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23 **IN THE UNITED STATES DISTRICT COURT**  
24 **FOR THE DISTRICT OF ARIZONA**

25 The Arizona Democratic Party, *et al.*,  
26 Plaintiffs,

27 v.

28 Katie Hobbs, *et al.*,  
Defendants,

and

State of Arizona, *et al.*

Intervenor-Defendants.

No. 2:20-cv-01143-DLR

**INTERVENOR-DEFENDANTS'**  
**RESPONSE TO EMERGENCY**  
**MOTION FOR STAY**

Intervenor-Defendants The Republican National Committee, Arizona Republican Party, and Donald J. Trump for President hereby join in the Defendant’s Emergency Motion To Stay The Court’s September 10, 2020 Injunction Pending Appeal (Doc. 119). Specifically, Intervenor-Defendants agree that a stay is warranted because the Court’s ruling requiring the State to provide a new process for “curing” missing signatures five days after the election raises “serious and difficult questions of law in an area where the law is somewhat unclear.” *Overstreet v. Thomas Davis Med. Ctrs., P.C.*, 978 F. Supp. 1313, 1314 (D. Ariz. 1997). And given the need to allocate resources and inform voters of the process for correctly voting, the decision increases the risk of voter confusion and should be stayed for the reasons the Supreme Court has described in *Purcell v. Gonzales*, 549 U.S. 1, 4-5 (2006).<sup>1</sup>

**First**, it bears emphasizing that there is no constitutional right to vote in a *particular* way. See *McDonald v. Bd. of Election Comm’rs Chicago*, 394 U.S. 802, 807 (1969); See also *Mays v. LaRose*, 951 F.3d 775, 789 (6th Cir. 2020) (“[T]here is no constitutional right to an absentee ballot.”); *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004) (*similar*). It follows that Arizona’s decision requiring properly executed ballot affidavits from absentee voters by election day imposes no actual burden on voting rights. It couldn’t, since in-person voting always remains available. The Supreme Court has made clear that “the usual burdens of voting” do not justify relief under *Anderson-Burdick*. *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 198 (2008). Indeed, the challenged requirement isn’t even a burden *associated* with voting—such as traveling or producing a form of I.D.—it is *the act of voting itself*. See Doc. 114 at 11 (“By definition, a voting prerequisite is something that voters must do before their votes will be counted.”)

**Second**, the Court recognized that to the extent the election-day cure deadline imposed any burden on voting rights, it was “minimal.” *Id.* 13. In light of that determination,

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<sup>1</sup> Consistent with this Court’s prior conditions on their participation in the case, Intervenor-Defendants do not seek to offer duplicative briefing and therefore presume the Court’s familiarity with its ruling as well as the general standards for granting a stay.

1 there is at least a “serious and difficult” question as to whether the state can truly identify  
 2 no interest sufficient to support the deadline. Intervenor joins the State’s argument on this  
 3 point. *See* Doc. 119 at 3-5.

4 **Third**, there is likewise a serious question over whether Plaintiffs can even bring a  
 5 separate claim for procedural due process outside of the *Anderson-Burdick* framework.  
 6 Numerous courts have rejected that notion. *See, e.g. Obama for Am. v. Husted*, 697 F.3d  
 7 423, 430 (6th Cir. 2012) (holding that *Anderson-Burdick* is the “single standard for  
 8 evaluating challenges to voting restrictions”); *DNC v. Bostelmann*, 2020 WL 3077047, at  
 9 \*6 (W.D. Wis. June 10, 2020). And in any event, *Anderson-Burdick* right-to-vote claims  
 10 rely on a much more “specific guarantee[]” than “the more generalized notion of”  
 11 procedural due process, so the generalized claim is duplicative of the specific claim. *See*  
 12 *Albright v. Oliver*, 510 U.S. 266, 273 (1994); *Conyers v. Abitz*, 416 F.3d 580, 586 (7th Cir.  
 13 2005). Indeed, the Court noted the contrasting authority on this point and ultimately  
 14 declined to provide any separate due-process analysis. *See* Doc. 114 at 20; *see also* Doc.  
 15 119 at 7 (arguing that a stay is appropriate given the serious questions surrounding the  
 16 Court’s due process analysis).

17 **Finally**, there are also serious questions over this Court’s application of *Purcell v.*  
 18 *Gonzalez*, 549 U.S. 1 (2006). *Purcell* warns against last-minute orders altering election  
 19 procedures, noting that “[c]ourt orders affecting elections ... can themselves result in voter  
 20 confusion and consequent incentive to remain away from the polls.” *Id.* At 4-5. This Court  
 21 held that no confusion is likely, but failed to consider how the change itself will render past  
 22 guidance and instructions void. This very much has the potential to confuse voters, and  
 23 “[a]s an election draws closer, that risk will increase.” *Id.* The Court’s injunction was issued  
 24 less than two months before the election day deadline, and courts have invoked *Purcell* in  
 25 proceedings conducted on a similar time frame as this one. *See, e.g., Husted v. Ohio State*  
 26 *Conference of NAACP*, 573 U.S. 988 (2014) (staying a lower-court order that changed  
 27 election laws 61 days before election day); *Thompson v. Dewine*, 959 F.3d 804, 813 (6th  
 28 Cir. 2020) (election day was “months away but important, interim deadlines ... [we]re

imminent” and “moving or changing a deadline or procedure now will have inevitable, other consequences”); *Perry v. Perez*, 565 U.S. 1090 (2011) (22 days before the candidate-registration deadline); *Purcell*, 549 U.S. at 4-5 (33 days before election day); *North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014) (32 days before election day).

For these reasons and the others explained by the State in its filing, Intervenor respectfully submit that there is at least a “serious question” as to whether the Court’s order will survive on appeal.

### CONCLUSION

The Court should grant an emergency stay pending appeal of this Court’s September 10, 2020 Injunction.

Dated: September 16, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2020, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

By: /s/Thomas Basile  
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