

No. 20-16932

IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

MI FAMILIA VOTA, *et al.*,
Plaintiffs-Appellees,

v.

KATIE HOBBS,
in her official capacity as Arizona Secretary of State,
Defendant-Appellee,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,
Intervenor-Defendants-Appellants,

STATE OF ARIZONA,
Intervenor-Pending.

On Appeal from the United States
District Court for the District of Arizona
Case No. 2:20-cv-01143

**UNOPPOSED MOTION OF THE HONEST ELECTIONS
PROJECT FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT
OF APPELLANTS' AND INTERVENOR-APPELLANT'S
REQUEST FOR ADMINISTRATIVE STAY**

The Honest Elections Project respectfully asks this Court for leave to file the attached amicus brief in support of Appellants' and Intervenor-Appellant's Request For Administrative Stay.¹

INTEREST OF PROPOSED AMICUS CURIAE

The Honest Elections Project is an independent, nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, the Project defends the fair, reasonable measures that States put in place to protect the integrity of the voting process. The Project supports commonsense voting rules and opposes efforts to reshape elections for partisan gain. As part of its mission, the Project seeks to ensure that elections are carried out in a lawful manner. Lawsuits that challenge duly enacted election rules drain precious resources, distract state officials, create voter confusion, and undermine the integrity of elections. The Project thus has a significant interest in this important case.

ARGUMENT

The Rules do not expressly allow or forbid amicus briefs in support of stay motions. But consistent with their inherent authority, circuit courts routinely accept amicus briefs filed in these circumstances. *See, e.g., In re Abbott*, 800 F. App'x

¹ Appellants consent to the filing of the Honest Election Project's Brief of *Amicus Curiae*. Appellees do not oppose the filing of the Honest Election Project's Brief of *Amicus Curiae*. Intervenor-Appellant, the State of Arizona consents to the filing of the Honest Election Project's Brief of *Amicus Curiae*.

296 (5th Cir. 2020); *Brooks v. Estelle*, 697 F.2d 586, 588 (5th Cir. 1982); Doc. 43, *FTC v. Qualcomm Inc.*, Nos. 19-15159, 19-16122 (9th Cir. July 23, 2020); Doc. 77, *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017); Docs. 59, 160, *Floyd v. N.Y.C.*, No. 13-3088 (2d Cir. Oct. 10, 2013); *Selfridge v. Carey*, 660 F.2d 516, 516 (2d Cir. 1981).

When exercising that inherent authority, this Court should “err on the side of granting leave.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002). As then-Judge Alito explained, “If an amicus brief that turns out to be unhelpful is filed, the [court], after studying the case, will often be able to make that determination without much trouble and can then simply disregard the amicus brief. On the other hand, if a good brief is rejected, the [court] will be deprived of a resource that might have been of assistance.” *Id.*

The Project has also received leave to file amicus briefs in numerous cases similar to this one. *See, e.g., Ariz. Democratic Party v. Hobbs*, No. 20-16759, No. 20-16766, 2020 U.S. App. LEXIS 31677 (9th Cir. Oct. 6, 2020); Doc. 49, *Pavek v. Simon*, No. 0:19-cv-3000 (D. Minn. Mar. 26, 2020); Doc. 43, *People First of Alabama v. Merrill*, No. 2:20-cv-619 (N.D. Ala.); Doc. 44, *Bruni v. Hughs*, No. 5:20-cv-35 (S.D. Tex. Apr. 23, 2020); Doc. 170 at 51, *Democratic Nat’l Comm. v. Bostelmann*, No. 3:20-cv-249 (W.D. Wis. Apr. 2, 2020); Notation Order, *League of Women Voters of Ohio v. LaRose*, No. 2:20-cv-1638 (S.D. Ohio Apr. 2, 2020).

Here, too, the Project's brief will be useful to the Court. The Project's brief makes two major points. The brief explains how the District Court incorrectly found that Arizona's voter registration deadline imposed severe burdens on voting rights under *Anderson-Burdick*, and consequently subjected the deadline to an inappropriately heightened level of scrutiny. The District Court essentially applied a strict scrutiny standard and incorrectly balanced the "minimal burden" on voting rights against the important interests of Arizona. Both points are directly relevant to the issues in this case, and both points are sufficient reasons to grant a stay.

CONCLUSION

For all these reasons, the Court should grant this motion and allow the Project to file the attached amicus brief.

Respectfully submitted,

/s/ Jason Torchinsky

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CERTIFICATE OF COMPLIANCE

This motion complies with Rule 27(d)(2) because it contains 618 words, excluding the parts that can be excluded. This motion also complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word in 14-point Times New Roman font.

/s/ Jason Torchinsky _____
Counsel for Honest Elections Project

CERTIFICATE OF SERVICE

I filed this motion with the Court via ECF on October 8, 2020, which will electronically notify all counsel of record.

/s/ Jason Torchinsky
Counsel for Honest Elections Project

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United States Court of Appeals
FOR THE NINTH CIRCUIT

MI FAMILIA VOTA, *et al.*,
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v.

KATIE HOBBS,
IN HER OFFICIAL CAPACITY AS ARIZONA SECRETARY OF STATE,
Defendant-Appellee,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,
Intervenor-Defendants-Appellants,

STATE OF ARIZONA,
Intervenor-Pending.

On Appeal from the United States
District Court for the District of Arizona
Case No. 2:20-cv-01903

BRIEF OF AMICUS CURIAE
THE HONEST ELECTIONS PROJECT
IN SUPPORT OF APPELLANTS' AND INTERVENOR-
APPELLANT'S REQUEST FOR ADMINISTRATIVE STAY

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INTEREST OF AMICUS CURIAE¹

Amicus Curiae, the Honest Elections Project, is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, the Honest Elections Project defends fair, reasonable, common sense measures to protect the integrity of the voting process. It thus has a significant interest in this important case.

Challenges to duly enacted election procedures, such as those brought by Plaintiffs in the present case, have the potential to damage the integrity and perceived legitimacy of the election results. After all, “there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Storer v. Brown*, 415 U.S. 724, 730 (1974). The Honest Elections Project submits this brief supporting the granting of a stay of the District Court’s injunction because the District Court applied an incorrect legal standard and Arizona’s voter registration deadline survives scrutiny under *Anderson-Burdick*.

¹ No party’s counsel authored this brief in whole or in part, and no one besides Amicus and its counsel contributed money to fund the brief’s preparation or submission.

SUMMARY OF THE ARGUMENT

This Court should stay pending appeal the preliminary injunction issued by the District Court extending Arizona’s voter registration deadline beyond that duly enacted by the Arizona Legislature because Plaintiffs are not likely to succeed on the merits of their claims. First, the District Court erred in its determination that Arizona’s duly enacted registration deadline constituted a “severe burden” on Plaintiffs’ voting rights, triggering heightened scrutiny. Arizona’s registration deadline is a neutral, nondiscriminatory law that requires nothing more from all Arizona voters than the “usual burdens of voting.” *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 198 (2008) (opinion of Stevens, J.). Any burden on Plaintiffs’ voting rights stems not from Arizona’s registration deadline, but from COVID-19, which is not government action. Accordingly, Arizona’s voter registration deadline is more than justified by the proffered government interests.

Furthermore, this would not be the first time this Court has stayed the decision of a district court applying an incorrect standard under *Anderson-Burdick* in response to COVID-19. Just days ago, this Court stayed a separate decision from the U.S. District Court for the District of Arizona, enjoining Arizona’s ballot signature deadline, which serves state interests similar to the voter registration deadline, and that was found to impose only minimal burdens on voters. *Ariz. Democratic Party v. Hobbs*, No. 20-16759, No. 20-16766, 2020 U.S. App. LEXIS 31677 (9th Cir. Oct. 6, 2020).

Accordingly, there is no likelihood of success on the merits of Plaintiffs-Appellees' claims. This Court should stay the District Court's injunction pending appeal.

ARGUMENT

I. ARIZONA'S VOTER REGISTRATION DEADLINE DOES NOT IMPOSE SEVERE BURDENS ON VOTING RIGHTS.

The District Court erred in enjoining Arizona's voter registration deadline because that deadline does not severely burden Plaintiffs-Appellees' voting rights. Any burden that may result from the registration deadline is attributable to the COVID-19 pandemic and not to Arizona.

When analyzing an election law's alleged burden on the right to vote, the well-established *Anderson-Burdick* framework applies. See *Burdick v. Takushi*, 504 U.S. 428 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

A court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.

Burdick, 504 U.S. at 434 (internal quotation marks omitted) (quoting *Anderson*, 460 U.S. at 789, and *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 213-14 (1986)). Under this *Anderson-Burdick* framework, "election laws generally are not subject to strict scrutiny, even though voting rights

are fundamental under the Constitution.” *Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 605 (4th Cir. 2016); *see also Burdick*, 504 U.S. at 433. This is because all “[e]lection laws will invariably impose some burden upon individual voters.” *Burdick*, 504 U.S. at 433. Every provision of a state elections code, “whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.” *Anderson*, 460 U.S. at 788.

Given that reality, a claim that an election law violates a voter’s Fourteenth Amendment rights hinges on “the extent to which [the] challenged regulation burdens” those rights. *Burdick*, 504 U.S. at 434. An election law that “imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters” is “‘generally’” justified by “‘the State’s important regulatory interests.’” *Id.* (quoting *Anderson*, 460 U.S. at 788). After all, there is no constitutional right to be free from “the usual burdens of voting.” *Crawford*, 553 U.S. at 198. Only in the extraordinary case where an election law “subject[s]” voting rights “to ‘severe’ restrictions” does a court apply strict scrutiny and assess whether the law is “‘narrowly drawn to advance a state interest of compelling importance.’” *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). When assessing a burden’s severity, courts must look at the burden’s

impact “categorically” upon all voters, without “consider[ing] the peculiar circumstances of individual voters.” *Crawford*, 553 U.S. at 206 (Scalia, J., concurring in the judgment).

A. Arizona’s Registration Deadline Does Not Impose A Severe Burden On Plaintiffs’ Voting Rights.

Here, Arizona’s voter registration deadline of October 5, 2020, does not severely burden Plaintiffs’ voting rights.

As an initial matter, this Court must “identify a burden before [the Court] can weigh it.” *Crawford*, 553 U.S. at 205 (Scalia, J., concurring). The burden proffered by the Plaintiffs and credited by the District Court was that “fewer voters will be registered in this State if the deadline is not extended” and that there had been a “large drop-off in registration during the months of the pandemic restrictions” *Mi Familia Vota v. Hobbs*, No. CV-20-01903-PHX-SPL, 2020 U.S. Dist. LEXIS 184397, *11, *15 (D. Ariz. Oct. 5, 2020). The District Court incorrectly determined this constituted a severe burden on Plaintiffs’ voting rights, triggering heightened scrutiny under *Anderson-Burdick*.

In reality, the registration deadline imposes only reasonable, nondiscriminatory voting requirements on all Arizona voters. Every election deadline necessarily results in “fewer” voters being registered, voting, or otherwise participating in the electoral process. But such cut-off dates are necessary to ensure finality, security, and order in election administration. *See infra* at Sec. I(C).

Arizona’s voter registration cutoff date is a perfect example of how all “[e]lection laws will invariably impose some burden upon individual voters.” *Burdick*, 504 U.S. at 433. It is a neutral, nondiscriminatory law that requires nothing more from all Arizona voters than the “usual burdens of voting.” *Crawford*, 553 U.S. at 198. Arizona’s voter registration deadline is therefore more than justifiable by Arizona’s important interests in the security, finality, and orderly administration of elections. *See infra* at Sec. I(C).

Just days ago, this Court stayed a separate decision from the District of Arizona, which had enjoined Arizona’s law requiring early voters to have signed their ballots by 7:00 PM on Election Day. *Ariz. Democratic Party*, 2020 U.S. App. LEXIS 31677. On September 10, 2020, less than two months before the General Election, the District Court enjoined the law and ordered Arizona to create and to institute a new procedure that would grant voters who failed to sign their ballots up to five days after voting has ended to correct the error. *Id.* at *4. This Circuit held that “Arizona’s Election Day signature deadline imposes, at most, a ‘minimal’ burden on those who seek to exercise their right to vote.” *Id.* In this way, Arizona’s ballot signature deadline is akin to Arizona’s voter registration deadline. *See also Democratic National Committee v. Bostelmann*, Nos. 20-2835, 20-2844 (7th Cir. Oct. 8, 2020) (granting stay of District Court order extending, *inter alia*, voter registration deadlines because federal courts should not change the rules so close to an election and political rather than judicial officials are entitled to decide when a pandemic justifies changes to rules that are otherwise valid.)

This Court’s sister circuit, the Seventh Circuit, also issued a decision this week that bears heavily on the merits of this case—*Tully v. Okeson*, No. 20-2605, 2020 U.S. App. LEXIS 31723 (7th Cir. Oct. 6, 2020). In that case, the Seventh Circuit affirmed a district court’s decision denying a preliminary injunction meant to require Indiana to permit unlimited absentee voting in the upcoming general election. *Id.* at *2. In determining that Indiana’s absentee voting scheme, *inter alia*, passed muster under *Anderson-Burdick*, the Court determined that it “cannot assess Indiana’s absentee voting provisions in isolation and instead must consider Indiana’s electoral scheme as a whole.” *Id.* at *15 (citing *Burdick*, 504 U.S. at 434-37; *Luft v. Evers*, 963 F.3d 665, 671-72, 675 (7th Cir. 2020)). Specifically, a court assessing a voting scheme must examine the burdens imposed by it in light of the variety of alternative ways to vote in advance of the deadline. *See id.* at *15-16.

In recent years, Arizona has drastically expanded access to the franchise of voting. Specifically, Arizona has enacted numerous voting advancements to make registering to vote easier, to expand absentee and early voting, to create a permanent early voting list, and other enhancements. In 1982, Arizona enacted a Motor Voter law, allowing voter registration at the time and place where residents apply for a driver’s license. *See* Ariz. Rev. Stat. §§ 16-111 and 16-112. In the following four years, the number of Arizona’s registered voters increased by over 40%. *See* Historical Election Results & Information, Arizona Secretary of State (last accessed May 30, 2020), <https://azsos.gov/elections/voter-registration-historical-election-data/historical-election-results-information>.

In 2002, Arizona gave individuals the option to register to vote online, in person, or by mail. *See* Matt A. Barreto et al., *Online Voter Registration (OLVR) Systems in Arizona and Washington 100* (2010). This not only reduces confusion in the registration process, but it can also be used by non-English speakers as Spanish translation is readily available. *Id.* at 67. Soon after Arizona’s adoption of online voter registration, it became the most popular way to register to vote by a wide margin. *Id.* at 73.

Cumulatively, these provisions make it substantially easier for Arizonans to register to vote while greatly increasing the likelihood they will vote. Viewing Arizona’s electoral background as a whole, it is obvious that the State has provided nearly every secure opportunity within reason to permit its citizens to register to vote.

B. Any Burden On Plaintiffs’ Voting Rights Is Traceable To COVID-19 Rather Than State Action.

Plaintiffs’ claims and the District Court’s analysis rely completely on the faulty premise that the effect of the COVID-19 pandemic on voter registration statistics somehow makes Arizona’s registration deadline unconstitutional. It is obvious that “[t]he real problem [for Plaintiffs] here is COVID-19, which all but the craziest conspiracy theorist would concede is not the result of any act or failure to act” by the State of Arizona. *See Coalition v. Raffensperger*, No. 1:20-cv-1677-TCB, 2020 U.S. Dist. LEXIS 86996, at *9 n.2 (N.D. Ga. May 14, 2020). It is

undeniable that the Virus has impacted the lives of Arizonans, but “these circumstances are not impediments created by the state.” *Bethea v. Deal*, No. CV216-140, 2016 U.S. Dist. LEXIS 144861, at *7 (S.D. Ga. Oct. 19, 2016). “While Plaintiffs contend that Defendants have done a poor job of responding to [the Virus], the fact that the [V]irus’s provenance was not through Defendants further increases, in this Court’s opinion, the impropriety of judicial intervention.” *Coalition*, 2020 U.S. Dist. LEXIS 86996 at *9 n.2; *cf. Bethea*, 2016 U.S. Dist. LEXIS 144861 at *6-7. “Assuming *arguendo* that injury has been demonstrated, that injury is nevertheless squarely traceable to the global pandemic, not to the actions of Defendants.” *Clark v. Edwards*, No. 20-308-SDD-RLB, 2020 U.S. Dist. LEXIS 108714, at *42 (M.D. La. June 22, 2020).

A number of courts, including the Fifth and Sixth Circuits, have specifically relied upon, at least in part, the fact that the Virus—or another natural disaster—does not present state action as reason to either stay a case, grant a preliminary injunction, dismiss claims, or deny a motion for preliminary injunction.

In *Texas Democratic Party v. Abbott*, the Fifth Circuit, upon granting a motion to stay the Western District of Texas’s order granting a preliminary injunction, held that:

The Constitution is not “offended simply because some” groups “find voting more convenient than” do the plaintiffs because of a state’s mail-in ballot rules. *That is true even where voting in person “may be extremely difficult, if not practically impossible,” because of*

circumstances beyond the state's control, such as the presence of the Virus.

961 F.3d 389, 405 (5th Cir. 2020) (emphasis added) (quoting *McDonald v. Bd. of Elec. Comm'rs*, 394 U.S. 802, 810 (1968)) (internal citation omitted). The Fifth Circuit indicated that the result is similar in the VRA context. *See id.* at 404 n.32 (“And here, unlike in *Veasey [v. Abbott]*, the *state* has not placed any obstacles on the plaintiffs’ ability to vote in person.” (emphasis in original)). The lack of state action is further emphasized in the concurring opinion, which notes “[f]or courts to intervene, a voter must show that *the state* ‘has in fact precluded [voters] from voting.’” *Id.* at 415 (Ho, J., concurring) (emphasis in original) (quoting *McDonald*, 394 U.S. at 808 & n.7).

In a case before the Sixth Circuit, plaintiffs were challenging the signature gathering requirement of Ohio’s ballot-initiative laws in light of the Virus. *Thompson v. Dewine*, 959 F.3d 804, 806 (6th Cir. 2020). When staying the District Court’s order granting plaintiffs a preliminary injunction, the Sixth Circuit noted the lack of state action inherent in claims resting upon the foundation of the Virus as the justification. *Id.* at 810 (“[J]ust because procuring signatures is now harder (largely because of a disease beyond the control of the State) doesn’t mean that Plaintiffs are *excluded* from the ballot.”). The court went further by noting that both First Amendment and Section 1983 actions require state action, which was

not met by private citizens' decisions to stay home for their own safety. *Id.* at 810-11.

In *Mays v. Thurston*, plaintiffs sought a mandatory temporary restraining order that the Governor of Arkansas “do more to ensure that Arkansans are allowed to have their vote counted by absentee ballot.” No. 4:20-cv-341 (JM), 2020 U.S. Dist. LEXIS 54498, at *3 (E.D. Ark. Mar. 30, 2020). The District Court found that the plaintiffs lacked Article III standing. *Id.* at *4-5. Specifically, the court stated that:

Plaintiffs have failed to articulate an injury suffered at the hands of . . . any . . . state official. Plaintiffs' right to vote during this global pandemic have been made easier by the Governor's . . . executive order suspending the normal prerequisites for requesting an absentee ballot. Plaintiffs complain that the Governor did not do enough. However, Plaintiffs' injury, if any, will occur only . . . if they do not show up to vote at a designated voting place exercising the social distancing and other protections suggested by the State and the federal government. *Any injury caused by Plaintiffs' failing to take advantage of these available avenues to exercise their rights to vote are not caused by or fairly traceable to the actions of the State, but rather are caused by the global pandemic.* Therefore, the Court finds that Plaintiffs do not have standing to pursue their requested remedy.

Id. (emphasis added). *See also Bethea*, 2016 U.S. Dist. LEXIS 144861 at *3-7 (denying preliminary injunction seeking to extend the voting registration deadline in response to Hurricane Matthew, because the State's “decision not to extend the [voter] registration deadline was [not] some sort of action that created an impediment to the right to vote”); *Assoc. of Communities for Reform Now v.*

Blanco, No. 2:06-cv-611, Order at 1-2 (E.D. La. 2006) (dismissing request to extend deadline for counting absentee ballots in wake of Hurricane Katrina).

Because the pandemic was neither caused nor facilitated by Arizona's registration deadline, it cannot qualify as state action; the Court should thus view the Virus's burdensome effects separately from the state action at issue here for purposes of an *Anderson/Burdick* analysis.²

² Importantly, the Supreme Court has stayed or overturned nearly every effort in federal court to alter a state's election laws in light of the Virus over the opposition of state government officials. *See, e.g., Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (Apr. 6, 2020) (granting stay of district court order requiring Wisconsin to count late postmarked absentee ballots for primary election, pending final disposition on appeal); *Merrill v. People First Of Ala.*, No. 19A1063 (July 2, 2020) (granting stay of district court order enjoining Alabama's duly enacted photo identification and witness requirements for absentee voting during the pandemic); *Little v. Reclaim Idaho*, No. 20A18 (July 30, 2020) (granting stay of district court orders relaxing Idaho's rules for ballot initiatives); *Clarno v. People Not Politicians*, No. 20A21 (Aug. 11, 2020) (granting stay of district court order relaxing Oregon's election procedures because of the coronavirus pandemic); *Thompson v. DeWine*, No. 19A1054 (June 25, 2020) (denying application to vacate Sixth Circuit stay of district court order suspending Ohio's enforcement of in-person signature requirements and extending filing deadlines for initiative campaigns); *Tex. Democratic Party v. Abbott*, No. 19A1055 (June 26, 2020) (denying application to vacate Fifth Circuit stay of district court order forcing Texas to implement no-excuse absentee voting); *Andino v. Middleton*, No. 20A55, 2020 U.S. LEXIS 4832, at *1.(Oct. 5, 2020) (staying district court injunction of South Carolina's witness requirement for absentee ballots).

C. Arizona’s Justifications For The Voter Registration Deadline Far Outweigh Any Minimal Burdens The Deadline Places On Plaintiffs’ Voting Rights.

In reviewing a reasonable, nondiscriminatory restriction on voting rights, such as Arizona’s voter registration deadline here, the restriction is justified by a state’s “important regulatory interests.” *Lee*, 843 F.3d at 606 (quoting *Burdick*, 504 U.S. at 434).

“[E]laborate, empirical verification of the weightiness of the State’s asserted justifications” is not required to satisfy less exacting review. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997). The State need not justify the regulation by making a particularized showing of how the interest will be furthered by it, *Munro v. Socialist Workers Party*, 479 U.S. 189, 194-96 (1986), much less that the regulation is an optimal method for advancing that interest. Holding otherwise would “invariably lead to endless court battles” over the quality of the State’s evidence, *id.* at 195, and to a “corresponding loss of certainty over the rules by which we select our government,” *Sarvis v. Alcorn*, 826 F.3d 708, 719 (4th Cir. 2016).

Under less exacting review, courts only ask whether the State “articulate[d] its asserted interests.” *Id.* (internal quotation marks and citation omitted). This is “not a high bar.” *Id.* The challenged statute will only be struck down as constitutionally invalid if it is “based on reasons totally unrelated to the pursuit of [the legislature’s] goal.” *See McDonald*, 394 U.S. at 809; *see also Sarvis v. Judd*,

80 F. Supp. 3d 692, 705 (E.D. Va. 2015) (“It is true that, under *Anderson*, the Court must identify and evaluate the *precise* interests put forward by the State, but precision does not equate to empiricism. . . . [the State] need only marshal its [precise] interests and present a logical nexus” to the regulation. (internal quotation marks omitted)).

In applying *Anderson/Burdick*’s less exacting review of the burdens and state’s interests to a ballot-ordering law, the Fourth Circuit articulated how simple this test is in application:

Here our job is easy—this case is one of the “usual[]” variety in which the “State’s important regulatory interests . . . justify reasonable, nondiscriminatory restrictions.” *Timmons*, 520 U.S. at 358 We leave further resolution of this controversy to a different and better set of arbiters: the people, and through them, the political branches.

Sarvis, 826 F.3d at 721 (cleaned up).

Here, Arizona has offered at least three “important regulatory interests,” *Timmons*, 520 U.S. at 358, served by the challenged deadline: (1) ensuring orderly elections; (2) election integrity; and (3) reduction of voter confusion. *See Mi Familia Vota v. Hobbs*, 2020 U.S. Dist. LEXIS 184397 at *12. As even the District Court acknowledges, the State has a “compelling” interest in all of these. *Id.* at *15. Indeed, this Court’s sister circuits have recognized these strong interests. *See, e.g., Democratic Exec. Comm. Of Fla. v. Lee*, 915 F.3d 1312, 1322-23 (11th Cir. 2019) (acknowledging that a State has a “legitimate and strong interest” in “protecting public confidence in the legitimacy of the election,” and “an important

interest in structuring and regulating its elections to avoid chaos and to promote the smooth administration of its elections.”).

Arizona has also easily met its burden of showing a logical nexus between these important interests and its voter registration deadline. In reference to the nexus between any regulation’s burden on voting rights and a state’s justification for that burden, the Supreme Court instructed: “The Constitution does not require the [State] to draw the perfect line nor even to draw a line superior to some other line it might have drawn. It requires only that the line actually drawn be a rational line.” *Armour v. City of Indianapolis*, 566 U.S. 673, 685 (2012). Under less exacting review, Arizona thus only needed to show an articulated connection between the deadline and the interests to be served that was related and logical. This is easily satisfied here.

In *Ariz. Democratic Party*, this Court held that Arizona’s Election Day signature deadline, which “imposes, at most, a ‘minimal’ burden on those who seek to exercise their right to vote,” is justified under *Anderson-Burdick* by the State’s important regulatory interests. 2020 U.S. App. LEXIS 31677 at *5-6. As this Court stated:

All ballots must have some deadline, and it is reasonable that Arizona has chosen to make that deadline Election Day itself so as to promote its unquestioned interest in administering an orderly election and to facilitate its already burdensome job of collecting, verifying, and counting all of the votes in timely fashion. Indeed, though the parties dispute the magnitude of the additional burden, there can be no doubt (and the record contains evidence to show) that allowing a five-day

grace period beyond Election Day to supply missing signatures would indeed increase the administrative burdens on the State to some extent.

Id. at *6. In this way, Arizona's ballot signature deadline is akin to Arizona's voter registration deadline and justified by similar state interests.

Arizona's registration deadline should have been subjected to less exacting review; had the District Court done so, the law would have easily survived this most deferential level of scrutiny. In the end, the District Court erred as a matter of law in its determination that Plaintiffs were likely to succeed on the merits of their *Anderson/Burdick* claim.

CONCLUSION

For the aforementioned reasons, Amicus Curiae respectfully requests this court stay the District Court's preliminary injunction below pending appeal.

Respectfully submitted this 8th day of October, 2020.

/s/ Jason Torchinsky

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Federal Rules of Appellate Procedure 29, 32(a)(5), and 32(a)(7), the foregoing *amicus curiae* brief is proportionally spaced, has a typeface of 14 point Times New Roman, and contains 3,835 words, excluding those sections identified in Fed. R. App. P. 32(f).

/s/ Jason Torchinsky

CERTIFICATE OF SERVICE

I filed this brief with the Court via ECF on October 8, 2020, which will electronically notify all counsel of record.

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