

No. 20-16932

In the
United States Court of Appeals
For the
Ninth Circuit

MI FAMILIA VOTA, *et al.*,

Plaintiffs-Appellees,

v.

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

Defendant-Appellee,

REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN SENATORIAL
COMMITTEE,

Intervenors-Defendants-Appellants,

STATE OF ARIZONA,

Putative Intervenor-Appellant.

Appeal from an Order of the United States District Court
for the District of Arizona, Phoenix, Hon. Steven P. Logan
D.C. Case No. 2:20-cv-01903-SPL

**BRIEF OF *AMICI CURIAE* LEAGUE OF WOMEN VOTERS OF ARIZONA AND
PHOENIX INDIAN CENTER IN OPPOSITION TO EMERGENCY MOTIONS TO STAY**

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CORPORATE DISCLOSURE STATEMENT

The League of Women Voters of Arizona is an affiliate of the League of Women Voters of the United States, a nonprofit corporation headquartered in Washington, D.C. The League has state and local affiliates in all 50 states and the District of Columbia. It has no parent company and has issued no stock.

The Phoenix Indian Center is a nonprofit organization incorporated under the laws of Arizona and headquartered in Phoenix. It has no parent company and has issued no stock.¹

INTERESTS AND STATEMENT OF AMICI

The League of Women Voters has long been active as a nonpartisan, grassroots organization at the national, state and local levels. For a century the League has dedicated its efforts to protecting and promoting the democratic processes of American government through public service and robust voter education and registration. The organization envisions a democracy where every person has the desire, the right, the knowledge, and the confidence to participate. The League uses many tools to achieve

¹ All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or its counsel or any other person made a monetary contribution intended to fund the preparation or submission of this brief.

these goals, and when its consensus building and lobbying efforts have proved insufficient, it has participated in litigation.

The League's volunteers help tens of thousands of citizens in Arizona register to vote, check their registration status, update voter information, and navigate the often confusing system of absentee and mail-in voting. During the COVID-19 pandemic, the League has provided vital voting information to Arizona citizens through online platforms like VOTE411.org as well as through printed materials, including voter guides.

The League believes that its long history of promoting democracy lends it a unique perspective in this appeal. The singular public health crisis has created the need for an extension of time for Arizona citizens to register to vote in the upcoming election, in part because—by necessity—there have been fewer in-person registration activities. It is clear that the quarantining, social distancing protocols, and caution induced by the COVID-19 outbreak have made it much harder to realize what should be a paramount goal for everyone in our democracy: all eligible voters may cast a ballot.

The Phoenix Indian Center was established in 1947, in collaboration with the City of Phoenix, to serve the needs of the American Indians who came to downtown Phoenix to sell their wares or shop for their families. The Center is the oldest and first social service agency in the United States

dedicated to improving the health and well-being of American Indian people. The Center intensively assists over 7,000 people and touches the lives of nearly 20,000 annually.

The American Indian community in Arizona is extremely low-income and under-resourced, and this population has been hit particularly hard by COVID-19. Community members living in the greater Phoenix area and in surrounding reservations have suffered unusually high rates of infection. These communities have not had widespread access to safety products that the rest of us take for granted, such as masks, gloves, disinfectant, and hand sanitizer. Stay-at-home orders resulted in lockdown conditions on the Arizona reservations for months; only recently have these communities returned to a semblance of normal activity. These residents have struggled to stay healthy and safe during the pandemic. Registering to vote has not been a main priority, especially given the significant barriers to American Indians registering through remote means.

Indian reservations in Arizona are mostly rural and without broadband or internet access. Even members of the American Indian community in urban areas in Arizona often lack the wherewithal to obtain the devices and connectivity that would enable them to register to vote remotely. And not until a month before the original deadline for registering

to vote in the 2020 election did the State permit registration by American Indians with non-standard addresses, i.e., physical descriptions of dwelling locations not associated with a driver's license.

As the COVID-related restrictions affecting American Indians in Arizona have eased, the Center has publicized, funded, and supervised four in-person voter registration events, complete with plexiglass divider screens and disposable keyboard and mouse covers to ensure safety. More than 200 members of the community have registered at the last two events in October, and more of these events are planned. The voter registration extension at issue in this appeal is a necessary adjustment given the acute effects the pandemic has had on this vulnerable population.

Amici therefore respectfully submit that, under the extraordinary circumstances presented, the voter registration extension ordered by the District Court based on its findings of fact is justified.

ARGUMENT

Thousands of Arizona citizens—many assisted by *Amici* here—have already registered to vote during the extension period that began on October 5, and many more will continue to register. Movants demand an emergency stay, but it would be illogical and counterproductive to suspend the voter registration extension pending appeal. If this Court ultimately

affirms the District Court, a temporary stay will not only have been for naught; it will have confused Arizona citizens and discouraged those who wish to register from doing so. If, on the other hand, the Court ultimately vacates the District Court's order, a temporary stay likewise will have served no purpose—at a minimum, citizens who register between now and the Court's ruling can vote in *future* elections, and the State of Arizona has already conceded that those who have registered since October 5 can vote in this election. (State of Arizona's Emergency Motion at 4.) Moreover, because Arizona citizens may register to vote for general purposes at any time regardless of the District Court's order, a stay would not prevent citizens from continuing to register and thus would not relieve any supposed burden on the State from its citizens registering to vote. An emergency stay issued now would only create confusion and uncertainty about who can vote in the 2020 election.

This Court has made clear that “[a] stay is not a matter of right, even if irreparable injury might otherwise result.” *Al Otro Lado v. Wolf*, 952 F.3d 999, 1006 (9th Cir. 2020) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). Movants here have failed to make a strong showing of success on the merits of their appeal or of irreparable harm absent a stay. *See id.* (citing *Nken v. Holder*, 556 U.S. 418, 433 (2009)). The record instead

demonstrates that the District Court's extension is necessary to ensure the adverse effects of the coronavirus do not deprive Arizona citizens of their constitutional right to vote. The closures, shelter-in-place orders, and other consequences of the pandemic have caused a significant drop in the rate of new voter registration among Arizona citizens.

It has been particularly challenging for American Indians who live on reservations to register. These citizens do not have the same access to voter registration as off-reservation voters. Turnout for American Indians is the lowest in the country as compared to other groups.² One report focused on Arizona found that, in the 2016 election,

few counties offered voter registration services on the reservation, while voter registration services were available during the counties' normal working hours for off-reservation voters. In 2016, nine counties were covered for American Indian languages under Section 203 of the Voting Rights Act. Only one provided translations of voter registration information in the covered language.³

These voters need in-person assistance to register, often at a long distance from their residence. For example, Navajo voters living in Teec Nos Pos in

² Tova Wang, *Ensuring Access to the Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy* at 3, 6 (available at: <https://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>).

³ Indian Legal Clinic, *Arizona Native Vote – Election Protection Project: 2016 Final Report* at 34.

Apache County had to travel 95 miles one way to obtain in-person voter registration assistance.⁴

While Arizona does offer online voter registration through the Department of Motor Vehicles, this is not a viable option for many voters. Fewer than half of the homes on tribal lands have reliable broadband access.⁵ Even if a voter on a reservation has access to broadband, the State of Arizona does not allow tribal IDs to be used a form of identification to register to vote online, even though tribal enrollment is a valid form of proof of U.S. citizenship. Until September 4, 2020—a month before the original voter registration deadline—most voters living on an Indian reservation in Arizona could not register to vote online because the portal would not accept non-traditional addresses. Due to these barriers, most voter registration efforts in Indian country are in person with a paper form. And the pandemic this year resulted in most voter registration drives being cancelled.

The District Court's two-week extension alleviates these burdens,

⁴ *Id.* at 19.

⁵ Keerthi Vedantam, *Thin on broadband: Tribal areas still struggle with lagging technology*, Cronkite News – Arizona PBS (2019) (available at <https://cronkitenews.azpbs.org/2019/05/08/tribal-lands-limited-broadband-internet/>).

allowing these citizens, and others who were precluded from registering due to the health crisis, to exercise their democratic rights. The new, court-ordered October 23 voter registration deadline appropriately matches the deadline for requesting an early ballot in Arizona. Notably, too, in response to the District Court's direct inquiry, Arizona's Secretary of State was unable to articulate any burden at all to state workers from the extension. *See* Order at 8.

The Attorney General's motion in this Court confirms the State's failure to make the requisite showing. References to "potential" chaos, administrative problems that "could" occur, and unspecified, hypothetical staff burdens that "may" arise are insufficient. (State of Arizona's Emergency Motion at iii-iv.) For decades, the League has worked hand in hand with local and state Arizona election officials and can attest that there is little or no added burden from merely allowing more citizens to join the voter rolls and turn out to vote in November. In this regard, the League is better positioned than any political party to assess whether an ongoing election process is orderly, as their members are voters and their work is on behalf of all Arizonans, irrespective of party affiliation.

Rather than state officials or election workers, it is the citizens of Arizona who would be irreparably harmed and deterred from exercising

their democratic rights by a stay of the two-week voter registration extension. *See* Order at 9 (finding that “the harm suffered is loss of possibly tens of thousands of voter registrations”). Yet, “the *suppliant* for a stay must make out a *clear* case of hardship or inequity[.]” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936) (emphasis added); *see also* Advisory Committee Note to Ninth Circuit Rule 27-3 (advising that an emergency stay “is meant for parties facing significant harm, e.g., imminent removal”). Movants have not met their burden on the first two factors in the stay test, which is fatal to their request.

Moreover, even if the Court sees fit to consider the other factors in the test—whether a stay would substantially injure other interested parties, and the effect on the public interest at large, *see Al Oto Lado*, 952 F.3d at 1007—those factors strongly counsel against a stay. The League’s core mission is to protect the right to vote, which lies “close to the core of our constitutional system.” *Carrington v. Rash*, 380 U.S. 89, 96 (1965). The Center’s core mission is to empower and assist members of the American Indian community, including by helping them register to vote. By cutting off these *Amici*’s ability to help those who wish to register to vote in the election, a stay would impair the League’s primary purpose—ensuring that every citizen eligible to vote can vote—and prevent the Center from

fulfilling its important goal of registering Arizona citizens in American Indian communities. Similarly, a stay would abridge the interests of many other entities not before the Court who regularly engage in voter registration efforts. These goals are neither narrow nor partisan—they are *American* goals.

Thus, the public interest weighs heavily against a stay of the extension of time for Arizonans to register. Madison’s “great principle of representation,” *The Federalist No. 14*, calls for no less than that *all* citizens eligible to vote be allowed to vote for their representatives in government. The COVID-19 pandemic has already killed over 200,000 Americans and greatly burdened the ability of eligible Arizona voters to register to have their say in the democratic process. The Republican Party’s “let-them-eat-cake” assertion that “[i]t has never been easier to register to vote in . . . Arizona” is false, in part because it wrongly assumes universal internet access. (Republicans National Committee’s Emergency Motion at 12.) As the District Court found, “Registering to vote has never been easier for *some*, though others are not so fortunate.” Order at 7-8 (emphasis in original). For instance, printing a voter registration form is simply unrealistic for most potential voters living on Arizona’s Indian reservations. The collective effect of high poverty rates, low levels of broadband access, and lack of utility

service makes it much more difficult for a reservation resident to print a voter registration form. In addition, the lack of reliable mail makes it difficult to request and receive a paper form, especially for those with limited English proficiency. Only 18 percent of American Indians outside of Maricopa and Pima Counties have at-home mail delivery.

Against these substantial burdens, Movants have not shown any likelihood that the integrity of election results would be affected by the extended registration period, during which voter registrations are subject to exactly the same verification requirements as prior registrations. *See* Order at 8 (noting that “Arizona voters are required to present proof of residency at the polls on Election Day.”). By contrast, just this week the Supreme Court stayed an attempt to interfere with substantive state ballot verification protocols. *Andino v. Middleton*, No. 20A55, 2020 WL 5887393, at *1 (U.S. Oct. 5, 2020). There is no downside to the District Court’s extension of the registration period for Arizona voters. The extension is a win for American democracy and, therefore, all Americans.

CONCLUSION

For the foregoing reasons, *Amici* urge the Court not to stay the District Court’s order that allowed additional time for Arizona citizens to register to vote in the upcoming election.

Respectfully submitted,

Dated: October 9, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit, via the appellate CM/ECF system. Counsel for the parties and other case participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: October 9, 2020

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