

No. 20-16932

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

MI FAMILIA VOTA, ET AL.,  
*Plaintiffs–Appellees,*

v.

KATIE HOBBS,  
*Defendant–Appellee, and*

REPUBLICAN NATIONAL COMMITTEE, ET AL.,  
*Intervenor-Defendants and Appellants.*

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On Appeal from the United States District Court for the District of Arizona  
The Honorable Steven P. Logan, No. CV-20-01903-PHX-SPL  
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**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE  
IN SUPPORT OF  
INTERVENOR-DEFENDANTS-APPELLANTS’ MOTIONS FOR A STAY**  
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Pursuant to Federal Rule of Appellate Procedure 29, Governor Douglas A. Ducey, President of the Arizona State Senate Karen Fann, Speaker of the House of Representatives Russell Bowers, Apache County Recorder Edison J. Wauneka, Pima County Recorder F. Ann Rodriguez, La Paz County Recorder Richard Garcia, Mohave County Recorder Kristi Blair, Cochise County Recorder David Stevens, Pinal County Recorder Virginia Ross, Gila County Recorder Sadie Jo Bingham, Graham County Recorder Wendy John, Yavapai County Recorder Leslie Hoffman, Yuma County Recorder Robyn Stallworth Pouquette, respectfully move the Court for leave to file the attached brief of amici curiae in support of Intervenor-Defendants-Appellants' and Proposed Intervenor State of Arizona's Motions for Stay for a Stay.<sup>1</sup>

Pursuant to Circuit Rule 29-3, amici endeavored to gain the consent of all parties before filing this motion. Counsel for all parties to the appeal granted consent, including counsel for Intervenor-Appellants Republican National Committee and National Republican Senatorial Committee, Proposed Intervenor State of Arizona, and Plaintiff-Appellees. Defendant-Appellee Katie Hobbs has not taken a position on the filing of the proposed brief. Therefore, amici move the Court for leave to file this brief pursuant to Fed. R. App. Proc. 29(a)(3).

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<sup>1</sup> No party's counsel authored the proposed amici brief in whole or in part; and no person or entity, other than the amici or their counsel, contributed money that was intended to fund preparing or submitting the brief.

## **ARGUMENT**

Federal courts have found it “preferable to err on the side of granting leave” to file amicus briefs. *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.); *accord Duronslet v. County of L.A.*, No. 16-cv-8933, 2017 WL 5643144, at \*1 (C.D. Cal. Jan. 23, 2017) (same). The Third Circuit stated that the “criterion of desirability set out in Rule 29(b)(2) is open ended, but a broad reading is prudent.” *Neonatology Assocs.*, 293 F.3d at 132. And “[e]ven when the other side refuses to consent to an amicus filing, most courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned.” *Id.* at 133. For the reasons set forth below, amici satisfy the standard under Rule 29.

### **I. Identity and Interest of Amici Curiae**

Amici curiae are Arizona Executive and Legislative lawmakers whose authority the district court usurped, and County Recorders whose election-administration duties the district court’s ruling upended, without consultation or notification, just before the voter-registration period was statutorily required to close, and after early voting already commenced.

Douglas A. Ducey is Governor of the State of Arizona. Governor Ducey has broad statutory and constitutional authority to ensure that the laws of the State of Arizona are faithfully executed, guide policy decisions, and provide for the health and welfare of Arizonans. *See e.g.*, Ariz. Const. art. V, § 4; Ariz. Rev. Stat. §§ 26-

303, 41-101(A)(1)-(7). Pursuant to his emergency authority, *see* Ariz. Rev. Stat. § 26-303(E), Governor Ducey has issued approximately 40 executive orders to combat the COVID-19 pandemic. These orders are now indirectly being used by Plaintiffs-Appellees (“Plaintiffs”) to claim an alleged “burden” on their constitutional rights even though these orders have expressly ensured that constitutional rights were protected. Governor Ducey, as the head of Arizona’s executive branch, has not only a strong interest but also a responsibility in ensuring Arizona’s laws—including election law and administration—are faithfully executed. *See* Ariz. Const. art. V, § 4 (the Governor “shall take care that the laws be faithfully executed”). Finally, the Legislature has specifically assigned the Governor a role in the administration of Arizona’s elections process through his approval of Arizona’s Elections Procedures Manual. *See* Ariz. Rev. Stat. § 16-452(B).

Karen Fann is President of the Arizona Senate, and Russell Bowers is the Speaker of the Arizona House of Representatives. The Arizona Constitution vests in the Legislature “the legislative authority of the state.” Ariz. Const. art. IV, pt. 1, § 1(1). Speaker Bowers and President Fann wish to participate as amici as representatives of the Legislature and defenders of its constitutional authority, which it exercised in enacting Arizona’s election laws, including the statutory deadline for voter registration.<sup>2</sup>

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<sup>2</sup> The Legislative authority to provide a complete election code includes the time

Edison J. Wauneka is the Apache County Recorder; David Stevens is the Cochise County Recorder; Sadie Jo Bingham is the Gila County Recorder; Richard Garcia is the La Paz County Recorder; Kristi Blair is the Mohave County Recorder; F. Ann Rodriguez is the Pima County Recorder; Virginia Ross is the Pinal County Recorder; Leslie Hoffman is the Yavapai County Recorder; Wendy John is the Graham County Recorder, and Robyn Stallworth Pouquette is the Yuma County Recorder (collectively, the “County Recorders”). The County Recorders are the elected officials who are responsible for the actual administration of Arizona’s elections, including the processing of voter registration forms. Neither the district court nor the Arizona Secretary of State consulted with or otherwise directed the inclusion of the County Recorders in the twenty-four-hour period provided by the district court for a response to the request for preliminary injunction in this matter. Had they been provided such an opportunity, the County Recorders would have explained to the district court that extending the voter-registration deadline significantly hinders their ability to safely, timely, and properly fulfill their responsibilities related to the administration of the General Election, and would have provided additional facts addressing the burden on voter-registration activities.

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deadlines for voter registration. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932).

**II. The Matters Asserted in the Amicus Brief Are Useful and Relevant to the Disposition of this Case.**

The criteria set forth in Rule 29(a)(3)(B) are satisfied here. Amici's proposed brief does not simply replicate the legal arguments raised in the Motion for a Stay. Instead, amici raise different legal arguments and provide unique, important perspectives for the Court's consideration. Specifically, amici possess extensive knowledge of the election-administration process, the scope of the legislature and executive's authority to regulate elections, and the detrimental effect the district court's injunction would have (and is already having) on the County Recorders' election-administration duties. All these subject areas are highly relevant to the disposition of this matter.

**CONCLUSION**

Amici bring unique perspectives to this matter that will assist the Court in resolving the issues before it. Therefore, amici respectfully request that the Court grant leave to file the proposed amicus brief, which is separately and concurrently lodged with the Court, for consideration in this matter.

Dated: October 9, 2020

Respectfully submitted on behalf of all amici,

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**Description of Document(s) (*required for all documents*):** **Motion for Leave to File Amicus Brief; Amicus Brief with Exhibits 1-2**

**Signature** s/ Brett W. Johnson

**Date** October 9, 2020

No. 20-16932

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PRESIDENT OF THE ARIZONA STATE SENATE KAREN FANN,  
SPEAKER OF THE HOUSE OF REPRESENTATIVES RUSSELL  
BOWERS, YUMA COUNTY RECORDER ROBYN STALLWORTH  
POUQUETTE, YAVAPAI COUNTY RECORDER LESLIE  
HOFFMAN, GILA COUNTY RECORDER SADIE JO BINGHAM,  
PINAL COUNTY RECORDER VIRGINIA ROSS, COCHISE COUNTY  
RECORDER DAVID STEVENS, MOHAVE COUNTY RECORDER  
KRISTI BLAIR, LA PAZ COUNTY RECORDER RICHARD GARCIA,  
PIMA COUNTY RECORDER F. ANN RODRIGUEZ, APACHE  
COUNTY RECORDER EDISON J. WAUNKA, GRAHAM COUNTY  
RECORDER WENDY JOHN,  
IN SUPPORT OF INTERVENOR-DEFENDANTS-APPELLANTS’  
MOTIONS FOR A STAY**  
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**STATEMENT OF COMPLIANCE WITH RULE 29(a)**

All parties have consented or stated no objection to the filing of this brief pursuant to Federal Rule of Appellate Procedure 29(a). No party or party's counsel authored this brief in whole or in part. No party, party's counsel, or any person other than counsel for *amici curiae* contributed money to fund the preparation of this brief.

## **IDENTITY AND INTEREST OF AMICI CURIAE**

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Arizona's elections process through his approval of Arizona's Elections Procedures Manual. *See* Ariz. Rev. Stat. § 16-452(B).

Karen Fann is President of the Arizona Senate, and Russell Bowers is the Speaker of the Arizona House of Representatives. The Arizona Constitution vests in the Legislature “the legislative authority of the state.” Ariz. Const. art. IV, pt. 1, § 1(1). Speaker Bowers and President Fann wish to participate as amici as representatives of the Legislature and defenders of its constitutional authority, which it exercised in enacting Arizona's election laws, including the statutory deadline for voter registration.<sup>1</sup>

Edison J. Wauneka is the Apache County Recorder; David Stevens is the Cochise County Recorder; Sadie Jo Bingham is the Gila County Recorder; Richard Garcia is the La Paz County Recorder; Kristi Blair is the Mohave County Recorder; F. Ann Rodriguez is the Pima County Recorder; Virginia Ross is the Pinal County Recorder; Leslie Hoffman is the Yavapai County Recorder; Wendy John is the Graham County Recorder; and Robyn Stallworth Pouquette is the Yuma County Recorder (collectively, the “County Recorders”). The County Recorders are the elected officials who are responsible for the actual administration of Arizona's elections, including the processing of voter-registration forms. Neither the district

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<sup>1</sup> The Legislative authority to establish a complete election code includes the time deadlines for voter registration. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932).

court nor the Arizona Secretary of State consulted with or otherwise directed the inclusion of the County Recorders in the twenty-four-hour period provided by the district court for a response to the request for preliminary injunction in this matter. Had they been provided such an opportunity, the County Recorders would have explained to the district court that extending the voter-registration deadline significantly hinders their ability to safely, timely, and properly fulfill their responsibilities related to the administration of the General Election, and would have provided additional facts addressing the burden of an injunction on voter-registration activities.

### **SUMMARY OF ARGUMENT**

Less than a month before the General Election and mere hours before Arizona's longstanding statutory deadline for voter registration was set to expire, the district court unilaterally rewrote the statute to extend the deadline by 18 days. This decision violates a number of well-established principles, including the separation of powers, the *Purcell* doctrine, laches, and judicial deference to the elected branches of government during emergencies. Just this year, the Supreme Court reaffirmed the importance of *Purcell* and made clear that the COVID-19 pandemic does not suspend its application. *See, e.g., Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1206 (2020) (staying district court order extending election deadline); *see also Democratic Nat'l Comm. v. Bostelmann*, ---F.3d---, 2020 WL

5951359, at \*2-3 (7th Cir. Oct. 8, 2020) (staying district court order extending Wisconsin’s voter-registration deadlines). The Supreme Court has also instructed lower courts that a state’s decision to change or maintain “election rules to address COVID-19 ordinarily ‘should not be subject to second-guessing by an unelected federal judiciary.’” *Andino v. Middleton*, ---S. Ct.---, 2020 WL 5887393 (U.S. Oct. 5, 2020) (mem.) (Kavanaugh, J., concurring) (citations omitted). Had the district court correctly applied these binding principles or required that the County Recorders be included in the proceedings, it would have rejected Plaintiffs’ claims out-of-hand.

The district court’s ruling on the merits of Plaintiffs’ First and Fourteenth Amendment claims was equally misguided. No state action burdened Plaintiffs’ rights. Instead, the court blamed “pandemic restrictions”—i.e., Governor Ducey’s COVID-19-related executive orders—for the allegedly “severe” burden on Plaintiffs’ rights. *See Mi Familia Vota*, No. CV-20-01903, 2020 WL 5904952, at \*4 (D. Ariz. Oct. 5, 2020). But *none* of Governor Ducey’s executive orders prevented Plaintiffs from conducting voter-registration activities. Quite the contrary, Governor Ducey’s executive orders expressly exempted “constitutionally protected activities” from their purview. In other words, the purported “burden” the district court relied on did not exist. And weighed against the State’s compelling interest in the orderly administration of elections, Arizona’s voter registration deadline easily survives

*Anderson/Burdick* review. Appellants’ and Proposed Intervenor State of Arizona’s Motions for Stay should be granted. *See* Dkt. 31; Dkt. 32.

### **ARGUMENT**

Four considerations govern whether a motion to stay an injunction should be granted: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). All these considerations weigh strongly in Appellants’ favor.

#### **I. There is a Strong Showing that Success Is Likely on the Merits.**

A stay applicant must show that there is a “substantial case for relief on the merits.” *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012) (citing *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011)). Appellants here are likely to succeed on the merits for multiple independent reasons.

##### **A. The District Court Usurped the Constitutional and Statutory Authority of the Executive and Legislature.**

First, the district court violated federalism and separation-of-powers principles by improperly substituting its policy judgment for that of Governor Ducey and the Arizona Legislature. Arizona’s elected branches of government are responsible for establishing the State’s election laws. This authority derives from the

Arizona Constitution: the Legislature possesses “the legislative authority of the state,” Ariz. Const. art. IV, pt. 1, § 1(1), while the Governor “shall take care that the laws be faithfully executed,” *id.* art. V, § 4. All of Arizona’s election statutes, including Ariz. Rev. Stat. § 16-120, were enacted through this constitutional process. In addition, Arizona law tasks the Governor with approving Arizona’s Elections Procedures Manual, which helps ensure consistent and efficient election practices throughout the State. *See* Ariz. Rev. Stat. § 16-452(B).

By ordering an 18-day extension of the statutory voter-registration deadline in § 16-120, the district court improperly assumed the role of the elected branches of government. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 7-8 (2013); *see also* U.S. Const. art. I, § 4, cl. 1. The district court’s order “encroach[es] upon the ‘constitutional commitment’ of the administration of elections to the state legislatures and to Congress.” *Mi Familia Vota v. Abbott*, SA-20-CV-00830-JKP, 2020 WL 5366291, at \*6 (W.D. Tex. Sept. 7, 2020) (citing *Baker v. Carr*, 369 U.S. 186, 217 (1962)). The district court also ran roughshod over Governor Ducey’s approval of the Elections Procedures Manual, which incorporates § 16-120.<sup>2</sup>

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<sup>2</sup> *See* Arizona Secretary of State’s Office, *2019 Elections Procedures Manual*, at 12 (Dec. 2019) (“*Manual*”), [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).



The district court justified this overreach on the grounds that the COVID-19 pandemic requires it. Not so. If anything, the elected branches of government are entitled to even *more* deference in responding to the pandemic than they receive in ordinary times. As Justice Kavanaugh noted earlier this week in an order staying a district court’s injunction of a state election law, “the Constitution ‘principally entrusts the safety and the health of the people to the politically accountable officials of the States.’” *Andino v. Middleton*, 2020 WL 5887393, at \*1 (U.S. Oct. 5, 2020) (Kavanaugh, J., concurring) (quoting *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613-14 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief)). “It follows that a State legislature’s decision either to keep or to make changes to election rules to address COVID–19 ordinarily should not be subject to second-guessing by an unelected federal judiciary, which lacks the background, competence, and expertise to assess public health and is not accountable to the people.” *Andino*, 2020 WL 5887393, at \*1.

And just yesterday, the Seventh Circuit stayed an injunction entered six weeks before the election that would have extended Wisconsin’s voter-registration deadlines. *Bostelmann*, 2020 WL 5951359, at \*3. The court correctly recognized that “the design of adjustments during a pandemic” is not “a judicial task.” *Id.* at \*4. The district court here wrongly concluded otherwise.

**B. The *Purcell* Doctrine Applies to Election Deadlines and Bars Plaintiffs' Claims.**

The district court also violated the familiar *Purcell* principle that election rules should not be changed on the eve of an election. Earlier this week, this Court reiterated this principle when it stayed another eleventh-hour injunction issued by an Arizona district court: “[A]s we rapidly approach the election, the public interest is well served by preserving Arizona’s existing election laws, rather than by sending the State scrambling to implement and to administer a new [election] procedure.” *Ariz. Democratic Party v. Hobbs*, --- F.3d ---, 2020 WL 5903488, at \*2 (9th Cir. Oct. 6, 2020). This reasoning applies with full force here.

In *Purcell v. Gonzalez*, the Supreme Court vacated this Court’s order enjoining Arizona from enforcing (among other things) a requirement that voters present proof of citizenship when they register to vote. 549 U.S. 1, 2 (2006). In holding that courts should refrain from issuing last-minute orders that affect elections, the Supreme Court emphasized the importance of preserving the integrity of the entire election process, because “[c]onfidence in our electoral processes is essential to the functioning of our participating democracy.” *Id.* at 4.

Here, the district court refused to apply *Purcell*, reasoning that it somehow “does not apply to the extension of election deadlines.” *Mi Familia Vota*, 2020 WL 5904952, at \*3. This is incorrect: election deadlines are integral parts of the electoral processes that the *Purcell* doctrine protects. *See Bostelmann*, 2020 WL 5951359, at

\*2-6. And the single case the district court cited—*Arizona Democratic Party v. Hobbs*, No. CV-20-01143, 2020 WL 5423898 (D. Ariz. Sept. 10, 2020)—lends no real support. As noted, this Court stayed that decision because (among other reasons) “the Supreme Court ‘has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.’” *See Hobbs*, 2020 WL 5903488, at \*8-9 (quoting *Republican Nat’l Comm.*, 140 S. Ct. at 1207)).

Applying that principle here requires dismissal of Plaintiffs’ claims. Days before Arizona’s voter-registration deadline, Plaintiffs asked the district court to change it. And the district court obliged—on the deadline itself. This eleventh-hour change inevitably will sow confusion and disorder in the electoral process. *See Feldman v. Ariz. Sec’y of State’s Office*, 843 F.3d 366, 368–69 (9th Cir. 2016) (holding that the *Purcell* doctrine is implicated when “a federal court injunction would disrupt long standing state procedures”).

To make matters worse, the General Election is not just days or months away; voting in Arizona already has begun and, as discussed below, County Recorders had already shifted resources from registration functions to election activities. The importance of maintaining the status quo of Arizona’s election processes is at its zenith. The judicially created obligations imposed on the non-party County Recorders to receive, review, verify, and follow up on voter-registration applications for 18 additional days cannot be accomplished this close to the election without

creating questions about the authenticity of those registrations. *See* Ariz. Rev. Stat. §§ 16-120 & -134. For these reasons too, this Court should stay the district court’s injunction. *See Purcell*, 549 U.S. at 5-6 (“Given the imminence of the election and the inadequate time to resolve the factual disputes, our action today shall of necessity allow the election to proceed without an injunction . . .”).

**C. Plaintiffs’ Claims Are Barred by the Doctrine of Laches.**

The laches doctrine also bars Plaintiffs’ claims. Laches bars a lawsuit where (1) the delay in filing was unreasonable, and (2) the defendant would suffer prejudice caused by the delay if the suit were allowed to continue. *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 838 (9th Cir. 2002). Both elements are met here.

Laches is a particular concern in election matters. *See Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990). “In the context of election matters, the laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party’s unreasonable delay prejudices the opposing party or the administration of justice.” *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922-23 (D. Ariz. 2016) (quoting *Ariz. Pub. Integrity All. Inc. v. Bennett*, CV-14-01044, 2014 WL 3715130, at \*2 (D. Ariz. June 23, 2014)). “Special interest groups and the lawyers who represent them . . . have an affirmative duty to bring their [election] challenges as early as practicable.” *Mathieu v. Mahoney*, 851 P.2d 81, 85 (1993).

Here, Plaintiffs did not assert any claim that they could not have raised months earlier. Plaintiffs concede that their alleged inability to register voters began in March, when COVID-19 spread throughout Arizona. They claim that due to the Governor's COVID-19-related executive orders, "Plaintiffs were effectively prevented from registering voters in person." *Mi Familia Vota*, No. CV-20-01903, Dkt. 1 at 9. But this is incorrect: the executive orders expressly protected the exercise of constitutional rights. And even if it were true, Plaintiffs' alleged hardship started *six months ago*. See *Bostelmann*, 2020 WL 5951359, at \*2 ("A last-minute event may require a last-minute change close to an election. But it is not possible to describe COVID-19 as a last-minute event."). Yet Plaintiffs waited until *five days* before the voter registration deadline to file this lawsuit.

Plaintiffs thus created their own emergency. And "[b]y sleeping on [their] rights . . . plaintiff[s] demonstrate[d] the lack of need for speedy action." *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213-14 (9th Cir. 1984) (citations omitted); see also *Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) ("Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm."). The district court determined Plaintiffs' claims could proceed anyhow, because they allegedly needed September voter-registration data to demonstrate that their requested relief could be redressed by extending the voter-registration deadline. *Mi Familia Vota*, 2020 WL 5904952,

at \*5. The district court mistakenly conflated Plaintiffs' ability to register voters in August and September with the fact that "the State's COVID-19 restrictions were lifted in August," *id.*, apparently assuming that the State somehow restricted Plaintiffs' ability to register voters in the first place. It did not, so Plaintiffs failed to justify their decision not to sue earlier. *See Jarrow Formulas*, 304 F.3d at 838.

Even if they could, the district court's order will unquestionably prejudice the County Recorders, who are charged with registering voters, administering early voting, and verifying provisional and conditional provisional ballots. *See infra* Section II; Ariz. Rev. Stat. § 16-101 *et seq.* For these reasons, the district court erred in finding that Plaintiffs' claims were not barred by laches.

**D. Plaintiffs Failed to Join Indispensable Parties.**

Plaintiffs' action is also barred by their failure to include as parties Arizona counties and their County Recorders. Rule 19 of the Federal Rules of Civil Procedure requires a party to be joined if feasible and if necessary to "accord complete relief among existing parties," or if the action may "as a practical matter impair or impede the [party's] ability to protect [its] interest." Fed. R. Civ. P. 19(a)(1)(A)-(B)(i). Only one of these factors must be present, yet both are here. The injunction should be stayed (and then vacated) for this reason as well. *See Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1022 (9th Cir. 2002) (dismissing action based on absence of necessary and indispensable parties).

It is the County Recorders, not the Secretary, that are the statutorily mandated responsible parties for collecting, verifying, and maintaining voter registration applications. *See* Ariz. Rev. Stat. § 16-101 *et seq.* Accordingly, the district court's extension of the deadline for voter-registration applications directly implicates the duties of the County Recorders, who are absent from this case.

Those County Recorders deserved the opportunity to be heard in the district court, but that was made infeasible by Plaintiffs' failure to name them and inexcusable delay in filing suit. Moreover, the absence of the County Recorders only exacerbates the *Purcell* problem: those County Recorders bear the burden of implementing new procedures close to an election. This will require shifting precious resources under election plans that were well-established and, in many cases, approved by the counties' Boards of Supervisors.

The district court ignored the County Recorders' interests and its order enjoining the Secretary of State is insufficient. The Secretary has no authority under Arizona law to unilaterally direct County Recorders to accept voter-registration applications past the statutory deadline or to disregard the Elections Procedures Manual.

The absence of the indispensable County Recorders, and the impracticability of joining them at this late juncture, warrants a stay of the district court's injunction. *See Washington v. Daley*, 173 F.3d 1158, 1167 (9th Cir. 1999) (non-parties must be

represented by named parties adequately to overcome Rule 19); *Westchester Disabled on the Move, Inc. v. Cty. of Westchester*, 346 F. Supp. 2d 473, 479-80 (S.D.N.Y. 2004) (failure to join local jurisdictions responsible for carrying out election mandates dismissal); *cf. Rizzo v. Goode*, 423 U.S. 362, 371-72 (1976) (valid claim for a constitutional violation under § 1983 requires alleged specific injury as a result of the specific conduct of a defendant).

**E. Ariz. Rev. Stat. § 16-120 Does Not Unreasonably Burden Plaintiffs' First and Fourteenth Amendment Rights.**

Given all of the structural, doctrinal, equitable, and procedural bars to Plaintiffs' claims, the district court never should have proceeded to the merits. But it did, and it got those wrong too. Appellants are likely to succeed on the merits of Plaintiffs' First and Fourteenth Amendment challenge because neither Plaintiffs nor the district court identified any *state* action that burdened their rights.

The *Anderson/Burdick* framework is the standard under which these constitutional challenges are evaluated. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *see Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Under this framework, courts “must first consider the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate.” *Short v. Brown*, 893 F.3d 671, 676 (9th Cir. 2018) (quoting *Anderson*, 460 U.S. at 789). If the plaintiff fails to demonstrate any burden, then “there is no reason to call on the State to justify its practice.” *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 732 n.12 (9th Cir. 2015).



In applying this “balancing and means-end fit framework,” the severity of the burden dictates the level of review required: if the burden is not severe, a state need only identify an important regulatory interest to justify a reasonable, non-discriminatory restriction. *See Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011) (“We have repeatedly upheld as ‘not severe’ restrictions that are generally applicable, evenhanded, politically neutral, and protect the reliability and integrity of the election process.”) (internal citations omitted); *see also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (citing *Burdick*, 504 U.S. at 434).

Here, the district court misapplied the *Anderson/Burdick* test to conclude that Ariz. Rev. Stat. § 16-120 unreasonably burdens Plaintiffs’ First and Fourteenth Amendment rights, dramatically overstating the supposed burden and downplaying the State’s countervailing interests in maintaining the voter-registration deadline.

**1. Section 16-120 imposes a minimal burden on Plaintiffs’ rights.**

The district court concluded that “the burden” imposed by the voter-registration deadline “is severe . . . because of the large drop-off in registration during the months of the pandemic restrictions.” *Mi Familia Vota*, 2020 WL 5904952, at \*4. This holding is incorrect for multiple reasons.

First, neither the challenged law, Ariz. Rev. Stat. § 16-120, nor any other state action constitutes a “severe” burden on Plaintiffs’ rights. So it is no surprise that the district court did not even mention § 16-120 in its burden analysis. *See id.* at \*4.

Instead, the court focused on “pandemic restrictions”—presumably Governor Ducey’s COVID-19-related executive orders—and the impact they supposedly had on Arizona’s voter-registration numbers. But the court inexplicably ignored the fact that none of Governor Ducey’s executive orders curtailed Plaintiffs’ ability to register new voters. Rather, all of them expressly exempted “constitutionally protected activities” from their restrictions. *See* Governor of the State of Arizona, *Stay Home, Stay Healthy, Stay Connected*, Exec. Order No. 2020-18, at 3 (Mar. 30, 2020); Governor of the State of Arizona, *Amending the Stay Home, Stay Healthy, Stay Connected Order*, Exec. Order No. 2020-33, at 4 (Apr. 29, 2020); Governor of the State of Arizona, *Stay Healthy, Return Smarter, Return Stronger*, Exec. Order No. 2020-36, at 3 (May 12, 2020). Therefore, Plaintiffs were free to conduct voter-registration activities even during the height of the pandemic, whether in person or virtually. This fact by itself ameliorates whatever burden the district court attributed to “pandemic restrictions.” *See, e.g., Thompson v. DeWine*, 959 F.3d 804, 811 (6th Cir. 2020) (finding, in the context of COVID-19-related executive orders, that the burden imposed by a ballot-initiative signature deadline was not severe because the orders exempted constitutionally protected activity).

Second, to the extent the pandemic itself caused a reduction in voter registration, that fact would not warrant judicial intervention. Again, *Thompson* is instructive on this point. There, the plaintiffs challenged a ballot-initiative signature

deadline, arguing that the Ohio governor’s stay-at-home order rendered the burden imposed by the signature deadline unconstitutional. *Id.* The Sixth Circuit rejected this challenge, reasoning that “First Amendment violations require state action,” and that courts “cannot hold private citizens’ decisions to stay home for their own safety against the State.” *Id.* at 810. *See also Kishore v. Whitmer*, --- F.3d ---, 2020 WL 4932749, at \*3 (6th Cir. 2020) (burden imposed by candidate signature-gathering requirement was not severe where plaintiffs could have gathered signatures but “made the conscious choice not to do so”).

The same reasoning applies here: any burden on Plaintiffs is not actionable because it was caused by Plaintiffs’ decisions or third parties’ changed behaviors due to the pandemic, not state action. Consequently, any reduction in Plaintiffs’ voter-registration efforts was caused by their own “conscious choice[s],” or those of prospective voters who opted not to participate in Plaintiffs’ programs. *Kishore*, 2020 WL 4932749, at \*3. The district court incorrectly held these decisions “to stay home . . . against the State.” *Thompson*, 959 F.3d at 810.<sup>3</sup>

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<sup>3</sup> It is also notable that the pandemic-related difficulties that different plaintiffs claimed to have in a similar case, *Arizonans for Fair Elections v. Hobbs*, turned out to be dramatically overstated. There, the plaintiffs claimed it would be “impossible” to collect a sufficient number of signatures to get their initiative petitions on the ballot without judicial intervention. *Arizonans for Fair Elections*, No. CV-20-00658-PHX-DWL, 2020 WL 1905747, at \*9 (D. Ariz. Apr. 17, 2020). Yet, despite the court’s denial of relief, *id.* at \*17, the proponents allegedly turned in a sufficient number of signatures to attempt to qualify for the ballot (two were subsequently

Footnote continued on next page

Third, any burden Plaintiffs experienced is minimized by the fact that they have had years to register voters. Arizonans can register to vote at any time, provided they do so “before midnight of the twenty-ninth day preceding the date of the election.” Ariz. Rev. Stat. § 16-134. Plaintiffs had a nearly unbounded amount of time to register voters. As such, the “burden” imposed by § 16-120 is even less severe than in *Kishore* and *DeWine*, where the deadlines had front-end restrictions on signature-gathering. If anything, Plaintiffs’ failure to register as many voters as they would like evidences a lack of “reasonable diligence” in their efforts, not a “severe,” state-imposed burden on their rights. *See Angle v. Miller*, 673 F.3d 1122, 1133 (9th Cir. 2012) (plaintiffs failed to establish “severe burden” where they did not make “reasonably diligent efforts” to exercise their rights).

**2. The State Has Important Interests in Upholding Ariz. Rev. Stat. § 16-120.**

The district court wrongly gave short shrift to the State’s interest in Ariz. Rev. Stat. § 16-120. Although the district court concluded that “the State’s concerns about early voting requests” are “compelling,” the district court nevertheless held that “the burden to Plaintiffs’ constitutional rights” outweighs “the administrative burden on the government.” *Mi Familia*, 2020 WL 5904952, at \*5. This was error.

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disqualified due to court challenges). *See Arizona Secretary of State, Initiative, Referendum and Recall*, <https://azsos.gov/elections/initiative-referendum-and-recall> (last visited Oct. 9, 2020).

By recognizing that the State has a “compelling” interest in Ariz. Rev. Stat. § 16-120, the district court’s holding falls apart on its own logic. Even where a government regulation imposes a “severe” burden—which does not exist here—the regulation still must be upheld if it is “narrowly drawn to advance a state interest of compelling importance.” *Arntz*, 640 F.3d at 1106 (citations omitted). As the district court correctly recognized, the State has a “compelling” interest in § 16-120 because the deadline ensures that voters who simultaneously register to vote and request an early ballot are able to receive an early ballot. *See Mi Familia*, 2020 WL 5904952, at \*4-5. Even assuming § 16-120 somehow constitutes a severe burden (it does not), the district court’s finding of a compelling interest should have been sufficient to uphold that statute. *See Arntz*, 640 F.3d at 1106. Instead, the district court used the State’s compelling interest as an excuse to rewrite § 16-120 by modifying the voter-registration deadline—something the Supreme Court has cautioned against. *See, e.g., Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 397 (1988) (holding that a court cannot “rewrite a state law to conform it to constitutional requirements”).

Moreover, the district court downplayed or outright ignored the State’s other “important regulatory interests,” which should have sufficed to uphold the minimal burden imposed by § 16-120’s “reasonable, nondiscriminatory restrictions.” *See Arntz*, 640 F.3d at 1106. The State has a compelling interest in orderly election administration, *Nader v. Brewer*, 531 F.3d 1028, 1040 (9th Cir. 2008), which § 16-

120 undoubtedly facilitates. Specifically, § 16-120 ensures that Arizona election officials—primarily Arizona’s county recorders—have enough time to perform mandatory duties that flow from voter registration. These duties include registration verification, *see* Ariz. Rev. Stat. § 16-166; inclusion on the permanent early voting list, *see* Ariz. Rev. Stat. § 16-544; and management of early-ballot requests, *see* Ariz. Rev. Stat. § 16-542. In addition, § 16-120 allows election officials to focus their limited resources on processing early ballots, given that early voting begins just two days after the statutory voter-registration deadline. *See* Ariz. Rev. Stat. § 16-542(C). Most importantly, under Ariz. Rev. Stat. § 16-168, the County Recorders must prepare a list of all qualified electors in each precinct in the county to be used as the official precinct registers at the polls by October 23, 2020. This will be impossible, as the district court’s new voter registration deadline is October 23, 2020 at 5 p.m.

Given the compelling interest in avoiding disruption to Arizona’s comprehensive and interconnected election processes, Appellants are likely to succeed on the merits of Plaintiffs’ First and Fourteenth Amendment claims.

## **II. The District Court’s Ruling Is Causing Irreparable Injury to County Recorders.**

There is a high probability of irreparable injury if the stay is not granted for all the reasons Appellants described. *See Lair*, 697 F.3d at 1214 (“[T]he second factor asks us to ‘anticipate what would happen as a practical matter following the denial of a stay.’”) (quoting *Leiva-Perez*, 640 F.3d at 969); *see also* Dkt. 31; Dkt. 32.

Amici emphasize that the district court's injunction directly implicates the duties of the County Recorders who are absent from this case. *See* Ariz. Rev. Stat. § 16-101 *et seq.*

As noted, the County Recorders are charged with registering voters and administering early voting. *Id.* Extending the voter-registration deadline for 18 days places an extreme hardship on their ability to facilitate the administration of this election and address potential challenges after the fact. The injunction adds additional burdensome steps in a delicate framework that has been refined to accurately process millions of votes in a safe, secure, and efficient manner. And “nothing about” the process entailed with Plaintiffs’ requested relief “can be accurately described as mere administrative inconvenience or ‘easily manageable.’” *Ariz. Democratic Party v. Reagan*, CV-16-03618, 2016 WL 6523427, at \*4 (D. Ariz. Nov. 3, 2016).

“[T]he voter registration deadline is only one step in a series of orchestrated events that must take place before the election, and officials must strategically undertake a multitude of critical tasks imposed by law.” *Reagan*, 2016 WL 6523427, at \*11. Election deadlines were methodically set by the Legislature, carefully crafted to ensure the timely, efficient, and accurate administration of elections. Thus, changing one deadline necessarily impacts the others.

By statute, early voting began on October 7. *See* Ariz. Rev. Stat. § 16-542. As set forth above, the rosters and registers must be provided by October 23 at 5 p.m., the exact same time as the extended voter registration deadline will occur. Ariz. Rev. Stat. § 16-168(A). The deadline to request an early ballot by mail is also October 23. Ariz. Rev. Stat. § 16-542(E).

In practice, the district court's decision to extend the voter registration deadline would require county election officials to simultaneously process voter registrations, rosters, *and* early ballots. This is an almost impossible task. The officials have no time to prepare at this late stage, and Arizona's already high rates of early voting are sure to be even higher this year. Further, obtaining the necessary resources, as well as the trained and available staff necessary to process voter-registration applications for an additional 18 days, is simply not feasible.

The district court's injunction also impairs, and in some instances prevents, the counties from performing simultaneous statutorily prescribed activities, including: (1) mailing sample ballots 11 days before the election as required by Ariz. Rev. Stat. § 16-461(D); (2) filing voter-registration totals with the Secretary of State as required by Ariz. Rev. Stat. § 16-445; (3) counting ballots beginning 14 days before election day as required by Ariz. Rev. Stat. § 16-550, because the system used for this process requires complete voter registration totals; (4) mailing letters to registrants without documented proof of citizenship 10 days after receipt of their



registration application;<sup>4</sup> and (5) exporting voter registration to electronic pollbooks beginning on October 12, in order to meet deadlines for delivery to polling places on November 2.<sup>5</sup>

The injunction may result in voters who have already voted re-registering in another county and voting again because there is no time for the system to catch such double registration, thereby increasing the number of provisional ballots and placing a tremendous strain on County Recorders. The district court's order will sow confusion and chaos into a process already reeling from the impacts of COVID-19. For all these reasons, the district court's ruling is already causing irreparable harm to the County Recorders that will only be exacerbated absent a stay.

### **III. The Public Interest in Upholding a Long-Standing State Election Deadline Outweighs Plaintiffs' Self-Inflicted Injury.**

The last two factors of the Court's stay analysis require weighing the public interest against the harm to the opposing party. *Nken*, 556 U.S. at 435; *see also Leiva-Perez*, 640 F.3d at 964-66. Here, Plaintiffs allege the "Voter Registration Cutoff" that has been in effect for 30 years threatens the First and Fourteenth Amendment

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<sup>4</sup> *Manual*, at 7.

<sup>5</sup> Attached as Exhibit 1 is a letter from Yuma County Recorder, Robyn Stallworth Pouquette, to Secretary of State Hobbs, dated October 7, 2020. The letter details the impact of the district court's injunction on County Recorders; *see also* emails between Christopher J. Roads, Chief Deputy Recorder/Registrar of Voters – Pima County Recorder's Office, and Sambo (Bo) Dul, State Elections Director for Secretary Hobbs, dated October 6, 2020, attached as Exhibit 2.

Footnote continued on next page

rights of voter-registration organizers. Specifically, the harm alleged by Plaintiffs is an inability to register voters by going door-to-door.<sup>6</sup> But, as set forth above, any harm Plaintiffs suffered was caused by their own inaction, not by the State. *See Wham-O, Inc. v. Manley Toys, Ltd.*, No. 08-56188, 2009 WL 1353752, at \*1 (9th Cir. May 15, 2009) (if the plaintiff can avoid the “purported harm,” it cannot establish that it was irreparable); *see also Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020) (self-inflicted and avoidable injuries are not irreparable). Plaintiffs have never been barred from registering voters by any government action. Put simply, the alleged harm was completely within Plaintiffs’ control to avoid.

Plaintiffs’ self-inflicted harm is substantially outweighed by the public interest in preserving the integrity of the State’s election process and not displacing the well-established election plans approved by local elected officials and executed by the County Recorders. As explained, § 16-120 promotes the efficient verification of voter registration applications and early ballot counting, and preserves the limited resources of state election officials. *See Timmons*, 520 U.S. at 364-65 (“States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials.”).

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<sup>6</sup> If the County Recorders had been parties, they would have introduced evidence in the district court that several other special-interest groups mailed blank voter registration forms to households all across the state with prepaid postage envelopes to be mailed back to County Recorders. Thus, there were other opportunities for voter registration.

## **CONCLUSION**

The district court's last-minute injunction violates binding precedent and threatens the orderly administration of Arizona's General Election. This Court should stay the district court's decision.

Dated: October 9, 2020

Respectfully submitted on behalf of all Amici,

/s Brett W. Johnson

Brett W. Johnson

Colin P. Ahler

One Arizona Center

400 E. Van Buren, Suite 1900

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

**9th Cir. Case Number(s):** No. 20-16932

I am the attorney or self-represented party.

**This brief contains 5,774 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

complies with the word limit of Cir. R. 32-1.

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**Signature** s/ Brett W. Johnson

**Date** October 9, 2020

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**Signature** s/ Brett W. Johnson  
4815-8861-1790

**Date** October 9, 2020

# **EXHIBIT 1**



## Yuma County Recorder

197 S. Main Street  
Yuma, Arizona 85364  
(928) 373-6020  
(928) 373-6024 FAX

Robyn Stallworth Pouquette, Recorder  
Nohyra Madsen, Chief Deputy

Secretary of State Katie Hobbs  
1700 W. Washington Street, 7<sup>th</sup> Floor  
Phoenix, AZ 85364

October 7, 2020

RE: Arizona Court Case Allowing for Voter Registration Deadline Extension

Dear Secretary Hobbs,

Following our discussion yesterday regarding the court decision extending the voter registration deadline in Arizona to October 23, 2020, I wanted to personally share my thoughts with you on challenges I feel will exist for my office moving forward. In reviewing the Court's order, I was disappointed that county election officials were not advised of this court case as the county recorders have the constitutional responsibility to maintain the integrity of all voter registration records and early ballots in their individual county. I am concerned that your office did not adequately communicate to the court the burden this decision will now place on county election administrators statewide. Your office does not enter voter registration records, verify a voter's district assignment or eligibility, nor does it issue, process, verify, or tabulate early ballots to ensure a voter has not previously submitted a voted ballot. For those reasons, your communication with counties solely responsible for these important functions would have ensured clarified communication with the court, strengthened the integrity of elections, and supported voters across Arizona in the absence of partisan politics.

This decision impacts several statutory requirements, including tabulation and certification, which will likely no longer be met and highlights operational concerns that counties simply do not have sufficient time to properly assess. There is a high likelihood of inadequate supplies and staffing, despite the lengthy preparation for the largest election we have seen to date, as well as voters receiving multiple ballots. There is also the possibility of a voter being able to vote in more than one county due to voter registration backlogs.

I feel the Arizona Voter Information Database (AVID) system, maintained by your office and utilized by 13 of the 15 counties in Arizona, is not adequate to accommodate this extension, while simultaneously processing incoming ballots in a timely fashion; the system has not been tested for this capability. I recognize you have modified the deadline



for voter registration within AVID, however I'm sure you would agree that the testing and validation of any system changes remains a vital necessary component. Changes to critical election laws during the election itself compromises the integrity of the election especially in consideration of current system capability. We are already conducting this election. Changing the rules during the 4<sup>th</sup> quarter of the Super Bowl would be met with opposition from both teams. Similarly, this situation affects voters expecting a fair and secure election regardless of politics.


It is my understanding that the court specifically asked you, as the Secretary of State, to address the administrative burdens on the State. Not only did you not fully do so, you also failed to clarify that all administrative burdens would be placed on county election administrators, whom you did not communicate with concerning this litigation. You referred to difficulties with voters who register too close to the election also requesting an early ballot, however did not mention the other challenges that will be placed on the staff processing these records nor the potential comprised integrity of election results.

The consequences of the decision will result in the blame of significantly delayed election results to be laid at the feet of County Recorders and County Election Directors. We are in a critical time, Secretary Hobbs, and it would be unfair to not communicate to you that our office feels that your administration is not interested in supporting the election administrators who actually conduct elections and had no intention of communicating with all counties regardless of party affiliation.

These processes should be non-partisan and in place to protect the integrity of elections, while serving the voters of our community. A political party should not be the party appealing a ruling that was decided without all the information. The appeal should have been from you, the Chief Election Officer of Arizona, in support of voters and election administrators across this state that expect a fair, impartial and secure election.

I sincerely appreciate your time in hearing my concerns.

Respectfully,



Robyn Stallworth Pouquette, Recorder

# **EXHIBIT 2**

**From:** Chris J Roads [<mailto:Chris.Roads@recorder.pima.gov>]

**Sent:** Tuesday, October 6, 2020 10:19 AM

**To:** Bo Dul <[bdul@azsos.gov](mailto:bdul@azsos.gov)>; Adrian Fontes <[afontes@risc.maricopa.gov](mailto:afontes@risc.maricopa.gov)>; David Stevens <[dstevens@cochise.az.gov](mailto:dstevens@cochise.az.gov)>; Edison Wauneka <[ewauneka@co.apache.az.us](mailto:ewauneka@co.apache.az.us)>; F. Ann Rodriguez <[F.Ann.Rodriguez@recorder.pima.gov](mailto:F.Ann.Rodriguez@recorder.pima.gov)>; Kristi Blair <[kristi.blair@mohavecounty.us](mailto:kristi.blair@mohavecounty.us)>; Leslie Hoffman <[leslie.hoffman@yavapai.us](mailto:leslie.hoffman@yavapai.us)>; Michael Sample <[michael.sample@navajocountyaz.gov](mailto:michael.sample@navajocountyaz.gov)>; Hansen, Patty <[pansen@coconino.az.gov](mailto:pansen@coconino.az.gov)>; Richard Garcia <[rgarcia@lapazcountyaz.org](mailto:rgarcia@lapazcountyaz.org)>; Robyn Stallworth Pouquette <[Robyn.Pouquette@yumacountyaz.gov](mailto:Robyn.Pouquette@yumacountyaz.gov)>; Sadie Jo Bingham <[sbingham@gilacountyaz.gov](mailto:sbingham@gilacountyaz.gov)>; Sharie Milheiro <[smilheiro@greenlee.az.gov](mailto:smilheiro@greenlee.az.gov)>; Suzie Sainz <[ssainz@santacruzcountyaz.gov](mailto:ssainz@santacruzcountyaz.gov)>; Virginia Ross <[virginia.ross@pinal.gov](mailto:virginia.ross@pinal.gov)>; Wendy John <[wjohn@graham.az.gov](mailto:wjohn@graham.az.gov)>; Allen Tempert <[allen.tempert@mohavecounty.us](mailto:allen.tempert@mohavecounty.us)>; Angela Romero <[aromero@co.apache.az.us](mailto:aromero@co.apache.az.us)>; Bianca Figueroa <[bfigueroa@greenlee.az.gov](mailto:bfigueroa@greenlee.az.gov)>; Brad Nelson <[brad.nelson@pima.gov](mailto:brad.nelson@pima.gov)>; emariscal <[emariscal@gilacountyaz.gov](mailto:emariscal@gilacountyaz.gov)>; Eslier Musta <[emusta@coconino.az.gov](mailto:emusta@coconino.az.gov)>; Hannah Duderstadt <[hduderstadt@graham.az.gov](mailto:hduderstadt@graham.az.gov)>; Kevin Scholl <[kscholl@lapazcountyaz.org](mailto:kscholl@lapazcountyaz.org)>; Marra, Lisa M <[Lmarra@cochise.az.gov](mailto:Lmarra@cochise.az.gov)>; Lynn Constabile <[lynn.constabile@yavapai.us](mailto:lynn.constabile@yavapai.us)>; Michele Forney <[michele.forney@pinal.gov](mailto:michele.forney@pinal.gov)>; [rayleen.richards@navajocountyaz.gov](mailto:rayleen.richards@navajocountyaz.gov); rvalenzuela <[rvalenzuela@risc.maricopa.gov](mailto:rvalenzuela@risc.maricopa.gov)>; Scott Jarrett <[sjarrett@risc.maricopa.gov](mailto:sjarrett@risc.maricopa.gov)>; Tiffany Anderson <[Tiffany.Anderson@yumacountyaz.gov](mailto:Tiffany.Anderson@yumacountyaz.gov)>

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**Subject:** RE: Court Order Extending Voter Registration Deadline

Bo,

This has a far greater impact than just extending the registration deadline. Early voting starts tomorrow. Any voter can now walk in to an early voting site tomorrow and vote. They can then register in another county and go there and vote. I do not believe AVID is set up to search one county's records from another county to see if a ballot has been issued and block a ballot in this circumstance.

By statute, the rosters and registers must be provided by October 23 by 5:00 p.m., the exact same time that the voter registration deadline will occur. The deadline to request an early ballot by mail is also the exact same deadline.

The settlement regarding DPOC allows a voter to update their status by 5:00 p.m. on October 29 but requires us to send the letter within 10 days of receipt of the registration. So now we will be trying to get these notices out while trying to get the rosters completed, the last early ballots out and all of our other tasks.

The problem with moving one election deadline is that it impacts dozens of others. None of those other deadlines were taken into consideration at all. All of those tasks fall under the responsibility of the Counties and not the Secretary of State. Yet again, we were not notified of this litigation and we should have been a party.

Christopher J. Roads  
Chief Deputy Recorder/Registrar of Voters  
Pima County Recorder's Office

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**From:** Bo Dul [<mailto:bdul@azsos.gov>]

**Sent:** Tuesday, October 6, 2020 10:06 AM

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**Subject:** Court Order Extending Voter Registration Deadline

**Importance:** High

All –

Last night, Judge Logan of the federal district court in Arizona ordered the voter registration deadline be extended through **October 23, 2020 at 5:00 p.m.** Unless this decision is stayed during or overturned on appeal, Arizonans will have until 5:00 p.m. on October 23 to register and be eligible to vote in the General Election.

An appeal filed by the RNC is pending. The Secretary defended the deadline, but will not be joining that appeal. No matter what, we now need to accommodate an extended voter registration deadline, and would rather not have to change that deadline again, or possibly twice if there is a stay followed by an affirmance of the original ruling. We are working with BPro to update the registration deadline in AVID and will be in close communication with the counties regarding any specific instructions.

Below are some points to note that we have gotten questions about and the responses AZSOS staff are giving to callers:

- If the District Court or Court of Appeals stays this decision, or if the Court of Appeal overturns the decision, the deadline will change. It is important that someone who isn't already registered and wants to register not delay. This extra time may go away, so we are encouraging callers who still have not registered to register asap.
- Even if a stay or reversal is granted, anyone who properly registers between October 5 and the date of the stay or reversal will be considered registered to vote in the General Election.
- The order requires that voter registration forms be **received by** the county on October 23 by 5:00 p.m. This is different from the prior voter registration deadline rule, where forms could be postmarked by the 29-day deadline.
- If the deadline is not stayed or reversed and someone registers after the early voting period has started, it will still take some time for the registration to be processed and entered into the system so that a ballot can be issued. Voters should confirm on Arizona.Vote or with their county recorder that their registration has been processed prior to voting early. Voters may not be able to register and then vote early in-person that same day unless they vote a provisional ballot.

We will discuss this and answer any questions on the counties/SOS call at 1PM today. Please feel free to reach out to me with any questions in the meantime.

Thank you,

Bo



Sambo (Bo) Dul  
State Elections Director  
Arizona Secretary of State

Email: [bdul@azsos.gov](mailto:bdul@azsos.gov)  
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