

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MI FAMILIA VOTA; ARIZONA  
COALITION FOR CHANGE; ULISES  
VENTURA,

Plaintiffs-Appellees,

v.

KATIE HOBBS,

Defendant-Appellee,

REPUBLICAN NATIONAL  
COMMITTEE; NATIONAL  
REPUBLICAN SENATORIAL  
COMMITTEE,

Intervenor-Defendants-  
Appellants.

No. 20-16932

On Appeal from  
United States District Court for  
Arizona, Phoenix  
Honorable Steven P. Logan  
Case No. 20 Civ. 1903 (SPL)

**PLAINTIFFS-APPELLEES’  
CONSOLIDATED  
OPPOSITION TO BOTH  
MOTIONS TO STAY**

**PRELIMINARY STATEMENT**

Plaintiffs-Appellees’ Mi Familia Vota and Arizona Coalition for Change are organizations engaged in voter registration work; Plaintiff Ulises Ventura is an individual voter registration organizer. They presented un rebutted evidence to the district court that the COVID-19 pandemic and resulting shutdown had caused a severe drop in their rates of voter registration. Their data was corroborated by the Arizona Secretary of State’s own data, which shows that Arizona netted less than

half as many additional voter registrations during the pandemic months as it did during the same months in 2016. Based on this factual showing, the district court correctly concluded that Arizona’s 29-day voter registration deadline (the “Voter Registration Cutoff”), as applied under the unprecedented circumstances caused by the pandemic this year, severely burdened Plaintiffs’ constitutional rights to register and organize voters for the upcoming election. In response, the Secretary of State failed to introduce *any* evidence that an extension of the registration deadline this year would actually burden the State. On this record, the district court granted a modest extension of the deadline (less than Plaintiffs had sought) until October 23. The Secretary of State declined to appeal the district court’s reasoned and careful order, determining that it was better for Arizona to comply. In the nearly one week since the district court’s order came down, thousands of Arizonans have benefited from the extension to register to vote. Neither the Republican Committee intervenors who improperly brought this appeal, nor the Attorney General who now seeks to improperly intervene into it, have made any colorable argument—much less adduced any evidence—that a few more days of voter registration are causing irreparable harm to anyone. They are not. A stay of the district court’s order now would moot Plaintiffs’ ability to obtain any relief ahead of the election and prevent thousands of Arizonans from voting in this year’s presidential election. The motions to stay should be denied.

## ARGUMENT

“A request for a stay pending appeal is committed to the exercise of judicial discretion.” *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020). To be entitled to a stay, Movants bear the burden of showing that: (1) they have “made a strong showing of the likelihood of success on the merits;” (2) that they “will be irreparably injured absent a stay;” (3) that a stay would not “substantially injure other parties;” and (4) that “the public interest” favors a stay. *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)). In this analysis, “[t]he first two factors . . . are the most critical” and the other factors are only considered “if the first two factors are satisfied.” *Doe #1*, 957 F.3d at 1058 (citing *Nken*, 556 U.S. at 435).

### I. THERE IS NO IRREPARABLE HARM

Without a showing of irreparable harm, “a stay may not issue, regardless of the petitioner’s proof regarding the other stay factors.” *Id.* (quotation omitted). The Court may enter a stay only “when irreparable harm is probable, not merely possible.” *Id.* at 1059-60; *see also Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) (movant must show that “an irreparable injury is the more probable or likely outcome.”) (quotation and citation omitted).

#### A. There Is No Showing of Irreparable Harm on this Record

No irreparable harm is caused by allowing Arizonans a few more days to register to vote. Movants “cannot meet this burden by submitting conclusory factual assertions and speculative arguments that are unsupported in the record.”

*Doe #1*, 957 F.3d at 1059-60; *see also Al Otro Lado*, 952 F.3d at 1009-10 (denying stay where movant offered “only speculation” and “no support” for its assertions of irreparable harm).

The Attorney General argues only that it has *per se* established irreparable harm because a state statute has been enjoined. Dkt. 32 at 1. If that were true, the government would automatically satisfy the irreparable harm factor any time a law was enjoined. But that is not the law. This Court has repeatedly denied stays where the government failed to make a *showing* of *actual* irreparable harm. *See, e.g., Doe #1*, 957 F.3d at 1059 (denying stay where government made similar argument because it would mean “no act of the executive branch asserted to be inconsistent with a legislative enactment could be the subject of a preliminary injunction.”); *Al Otro Lado*, 952 F.3d at 1003 (denying stay where government regulation had been enjoined). The Attorney General makes no other attempt to argue, much less show, *any* irreparable harm from continued registration that would justify a stay.

The Republican Committees fare even worse. Tellingly, this factor—the most important in assessing the need for a stay, *Doe #1*, 957 F.3d at 1061—is not even mentioned until page 17 of the Committees’ brief. Then, they argue only that the district court’s order “obliges” them to spend money and resources on voter registration efforts instead of unspecified “other campaign activities or risk falling behind in the competition to register voters throughout Arizona.” Dkt. 31 at 18.

Nothing in the district court's order "*obliges*" the Republican Committees to do anything at all. Their voluntary decision to devote resources to voter registration is, at best, "purely monetary" harm and it is well-established that "monetary injury is not normally considered irreparable." *Doe #1*, 957 F.3d at 1060 (quotation omitted). Their asserted "*risk* [of] falling behind in the competition to register voters" (Dkt. 31 at 18) is facially speculative and therefore insufficient to prove irreparable harm. *See Al Otro Lado*, 952 F.3d at 1009-10.

The extension ordered by Judge Logan has now been in effect for almost a week. Movants "thus had available to [them] the best evidence of harms likely to occur because of the injunction: evidence of harms that *did* occur because of the injunction. Rather than submitting evidence of actual burdens and delays [they had] experienced since the injunction issued," Movants submitted only conclusory allegations of harm. *Al Otro Lado*, 952 F.3d at 1007 (emphasis in original). That is because the ongoing registration of voters is not causing anyone irreparable harm. The evidence shows that voters are continuing to register and local elections officials are continuing to process those registrations. On the first day the extension was in effect, October 6, *almost 15,000 Arizonans registered* to vote in Maricopa County alone.<sup>1</sup> Maricopa County's elections department informs voters that, in the

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<sup>1</sup> The AZ - abc15 - Data Guru (@Garrett\_Archer), Twitter (Oct. 7, 2020; 2:57 PM), [https://twitter.com/garrett\\_archer/status/1313916256173473792](https://twitter.com/garrett_archer/status/1313916256173473792) ("Maricopa voter registration changes from 10/5 to 10/6, since registration is still open:

wake of the extension ordered by the district court, it is processing new voter registrations and is confident that: “Our voter registration department has adequately prepared to handle the high volume of voter registration forms for the November General Election. *We will continue to timely process voter registration forms for the election.*”<sup>2</sup> The Attorney General acknowledges that these registrations have been processed and does not identify any irreparable harm caused by processing these registrations or allowing those newly registered voters to vote in the election. Dkt. 32 at 4 (“those voters who have completed registration under the terms of the district court’s injunction—i.e., those have been told that they will be permitted to vote by the terms of the injunction—should be excluded from the stay pending appeal.”). As for the Republican Committees, it is puzzling to hear them claim irreparable harm from the extension, when the Arizona Republican Party has been boasting on Twitter that more Republicans registered than Democrats (5,115 vs. 4,273) on October 6 “since registration is still open” and cheering that they are “Rockin’ and rollin’!! Keep up the momentum.”<sup>3</sup>

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Republicans: 5,115 (58% as PEVL) Democrats: 4,273 (93% as PEVL) Libertarian: 322 (57% as PEVL) Other: 5,169 (85% as PEVL) 5,135 inactive registrants moved to active status.”)

<sup>2</sup> Maricopa Cty. Elections Dep’t, *Register to Vote: Frequently Asked Questions*, <https://recorder.maricopa.gov/elections/registrationform.aspx> (last visited Oct. 9, 2020).

<sup>3</sup> Arizona Republican Party (@AZGOP), Twitter (Oct. 7, 2020; 3:05 PM), <https://twitter.com/AZGOP/status/1313918296954073088>.

The Movants’ failure to show irreparable harm is fatal to their attempts to seek a stay. “[I]f a stay applicant cannot show irreparable harm, *a stay may not issue*, regardless of [Movants’] proof regarding the other stay factors.” *Doe #1*, 957 F.3d at 1061-62 (quotation omitted) (emphasis added).

## **II. THE APPEAL IS NOT LIKELY TO SUCCEED**

Even if the other factors are considered, however, Movants also fail to satisfy them. “Where, as here, the showing of irreparable harm is weak at best, [Movants] must make a commensurately strong showing of a likelihood of success on the merits to prevail under the sliding scale approach.” *Al Otro Lado*, 952 F.3d at 1010. Here, Movants have “not made a strong showing—let alone the especially strong showing required here in light of the weak irreparable harm demonstration—that it is likely to succeed.” *Id.* at 1011.

### **A. The Appeal Is Likely to Be Entirely Dismissed**

Because the Arizona Secretary of State has decided not to appeal the District Court’s order, the Republican Committees lack standing to pursue an appeal on their own. *Republican Nat’l Comm. v. Common Cause R.I.*, No. 20A28, 2020 WL 4680151, at \*1 (U.S. Aug. 13, 2020) (denying stay sought by intervenor RNC); *Hollingsworth v. Perry*, 570 U.S. 693, 715 (2013); *Diamond v. Charles*, 476 U.S. 54, 71 (1986). The Republican Committees are therefore unlikely to succeed on

their appeal. *See* Dkt. 2 (Pl. Motion to Dismiss); Dkt. 37 (Pl. Reply on Motion to Dismiss).

Similarly, because there was never an appropriate appellate predicate, there is no appellate jurisdiction to consider the Attorney General's eleventh-hour attempt to intervene. *See* Dkt. 34 (Pl. Opposition to Intervention).

Because the entire appeal will be dismissed for lack of jurisdiction, there is no likelihood of success on appeal for anyone.

**B. The District Court Correctly Applied *Anderson Burdick***

Even if the jurisdiction of this Court had been properly invoked and a party with standing to appeal sought a stay, there would still be no likelihood of success on the appeal. The district court carefully, thoughtfully, and correctly applied the law to the record of this case.

No one disputes that Judge Logan applied the correct legal framework, *i.e.* the *Anderson Burdick* balancing test. *See* Order, attached as Ex. A, at 5-6. Because there is no allegation of legal error, this Court must defer to the district court's findings of fact and may reverse only if those findings were "clearly erroneous." *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 795 (9th Cir. 2005) ("As long as findings are plausible in light of the record viewed in its entirety, a reviewing court may not reverse even if convinced it would have reached a different result.") (quotation omitted).



There is no clear error in Judge Logan’s factual findings. Judge Logan found that Plaintiffs’ rights were severely burdened by the Voter Registration Cutoff as applied this year because “*Plaintiffs offer data* that shows that they could not reach the same number of voters during the pandemic months. Before COVID-19, Plaintiffs were registering about 1,523 voters a week, which dropped to 282 a week during the restrictions. After COVID-19 restrictions were lifted, their registration numbers returned to almost the same as before the pandemic.” Ex. A at 7 (emphasis added). The Secretary of State’s own data established a huge drop in the rate of voter registration during the pandemic months: from January to August 2020, Arizona netted only 62,565 new registrations, as compared to 146,214 during the same eight-month period in 2016. *See id.* at 8; *see* Salzman Decl. (Dist. Ct. Dkt. 30-1), attached as Ex. B, ¶¶ 3-7. On this undisputed record, Judge Logan correctly held that Plaintiffs’ rights were severely burdened. Other courts around the country have made similar findings. *See, e.g., Eshaki v. Whitmer*, 813 Fed. App’x 170, 171 (6th Cir. 2020) (upholding the district court’s preliminary injunction prohibiting enforcement of Michigan’s ballot petition signature deadline, which imposed severe burden during COVID-19); *Fair Maps Nev. v. Cegavske*, No. 20 Civ. 271, 2020 WL 2798018, at \*14-16 (D. Nev. May 29, 2020) (ordering Nevada to extend its statutory ballot initiative petition deadline, which impermissibly inhibited plaintiffs’ First Amendment rights, as applied during

COVID-19); *Gallagher v. N.Y. State Bd. of Elections*, No. 20 Civ. 5504, 2020 WL 4496849, at \*16–18, 23 (S.D.N.Y. Aug. 3, 2020) (enjoining New York to disregard its statutory mail-in ballot postmark deadline, which “in light of the ongoing COVID-19 pandemic” imposed an “exceptionally severe” burden on plaintiffs); *Libertarian Party of Ill. v. Pritzker*, No. 20 Civ. 2112, 2020 WL 1951678, at \*2–5 (N.D. Ill. Apr. 23, 2020) (adopting a joint proposed order extending ballot petition signature deadlines where, as applied in combination with COVID-19 restrictions, the effect of the requirements insurmountably burdened plaintiffs); *Goldstein v. Sec’y of the Commonwealth*, 484 Mass. 516, 525 (Mass. 2020) (applying state *Anderson-Burdick* equivalent and ordering Massachusetts to extend deadlines for submission of nominating papers where statutory requirements imposed a severe burden, as applied during COVID-19).<sup>4</sup>

Judge Logan then found that he “asked the Defendant to address the administrative burdens on the state in its Response, and *Defendant did not do so*, beyond referring to difficulties with voters who register too close to the election requesting an early voting ballot.” Ex. A at 8 (emphasis added). Despite Defendant’s failure to offer evidence of this concern, Judge Logan still addressed

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<sup>4</sup> See also *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1254 (N.D. Fla. 2016) (extending voter registration deadline in the wake of Hurricane Matthew); *Ga. Coal. for the People’s Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1345-46 (S.D. Ga. 2016) (same).

Defendant's theoretical burden by carefully tailoring the injunctive relief and issuing a shorter extension than what Plaintiffs had sought, explaining: "taking into account the Early Voting deadline of October 23, 2020 and the issues that may arise with voters requesting early voting ballots after that deadline, the Court will grant a preliminary injunction on the voter registration deadline until October 23, 2020 to alleviate any potential problems with belated requests for any Early Voting ballots beyond that date." *Id.* at 9-10.

The Attorney General does not even attempt to dispute Judge Logan's factual findings that the Voter Registration Cutoff, as applied in these circumstances, severely burdened Plaintiffs' rights and that the State failed to put forth evidence of a narrowly tailored, compelling state interest.

The Republican Committees' speculation that only a small number of Arizona voters may have been burdened by the pandemic is not only without support, it is utterly contradicted by the undisputed record in this case. *See id.*; *contra* Dkt. 31 at 11-14. The rest of the Republican Committees' arguments mischaracterize Plaintiffs' allegations: Plaintiffs argued that the State's enforcement of the Voter Registration Cutoff during the pandemic (*not* the Governor's executive orders) severely burdened their rights to register voters ahead of the deadline to register *for the 2020 election* and introduced unrebutted data showing that tens of thousands of voters were denied the opportunity to

register as a result of the enforcement of the Voter Registration Cutoff under these circumstances. *Contra* Dkt. 31 at 5. The district court’s extension of the registration deadline redressed Plaintiffs’ injury by allowing them to register more voters—indeed, the evidence shows that an astonishing 14,879 new voters in one county alone registered on the first day of the extension.<sup>5</sup>

The Republican Committees also fail to point to any *evidence* of a compelling, narrowly tailored state interest in strict enforcement of the Voter Registration Cutoff this year, despite their kitchen sink of concerns advanced by neither the Secretary of State below nor the Attorney General on appeal. *Contra* Dkt. 31 at 14-16. All of these are pre-existing features of Arizona election procedures which are not caused by the registration extension and therefore fail to justify the State’s interest in enforcing the Voter Registration Cutoff. Specifically: the 29-day residency requirement is irrelevant; as Judge Logan found, this argument “is unpersuasive, considering Arizona voters are required to present proof of residency at the polls on Election Day.” Ex. A at 8. Nothing in the extension changes that procedure. Similarly, Arizonans are required to submit proof of citizenship to vote in state and local elections regardless of whether they

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<sup>5</sup> The AZ - abc15 - Data Guru, *supra* note 1.

register before or during the extension.<sup>6</sup> There is also no evidence that it is impossible for Arizona to finalize voter rolls while processing voter registrations. Dkt. 31 at 15. On the contrary, Arizona law already requires the updating of voter rolls while voting is happening. *See, e.g.*, Ariz. Rev. Stat. §§ 16-103, 16-134, 16-411(b)(5). There is also plenty of time for the registrations received during the extension until October 23 to be processed ahead of November 3: Maricopa County (the State’s most populous) explains on its website that it takes them “about a week to process paper voter registration forms and 24 hours for online registering.”<sup>7</sup> Finally, there is also no evidence of any problems with provisional ballots (which are a feature of any election, regardless of the length of the voter registration period) nor the unspecified “*potential risks* to election integrity.” Dkt. 31 at 15-16 (emphasis added). These arguments were not even raised below and are therefore waived on appeal. *Armstrong v. Brown*, 768 F.3d 975, 982 (9th Cir. 2014).

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<sup>6</sup> *See also* Ariz. Sec’y of State, *Proof of Citizenship Requirements*, <https://azsos.gov/elections/voting-election/proof-citizenship-requirements> (last visited Oct. 5, 2020) (Salzman Decl. Ex. I).

<sup>7</sup> Maricopa Cty. Elections Dep’t, *Register to Vote: Frequently Asked Questions*, available at <https://recorder.maricopa.gov/elections/registrationform.aspx> (last visited Oct. 9, 2020).

**C. The District Court Properly Found Plaintiffs Have Standing**

The Republican Committees argue that Plaintiffs lack standing because their injuries are not traceable to the Voter Registration Cutoff and their injuries are not addressed by the injunction extending the deadline. They are wrong on both points.

The two organizational Plaintiffs proved that they diverted substantial resources toward registering voters in a truncated period of time which resulted directly from the enforcement of the Voter Registration Cutoff in the midst of the pandemic *and* that their organizational missions were frustrated by this application of the deadline insofar as it impaired their ability to register voters *for the November 3 general election*. See Ex. A at 4. The court's order extending the deadline has and continues to directly address that injury by enabling Plaintiffs to continue to register voters for the election.

Similarly, the infringement of the First and Fourteenth Amendment rights of Plaintiff Ulises Ventura resulted directly from the application of the registration deadline in the midst of the pandemic impairing his ability to register voters for the upcoming election—an impairment that has been addressed by the court's order extending the deadline. Because he is an individual, Plaintiff Ventura is not required to satisfy organizational standing requirements of frustration of mission and diversion of resources.

**D. The *Purcell* Doctrine Does Not Apply Here**

The Attorney General’s motion for a stay relies entirely on the argument that the district court *violated* the *Purcell* doctrine. But Judge Logan correctly found that *Purcell* does not apply here.

The Attorney General asks the Court to dramatically reify *Purcell* into a bright-line rule that bars courts from granting *any* election-related remedy a month before an election. There is no support for this extreme interpretation in either the text of *Purcell* or in its progeny. *Purcell* held only that “[f]aced with an application to enjoin operation of voter identification procedures just weeks before an election, the Court of Appeals was required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). “*Purcell* did not set forth a *per se* prohibition against enjoining voting laws on the eve of an election.” *Feldman v. Arizona Sec’y of State’s Office*, 843 F.3d 366, 368 (9th Cir. 2016).

More importantly, “the factors that animated the Supreme Court’s concern in *Purcell* are not present” here because “*the injunction at issue here does not involve any change at all to the actual election process.*” *Id.* (emphasis added). An extension of the voter registration period simply allows more people to register and vote using the processes already in place. “[I]n our case, in contrast to *Purcell*, an

injunction will not confuse election officials or deter people from going to the polls for fear that they lack the requisite documentation. The election process is unaffected.” *Id.* As Judge Logan reasoned: “This Court has previously held that the *Purcell* doctrine does not apply to the extension of election deadlines because the requested remedy is asking election officials to continue applying the same procedures they have in place now, but for a little longer.” Ex. A at 4-5 (quotation omitted).

This case is not like *Arizona Democratic Party v. Hobbs*, where the district court “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.” No. 20-16759, 2020 WL 5903488, at \*1 (9th Cir. Oct. 6, 2020) (first emphasis added). Here, by contrast, no change to Arizona’s elections procedures was ordered and no “new procedure” of any kind had to be created or implemented; the State was merely directed to continue to accept voter registrations for a little longer than it usually does, and then allow those voters to vote using the same election procedures already in place. Equally important was this Court’s finding in *Arizona Democratic Party* that “the record contains evidence to show” that the new procedure “would indeed increase the administrative burdens on the State.” *Id.* Here, by contrast, there *is no such evidence*. Judge Logan “asked the Defendant to address the administrative burdens



on the state in its Response, and *Defendant did not do so*, beyond referring to difficulties with voters who register too close to the election requesting an early voting ballot.” Ex. A at 8 (emphasis added). Judge Logan credited the only concern advanced by Defendant, even though it was unsubstantiated, by carefully tailoring the injunctive relief and issuing a shorter extension than what Plaintiffs had sought.

There is therefore no *Purcell* issue at all in this case, much less a “violation” that requires reversal.

### **III. A STAY WILL CAUSE IRREPARABLE HARM TO PLAINTIFFS AND THE PUBLIC**

There is no irreparable harm to the Attorney General, much less the Republican Committees, if voters in Arizona are given a little more time in this unprecedented pandemic to continue to register to vote. Judge Logan methodically considered the evidence, Ex. A at 9, and found that “the evidence demonstrated that Plaintiffs would suffer irreparable harm absent preliminary injunctive relief and that the government was unlikely to succeed in showing otherwise.” *Doe #1*, 957 F.3d at 1060. “Plaintiff has shown that fewer voters will be registered in this State if the deadline is not extended. As previously discussed, the harm suffered is loss of possibly tens of thousands of voter registrations, and a burden to Plaintiffs’ First and Fourteenth Amendment rights to organize voters.” Ex. A at 9.

A stay now would cause irreparable harm to Plaintiffs by permanently upending the *status quo* and stopping their voter registration efforts without time

for them to be restarted ahead of the election in the likely event this appeal is ultimately dismissed. *See Nat'l Urban League v. Ross*, No. 20-16868, 2020 WL 5815054, at \*2 (9th Cir. Sept. 30, 2020) (refusing to stay extension of census deadline because it would not be possible to stop and then restart census operations). A stay therefore “risks rendering the plaintiff’s challenge to the [Voter Registration Cutoff] effectively moot.” *Id.*

The public interest would also be irreparably harmed by a stay. As the Secretary of State, Arizona’s chief election official, explained when she decided she would not appeal Judge Logan’s order: “With the General Election less than a month away, Arizonans deserve a quick resolution to this matter. Providing clarity is more important than pursuing this litigation.”<sup>8</sup> Almost 15,000 Arizonans registered to vote just in Maricopa County on the first day of the extended registration period. The public’s interest in “permitting as many qualified voters to vote as possible,” *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012), is plainly served by extending the Voter Registration Cutoff. *See also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247-48 (4th Cir. 2014) (the public interest is served when “as many qualified voters as possible” can vote).

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<sup>8</sup> Secretary Katie Hobbs (@SecretaryHobbs), Twitter (Oct. 6, 2020; 1:37 AM), <https://twitter.com/secretaryhobbs/status/1313352717407006725>.

The Attorney General does not argue that the public interest favors a stay or that Plaintiffs will not be irreparably harmed by a stay. The Republican Committees make only a conclusory assertion that extending the voter registration period will create confusion. But that argument lacks any support in the record and defies common sense. As Judge Logan found, any “voter confusion will be minimal. Voters who are already registered will not need to bother with the new deadline, and those voters that were unable to register before October 5, 2020 now have extra time.” Ex. A at 8. That factual finding is entitled to deference on appeal. There is simply nothing confusing about giving people a few more days to register to vote in a pandemic that has required extensions of many other previously sacrosanct deadlines, including the deadline to file taxes and the deadline to complete the census.

As Judge Logan held, the public interest favors an extension of the registration period, in the unprecedented circumstances caused by the pandemic this year, because: “a core tenet of democracy is to be ruled by a government that represents the population. Due to COVID-19, a portion of the population is prevented from registering to vote, and thus the integrity of the election is undermined in a different way; that portion is going unrepresented. Extending the deadline would give more time for those voters to register and let their voices be heard through the democratic process.” Ex. A at 9.

## CONCLUSION

No irreparable harm exists to justify a stay. On the contrary, a stay would irreparably harm Plaintiffs and the public at large by denying tens of thousands of Arizonans the right to register to vote in the presidential election this year. The appeal is also unlikely to succeed on the merits: the Court lacks jurisdiction over the appeal because the Republican Committees lack standing to pursue this appeal; there is no valid appeal in which the Attorney General can intervene, nor proper basis for intervention; and the district court's reasoning was sound. Both motions to stay should be denied.

DATED this 9th day of October, 2020.

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF System.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Avanika Sharda

# **EXHIBIT A**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Mi Familia Vota, et al.,	}	No. CV-20-01903-PHX-SPL
	}	
Plaintiffs,	}	<b>ORDER</b>
vs.	}	
	}	
Katie Hobbs,	}	
	}	
Defendant.	}	
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On September 30, 2020, two non-profit organizations, Mi Familia Vota and the Arizona Coalition for Change, and an individual voter organizer with Mi Familia Vota, Ulises Ventura (together “Plaintiffs”), filed a Complaint seeking a declaratory judgment (Doc. 1) and an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Defendant Arizona Secretary of State Katie Hobbs. (Doc. 2) On October 2, 2020, Defendant filed a Response in Opposition. (Doc. 16) Also on October 2, 2020, Intervenor-Defendants Republican National Committee and National Republican Senatorial Committee filed a Motion to Intervene. (Doc. 15) The Court granted the Motion to Intervene and the Clerk of Court filed the Intervenor-Defendants’ Response in Opposition to the Plaintiffs’ Motion (Doc. 26) and the Intervenor-Defendants’ Answer. (Doc. 27)<sup>1</sup> The Court also granted Governor Douglas A. Ducey’s Motion for Leave to File

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<sup>1</sup> To the extent Plaintiffs argue the Court should reconsider its decision to grant Defendant-Intervenors leave to intervene, the request is untimely due to the fast-turnaround needed in this case and will not be considered by the Court.



1 Amicus Brief in Support of Defendant, which the Clerk of Court filed. (Doc. 29) Due to  
2 the urgent nature of this case, the Court held oral argument on the matter on Monday,  
3 October 5, 2020. The Court also exercises its discretion under Federal Rule of Civil  
4 Procedure 65(a)(2) to consolidate the trial on the merits with the hearing on the temporary  
5 restraining order and preliminary injunction. Furthermore, because the requested  
6 injunction is longer than 14 days, pursuant to Rule 65, the Court will treat Plaintiffs' request  
7 as a request for a preliminary injunction. For the reasons that follow, the preliminary  
8 injunction is granted as modified.<sup>2</sup>

9 **I. BACKGROUND**

10 Plaintiffs allege that if Defendant were to enforce the Arizona Voter Registration  
11 Deadline of October 5, 2020, their First and Fourteenth Amendment Rights would be  
12 burdened. (Doc. 1 at 17) They seek an extension of the voter registration deadline to  
13 October 27, 2020. Defendant alleges that (1) Plaintiffs are not likely to succeed on the  
14 merits of their claims, (2) Plaintiffs fail to show the enforcement of the deadline will cause  
15 irreparable injury, and (3) an extension of the deadline would result in hardship to election  
16 officials and result in public confusion. Intervenor-Defendants allege that (1) Plaintiffs'  
17 action is untimely, (2) Plaintiffs failed to join all necessary parties, (3) Plaintiffs lack  
18 standing, and (4) the deadline does not burden Plaintiffs' rights and is necessary to  
19 vindicate important state interests.

20 **II. LEGAL STANDARDS**

21 When deciding whether to grant a preliminary injunction, courts follow the test set  
22 out by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S.

23 \_\_\_\_\_  
24 <sup>2</sup> Rule 65 provides that no injunction shall issue except with the giving of security  
25 by the applicant for the payment of costs and damages that may be incurred by any party  
26 found to be wrongfully enjoined. Although the language is mandatory, courts have  
27 discretion as to the amount of the security and may dispense with the requirement when  
28 they conclude there is no likelihood of harm or when the plaintiff's constitutional rights  
are affected. *See Reed v. Purcell*, No. CV 10-2324-PHX-JAT, 2010 WL 4394289, at \*5  
(D. Ariz. Nov. 1, 2010). As the likelihood of harm to Defendant is low, Defendant has not  
requested a bond, and Plaintiffs' First and Fourteenth Amendment rights are affected, this  
Court will waive the bond requirement.

1 7 (2008). A plaintiff seeking a preliminary injunction must establish that (1) he is likely to  
2 succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of  
3 preliminary relief, (3) the balance of equities tips in his favor and, (4) an injunction is in  
4 the public interest. *Id.* at 20. The Ninth Circuit has also approved a “sliding scale” test. “A  
5 preliminary injunction is appropriate when a plaintiff demonstrates . . . that serious  
6 questions going to the merits were raised and the balance of hardships tips sharply in the  
7 plaintiff’s favor. . . . Of course, plaintiffs must also satisfy the other *Winter* factors.”  
8 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (internal  
9 citations and quotations omitted).

### 10 **III. DISCUSSION**

11 Due to the urgent nature of this matter, the Court will now address the request for  
12 the preliminary injunction with the merits of the case. *See* Rule 65(a)(2).

#### 13 **A. Plaintiffs’ success on the merits**

14 A plaintiff seeking an injunction must first establish likely success on the merits.  
15 *See supra* II. Before determining likelihood of success on the merits, the Court must also  
16 determine whether Plaintiffs have standing and whether the Complaint (Doc. 1) was timely  
17 filed.

##### 18 **i. Standing**

19 Article III standing requires would-be plaintiffs to establish (1) injury in fact that is  
20 (2) fairly traceable to the challenged conduct of the defendant that is (3) likely to be  
21 redressed by a favorable judicial decision. *Friends of the Santa Clara River v. U.S. Army*  
22 *Corps of Eng’rs*, 887 F.3d 906, 918 (9th Cir. 2018). Defendant and Intervenor-Defendants  
23 argue that Plaintiffs lack standing because there has been no state action and because the  
24 harm suffered is not redressable. (Doc. 16 at 8–9; Doc. 26 at 8–10) Defendant and  
25 Intervenor-Defendants further argue that Plaintiffs failed to join all necessary parties and  
26 they should have also sued the 15 County Recorders of Arizona. (Doc. 16 at 9; Doc. 26  
27 at 7) Plaintiffs argue they can establish standing because organizations have standing when  
28 their organizational mission is frustrated, and when they have diverted resources to combat

1 the conduct in question. (Doc. 2 at 6) (citing *Am. Diabetes Ass'n v. U.S. Dep't of the Army*,  
2 938 F.3d 1147, 1154 (9th Cir. 2019)). The conduct in question here is enforcement of the  
3 voter registration deadline. (Doc. 2 at 6–7) The resources Plaintiffs expended include  
4 paying registration workers higher salaries, re-allocating staff to registration efforts,  
5 developing health and safety protocol, and engaging in extra fundraising and re-budgeting.  
6 (Doc. 2 at 7) Plaintiffs further argue that the County Recorders are not necessary parties  
7 because this Court has ruled on that issue in the past and found that because the Secretary  
8 of State promulgates the voter registration rules, the counties are bound by them. (Doc. 30  
9 at 6) *See Arizona Democratic Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL  
10 6523427, at \*7 (D. Ariz. Nov. 3, 2016).

11 Other courts have recently found there to be standing when organizational plaintiffs'  
12 efforts to gather ballot initiative signatures this year were frustrated due to COVID-19. *See*,  
13 *e.g., Fair Maps Nevada v. Cegavske*, No. 320CV00271MMDWGC, 2020 WL 2798018, at  
14 \*6 (D. Nev. May 29, 2020). Furthermore, an injunction against the Secretary of State would  
15 redress the harm alleged by Plaintiffs. *Reagan*, 2016 WL 6523427, at \*7. Thus, the Court  
16 finds Plaintiffs have sufficiently established organizational standing by showing their  
17 organizational mission was frustrated, that they have diverted resources to combat the  
18 effects of COVID-19, and that the County Recorders are not necessary parties to this action  
19 because they answer to the Defendant.

## 20 ii. Timeliness

21 Defendant and Intervenor-Defendants also argue the claim is untimely due to the  
22 *Purcell* doctrine as well as the equitable doctrine of laches. (Doc. 16 at 10–11; Doc. 26 at  
23 2–7) They argue that (1) Plaintiffs should have brought the claim earlier, when it was clear  
24 COVID-19 was having an impact on registration, and (2) election rules should not be  
25 changed on the “eve of an election.” (Doc. 16 at 10–11, Doc. 26 at 2–7) The *Purcell*  
26 doctrine comes from Supreme Court case *Purcell v. Gonzales*, 549 U.S. 1 (2006). *Purcell*  
27 discourages courts from creating or altering election rules close to elections to avoid voter  
28 confusion. *Id.* at 4–5. This Court has previously held that the *Purcell* doctrine does not

1 apply to the extension of election deadlines because the requested remedy is “asking  
2 [election] officials to continue applying the same procedures they have in place now, but  
3 for a little longer.” *Arizona Democratic Party v. Hobbs*, No. CV-20-01143-PHX-DLR,  
4 2020 WL 5423898, at \*13 (D. Ariz. Sept. 10, 2020). The Court finds the current case no  
5 different.

6 The laches doctrine bars claims when there is “unreasonable delay” in bringing the  
7 suit that “prejudices the opposing party or the administration of justice.” *Arizona*  
8 *Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922 (D. Ariz. 2016) (internal citations  
9 omitted). “To determine whether delay was unreasonable, a court considers the justification  
10 for the delay, the extent of the plaintiff’s advance knowledge of the basis for the challenge,  
11 and whether the plaintiff exercised diligence in preparing and advancing his case.” *Id.* at  
12 923. Here, Plaintiffs told the Court during the October 1, 2020 scheduling conference that  
13 they were waiting to bring this claim until they knew the harm could be redressed by  
14 extending the voter registration deadline, and thus establish standing, and reasserted that  
15 argument in their Reply brief and in oral argument. (Doc. 30 at 8) The State’s COVID-19  
16 restrictions were lifted in August. Plaintiff Mi Familia Vota has been able to register about  
17 1,094 voters per week since the last week of August, as opposed to the less than 200  
18 registered during the restrictions. (Doc. 2-1 at 6) Plaintiff Arizona Coalition for Change  
19 has been able to register 1,343 voters in August and September. (Doc. 2-2 at 4–5) Plaintiffs  
20 argue they will be able to register about 2,000 voters in three weeks, and that their coalition  
21 will be able to register 25,000 more voters if the deadline is extended. (Doc. 30 at 2)  
22 Plaintiffs also assert that, based on new State data, around 65,120 voters would be able to  
23 register in the three-week extension period, if it is granted. (Doc. 30 at 2) Thus, because  
24 Plaintiffs needed the September data to establish standing and to diligently prepare their  
25 case, the Court finds the claim is not laches-barred.

26 **iii. *Anderson/Burdick* test**

27 When a plaintiff alleges a violation of voter rights under the First and Fourteenth  
28 Amendments, courts apply the *Anderson/Burdick* balancing or sliding scale test. *Soltysik*

1 v. *Padilla*, 910 F.3d 438, 449 n.7 (9th Cir. 2018). The “character and magnitude” of the  
2 state-imposed burden on the plaintiff is weighed against the strength of the state’s interest  
3 and whether the burden is necessary given the state interest. *Pub. Integrity All., Inc. v. City*  
4 *of Tucson*, 836 F.3d 1019, 1025 n.2 (9th Cir. 2016). In *Burdick v. Takushi*, the Supreme  
5 Court held that if the restriction on First and Fourteenth Amendment rights is severe, the  
6 restriction must be “narrowly drawn” to advance a “compelling” state interest. 504 U.S.  
7 428, 434 (1992). If the restriction is less severe, the more flexible balancing test applies.  
8 *Id.* If the restriction is non-discriminatory and reasonable, a state’s “important regulatory  
9 interests” are usually enough justification for the rule. *Timmons v. Twin Cities Area New*  
10 *Party*, 520 U.S. 351, 358 (1997). Generally, when the constitutional challenge is to an  
11 electoral system the governmental interest is given more weight than when the challenge  
12 is to a discrete election rule. *See generally Pub. Integrity All., Inc.*, 836 F.3d 1019.

13 Plaintiffs argue the burden is severe because the deadline combined with COVID-  
14 19 restricts ballot access. (Doc. 2 at 8–9) Plaintiffs cite other courts that have applied the  
15 stricter balancing test in light of COVID-19. (Doc. 2 at 9–10) Some but not all those cases  
16 are relevant here; the cases resolving voter registration deadlines are more helpful than  
17 those regarding ballot initiative petitions. *See, e.g., Democratic Nat’l Comm. v.*  
18 *Bostelmann*, No. 20-CV-249-WMC, 2020 WL 5627186, at \*17–22 (W.D. Wis. Sept. 21,  
19 2020) (extending Wisconsin’s statutory voter registration deadline and absentee ballot  
20 deadlines); *Gallagher v. N.Y. State Bd. of Elections*, No. 20 CIV. 5504 (AT), 2020 WL  
21 4496849, at \*16–18, 23 (S.D.N.Y. Aug. 3, 2020) (extending New York’s statutory mail-in  
22 ballot postmark deadline in light of COVID-19). Here, Defendant argues that the burden is  
23 not severe, and the Court should instead apply the more flexible balancing test, based on a  
24 holding in the Eastern District of California. (Doc. 16 at 11–12) That court found that the  
25 burden was not severe on a political party attempting to register voters when voters could  
26 have registered without in-person contact and when the state COVID-19 restrictions  
27 exempted election-related activities. *Common Sense Party v. Padilla*, No.  
28 220CV01091MCEEFB, 2020 WL 3491041, at \*1, 6 (E.D. Cal. June 26, 2020). Defendant-

1 Intervenor argue that the challenge is to the electoral system and thus the governmental  
2 interest should bear more weight in the analysis. (Doc. 26 at 11)

3 The Court finds, similarly as it did in regard to the *Purcell* doctrine, that the  
4 challenge is to the enforcement and execution of one rule and not the whole system, and  
5 thus the government’s interest will not be given extra weight. The Court further finds  
6 Plaintiffs have shown the burden is severe, unlike the plaintiffs in *Padilla*, because of the  
7 large drop-off in registration during the months of the pandemic restrictions, as discussed  
8 below.

9 Plaintiffs offer data that shows that they could not reach the same number of voters  
10 during the pandemic months. (Doc. 2 at 8) Before COVID-19, Plaintiffs were registering  
11 about 1,523 voters a week, which dropped to 282 a week during the restrictions. (Doc. 2 at  
12 8–9) After COVID-19 restrictions were lifted, their registration numbers returned to almost  
13 the same as before the pandemic. *See supra* III.A.ii. Defendant argues the right was not  
14 restricted and that more voters have registered in 2020 than during the 2016 presidential  
15 election. (Doc. 16 at 12) Plaintiff rebuts this argument by showing with state and census  
16 data that the State population has grown since 2016, and that the voter registration did not  
17 grow proportionally this year. (Doc. 30 at 3; Docs. 30-2, 30-3, 30-4, 30-5, 30-6, 30-7, &  
18 30-8) Defendant argued at oral argument that the changes in the data collection methods  
19 caused the discrepancy. Defendant also argues voter registration is not an in-person activity  
20 and thus the cases Plaintiffs cite involving in-person activities (*e.g.*, signature gathering for  
21 ballot initiative measures) are distinguishable. (Doc. 16 at 14–15) Defendant-Intervenors  
22 argue that registering to vote “has never been easier” because voters can register online  
23 and via telephone, and also point to the signatures collected for ballot measures as proof  
24 that in-person solicitation could still occur during COVID-19 restrictions. (Doc. 26 at 10–  
25 16)

26 While this Court acknowledges the efforts made by the Secretary and the State to  
27 make voter registration easier, the Court is also cognizant of the large population of  
28 Arizona that lacks access to the internet. Registering to vote has never been easier for *some*,



1 though others are not so fortunate. Ballot access is an extremely important right, and it has  
2 been restricted during this unprecedented time. Furthermore, the change in data collection  
3 from 2016 to now does not account for the percentage drop in voter registration,  
4 particularly considering the great deal of population growth.

5 The Court asked the Defendant to address the administrative burdens on the state in  
6 its Response, and Defendant did not do so, beyond referring to difficulties with voters who  
7 register too close to the election requesting an early voting ballot. (Doc. 16 at 13) Those  
8 voters may not receive or return their ballots in time to be counted. (Doc. 16 at 13) Early  
9 voting closes on October 23, 2020. Defendant also argues that election officials will have  
10 to process early votes alongside new voter registration if the deadline is extended. (Doc.  
11 16 at 13) Defendant generally cites the state interest in orderly elections. (Doc. 16 at 12)  
12 Intervenor-Defendants argue that the deadline is necessary to ensure voters have lived in  
13 the state for 29 days before voting (a state voter eligibility requirement), that Defendant  
14 needs time to verify voter residency before Election Day, and that extending the deadline  
15 will result in voter confusion. (Doc. 26 at 15–16)

16 The Court recognizes the importance of reducing voter confusion and ensuring  
17 Arizona’s other voter regulations are able to be upheld. However, the Court takes note that  
18 31 other states have later voter deadlines than Arizona, many of which allow voters to  
19 register when they show up to vote on Election Day. Furthermore, the Intervenor-  
20 Defendants’ argument that the October 5, 2020 deadline is necessary to enforce the State’s  
21 29-day residency rule is unpersuasive, considering Arizona voters are required to present  
22 proof of residency at the polls on Election Day. Finally, the Court agrees with Plaintiffs’  
23 point made in oral argument that voter confusion will be minimal. Voters who are already  
24 registered will not need to bother with the new deadline, and those voters that were unable  
25 to register before October 5, 2020 now have extra time. The Court acknowledges the  
26 difficulty with early voting requests coming in after the deadline for early voting has  
27 passed, and notes that Plaintiffs admitted during oral argument that even a shorter extension  
28 would help cure their harm.

1 Weighing the burden to Plaintiffs’ constitutional rights and the administrative  
2 burden on the government, the Court concludes that Plaintiff has met their burden under  
3 *Anderson/Burdick*. However, finding the State’s concerns about early voting requests to be  
4 compelling, the court will take them into account when granting relief.

5 **B. Plaintiff’s harm in the absence of relief**

6 Plaintiff has shown that fewer voters will be registered in this State if the deadline  
7 is not extended. *See supra* III.a.iii. As previously discussed, the harm suffered is loss of  
8 possibly tens of thousands of voter registrations, and a burden to Plaintiffs’ First and  
9 Fourteenth Amendment rights to organize voters. To the extent that Intervenor-Defendants  
10 argue Plaintiffs cannot establish harm based on expenditures made to register voters,  
11 Plaintiffs made no such argument and thus it will not be considered by the Court.

12 **C. The balance of equities and the public interest**

13 When the government is a party, the balance of equities and public interest factors  
14 merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance of equities has been  
15 addressed in the *Anderson/Burdick* analysis. Plaintiffs’ interests outweigh those of the  
16 government. The public interest factor cuts both ways, though it ultimately falls in favor  
17 of Plaintiffs. Voter confusion undermines public trust in the electoral process, and it is  
18 highly important that Defendant retains a sense of integrity in its procedures. However, a  
19 core tenet of democracy is to be ruled by a government that represents the population. Due  
20 to COVID-19, a portion of the population is prevented from registering to vote, and thus  
21 the integrity of the election is undermined in a different way; that portion is going  
22 unrepresented. Extending the deadline would give more time for those voters to register  
23 and let their voices be heard through the democratic process.

24 **IV. CONCLUSION**

25 The Court finds that Plaintiffs have established standing, made a timely claim, and  
26 met their burden under the *Anderson/Burdick* test. Defendant and Defendant-Intervenors  
27 have failed to show the administrative burden on the state outweighs the burden on  
28 Plaintiffs’ First and Fourteenth Amendment rights. However, taking into account the Early



1 Voting deadline of October 23, 2020 and the issues that may arise with voters requesting  
2 early voting ballots after that deadline, the Court will grant a preliminary injunction on the  
3 voter registration deadline until October 23, 2020 to alleviate any potential problems with  
4 belated requests for any Early Voting ballots beyond that date. Accordingly,

5 **IT IS ORDERED** that Plaintiffs' request for a preliminary injunction (Doc. 2) is  
6 **granted as modified.**

7 **IT IS FURTHER ORDERED** that Defendant is preliminarily enjoined from  
8 enforcing the A.R.S. § 16-120 October 5, 2020 voter registration cutoff.

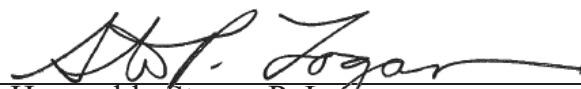
9 **IT IS FURTHER ORDERED** that Defendant shall direct the County Recorders to  
10 accept all voter registration applications received by 5:00 p.m. on October 23, 2020 and  
11 process them in time for eligible voters to vote in the November 3, 2020 general election.

12 **IT IS FURTHER ORDERED** that the Court exercises its discretion and waives  
13 the requirement of a security bond accompanying this preliminary injunction.

14 **IT IS FURTHER ORDERED** that this case is **dismissed.**

15 **IT IS FURTHER ORDERED** that the Clerk of Court shall terminate this action.

16 Dated this 5th day of October, 2020.

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18   
19 Honorable Steven P. Logan  
20 United States District Judge  
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# **EXHIBIT B**

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.

No. 20 Civ. 1903 (SPL)

**Declaration of Zoe Salzman**

ZOE SALZMAN, an attorney duly admitted *pro hac vice* in the District of Arizona, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a partner with the law firm of Emery Celli Brinckerhoff Abady Ward & Maazel LLP, attorneys for Plaintiffs Mi Familia Vota, Arizona Coalition for Change, and Ulises Ventura.
2. I respectfully submit this declaration in further support of Plaintiffs' motion for a temporary restraining order and preliminary injunction.
3. Attached hereto as Exhibit A is a true and correct copy of the Arizona Secretary of State's "State of Arizona Registration Report" from January 2016, available at <https://apps.azsos.gov/election/voterreg/2016-01-01.pdf> (last visited October 5, 2020). According to this official report, 3,254,397 Arizonans were registered to vote as

of January 2016. *See* Ex. A at 1, 5 (highlighted text).

4. Attached hereto as Exhibit B is a true and correct copy of the Arizona Secretary of State’s “State of Arizona Registration Report” from August 2016, *available at* <https://apps.azsos.gov/election/voterreg/2016-08-01.pdf> (last visited Oct. 5, 2020). According to this official report, 3,400,611 Arizonans were registered to vote as of August 2016. *See* Ex. B at 1, 5 (highlighted text).

5. Attached hereto as Exhibit C is a true and correct copy of the Arizona Secretary of State’s “State of Arizona Registration Report” from January 2020, *available at* [https://azsos.gov/sites/default/files/2020\\_0121\\_January\\_State\\_Voter\\_Registration.pdf](https://azsos.gov/sites/default/files/2020_0121_January_State_Voter_Registration.pdf) (last visited Oct. 5, 2020). According to this official report, 3,926,649 Arizonans were registered to vote as of January 2020. *See* Ex. C at 1, 5 (highlighted text).

6. Attached hereto as Exhibit D is a true and correct copy of the Arizona Secretary of State’s “State of Arizona Registration Report” from August 2020, *available at* [https://azsos.gov/sites/default/files/State\\_Voter\\_Reigstration\\_2020\\_Primary.pdf](https://azsos.gov/sites/default/files/State_Voter_Reigstration_2020_Primary.pdf) (last visited Oct. 5, 2020). According to this official report, 3,989,214 Arizonans were registered to vote as of August 4, 2020. *See* Ex. D at 1, 5 (highlighted text).

7. Per the Secretary of State’s own data in Exhibits A–D, cited above, from January to August 2016, the total number of Arizonans registered to vote increased from 3,254,397 to 3,400,611, a net gain of 146,214 voters. From January to August 2020, the total number of Arizonans registered to vote increased from 3,926,649 to 3,989,214, a

net gain of only 62,565 voters. In short, from January to August 2016, Arizona netted more than twice as many additional voters than during the same period in 2020.

8. According to the Declaration of Arizona State Elections Director Sambo Dul (Dkt. 18-3), as of October 1, 2020, 4,160,915 Arizonans are currently registered to vote. *Id.* ¶ 10. As noted above, 3,989,214 Arizonans were registered to vote as of August 4, 2020. Ex. D at 1, 5 (highlighted text). Thus, between August 4 and October 1, 2020, Arizona’s voter rolls increased by 171,701 registered voters—a post-shutdown registration average of 2,960 net additional voters per day. If registrations were to continue at this rate throughout an extension of the Voter Registration Cutoff to October 27, 2020, Arizona would gain a net additional 65,120 registered voters.

9. Attached hereto as Exhibit E is a true and correct copy of Governor Doug Ducey’s June 25, 2020 press release titled, “Governor Ducey: ‘Arizonans Safer At Home,’” *available at* <https://azgovernor.gov/governor/news/2020/06/governor-ducey-arizonans-safer-home> (last visited Oct. 5, 2020).

10. Attached hereto as Exhibit F is a true and correct copy of a page from the Secretary of State’s website titled, “Voting In This Election,” *available at* <https://azsos.gov/elections/voting-election> (last visited Oct. 5, 2020).

11. Attached hereto as Exhibit G is a true and correct copy of Governor Doug Ducey’s December 31 2019 press release titled, “New Census Report Ranks Arizona Third In Percentage Growth Rate,” *available at* <https://azgovernor.gov/node/4604> (last visited Oct. 5, 2020).

12. Attached hereto as Exhibit H is a true and correct copy of a page

from the Secretary of State’s website titled, “Voting by Mail: How to Get a Ballot-by-Mail,” *available at* <https://azsos.gov/votebymail> (last visited Oct. 5, 2020).

13. Attached hereto as Exhibit I is a true and correct copy of a page from the Secretary of State’s website titled, “Proof of Citizenship Requirements,” *available at* <https://azsos.gov/elections/voting-election/proof-citizenship-requirements> (last visited Oct. 5, 2020).

Dated: October 5, 2020



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ZOE SALZMAN