald Bolding (“Bolding Decl.”), Joel Edman (“Edman Decl.”), and expert
 Virginia Martin (“Martin Decl.”).

enjoining of unconstitutional behavior and extension of the Voter Registration Cutoff, and the public interest weighs strongly in favor of allowing Arizonans to exercise their Constitutional rights and expand the voting franchise, this Court should grant Plaintiffs' motion for a temporary restraining order and a preliminary injunction.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

The organizational plaintiffs have standing. All Plaintiffs are likely to succeed on their claims that the Voter Registration Cutoff as applied following months of COVID-19-related stay-at-home restrictions and social distancing measures severely burdens Plaintiffs' First and Fourteenth Amendment rights.

A. The Organizational Plaintiffs Have Standing to Seek an Injunction

MFV and ACFC have Article III standing because they "can demonstrate: (1) frustration of [their] organizational mission; and (2) diversion of [their] resources to combat the particular [conduct] in question." *Am. Diabetes Ass'n v. U.S. Dep't of the Army*, 938 F.3d 1147, 1154 (9th Cir. 2019) (quotation marks and citation omitted).

MFV's mission is "uniting Latino, immigrant, and allied communities to promote social and economic justice through citizenship workshops, voter registration, and voter participation" and "public education, voter registration, and voter engagement." Bravo Decl. ¶ 2. Similarly, ACFC's mission is "to empower everyday people to transform their community by building civic power, just and equitable schools, and safer neighborhoods." Bolding Decl. at ¶ 2. ACFC's "civic engagement team's primary mission is to register people to vote." Bolding Decl. ¶ 3. Because of the pandemic restrictions, Plaintiffs have only been able to register approximately 23,000 new voters instead of their targeted 55,000. *Id.* ¶ 29; Bravo Decl. ¶ 37. Enforcement of the Voter Registration Cutoff this year will frustrate Plaintiffs' mission by preventing them from registering thousands of additional voters. *See Fair Maps Nev. v. Cegavske*, No. 20 Civ. 271, 2020 WL 2798018, at *14–16 (D. Nev. May 29, 2020) (holding that organizational plaintiff had standing to challenge statutory election deadline because the organization

1 was “collecting [ballot initiative] signatures until COVID-19 and the Stay at Home
2 Order made it impossible to collect signatures in person.”).

3 Plaintiffs diverted resources because of the impending Voter Registration Cutoff.
4 For example, MFV paid voter registration workers higher salaries, re-allocated staff to
5 do voter registration work, and developed a health and safety protocol for renewed in-
6 person registration. Bravo Decl. ¶¶ 29–32. ACFC hosted drive-through registration
7 events; reassigned employees from other projects to voter registration work; and
8 engaged in unplanned fundraising and re-budgeting. Bolding Decl. ¶¶ 23–27.

9 **B. The October 5 Registration Cutoff Violates Plaintiffs’ First and**
10 **Fourteenth Amendment Rights**

11 A state’s election laws, including those that “govern the registration and
12 qualification of voters,” inevitably affect “the individual’s . . . right to associate with
13 others for political ends.” *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Voter
14 registration efforts are protected by both the First Amendment and the Due Process
15 Clause of the Fourteenth Amendment.⁴ *See Dietrich v. John Ascuaga’s Nugget*, 548
16 F.3d 892, 896 (9th Cir. 2008) (“[T]he First Amendment plainly protects Plaintiff’s
17 activities—gathering signatures for a political petition and registering voters.”) (citing
18 *Morse v. Frederick*, 551 U.S. 393, 403 (2007)).

19 Challenges to state election laws that burden constitutional rights are analyzed
20 under the *Anderson-Burdick* balancing test, which courts use to “weigh the character
21 and magnitude of the burden the State’s rule imposes on those rights against the
22 interests the State contends justify that burden, and consider the extent to which the
23 State’s concerns make the burden necessary.” *Timmons v. Twin Cities Area New Party*,

24
25 ⁴ *See NAACP v. Alabama*, 357 U.S. 449, 460 (1958) (“It is beyond debate that
26 freedom to engage in association for the advancement of beliefs and ideas is an
27 inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth
28 Amendment, which embraces freedom of speech.”). As noted below, Plaintiffs’
Fourteenth and First Amendment claims are analyzed in concert under the *Anderson-*
Burdick test.

520 U.S. 351, 358 (1997) (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). First Amendment and due process claims are both “folded into the *Anderson-Burdick* inquiry,” *Soltysik v. Padilla*, 910 F.3d 438, 449 n.7 (9th Cir. 2018), and addressed “collectively using a single analytical framework,” *Dudum v. Arntz*, 640 F.3d 1098, 1106 n.15 (9th Cir. 2011).

“[T]he rigorousness of [the court’s] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” *Burdick*, 504 U.S. at 434. Laws that impose “severe restrictions” must be “narrowly drawn to advance a state interest of compelling importance. *Id.* (quotation marks and citation omitted).

1. The Burden Imposed by the Voter Registration Cutoff Is Severe

Strict enforcement of the Voter Registration Cutoff following five months of COVID-19 stay-at-home orders, social distancing, and related restrictions imposes a severe burden on Plaintiffs’ constitutional rights, triggering exacting review under *Anderson-Burdick*. See *Esshaki v. Whitmer*, 813 Fed. App’x 170, 171 (6th Cir. 2020) (“[T]he district court properly applied the *Anderson-Burdick* test” and “correctly determined that the combination of the State’s strict enforcement of the ballot-access provisions and the Stay-at-Home Orders imposed a severe burden on plaintiffs’ ballot access, so strict scrutiny applied.”).

In 2020, Plaintiffs’ target was to register 55,000 voters. Bravo Decl. ¶ 5; Bolding Decl. ¶ 8. Before the shutdown, MFV alone was on track to register 41,568. Bravo Decl. ¶ 7. But during the 5-month government-imposed shutdown, Compl. ¶¶ 37–47, Plaintiffs’ teams of organizers found themselves unable to register voters door-to-door and in busy public settings without running afoul of the Governor’s orders, county and city restrictions, CDC guidance, and the public health consensus. Bravo Decl. ¶¶ 8–17; Bolding Decl. ¶¶ 11–15. Plaintiffs’ voter registration numbers plummeted. MFV averaged only 193 registrations per week as compared to 1,523 the week before the

1 shutdown. Bravo Decl. ¶ 23. Similarly, ACFC averaged only 89 registrations per week
 2 from April through July. Bolding Decl. ¶ 21. Simply put, Plaintiffs “lost 5 months of in-
 3 person voter registration.” Bravo Decl. ¶ 24. According to the Secretary’s own data,
 4 there has been a 65% decrease in voter registrations as compared to 2016.⁵ “Like [the
 5 pandemic], the voter registration deadline” is now “also approach[ing] and b[earing]
 6 down” on the State of Arizona. *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250,
 7 1254 (N.D. Fla. 2016).

8 Courts around the country have recognized the severe burden that the pandemic
 9 and related shut-down orders place on election-related constitutional rights and have
 10 ordered the remedy requested here—an extension on statutory deadlines. *See, e.g.*,
 11 *Cegavske*, 2020 WL 2798018, at *14–16 (ordering Nevada to extend its statutory ballot
 12 initiative petition deadline, which impermissibly inhibited plaintiffs’ First Amendment
 13 rights, as applied during COVID-19); *Democratic Nat’l Comm. v. Bostelmann*, No. 20
 14 Civ. 249, 2020 WL 5627186, at *17–22 (W.D. Wis. Sept. 21, 2020), *stay request denied*
 15 *and interim stay vacated*, Nos. 20-2835 & 20-2844, 2020 WL 5796311 (7th Cir. Sept.
 16 29, 2020) (ordering the extension of Wisconsin’s statutory 2020 general election voter
 17 registration and absentee ballot deadlines which, in light of COVID-19, substantially
 18 burden plaintiffs’ constitutional rights); *Esshaki*, 813 Fed. App’x at 171 (upholding the
 19 district court’s preliminary injunction prohibiting enforcement of Michigan’s ballot
 20 petition signature deadline, which imposed severe burden during COVID-19);
 21 *Gallagher v. N.Y. State Bd. of Elections*, No. 20 Civ. 5504, 2020 WL 4496849, at *16–
 22 18, 23 (S.D.N.Y. Aug. 3 2020) (enjoining New York to disregard its statutory mail-in
 23 ballot postmark deadline, which “in light of the ongoing COVID-19 pandemic” imposed
 24 an “exceptionally severe” burden on plaintiffs); *Libertarian Party of Ill. v. Pritzker*, No.
 25 20 Civ. 2112, 2020 WL 1951678, at *2–5 (N.D. Ill. Apr. 23, 2020) (adopting a joint

26
 27 ⁵ Between January and August 2016, 146,214 new voters registered. In the same
 28 period this year, the State processed only 62,565 registrations. Compl. ¶ 61; Martin
 Decl. ¶ 44.

1 proposed order extending ballot petition signature deadlines where, as applied in
 2 combination with COVID-19 restrictions, the effect of the requirements insurmountably
 3 burdened plaintiffs); *Goldstein v. Sec’y of the Commonwealth*, 484 Mass. 516, 525
 4 (Mass. 2020) (applying state *Anderson-Burdick* equivalent and ordering Massachusetts
 5 to extend deadlines for submission of nominating papers where statutory requirements
 6 imposed a severe burden, as applied during COVID-19). Beyond the COVID-19
 7 context, courts have also granted preliminary injunctive relief where statutory voter
 8 registration deadlines severely burdened constitutional rights in the wake of a natural
 9 disaster. *See Scott*, 215 F. Supp. 3d at 1257 (statutory voter registration cutoff date, as
 10 applied in the wake of hurricane-related emergency restrictions and closures, likely
 11 severely burdened individuals’ right to vote); *Ga. Coal. for the People’s Agenda, Inc. v.*
 12 *Deal*, 214 F. Supp. 3d 1344, 1345–46 (S.D. Ga. 2016) (same).

13 *Cegavske*, a recent District of Nevada decision, is particularly instructive here. In
 14 *Cegavske*, as here, plaintiffs brought an as-applied challenge to a state statutory election
 15 filing deadline. *Cegavske*, 2020 WL 2798018, at *1. The organizational plaintiff in
 16 *Cegavske*, Fair Maps Nevada (“FMN”), like Plaintiffs here, engaged in core First
 17 Amendment election-related organizing activity—in FMN’s case, by collecting
 18 signatures in support of a ballot initiative. *Id.* at *3, 11. FMN’s signature-gathering
 19 activity involved the same sort of close human contact required for Plaintiffs to help
 20 voters fill out registration forms. FMN collected approximately 10,000 signatures prior
 21 to the emergence of COVID-19, *id.*, like MFV and ACFC, who registered 16,507
 22 voters. Nevada’s Governor, like Arizona’s, took significant measures to combat
 23 COVID-19, including declaring a state of emergency, issuing a stay-at-home order, and
 24 forbidding group gatherings. *Id.* at *3. Nevada’s stay-at-home orders and social
 25 distancing restrictions “effectively barred [FMN] from circulating their initiative
 26 petition for signature” throughout the stay-at-home order, *id.* at *1, meaning FMN, like
 27 Plaintiffs, found its electoral organizing efforts hamstrung. FMN filed suit and argued
 28 that Nevada’s statutory filing deadline, as applied in concert with Nevada’s COVID-19

1 restrictions, “made collecting signatures in-person prohibitive and even dangerous—so
 2 the Secretary [of State] should extend the Deadline.” *Id.* at *4. The *Cegavske* court
 3 agreed and held that the Secretary of State’s refusal to extend the filing deadline
 4 “significantly inhibited [FMN’s] chances of collecting the threshold signatures to
 5 qualify their initiative,” *id.* at *14, and therefore violated FMN’s First Amendment
 6 rights,⁶ *id.* at *15. The court issued a preliminary injunction and directed the Nevada
 7 Secretary of State to extend the deadline. *Id.* at *16–18.

8 This Court should do the same here. The public health threat posed by COVID-
 9 19 cannot be enjoined, but the Voter Registration Cutoff as applied in these pandemic
 10 circumstances is subject to this Court’s constitutional scrutiny. Only the relief ordered
 11 in *Cegavske* and the many other cases cited above—an injunction and extension of the
 12 Voter Registration Cutoff—will protect Plaintiffs’ constitutional rights.

13 **2. No State Interest Sufficiently Justifies the October 5, 2020** 14 **Cutoff**

15 The Secretary cannot provide sufficient justification for enforcement of the Voter
 16 Registration Cutoff given the severe burden imposed on core constitutional rights and
 17 the limited inconvenience of an extension.

18 **a. The State Cannot Justify the Severe Burden on** 19 **Plaintiffs’ Constitutional Rights**

20 Any administrative inconvenience the Secretary may experience as a result of an
 21 extension of the Voter Registration Cutoff is insufficient to justify imposing a severe
 22 burden on Plaintiffs’ constitutional rights. “While [inconvenience] is a valid
 23

24 ⁶ Because *Cegavske* challenged a deadline created by statutes that implement
 25 Nevada’s ballot initiative process, the court applied the Ninth Circuit’s test in *Angle v.*
 26 *Miller*, 673 F.3d 1122 (9th Cir. 2012), which “took what is basically the *Anderson-*
 27 *Burdick* framework and applied it to the specific context of Nevada’s initiative process
 28 for amending the Nevada Constitution.” *Cegavske*, 2020 WL 2798018, at *11. The
 standard in *Angle* is functionally identical to *Anderson-Burdick*. See *id.* at *14
 (weighing whether Nevada’s statute providing the submission deadline is narrowly
 tailored to advance a compelling state interest to survive First Amendment scrutiny).

1 governmental interest,” it is not “compelling under the circumstances here—during an
2 unprecedented pandemic.” *Cegavske*, 2020 WL 2798018, at *15.

3 In two apposite cases arising from a hurricane that struck the Southeast prior to
4 the 2016 election, courts weighed urgent requests to extend voter registration deadlines
5 and found that any administrative inconvenience to defendants was insufficient to
6 justify burdening plaintiffs’ constitutional rights. *See generally Scott*, 215 F. Supp. 3d
7 1250; *Deal*, 214 F. Supp. 3d 1344. The *Scott* court reasoned that it would be
8 “nonsensical to prioritize [voter registration] deadlines” over constitutional rights,
9 “especially given the circumstances” of the state of emergency. 215 F. Supp. 3d at 1258.
10 Likewise, in *Deal*, the court noted that the defendants’ “administrative hurdles pale[d]
11 in comparison to the physical, emotional, and financial strain [individuals] faced in the
12 aftermath of [the] Hurricane.” 214 F. Supp. 3d at 1345; *see also Carey v. Population*
13 *Servs. Int’l*, 431 U.S. 678, 691 (1977) (“[T]he prospect of additional administrative
14 inconvenience has not been thought to justify invasion of fundamental constitutional
15 rights.”). Under emergency situations, affording impacted individuals extra time to
16 register to vote is “small consolation on behalf of their government.” *Deal*, 214 F. Supp.
17 3d at 1345–46.

18 The same relief is appropriate here, where Plaintiffs have faced a greater
19 emergency—both in duration and community impact—than a single hurricane. Arizona,
20 on the other hand, faces precisely the same administrative inconvenience the Florida
21 and Georgia defendants faced in *Scott* and *Deal*. As the court concluded in *Cegavske*:
22 “If there is any time where business as usual is impossible, this is it. Thus, the Court
23 does not find severe inconvenience a compelling government interest given these
24 extraordinary circumstances.” 2020 WL 2798018, at *15.

25 **b. Any Inconvenience to the Secretary Will Be Minimal**

26 Any inconvenience the Secretary might experience will also be minimal.
27 According to Virginia Martin, an expert in elections administration, “an extension of
28 Arizona’s voter registration deadline is highly feasible. I see no reason why counties

could not accept registrations until seven days before the election and then successfully process them.” Martin Decl. ¶ 35. Updating poll books, both paper and electronic, causes only “negligible” inconvenience to election officials. *Id.* ¶ 36. “Arizona recorders and poll inspectors routinely adapt to a voter roll that changes . . . during the early voting period and up to and including election day.” *Id.* ¶ 38.

First, “Arizona already allows for changes to its voter roll after voting has begun.” *Id.* ¶ 37 (citing Ariz. Rev. Stat. § 16-134). Officials process four categories of overseas voter registrations as late as 7:00 p.m. on election day, belying any claim by the Secretary that Arizona is unable to accept new registrations after October 5.⁷

Second, Arizona already allows early voting to begin just *two days* after the Voter Registration Cutoff. Ariz. Rev. Stat. § 16-541.⁸ That means that, as a matter of course, Arizonians can register to vote on October 5 and cast their ballot by voting early just two days later on October 7. “In recent years, the Arizona Association of Counties, on behalf of the various County Recorders, as well as several County Recorders individually, have supported proposed legislation that would have allowed them to

⁷ See Ariz. Rev. Stat. § 16-103(A), (C) (qualified registrants temporarily absent from the state may register by submitting an affidavit to the county recorder up until 7:00 p.m. on election day); *id.* § 16-103(B), (C) (designated overseas voters, including military servicemembers, federal employees, and their families, may register to vote via federal postcard application up until 7:00 p.m. on election day); *id.* § 16-103(E) (U.S. citizens who have never resided in the U.S. and whose parent is a citizen who is registered to vote in Arizona may register using a federal write-in early ballot, as long as it is received by the county recorder by 7:00 p.m. on election day); *id.* § 16-103(D) (these same designated overseas voters, if discharged from overseas service in the 90 days before election day, may register to vote by 5:00 p.m. on the Friday before election day); *id.* § 16-134(C)(1) (in case of registration by mail, a registration is valid if “[t]he form is postmarked twenty-nine days or more before an election and is received by the county recorder by 7:00 p.m. on the day of that election”).

⁸ See, e.g., Maricopa Cnty. Elections Dep’t, *Where Do I Vote?*, <https://recorder.maricopa.gov/pollingplace/> (last visited Sept. 30, 2020) (click: “vote centers” for early voting locations); Pima Cnty. Recorder’s Office, *Early Voting Sites*, <https://www.recorder.pima.gov/EarlyVotingSites> (last visited Sept. 30, 2020); Yuma Cnty. Ariz., *Early Voting*, <https://www.yumacountyaz.gov/government/recorder/voter-information/early-voting> (last visited Sept. 30, 2020).

1 extend the in-person early voting period right up until the close of business on the day
 2 before the election.” Edman Decl. ¶ 6 (citing HB 2237 (2019); HB 2206 (2018); SB
 3 1466 (2018)). This is in line with the national trend: 40% of states plus the District of
 4 Columbia allow same-day registration, and North Dakota requires no registration at all.
 5 Martin Decl. ¶ 43.

6 *Third*, Arizona already allows voters to simultaneously update their voter
 7 registration addresses and cast their votes the same day. Ariz. Rev. Stat. § 16-
 8 411(b)(5).⁹ “As a practical matter, this process (whether paper or electronic) works
 9 similarly to how same-day registration would work” Edman Decl. ¶¶ 4–5.

10 *Fourth*, Arizona already uses electronic poll books which allow for swift and
 11 frequent updating with new voter registrations.¹⁰ See Edman Decl. ¶ 4.

12 *Fifth*, all 15 Arizona counties subscribe to the Electronic Registration
 13 Information System (“ERIC”), an interstate system which makes it easier to “register
 14 more eligible citizens to vote.” Compl. ¶ 104; Martin Decl. ¶ 40.

15 For all these reasons, any inconvenience experienced by the Secretary as a result
 16 of an extension of the Voter Registration Cutoff will be minimal at worst, well short of
 17 the “severe inconvenience” deemed *insufficient* in *Cegavske*, 2020 WL 2798018, at *15,
 18 and certainly insufficient to justify severely burdening Plaintiffs’ constitutional rights.

19 **II. PLAINTIFFS FACE IRREPARABLE HARM**

20 “It is well established that the deprivation of constitutional rights unquestionably
 21 constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
 22 (quotation marks and citation omitted). Here, where the Voter Registration Cutoff
 23

24 ⁹ See, e.g., Pima Cnty. Recorder’s Office, *Provisional Voter FAQ*,
 25 https://www.recorder.pima.gov/faq_voter_provisional (last visited Sept. 30, 2020)
 26 (noting that a voter can vote in person and then use a provisional ballot form to update
 their voter registration record with a new residence address).

27 ¹⁰ See Nat’l Conference of State Legislatures, *Electronic Poll Books | e-Poll Books*
 28 (Oct. 25, 2019), <https://www.ncsl.org/research/elections-and-campaigns/electronic-pollbooks.aspx> (last visited Sept. 30, 2020) (noting that Ariz. Rev. Stat. Ann. §§ 16-571, 16-444 authorize the use of e-poll books).

1 squarely threatens the First and Fourteenth Amendment rights of voter registration
 2 organizers, it is clear “that irreparable harm is *likely*, not just possible.” *Alliance for the*
 3 *Wild Rockies*, 632 F.3d at 1131. Because Plaintiffs are likely to succeed on the merits
 4 that the Voter Registration Cutoff violates their First and Fourteenth Amendment rights,
 5 the Court should “necessarily find[] irreparable harm.” *Cegavske*, 2020 WL 2798018, at
 6 *17.

7 As the court noted in *Scott*, “[t]his isn’t golf: there are no mulligans. Once the
 8 voter registration deadline passes, ‘there can be no do-over and no redress.’” *Scott*, 215
 9 F. Supp. 3d at 1258 (quoting *League of Women Voters of N.C. v. North Carolina*, 769
 10 F.3d 224, 247 (4th Cir. 2014)). Plaintiffs will suffer irreparable injury if this Court does
 11 not extend the Voter Registration Cutoff.

12 **III. THE NARROW ORDER SOUGHT BY PLAINTIFFS IS IN THE PUBLIC** 13 **INTEREST AND WILL NOT HARM THE STATE**

14 The remaining elements—the balancing of equities and the public interest—also
 15 favor Plaintiffs. “When the government is a party, these last two factors merge.” *Drakes*
 16 *Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citation omitted). “To
 17 determine which way the balance of the hardships tips, a court must identify the
 18 possible harm caused by the preliminary injunction [or TRO] against the possibility of
 19 the harm caused by not issuing it,” and then weigh “the hardships of each party against
 20 one another.” *Univ. of Haw. Prof’l Assembly v. Cayetano*, 183 F.3d 1096, 1108 (9th Cir.
 21 1999). As to the public interest, “[i]n exercising their sound discretion, courts of equity
 22 should pay particular regard for the public consequences” of issuing preliminary relief.
 23 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (quotation omitted).

24 Here, “[t]hese two factors also weigh in favor of issuing a preliminary injunction
 25 [and TRO] that only declares [Ariz. Rev. Stat. § 16-120] unconstitutional as applied to
 26 Plaintiffs by the Secretary under the unique factual circumstances of this case,”
 27 *Cegavske*, 2020 WL 2798018, at *18, for the following four reasons. *First*, as explained
 28 above, the violation of Plaintiffs’ constitutional rights outweighs any administrative

1 inconvenience the Secretary may suffer. *Second*, Plaintiffs were effectively prohibited
2 from registering voters for five months due to the stay-at-home order, social distancing
3 mandates, and related pandemic restrictions, “so it is both unreasonable and unfair not
4 to extend a statutory deadline for a corresponding period of time.” *Id.* at *15. *Third*, an
5 injunction is in the public interest, as “it is always in the public interest to prevent the
6 violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (quotation
7 marks and citation omitted). *Fourth*, the public’s interest in “permitting as many
8 qualified voters to vote as possible,” *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th
9 Cir. 2012), is plainly served by extending the voter registration deadline—an act that
10 will result in more Arizonans voting in this and future elections.

11 CONCLUSION

12 Plaintiffs are likely to succeed on their claims that, in the midst of the COVID-19
13 pandemic, enforcement of the Voter Registration Cutoff violates Plaintiffs’ First and
14 Fourteenth Amendment rights. The Court should enter a temporary restraining order and
15 preliminary injunction extending the deadline to a date no earlier than October 27, 2020.

1 DATED this 30th day of September, 2020.

2 EMERY CELLI BRINCKERHOFF ABADY
3 WARD & MAAZEL LLP

4 By s/ Zoe Salzman

5 Matthew D. Brinckerhoff
6 Jonathan S. Abady
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mi Familia Vota, Arizona Coalition for
Change, and Ulises Ventura;

Index No.

Plaintiffs,

-against-

Katie Hobbs, in her official capacity as
Arizona Secretary of State,

Defendant.

Declaration of Flavio Bravo

FLAVIO BRAVO, pursuant to 28 U.S.C. § 1746, declares under penalties of perjury as follows:

1. I am the Arizona Democracy Collaborative Director of Mi Familia Vota, a plaintiff in the above-captioned matter. I am authorized to provide this declaration on behalf of Mi Familia Vota.

Background on Mi Familia Vota's Mission and Work

2. Mi Familia Vota is a national civic engagement organization with the mission of uniting Latino, immigrant, and allied communities to promote social and economic justice through citizenship workshops, voter registration, and voter participation. Our mission consists of public education, voter registration, and voter engagement. We have operations in Arizona, California, Colorado, Florida, Nevada, and Texas.

3. In Arizona, Mi Familia Vota's election-related work is focused on registering new voters and encouraging people to vote.

4. We also provide services which are not related to voting, including running citizenship workshops; referring people to pro bono legal services; providing education services in climate justice and immigration justice, including know-your-rights workshops; running youth development services; and administering a COVID relief fund for those in need.

5. In 2020, Mi Familia Vota joined a coalition of organizations dedicated to registering 250,000 voters for the election this year. Our organization's target was to register 30,000 voters.

6. The primary means by which we typically register voters are by sending voter registration teams to speak with people at their homes, by going door-to-door, and at central public gathering places such as churches, schools, and grocery stores.

7. Using these methods, between January 13 and March 20, 2020, we had registered 9,845 voters. During this period of time, we were registering on average 1,094 voter per week, which means we were on track to register 41,568 by the October 5 voter registration deadline.

COVID-19 Hits Arizona and Requires State-Wide Closures and Restrictions

8. The first known-case of community-based transmission of COVID-19 in Arizona was documented on March 6, 2020.

9. After that, cases spread rapidly through the community.

10. The Governor declared a state of emergency and then issued a

statewide stay-at-home order, which restricted people to their homes except for essential activities.

11. During this time, it became almost impossible for us to register voters using our usual methods.

12. The public spaces like schools and churches which we usually used to connect with potential voters were closed and most remain closed to this day.

13. Gatherings of large groups of people were prohibited, making it impossible to hold large voter registration events.

14. Throughout this time, people were instructed to maintain physical distances of six feet from each other, making it difficult for us to meet with potential voters and help them fill out their voter registration paperwork.

15. The Governor's attempts in the middle of May to loosen some of the restrictions led to a dramatic surge of new cases in Arizona in June and July 2020 and the Governor reimposed restrictions on many non-essential businesses, which were maintained through August 2020.

16. Throughout this time, Arizonans were still directed to maintain physical distancing from others in public areas and avoid setting where physical distancing was not possible.

17. Throughout this time, voter registration workers and potential voters alike were fearful to engage in door-to-door visits and close quarter conversations in public spaces such as grocery store parking lots.

The Pandemic and Ensuing Restrictions Curtailed Our Voter Registration Efforts

18. The week prior to the stay-at-home order being issued on March 30, 2020, we registered 1,523 voters in just that one week.

19. During the shutdown, however, our traditional voter registration efforts were severely curtailed.

20. We attempted to replace our traditional, in-person voter registration efforts with phone registration. Between the end of March and the middle of August, we made 551,910 calls seeking to register voters. People were reluctant, however, to provide the personal information required to register to vote over the phone. We were only able to register a total of 2,352 voters by phone.

21. We also organized drive-through voter registration events, but these were not widely attended.

22. We also attempted to do online voter registration.

23. Notwithstanding all our efforts, during this period of time from March through August, we registered on average only 193 voters every week—a dramatic reduction from the 1,523 voters we had registered in the single week before the shutdown.

24. Due to the pandemic, we lost 5 months of in-person voter registration.

We Have Diverted Significant Resources to Resume and Maximize In-Person Registration Ahead of the October 5 Deadline

25. Following the lifting of most of the Governor's restrictions in the

middle of August, Mi Familia Vota began to mobilize to re-launch our in-person voter registration efforts so that we could try to register as many voters as possible ahead of the deadline.

26. We had to divert resources in order to ramp up our in-person registration work to get people registered ahead of the deadline. That meant we had to purchase PPE equipment, buy cleaning supplies, develop new health and safety protocols, train staff to follow those protocols, and hire safety control staff to make sure that those protocols were being followed.

27. In the last week of August, we were at last able to deploy in-person voter registration teams for the first time since March.

28. With our new pandemic protocols, the time required to speak with each voter, and to effectively inform and assist them in accessing their rights, has substantially increased.

29. Given the looming October 5 registration deadline, Mi Familia Vota expended additional money and resources we would not typically spend so as to register as many voters as possible ahead of the deadline.

30. For example, we increased the salary for voter registration organizers from \$15/hr to \$17/hr to try to increase our staff and put more organizers on the street.

31. We have also diverted resources to reassign staff to try to register as many voters as possible ahead of the deadline. Between March 30 and the middle of August, we had stopped doing voter registration in Tucson because of the restrictions.

When we ramped back up our voter registration work in August, we had to move staff from Phoenix to Tucson. For example, Ulises Ventura, one of our voter registration organizers and a plaintiff in this lawsuit, is usually staffed in our Phoenix office. But in August we diverted resources to reassign him to Tucson register voters there ahead of the deadline.

32. We have also diverted resources away from other work we typically do in voter education in order to prioritize voter registration ahead of the deadline.

33. If we had not diverted these resources to in-person registration ahead of the impending registration deadline, then it would have frustrated our mission of registering voters.

34. Even with all the changes we made, it was not clear at first if we would be able to use in-person registration as effectively as we had before the pandemic. But our efforts have born fruit. Our re-allocation of resources and commitment to allocating money, resources, staff, and time to maximize voter registration ahead of the deadline has been hugely successful so far.

35. Since resuming our in-person registration work at the end of August, in the last three weeks, we have registered 4,500 additional voters.

36. This rate is similar to the rate of registration we had been experiencing prior to the shutdown, *i.e.* on average 1,094 voter per week.

37. Mi Familia Vota has registered a total of just under 14,000 voters so far this year.

38. If the October 5 registration deadline was extended, our track record

suggests that this rate of registration would continue, we would be able to register thousands of additional voters, and thousands of additional people would get to exercise their fundamental right to vote and participate in our democracy.

Dated: September 30, 2020
Phoenix, AZ



FLAVIO BRAVO

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mi Familia Vota, Arizona Coalition for
Change, and Ulises Ventura;

Plaintiffs,

-against-

Katie Hobbs, in her official capacity as
Arizona Secretary of State,

Defendant.

Index No.

Declaration of Reginald Bolding

REGINALD BOLDING, pursuant to 28 U.S.C. § 1746, declares under penalties of perjury as follows:

1. I am the Co-Executive Director of Arizona Coalition for Change, a plaintiff in the above-captioned matter. I am authorized to provide this declaration on behalf of Arizona Coalition for Change.

Background on Arizona Coalition for Change's Mission and Work

2. The mission of Arizona Coalition for Change is to empower everyday people to transform their community by building civic power, just and equitable schools, and safer neighborhoods.

3. Our civic engagement team's primary mission is to register people to vote.

4. We also provide voter education services, including teaching people

about elections, when elections are happening, where to find their polling places, and how to advocate for issues they care about such as by participating or testifying in school board meeting or city or state legislative hearings.

5. We also engage in get out the vote efforts and advocacy for fair elections and increased access to polls, expanding ways for people to vote (such as ballot initiatives), and opposing measures to disenfranchise voters. We also advocate on criminal justice and education issues as well.

6. In addition to our voting rights work, we provide leadership development services, including by running youth engagement programs. For example, our Young Black Organizer Movement trains African Americans between the ages of 15 and 39 in all forms of civic organizing and our Civic Scholars Program organizes high school chapters of Arizona Coalition for Change to get students interested in civic engagement.

7. In 2020, we devoted a lot of our work to providing services to educate people about the census.

The Pandemic Has Frustrated Our Voter Registration Efforts

8. In 2020, we joined a coalition of organizations dedicated to registering 250,000 voters for the election this year. Our organization's target was to register 25,000 voters.

9. In the first quarter of the year, we were on target to meet or exceed that target.

10. By March 30, 2020, we had registered 6,662 voters.

11. Then the COVID-19 pandemic hit Arizona and it was no longer safe to send voter registration teams out into the field to meet with potential voters in person.

12. We typically conduct voter registration by sending our community voter registration specialists to designated “hotspots,” which are high traffic locations such as community colleges, colleges, grocery stores, and community centers.

13. But most of these high traffic locations have been closed since the end of March due to the pandemic, making voter registration efforts at such locations impossible.

14. Even in those locations which were open, such as grocery stores, it was not safe to have voter registration teams in close interaction with potential voters.

15. Arizonians were also ordered to maintain physical distancing of at least 6 feet away from each other, making in-person voter registration all but impossible no matter the location.

Arizona Coalition for Change Diverted Resources to Register Voters Ahead of the Deadline

16. Realizing that traditional voter registration efforts would not be possible, we moved our entire registration effort online in order to register voters ahead of Arizona’s October 5 registration deadline.

17. Because many of our voter registration employees are young people from communities of color, many of them lacked the resources needed to work virtually. We had to purchase them Wifi hotspots, cell phones to call and text potential voters, and tablets to help potential voters register online. We also spent money purchasing software to help our employees make calls and send texts to potential voters.

18. We spent money, time, and resources creating and running digital ads and related software which would allow us to follow up with people who responded to an ad and expressed interest in registering to vote.

19. We also created a new text-messaging voter registration campaign.

20. We were required to train our volunteers on these new voter registration methods and the supportive technologies. It took time for our employees and volunteers learn, adapt, and become comfortable with the new voter registration processes.

21. Notwithstanding all our efforts, our voter registration numbers remained low throughout the spring and summer. Between April and July 2020, we registered just 710 total new voters.

22. We had to significantly ramp up our voter registration efforts ahead of the registration deadline on October 5.

23. Since restrictions throughout the state began to loosen in August, we diverted resources to develop and host drive-through registration events in church and foodbank parking lots, voter registration mask give-away events at local elementary schools, and drive-in movie voter registration events.

24. During this period, we also diverted resources to pay for increased spending on digital advertising.

25. In order to operationalize this entirely new kind of voter registration program as quickly as possible ahead of the October 5 deadline, we diverted resources to build new employee schedules to be able to create and staff this registration program.

This required us to divert employees from other projects into the voter registration work, including changing people's job descriptions, titles, positions, and work hours.

26. In addition to having to divert money, time, and employees, we also had to divert additional time to voter registration. Prior to the pandemic, in a typical 6 hour shift, one voter registration employee would on average register 1.5 new voters every hour; that has now dropped to 0.35 new voters per hour.

27. In order to pay for all of these unprecedented costs and to ensure that our voter registration efforts moved forward as quickly as possible, in light of the upcoming October 5 deadline, we had to divert resources to engage in additional, unplanned fundraising; apply for grants from COVID relief funds; and reallocate funds from our other projects.

28. Our efforts have been successful. Voter registration numbers have started to rise. In August and September, we registered 1,343 new voters.

29. To date, Arizona Coalition for Change has registered 9,637 voters in 2020.

30. If we had not devoted these resources to in-person registration, then it would have frustrated our mission of registering voters.

31. If the October 5 registration deadline was extended, our track record suggests that this rate of registration would continue, we would be able to register thousands of additional voters, and thousands of additional people would get to exercise their fundamental right to vote and participate in our democracy.

32. We have communicated to the Secretary of State the difficulties in voter registration since the pandemic. But to this day, the voter registration deadline has not been extended and remains October 5, 2020.

Dated: September 30, 2020
Phoenix, AZ

Reginald Bolding

REGINALD BOLDING

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mi Familia Vota, Arizona Coalition for
Change, and Ulises Ventura;

Index No.

Plaintiffs,

-against-

Katie Hobbs, in her official capacity as
Arizona Secretary of State,

Defendant.

DECLARATION OF VIRGINIA MARTIN

VIRGINIA MARTIN, pursuant to 28 U.S.C. § 1746, declares under penalties of perjury as follows:

1. I am of legal age and competent to provide this declaration. All the information herein is based on my own personal knowledge unless otherwise indicated.
2. I submit this declaration in support of the Plaintiffs' motion for a temporary restraining order and preliminary injunction. In my expert opinion, based on my experience administering and overseeing elections, it is feasible this year for Arizona to extend the voter registration deadline until October 27, 2020, *i.e.* one week before election day, because of the unique challenges the COVID-19 pandemic and related restrictions have imposed on voter registration efforts.
3. My background, qualifications, and professional affiliations are set forth in my curriculum vitae, which is attached as Exhibit A.

4. I served as Democratic Election Commissioner in Columbia County, New York from 2008 until early 2020. The role of Democratic Election Commissioner in Columbia County is a full-time salaried role overseeing three full-time Democratic staff, one half-time Democratic staff, and 150 or more Democratic seasonal and election-day workers.

5. I am a member of the Election Verification Network, a national organization; a member of the advisory board of the National Election Defense Council; a member of the board of directors of Citizens for Voting Integrity New York; and a member of the advisory board of SMART Elections.

6. I have frequently been called upon to present to groups all around the country that are interested in election security and election administration, I have frequently appeared on a variety of radio programs, and I have been interviewed for many newspaper and blog articles about my experience with election security and election administration.

7. I have an MS and a PhD, both in communication and rhetoric, from Rensselaer Polytechnic Institute in Troy, New York.

8. In my 11 years as election commissioner, I came to appreciate the necessarily changeable nature of election operations, which require quick response to exigencies related to the running of fair, secure, and accurate elections. Of overriding import is an election board's responsibility to ensure that voters can enjoy the enfranchisement that they are constitutionally due.

9. I have experienced and responded successfully to many changes to operations, some major and some minor, some with months of lead time, some with weeks or days or hours. Transitions to new voting or registration systems had far-reaching implications to

election operations, while many others were more focused. Some required almost instantaneous flexibility and adjustment of current operations, involving staff, election workers in the field, and voters, as well as the media. Some arose from an emergency and some from an Act of God. All contributed in their way to voters' rights. All related to my sworn duty to uphold the Constitution and to protect voter enfranchisement.

10. I oversaw a major transition of election systems in Columbia County, to a primarily hand-marked paper ballot system. I have a great deal of experience over dozens of elections overseeing optical-scan voting using hand-marked paper ballots and all that it entails, including a unique modified 100% hand count audit. In my county's elections, hundreds of thousands of voter-marked ballots were cast, with easily millions of votes on individual races, and I have personally examined thousands of such ballots.

11. I oversaw a major transition of pollbook systems in Columbia County, New York, to an electronic pollbook system with paper backup, which was accomplished within an extremely tight timeframe.

12. Because of my extensive experience in running secure elections using optical scanners and hand counting a high percentage of the paper ballots therefrom, and my experience in overseeing election-operation transitions in abbreviated time frames, I have frequently been called to confer with and advise election-integrity experts, attorneys in election cases, other election officials, and other advocates about the security and feasibility of such processes.

13. I testified at the July 2019 preliminary injunction hearing in *Curling v. Raffensperger*, No. 1:19-cv-2989-AT (N.D. Ga.), and at the October 2019 trial in

Common Cause New York v. Brehm, No. 1:17-cv-6770-AJN (S.D.N.Y.). My testimony was credited by the court in both cases. See *Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1399 (N.D. Ga. 2019); *Common Cause New York v. Brehm*, 432 F. Supp. 3d 285, 300, 306 (S.D.N.Y. 2020). I also testified at the August 2020 preliminary injunction hearing in *North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, 20-CVS-5035 (Wake Cnty Super. Ct.). I provided an expert declaration in *Mi Familia Vota v. Abbott*, No. 5:20-cv-00830 (W.D. Tex.).

Executive Summary of Conclusions

14. I oversaw two major and immensely challenging transitions, as follows. In 2010 we had adequate lead time, but in 2019 lead time was short and aspects of some operations transitioned with sometimes just days to spare. Both were effected successfully and in compliance with state and federal laws.

15. In 2010, I oversaw, with my counterpart, a major voting-system transition, from a mechanical voting system with no electronic components or paper ballots to one employing optical scanners and hand-marked paper ballots for every voter. It represented a sea change in our elections and required substantial modifications to every aspect of our operations.

16. In 2019, in conjunction with New York State's abrupt legalization of early voting, I oversaw a secure countywide transition to electronic poll books where, mere weeks before early voting began, we had neither taken receipt of a single pollbook nor trained a single inspector on its use. That transition was accomplished during a year in which

dozens of game-changing election laws were enacted, one after the other, many to be implemented with just months if not weeks or days of advance notice.

17. I also oversaw an operational challenge of a far more modest nature, one that is on a scale with the relief that plaintiffs seek. In 2012, Hurricane Sandy struck the east coast mere weeks before election day, and the governor declared a statewide disaster emergency. Hardest hit was the metropolitan New York City area. Election boards were closed. Many thousands of residents were displaced to other counties, including Columbia County. By gubernatorial executive order one day before this presidential election, county boards throughout the state were directed to provide provisional ballots to voters from any of nine federally declared disaster counties. County boards successfully operationalized this order overnight and in a matter of hours, and voters were not disenfranchised.

18. Now, the COVID-19 pandemic has changed the face of daily life, and I believe that the State of Arizona must respond in the interest of citizen enfranchisement.

19. I believe extending the voter registration cutoff to within one week of election day is a relatively modest adjustment to election operations that counties can feasibly accommodate. To do nothing and to hew to what is, in this environment, an unreasonably harsh deadline of 29 days before the election, will have the effect of disenfranchising voters.

20. It is my experience that county election administrators are able, on very short deadlines, to implement all manner of operational changes. These include huge, far-reaching changes, as I have experienced in the major election-administration transitions

described above, and more modest ones, such as occasioned by Hurricane Sandy. It is my experience that, particularly in times of uncertainty which we clearly are experiencing in the current pandemic, properly funded orders and mandates, enacted whenever they may be necessary, can actually make administrators' jobs easier because they eliminate many of the uncertainties and ambiguities that are associated with election administration during difficult times. On a positive front, any changes relating to voter enfranchisement also result in heightened voter confidence and public approval.

21. When an administrative change is ordered, it has been my experience that commissioners such as myself have a quite robust support system, including in my case the State Board of Elections, vendor technicians, and members of our Election Commissioners Association. I never ceased to be amazed and pleased by the level of support that I received. None of us face our challenges in a vacuum.

22. What Arizona can do is honor the democratic impulses of its citizens who now have increased opportunity to partake of public life subsequent to the COVID-19 lockdown. It is my belief that, with proper support, election administrators will rise to the occasion.

Experience as Columbia County Election Commissioner

23. I served as Democratic Election Commissioner in Columbia County, New York from 2008 until early 2020. Jason Nastke served as Republican Election Commissioner from 2010 until year-end 2019.

24. The role of Democratic Election Commissioner in Columbia County is a full-time salaried role overseeing three full-time Democratic staff, one half-time Democratic staff,

and 150 or more Democratic seasonal and election-day workers, referred to herein variously as poll workers or inspectors. My Republican counterpart had the same staffing.

25. Columbia County currently has more than 45,000 active voters in 50 precincts.

26. Columbia County includes one city, 18 towns and four villages.

27. The Columbia County Board of Elections conducts all federal, state, county and municipal elections with the exception of three villages' elections. All such elections are conducted on hand-marked paper ballots, scanned and tabulated in the polling place by optical scanners and then tabulated in the central office on the central tabulator for the election management system.

28. As required by the Help America Vote Act (HAVA), for all elections run by our board, each polling place is outfitted with at least one Dominion ImageCast accessible voting unit.

29. Since 2010, the Columbia County Board of Elections, comprising Commissioner Nastke and myself, ran 35 elections on Dominion ImageCast optical scan voting machines, followed by a hand count of the hand-marked ballots which I oversaw with Commissioner Nastke. The hand count was unique in New York State and I believe in the country. It required that, building on New York State templates, we develop our own policies and procedures for a uniquely robust modified 100% hand count of all ballots, to ensure the security of our elections. It was an undertaking of great effort but we executed it efficiently and without hesitation.

30. In late 2012, just before the November 6th presidential and US senatorial election, Hurricane Sandy hit the east coast, and Governor Cuomo declared a disaster emergency

statewide. Nine counties in the metropolitan New York area took devastatingly destructive blows and were declared federal disaster areas. Election activities in those areas slowed to a crawl or came to a halt. Poll sites were inaccessible. On Monday, November 5th, the governor issued an executive order directing all counties in the state to provide their provisional ballots to voters from any of the nine federal disaster counties. With hours to go before poll inspectors arrived at poll sites at 5am, commissioners like myself mobilized to carry out this directive. Many of us were suffering hurricane damage of our own, and we all were consumed with other pre-election activities, but not one of us hesitated to comply. It was a challenge and as with any last-minute change there were questions that we didn't have all the answers to, but we gladly met the challenge before us. Voters and poll inspectors rose to their own challenges, and no one who attempted to vote provisionally in Columbia County was disappointed. Our poll inspectors reported that the voters were greatly appreciative. Voters and inspectors alike dealt with the inconvenience, the unfamiliar processes, the much-longer lines, and the waits with great equanimity and patience. All were exceedingly happy to help. They felt that they were "doing democracy," as one related to me.

31. In 2019, all New York State counties were mandated to offer nine days of early voting before the 2019 general election, beginning October 26. By July, New York State had certified three electronic pollbooks.

32. For the 2019 general election, the Columbia County Board of Elections decided to open three early-voting poll sites. To accommodate the need for real-time registration data at multiple early-voting pollsites, we began in April 2019 the selection process of

and transition to electronic pollbooks. It was not an easy process. Due to our selected vendor dropping out, we did not take even a partial delivery of pollbooks until the end of September, less than a month before they were to be deployed and used by poll workers. It was far from an ideal situation and the timeframes seemed impossible. Yet we successfully opened our three early-voting sites with electronic pollbooks on October 26, keeping them open for nine days, and we successfully opened our 33 pollsites on November 5 with electronic pollbooks in each of our 50 precincts. The pollbooks worked fine and were generally seen in a positive light by voters, poll workers, and board staff.

33. It is my experience that election administrators react quickly to any number of urgent needs, on the spot and often in the public eye. For example, on election days I was frequently called to appear in court to testify on behalf of a voter's eligibility to cast a ballot.

34. Election administrators are accustomed to meeting urgent needs, particularly in the interest of voter enfranchisement. It is the nature of the work and they get used to adjusting as need be.

Substantially Extending Arizona's Registration Deadline is Highly Feasible

35. It is my opinion that an extension of Arizona's voter registration deadline is highly feasible. I see no reason why counties could not accept registrations until seven days before the election and then successfully process them. A seven-day, one-week deadline, is used for several New York State election activities and is used in other states as well. Further, I think it is highly likely that counties could accept and then successfully process

registrations received as late as four days before the election, which also is the last day of early voting.

36. It is my experience that, even after the statutory deadline for accepting voter registrations had passed and even after paper poll books had been printed or electronic poll books had been distributed, there were occasionally changes to be made to them, especially if any registrations had not been cleared in advance of the printing. We made those changes with minimal inconvenience. In the case of a paper poll book, we printed new pages, adding any new voters. If the book was already at the polls, we called the inspectors to inform them of the addition/s and delivered the new page/s as soon as was possible, which was not a particular inconvenience as staff were often in the field to check on poll sites. If a voter appeared at the poll site to vote before his page was delivered, he simply signed the end of the poll roster, similar to the instruction given for provisional ballots in the Secretary of State's *2019 Elections Procedures Manual*. After my county implemented electronic poll books, we could update the rolls in the evening when the books were returned to our office. Either way, the inconvenience was negligible.

37. Arizona already allows for changes to its voter roll after voting has begun. For example, mailed registrations dated on or before the deadline are accepted five days post-deadline, which is three days after early voting has begun. Ariz. Rev. Stat. § 16-134(C)(2). Additionally, mailed registrations postmarked on or before the deadline are accepted on election day, or 27 days after early voting has begun. Ariz. Rev. Stat. § 16-134(C)(1). Pursuant to The Uniformed and Overseas Citizens Absentee Voting Act

(UOCAVA), certain registrations are accepted four days before election day, or 23 days after early voting has begun, and certain others are accepted on election day. Ariz. Rev. Stat. §§ 16-103(D), 16-103(C), and 16-103(E). What's more, the Documentary Proof of Citizenship (DPOC) Submission Form for a new registration can be submitted until five days before election day, or 22 days after early voting has begun. *See State of Arizona 2019 Elections Procedures Manual*.¹ A procedure similar to the ones used for these situations could easily be implemented to support extending the voter registration deadline this year.

38. In that regard, Arizona recorders and poll inspectors routinely adapt to a voter roll that changes, as above, during the early voting period and up to and including election day. For example, the recorder is permitted to present a voter with a Recorder's Certificate confirming the voter's eligibility to vote in an election, which the voter presents to a poll inspector. Per Section 16-584 A of Arizona election law, "A qualified elector whose name is not on the precinct register and who presents a certificate from the county recorder showing that the elector is entitled by law to vote in the precinct shall be entered on the signature roster on the blank following the last printed name and shall be

¹Available at https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_AP_PROVED.pdf

given the next consecutive register number, and the qualified elector shall sign in the space provided."

39. Additionally, one day before election day, the recorder delivers to poll inspectors a list of early ballots voted, thereby modifying the election day voter roll. Ariz. Rev. Stat. § 16-542(G). Finally, inactive voters whose names are not on the precinct register are allowed to vote; they sign a separate signature roster page. Ariz. Rev. Stat. § 16-583(A). Whether paper or electronic poll books are used, it is a simple matter to add new voters to the poll register.

40. The processing of registrations should be facilitated by the state's membership in the Electronic Registration Information System, or ERIC, which provides its members a list of likely-eligible residents. This member-owned and -governed organization "provides sophisticated data matching services to members in order to improve their ability to identify inaccurate and out-of-date voter registration records, as well as likely eligible, but unregistered residents."²

41. I am heartened to see that Arizona counties' official canvass occurs 27 days post election, with the final canvass and certificate issuances 20 days post election. I know that the post-election days are busy ones in which a recanvass and an audit occur, provisional ballots are adjudicated and tallied, and many details are resolved. This calendar provides a cushion for finalizing other activities. I note also that voters have one week after the election to cure problems relating to early ballot signatures or provisional

² Available at https://ericstates.org/wp-content/uploads/2018/12/ERIC_Tech_and_Security_Brief_v3.0-1.pdf.

ballots, and that provisional ballots are not processed until 10 days post election. All together, I believe that any heightened processing activity that may result from an extended registration deadline can be accommodated within those 20 days post-election.

42. Arizona's 29-day registration cutoff is one of the longest in the country; 36 states and the District of Columbia make it easier for voters to register by allowing a later pre-election cutoff.

43. Forty percent of states plus the District of Columbia allow same-day registration, and North Dakota requires no registration at all. Given the pandemic constraints placed on all people and all activities that are just beginning to be lifted, I believe that enforcing a protracted period during which citizens are prohibited from registering to vote is odious. This year of all years, registration cutoffs should be eased if not eliminated altogether.

44. Registration data from the Arizona Secretary of State's Office reveal just how badly crippled these civic activities have been. In a normal presidential year such as 2016, the months leading up to an election are replete with registration activity. But in 2020, activity during the same months sadly ground to a virtual halt. Between the months of January and August of 2020, Arizona only saw 62,565 new voter registrations, a heartbreaking 65% decrease in the rate of new registrations compared to the 146,214 new registrations during the same period in 2016.³ A remedy must be attempted, and the first

³ Available at <https://azsos.gov/elections/voter-registration-historical-election-data/voter-registration-counts>

and most important step in that direction would be to substantially reduce if not eliminate altogether the registration cutoff.

45. With an extended registration deadline, the processing of registrations, which given the deadlines above continues during the early-voting period and immediately before election day, will increase in numbers, and if all goes well, will increase substantially.

46. In the interest of "registering more eligible citizens to vote," one of the state's goals given its participation and investment in ERIC, the state could promote the extended registration period via news releases, social media, public service announcements, websites, etc. Arizona's registration look-up tool, on state and county websites, could be heavily promoted, which would be a benefit in itself, and new registrants and old could be encouraged to make use of it.

47. In the interest of facilitating the most efficient and effective registration process, plaintiffs, the state, and individual recorders could cooperate. Doing so would facilitate easier and faster processing of submitted forms, which ideally would be clear as well as complete with all required identification documentation. A simple meeting between the principals at the state or county level, for example to discuss best practices, can go a long way to making everything work better, for the voter and for the county. Given the stressful pandemic environment that all parties find themselves in, this could help further democracy, build confidence in and appreciation of all involved, and result in the most complete voter roll possible.

**Extending Arizona's Registration Deadline for the November 2020 General Election
Extends the Reach of Democracy, which is Fundamental to our Nation**

48. Based on my professional experience administering elections and my research into the systems and laws of Arizona, it is feasible, with relatively little burden, for Arizona to extend the voter registration deadline this year to October 27, 2020.

49. To say that we are in an extraordinary time is a shocking understatement of the reality. All states, including the State of Arizona, have an inarguable responsibility to protect democracy.

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

Executed on the 30th day of September, 2020.



VIRGINIA MARTIN

Exhibit A

Virginia Martin
Curriculum vitae

724 Warren St. #2
Hudson, NY 12534

(518) 755-1521
viriniamartin2010@gmail.com

EDUCATION

PhD, Communication and Rhetoric	2005
Rensselaer Polytechnic Institute, Troy, NY	
MS, Communication and Rhetoric	2000
Rensselaer Polytechnic Institute, Troy, NY	
BA, English/Communication	1999
Skidmore College University Without Walls, Saratoga Springs, NY	

PROFESSIONAL EXPERIENCE

Columbia County Board of Elections

- Democratic Commissioner 2008-2020 (Feb)

Teaching

University at Albany (NY)

- Dept. of Communication, Adjunct Professor 2006-2008

Rensselaer Polytechnic Institute (Troy, NY)

- Dept. of Language, Literature, and Communication, Teaching Assistant 2000-2004

TESTIMONY / PRESENTATIONS / PANELS / INTERVIEWS. etc.: Election Security

US District Court, Western District of TX, *Mi Familia Vota v. Abbott*

- Personal affidavit, August 2020

NC Superior Court, Wake County, *NAACP v. NCSBOE*

- personal affidavit, June 2020
- personal testimony at hearing, August 2020

Kill Chain: The Cyber War on America's Elections, released March 2020

- interviewed and filmed during June 2019 primary election

US District Court, Southern District of NY, *Common Cause v. NYS Board of Elections*

- personal declaration/affidavit, September 2019
- personal testimony at trial, October 2019

Citizens for Voting Integrity New York, *Hastings on Hudson*: panel presentation, October 2019

US District Court, Northern District of GA, *Curling v. Kemp*

- personal declaration/affidavit and 2 supplementals, August 2018-June 2019
- personal testimony at hearing, July 2019

State of Rhode Island Board of Elections: participant, *Risk Limiting Audit Pilot*, January 2019

GA Superior Court, *Curling v. Kemp*, CD6 special election

- expert affidavit, May 2017

GA Senate Ethics Committee, consideration of HB316 re hand-marked paper ballots

- expert statement, March 2019

Expert statement re hand-marked paper ballots re upcoming voting machine purchase, South Carolina, February 2019

Virginia Martin

Page 2

Bard College Lifetime Learning Institute, speaker, “Women in Politics,” April 2018
California Election Integrity Coalition, National Take Back the Vote Conference, Berkeley, CA

➤ October 2019

➤ October 2017

Sierra Club Hudson-Mohawk Chapter; February 2017, March 2018

Center for National Security, Fordham Law School, NYC, January 2017

George Washington University, Washington, DC, Election Verification Network, March 2017

National Press Club, Washington, DC, with Congressional candidate Tim Canova, October 2016

Bureau of Labor Statistics, Washington, DC, Washington Statistical Society, October 2016

Hastings on Hudson/Westchester, League of Women Voters: March 2017, May 2018

Dobbs Ferry, League of Women Voters of the Rivertowns: annual meeting keynote, May 2017

UDC David A. Clarke School of Law, Washington, DC: Jonathan Simons’ *Code Red*, May 2015

Left Forum, John Jay College of Criminal Justice, NYC, 2016 and 2017 (panelist)

Radio: *Writer’s Voice*, Progressive Radio Network, June 2016; *BradBlog*, October 2015; WOOC

Sanctuary for Independent Media, Troy, NY, May 2018; WGXC, Hudson NY, various

Columbia Paper, Chatham, NY: *Your Vote Counts*; regular column, 2010-2011

Alliance for Democracy/Justice Rising: “Hand Counting Ballots for Accurate Election Results,”
September 2016

MEMBERSHIPS: Election Security

National Election Defense Council: Advisory Board

Election Verification Network: member

SMART Elections: Advisory Board

Citizens for Voting Integrity New York: Board of Directors

New York Democratic Lawyers Council: member

PAPERS/PRESENTATIONS/PUBLICATIONS: Academic

Martin, V. “Feeling a Thought Through Song.” In *The Big Red Songbook*. Eds. Green, Archie, D. Roediger, F. Rosemont, S. Salerno. Chicago: Charles H. Kerr Publishing Co., 2007.

Martin, V. “*You Can’t Weave Cloth With Bayonets*”: *The Role of Singing in the 1912 Lawrence Textile Strike*. Doctoral dissertation, Rensselaer Polytechnic Institute. 2005.

Martin, V. “‘All Races Need Apply’: The Wobblies as Early 20th-Century Model of Inclusion and Union.” Rhetoric Society of America conference, Austin, TX. May 2004.

Halloran, S., Martin, V., Moore, V. “Rhetorical Spectacle on the Erie Canal: The Third Annual Tugboat Roundup.” Rhetoric Society of America conference, Las Vegas, NV. May 2002.

Martin, V. “The Rhetoric of Democracy: The Story of Joe Hill.” Rhetoric Society of America conference, Las Vegas, NV. May 2002.

Halloran, S., Martin, V. “The Prudence of the Curmudgeon.” National Communication Association conference, Atlanta, GA. November 2001

FELLOWSHIPS AND SCHOLARSHIPS

2004: School of Humanities and Social Sciences Fellowship, Rensselaer Polytechnic Institute

1999: Graduate School Fellowship, Rensselaer Polytechnic Institute

1997: Patricia B. Trbovich Memorial Scholarship, Skidmore College University Without Walls

NOTARY PUBLIC, STATE OF NEW YORK

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MI FAMILIA VOTA; and ARIZONA
COALITION FOR CHANGE,

Plaintiffs,

-against-

KATIE HOBBS, Arizona Secretary of State,

Defendant.

Index No.

Declaration of Joel Edman

JOEL EDMAN, pursuant to 28 U.S.C. § 1746, declares under penalties of perjury as follows:

1. I am the Executive Director of Arizona Advocacy Network & Foundation (“AZAN”). I make this declaration in support of Plaintiffs’ motion for a preliminary injunction to extend the voter registration deadline.
2. AZAN fights to protect and expand access to the ballot, and to ensure fair and open elections and courts by supporting Arizona’s Clean Elections and Merit Selection systems. I have served as the Executive Director of AZAN since January 2017. After graduating cum laude from Harvard Law School in 2013, I clerked for Chief Justice Scott Bales of the Arizona Supreme Court, served as a legal fellow with the ACLU of Arizona, and was law clerk to Judge Roslyn O. Silver of the U.S. District Court of Arizona. I have long worked in areas related to Arizona election law and policy.
3. My professional background and experience have given me a deep familiarity with the way voter registration and voting works in Arizona.

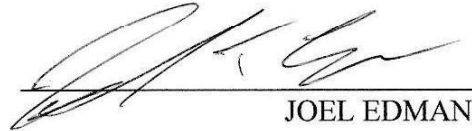
4. Under Arizona law (Ariz. Rev. Stat. § 16-411(b)(5)), voters can simultaneously update their voter registration addresses and cast their votes the same day. If the county where the voter is located uses electronic poll books, then the county is able to seamlessly and immediately update the poll books with the voter's updated registration and the voter votes on a regular ballot. If the county where the voter is located is still using paper voter lists, then the voter votes on a provisional ballot and the vote is counted once the updated registration has been verified. As a practical matter, this process (whether paper or electronic) works similarly to how same-day registration would work but it is currently only accessible to voters who are registered before the October 5th deadline.

5. All counties in Arizona permit voters to update their voter registration addresses simultaneous with voting at their new residence's polling location, during early voting and on election day, provided the voter has not relocated from outside the county (in which case a new registration is required).

6. Arizona also allows early voting to begin two days after the voter registration cutoff and to continue up until the close of business on Friday before the election on Tuesday. Ariz. Rev. Stat. Ann. § 16-541. In recent years, the Arizona Association of Counties, on behalf of the various County Recorders, as well as several County Recorders individually, have supported proposed legislation that would have allowed them to extend the in-person early voting period right up until the close of business on the day before the election. *See* HB 2237 (2019); HB 2206 (2018); SB 1466 (2018). AZAN also supported this legislation as we believe that expanding access to in-person voting, and to the opportunity to update registration information, will better serve voters. These bills did not pass, but they also were not considered in the context of the COVID-19 pandemic.

7. Recently, Apache County adopted a new provisional ballot form which also doubles as a registration form, so that as-yet-unregistered voters can simultaneously register to vote and cast a provisional ballot. While the registration is not effective until future elections, the process undertaken is the functional equivalent of a same day registration process.

Dated: Phoenix, AZ
September 30, 2020



JOEL EDMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mi Familia Vota; Arizona Coalition for
Change; and Ulises Ventura,

Plaintiffs,

v.

Katie Hobbs, in her official capacity as
Arizona Secretary of State,

Defendant.

No. _____

**TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY
INJUNCTION**

THIS MATTER, having come before the Court on Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction against Katie Hobbs in her official capacity as Secretary of State of Arizona and the Court, having considered the Complaint, the Motion and supporting Memorandum of Law, and the declarations and documents filed in support of the Motion, the Court finds and concludes that Plaintiffs are likely to succeed on the merits of their claims that Ariz. Rev. Stat. § 16-120, as applied to require an October 5, 2020 voter registration cutoff for the November 3, 2020 general election, unduly burdens Plaintiffs' speech and associational rights in violation of the First and Fourteenth Amendments. The Court further finds and concludes that Plaintiffs are likely to suffer irreparable harm in the absence of preliminary injunctive relief; the balance of equities is in their favor; and a temporary restraining order and/or preliminary injunction is in the public interest.

Accordingly, Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is **GRANTED** and it is **ORDERED** that:

1 1. Defendant is preliminarily enjoined from enforcing the Ariz. Rev. Stat.
2 § 16-120 October 5, 2020 voter registration cutoff; and

3 2. Defendant shall direct the county recorders to accept all voter
4 registration applications received by 5:00 p.m. on October 27, 2020 and process them
5 in time for eligible voters to vote in the November 3, 2020 general election.

6 Pursuant to Federal Rule of Civil Procedure 65(c), the Court finds that a bond
7 is unnecessary and that requiring a bond would not be in the public interest under the
8 circumstances of this litigation.

9 **IT IS FURTHER ORDERED** that this Preliminary Injunction shall remain in
10 effect pending final resolution of this action or further order of this Court.