

Multiple Documents

Part	Description
1	14 pages
2	Exhibit 1
3	Text of Proposed Order

Daniel C. Barr (# 010149)
Sarah R. Gonski (# 032567)
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788
Telephone: (602) 351-8000
Facsimile: (602) 648-7000
DBarr@perkinscoie.com
SGonski@perkinscoie.com

Attorneys for Plaintiffs

Roopali H. Desai (# 024295)
Andrew S. Gordon (# 003660)
D. Andrew Gaona (# 028414)
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Telephone: (602) 381-5478
RDesai@cblawyers.com
AGordon@cblawyers.com
AGaona@cblawyers.com

*Attorneys for Intervenor-Plaintiff
Bernie 2016, Inc.*

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Leslie Feldman, et al.,
Plaintiffs,
v.
Arizona Secretary of State's Office, et al.,
Defendants.

No. CV-16-01065-PHX-DLR

**PLAINTIFFS' EXPEDITED
JOINT MOTION TO STRIKE
PORTIONS OF INTERVENOR-
DEFENDANT THE ARIZONA
REPUBLICAN PARTY'S
MOTION TO DISMISS AND
EXTEND TIME TO RESPOND
(First Request) AND
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT**

Plaintiffs Leslie Feldman, Luz Magallanes, Mercedes Hymes, Julio Morera, Cleo Ovalle, Former Chairman and First President of the Navajo Nation Peterson Zah, the Democratic National Committee, the DSCC a.k.a. Democratic Senatorial Campaign

Committee, the Arizona Democratic Party, Kirkpatrick for U.S. Senate, and Hillary for America (“Original Plaintiffs”) and Intervenor-Plaintiff Bernie 2016, Inc. (“Intervenor-Plaintiff”) (together, “Plaintiffs”) jointly move this Court pursuant to Local Rules of Civil Procedure 7.2(m) and 7.3 and Federal Rule of Civil Procedure 6(b) to strike portions of the Motion to Dismiss filed by Intervenor-Defendant the Arizona Republican Party (Doc. 108) (the “Motion to Dismiss”) that were filed in violation of the Federal Rules of Civil Procedure and request that the Court issue an order extending the time for Plaintiffs to file a response in opposition to any remaining arguments until 21 days after the Court has ruled on the Plaintiffs’ pending motions for preliminary injunction.

In support, Plaintiffs submit the following memorandum of points and authorities. In consideration of impending deadlines, Plaintiffs respectfully request the Court to expedite consideration of this motion.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

On Friday, June 17, 2016, Intervenor-Defendant filed three motions with the Court, including the Motion to Dismiss that is the subject of this motion and memorandum in support. Two of those motions—the Motion for Extension of Time to file responses to Plaintiffs’ motion for a preliminary injunction on the polling allocation and provisional balloting issues, and the related Motion to Expedite Case Management Conference—were filed jointly with the State and County Defendants. (Docs. 106 and 107). In those filings, all of the Defendants assert that the amount of evidentiary material that Plaintiffs submitted in support of their two motions for preliminary injunction—the bulk of which was previously available to all Defendants—justify granting Defendants an additional four weeks to respond and conduct discovery related to the motion currently scheduled to be heard on August 12th, for a total of ten weeks’ time between Plaintiffs’ filing of the motion on June 10th, to August 22nd, the earliest date that Defendants argue they should be required to file their responses in opposition.¹ *See* Defs.’ Joint Mot. for Extension of

¹ The Court bifurcated Plaintiffs’ motions for preliminary injunction into two separate schedules: the first, which addresses HB2023, is scheduled to be heard on

1 Time to Respond at 2 (asserting Plaintiffs’ submission of “25 declarations and four
 2 lengthy expert reports” justify their request for an additional month to respond)
 3 (Doc. 106); Defs.’ Joint Mot. for Expedited Case Mgmt. Conf. at 2 (Doc. 107) (same).²

4 Notwithstanding this urgent and expedited need for discovery and a full additional
 5 month to respond to the evidence submitted by Plaintiffs-Intervenor-Defendant filed a
 6 Motion to Dismiss both the Original Plaintiffs’ and the Intervenor-Plaintiff’s claims in
 7 their entirety, arguing that Plaintiffs have not and cannot support any of their claims with
 8 factual evidence. *See generally* Mot. to Dismiss (Doc. 108). In the Motion to Dismiss,
 9 which is *not* joined by either the State or County Defendants (i.e., the only Defendants
 10 who will be subject to any relief ordered by this Court), Intervenor-Defendant also argues
 11 that Plaintiffs’ claims were filed both too late and too soon, suggests that this Court should
 12 abdicate its responsibility to decide Plaintiffs’ entirely federal claims in favor of a
 13 later-filed challenge to the Maricopa County 2016 Presidential Preference Election now
 14 pending in Arizona State Court, and—on theories that are far from clear—that Plaintiffs
 15 lack standing.

16 Aside from its highly questionable merit, Intervenor-Defendant’s Motion to
 17

18 August 3rd. The second, which addresses Plaintiffs’ polling allocation and provisional
 19 ballot claims, is scheduled to be heard August 12th. The Motion for Extension of Time
 20 did not request an extension of time to respond to Plaintiffs’ HB2023 motion, but
 21 Defendants’ complaint that Plaintiffs have produced too much material to analyze and
 respond to in the six week period currently allotted for their response due July 25th made
 no distinction between the evidence produced in support of the HB2023 motion or the
 other motion. *See* Pls.’ Joint Opp’n. to Mot. for Extension of Time at 4 (Doc. 111).

22 ² Although Defendants do not explicitly request an expansion of the page limit,
 23 they hint that such a request might be coming, asserting they “should not be required to
 24 use limiting [sic] briefing space to address” what they believe are admissibility problems
 25 with Plaintiffs’ evidence. Defs.’ Joint Mot. for Expedited Case Mgmt. Conf. at 2
 26 (Doc. 107). Plaintiffs would object to any expansion of Defendants’ page limits for two
 27 reasons. First, the Local Rules make it clear that the standard page limits not only
 28 contemplate, but explicitly *require* parties to present any objections to the admissibility of
 evidence offered in support of a motion “in the objecting party’s responsive or reply
 memorandum and not in a separate motion to strike or other separate filing.” Az. L. R.
 Civ. P. 7.2(m)(2). Second, the Parties have already presented extensive argument on the
 page limits issue, and it would be prejudicial to Plaintiffs to now permit Defendants, who
 have among them a full 51 pages to respond to *each* of Plaintiffs’ motions, additional
 pages, particularly in light of the limitations clearly set forth in the Local Rules.

Dismiss was filed out of time, in violation of the Federal Rules of Civil Procedure and, as a result, should be stricken, at least in part. Intervenor-Defendant's decision to file the Motion to Dismiss now, moreover, directly contradicts the representations that it made to this Court and the original Parties when it sought intervention, where it asserted that it "plan[ned] to file a Motion to Dismiss portions of" the Original Plaintiffs' First Amended Complaint, but it would do so "on the timeline contemplated by the parties' stipulation," Mot. to Intervene at 2, n.1 (Doc. 39). As discussed herein, that timeline clearly contemplated such motions being filed *after* the Court ruled on the pending motions for preliminary injunction.

Thus, to avoid significant prejudice to the Plaintiffs, and hold the Intervenor-Defendant to the representations that it made to the Court and the original Parties at the time it intervened, Plaintiffs request that they be granted an extension of time to respond to any remaining arguments in the Motion to Dismiss until after the Court rules on the motions for preliminary injunction.³

I. BACKGROUND

The Original Plaintiffs initiated this action on April 15, 2016 against several Arizona State and Maricopa County Defendants, all named in that initial complaint. Compl. (Doc. 1). Four days later, the Original Plaintiffs filed the First Amended Complaint, which added as a Plaintiff the presidential campaign Hillary for America, but otherwise remained substantively unchanged. First Am. Compl. (Doc. 12). On April 29, Intervenor-Plaintiff the presidential campaign Bernie 2016, Inc. moved to intervene, attaching to its motion for intervention a proposed Complaint in Intervention. Intervenor-Pl.'s Mot. to Intervene (Doc. 27). On May 5th, the Original Plaintiffs entered into a stipulation with the State and County Defendants to permit the parties then involved in the action as defendants to "have until 21 days following the Court's ruling on

³ If the Court declines to strike the untimely portions of the Motion to Dismiss, Plaintiffs request, in the alternative, that their time to respond to the Motion to Dismiss in its entirety be extended.

1 Plaintiffs' forthcoming Motion for Preliminary Injunction to answer or otherwise respond
2 to the Amended Complaint." Stip. For Extension of Time to Answer (1st Request) at 2
3 (Doc. 31). On May 9th, the Court approved that stipulation and ordered that the "State
4 Defendants may have until 21 days after this Court's ruling on Plaintiffs' Motion for
5 Preliminary Injunction to answer or otherwise respond to the Amended Complaint."
6 May 9, 2016 Order (Doc. 36).

7 In response to the Original Plaintiffs' request that an expedited status conference be
8 held to establish a briefing and hearing schedule for their forthcoming motion for
9 preliminary injunction and to address limited related discovery requests, the Court set a
10 telephonic hearing for May 10th. *See* May 6, 2016 Order (Doc. 33). Less than 24 hours
11 before that hearing was scheduled to take place, the Intervenor-Defendant filed its motion
12 to intervene. Intervenor-Def.'s Mot. to Intervene (Doc. 39). Attached to that motion was a
13 proposed Answer to the Original Plaintiffs' First Amended Complaint. *See* Proposed
14 Answer (Doc. 39-1). In its motion, Intervenor-Defendant stated that:

15 The Proposed Intervenor and its counsel understand that the
16 current parties have stipulated to an extension of time for all
17 Defendants to answer or otherwise respond to the First
18 Amended Complaint ... , based on the expectation of a ruling
19 on Plaintiffs' forthcoming Motion for Preliminary Injunction.
20 Given that, Proposed Intervenor respectfully advises that *it plans to file a Motion to Dismiss portions of the [First Amended Complaint], but intends to do so on the timeline contemplated by the parties' stipulation and only after properly conferring with Plaintiffs per the Court's Order.*

21 Intervenor-Def.'s Mot. to Intervene at 2 n.1 (internal citations omitted) (emphasis added).

22 At the May 10th telephonic conference, the Court granted the motions to intervene
23 of both the Intervenor-Plaintiff and the Intervenor-Defendant. *See* Minute Entry (Doc. 44).
24 That same day, the Intervenor-Plaintiff filed the proposed Complaint in Intervention that it
25 had attached to its Motion to Intervene. *See* Intervenor Compl. (Doc. 53). Intervenor-
26 Defendants entered into a stipulation, joined by all other Defendants, to extend time to
27 answer the Complaint in Intervention. Intervenor-Defendant did not, however, enter into a
28 stipulation with the Original Plaintiffs for an extension of time to answer or otherwise

1 respond to the First Amended Complaint. Intervenor-Defendant also failed to lodge the
 2 proposed Answer that it attached to its motion to intervene after the Court granted that
 3 motion.

4 The May 10th conference with the Court involved extensive discussion about the
 5 appropriate schedule in this case through the summer, and culminated with the Court
 6 issuing a scheduling order making Plaintiffs' motions for preliminary injunction due by
 7 June 10th, responses in opposition from Defendants due six weeks later on July 25th, and
 8 Plaintiffs' reply due by August 1st, with a hearing to be held on August 12th. Minute
 9 Entry (Doc. 44). The Court held two subsequent telephonic status conferences to address
 10 matters related to that briefing schedule, on May 17th, and then on May 26th. *See* Minute
 11 Entries (Docs. 57 and 63). At no point during any of the three conferences did counsel for
 12 Intervenor-Defendant ever state that Intervenor-Defendant intended to file a Motion to
 13 Dismiss in the midst of the briefing schedule that the Parties and Court repeatedly
 14 convened to discuss.

15 II. ARGUMENT

16 A. Portions of the Motion to Dismiss Should Be Stricken Because They Are 17 Prohibited By Federal Rule of Civil Procedure 12(b)

18 The sections of the Motion to Dismiss that argue that the First Amended Complaint
 19 fails to state a claim upon which relief may be granted should be stricken because they
 20 were filed in violation of Federal Rule of Civil Procedure 12(b), which requires that a
 21 motion to dismiss setting forth any of the defenses listed in that rule "must be made before
 22 pleading if a responsive pleading is allowed." *See also* Local Civ. R. P. 7.2(m)
 23 (authorizing motions to strike "any part of a filing or submission on the ground that it is
 24 prohibited (or not authorized) by a statute, rule, or court order"). When
 25 Intervenor-Defendant sought to intervene in this action, they attached a proposed Answer
 26 to their motion. They should have lodged that Answer with the Court when their motion to
 27 intervene was granted. Fed. R. Civ. P. 24(c). Instead, they allowed five weeks to go by,
 28 during which time they did not obtain an extension to file their answer or a motion to

1 dismiss, before filing the now pending Motion to Dismiss this past Friday (Doc. 108).

2 Presumably, the Intervenor-Defendant did not formally lodge its Answer with the
3 Court because it concluded that the clerk of the court would deem the Answer filed at the
4 time the Court granted the motion to intervene. Although this procedure is not explicitly
5 authorized by the relevant rules, it is likely to be deemed a technical defect and Plaintiffs
6 have not moved for default. But Intervenor-Defendant should not be permitted to have it
7 both ways. If they were not required to separately lodge their proposed Answer when the
8 Court granted their motion to intervene, the Court should deem the Answer lodged at that
9 time, rendering Intervenor-Defendant's attempt to now move to dismiss the Original
10 Plaintiffs' Complaint for failure to state a claim upon which relief may be granted in
11 violation of the Federal Rules, which require a party to file *either* an appropriate
12 responsive pleading *or* a motion to dismiss under Rule 12(b)(1) through (7) within 21
13 days of service of the complaint. Fed. R. Civ. P. 12(a)(1)(A)(i). Because Intervenor-
14 Defendant was not one of the original defendants served with a summons and complaint
15 in this matter, but rather inserted itself into this action, its responsive pleading or motion
16 to dismiss on 12(b)(6) grounds should have been filed promptly after the Court granted
17 intervention, but in no case should it be appropriate for Intervenor-Defendant to fail to file
18 either and then five weeks later suddenly move to dismiss on these grounds.

19 **B. Plaintiffs Should Be Permitted Additional Time to Respond to the Motion To**
20 **Dismiss**

21 Whether the Court grants or denies the motion to strike, there is ample good cause
22 to grant Plaintiffs an extension of time to respond to the Motion to Dismiss until 21 days
23 after the Court rules on the pending motions for preliminary injunction. This request is
24 particularly reasonable in light of the representations that the Intervenor-Defendant made
25 in its motion to intervene that it intended "to file a Motion to Dismiss portions of the [First
26 Amended Complaint], but intends to do so on the timeline contemplated by the parties'
27 stipulation," pursuant to which the Original Plaintiffs agreed to an extension of the
28 original Defendants' time to answer or otherwise respond to the complaint to 21 days after

1 the Court rules on the motions for preliminary injunction. Intervenor-Def.'s Mot. to
2 Intervene at 2 n.1. *See also* Stipulation of Extension of Time to Answer (Doc. 31).

3 The Original Plaintiffs and Defendants entered into that Stipulation with the
4 express understanding that it would enable the parties to focus first on the motions for a
5 preliminary injunction without having to expend resources on answering or otherwise
6 responding to the Complaint or motions to dismiss. That understanding is reflected in the
7 plain language of the stipulation, and indeed in the Intervenor-Defendant's motion to
8 intervene, which clearly understood the stipulation to "contemplate[]" a particular
9 "timeline" for filing motions to dismiss. (Doc. 39 at 2 n.1). Intervenor-Defendant cannot
10 now credibly argue that it believed that the stipulation contemplated that the Defendants
11 would be filing motions to dismiss at the same time that the parties were briefing the
12 motions for preliminary injunction for at least two reasons. *First*, if that was in fact what
13 Intervenor-Defendant understood, there would have been no reason for it to include a
14 footnote in its motion to intervene assuring the Court and the parties that it would abide by
15 a negotiated timeline different from the normal course of litigation as established by the
16 Federal Rules which, as discussed, require defendants to file either a responsive pleading
17 or a motion to dismiss within a set time period following the service of the complaint.
18 *Second*, the only "timeline" set forth in the stipulation to which Intervenor-Defendant
19 refers extends the time to answer or file such motions 21 days beyond the Court's ruling
20 on the motions for a preliminary injunction. (Doc. 31).

21 Had Plaintiffs understood that Intervenor-Defendant in fact intended to pursue its
22 own independent timeline and file a motion to dismiss in the midst of the preliminary
23 injunction briefing schedule, Plaintiffs would have objected to Intervenor-Defendant's
24 intervention on the grounds of prejudice. Fed. R. Civ. P. 24(b)(3); *Perry v. Proposition 8*
25 *Official Proponents*, 587 F.3d 947, 955 (9th Cir. 2009) (denial of motion to intervene was
26 proper when intervention would delay proceedings, elongate discovery, and consume
27 additional time and resources for the court and the parties; it was "well within the district
28 court's discretion to find that the delay occasioned by intervention outweighed the value

1 added by the Campaign’s participation in the suit”).⁴ *See also Citizens for Trump v. City*
2 *of Cleveland*, Case No. 16-CV-1465 (N.D. Ohio June 21, 2016) (Doc. 20), at *2 (denying
3 the Republican National Convention Committee’s motion to intervene in litigation
4 bringing due process challenges to City of Cleveland’s 2016 Republican National
5 Convention regulations because plaintiffs “make no claim against the [Convention]” itself
6 and while the Convention “may have given input regarding the challenged regulations,
7 [the Convention did not promulgate] the regulations” that plaintiffs challenge). Plaintiffs
8 should not now be forced to expend additional resources responding to a motion to that
9 they were not only assured would be filed in accordance with the originally contemplated
10 timeline that resulted in the stipulation to extend the deadline for the original Defendants,
11 but that counsel for Intervenor-Defendant never once, during three separate conferences
12 with the Court addressing the timeline for briefing and hearing those motions for
13 preliminary injunction, so much as mentioned Intervenor-Defendant intended to file.

14 This is particularly so given that the arguments that Intervenor-Defendant makes in
15 its Motion to Dismiss could just as easily be made in opposition to the motions for
16 preliminary injunction, which requires that the Court determine whether Plaintiffs have a
17 likelihood of success on the merits. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
18 (2008). If the Court were to find, for example, that Plaintiffs lack standing, or that their
19 claims are not ripe, or are moot, or barred by laches, or that they have failed to support
20 legally cognizable claims, that would obviously be highly relevant to the Court’s
21 resolution of the motions for preliminary injunction. *See, e.g., Internet Specialties W.,*
22 *Inc. v. Milon-DiGiorgio Enters., Inc.*, 559 F.3d 985, 989 (9th Cir. 2009) (affirming district
23 court’s consideration and rejection of laches defense in granting a preliminary injunction);
24 *Boardman v. Pac. Seafood Grp.*, No. 15-35257, 2016 WL 1743350, at *7 (9th Cir. May 3,

25
26 ⁴ In their representation to the Court and the original Parties in the Motion to
27 Intervene, Intervenor-Defendant also stated that it would be filing a “partial” motion to
28 dismiss. (Doc. 39 at 2 n.1). The motion to dismiss filed by Intervenor-Defendant on
Friday, however, moves to dismiss both pending Complaints in their entirety. (Doc. 108 at
1).

1 2016) (affirming district court's consideration of standing as being related to whether the
2 plaintiff is likely to suffer irreparable harm absent an injunction). Similarly, in deciding
3 the motions for preliminary injunction the Court is very likely to reject arguments that
4 Plaintiffs lack standing or that their claims fail for any of the other reasons that any of the
5 Defendants assert, thereby mooting the Motion to Dismiss in its entirety, or significantly
6 narrowing it. *See* 559 F.3d at 989; 2016 WL 1743350, at *7.

7 By seeking to have these motions briefed simultaneously, Intervenor-Defendant is
8 needlessly magnifying the burden of this action on the resources of all of the parties and
9 the Court. Indeed, by filing the Motion to Dismiss when it did, Intervenor-Defendant
10 virtually guaranteed that the motions for preliminary injunction will be fully briefed,
11 heard, and decided prior to the Motion to Dismiss. Under the default briefing schedule,
12 the earliest that the Court could hold a hearing on the Motion to Dismiss would be the
13 week of July 25th. *See* Az. L. R. Civ. P. 7.2, Appendix A. However, as discussed at two of
14 the status conferences addressing the timing of the hearings on the motions for a
15 preliminary injunction, lead counsel for Original Plaintiffs, lead counsel for Intervenor-
16 Plaintiffs, lead counsel for Intervenor-Defendants and one attorney for State Defendants
17 are all unavailable at various points during the week of July 25th. Tr. of 5/26/16
18 Scheduling Conference at 18:1-16, 19:8-21, 20:23-21:1 attached as Exhibit 1. And the
19 Court is already scheduled to hear the first of Plaintiffs' motions for a preliminary
20 injunction, addressing HB2023, the following week on August 3rd. Minute Entry
21 (Doc. 63).

22 The Original Plaintiffs also have significant scheduling issues that would make
23 briefing their response to the Motion to Dismiss on the default schedule incredibly
24 difficult. Currently, several of the attorneys for the Original Plaintiffs also involved in this
25 case are in the process of preparing briefs in two matters being considered by the U.S.
26 Courts of Appeals—the first of those briefs is due July 5th, and the second is due
27 July 11th. Both matters are being heard on an expedited schedule, with oral argument in
28 the second scheduled for August 2nd.

1 Finally, the Court can and should consider the extensive evidence submitted in
2 support of the Plaintiffs' motions for preliminary injunction in deciding the appropriate
3 timeline for briefing and hearing the newly-filed Motion to Dismiss. That evidence, which
4 Defendants separately argued in their Motion for Extension of Time to Respond is so
5 extensive that they require a full ten weeks to consider and respond to it, seriously
6 undermines the Intervenor-Defendant's contentions in its Motion to Dismiss that
7 Plaintiffs' claims either are not or could never be—with an amendment or a motion to
8 conform the pleadings to the evidence submitted in this case—sufficient to survive the
9 applicable legal standard, which require that the Court “accept all factual allegations of
10 the complaint as true and draw all reasonable inferences in favor of the nonmoving
11 party.” *Pub. Lands for the People, Inc. v. U.S. Dep’t of Agric.*, 697 F.3d 1192, 1196 (9th
12 Cir. 2012) (internal quotation marks omitted); *Numrich v. Oregon*, No. 3:15-CV-00183-
13 JE, 2015 WL 5130462, at *2 (D. Or. Aug. 31, 2015) (“A claim should be dismissed only
14 if it appears beyond doubt that the plaintiff can establish no set of facts under which relief
15 could be granted.”). *See also Integrated Practice Sols., Inc. v. Wilson*, No. 13cv00088
16 BTM (WMC), 2013 WL 2396446, at *3 (S.D. Cal. May 31, 2013) (granting preliminary
17 injunction while after-filed motion to dismiss was pending because deciding the motion to
18 dismiss first would “create substantial prejudice”).

19 This request for an extension is the first request by Plaintiffs. Counsel for Plaintiffs
20 have conferred with counsel for the Intervenor-Defendant and have been advised that the
21 Defendants oppose Plaintiffs' request for an extension of time to respond to the Motion to
22 Dismiss.

23 III. CONCLUSION

24 For all of the foregoing reasons, Plaintiffs respectfully request that the Court strike
25 those portions of Defendant-Intervenor's Motion to Dismiss that assert the Original
26 Plaintiffs have failed to state a claim under which relief may be granted as prohibited by
27 the Federal Rules of Civil Procedure. Plaintiffs further request that the Court extend their
28 time to file responses in opposition to the Motion to Dismiss (whether in whole, or those

sections remaining if the Court grants the motion to strike) until 21 days after the Court rules on the Plaintiffs' pending motions for preliminary injunction, the resolution of which is highly likely to significantly narrow or even moot the motion to dismiss and will therefore promote judicial economy and conserve the resources of the parties. A proposed order in compliance with Rule 7.1(B)(3) of the Local Rules of Civil Procedure is submitted herewith.

Dated: June 22, 2016

s/ Elisabeth C. Frost

Daniel C. Barr (# 010149)
 Sarah R. Gonski (# 032567)
 PERKINS COIE LLP
 2901 North Central Avenue, Suite 2000
 Phoenix, Arizona 85012-2788

Marc E. Elias (WDC# 442007)*
 Bruce V. Spiva (WDC# 443754)*
 Elisabeth C. Frost (WDC# 1007632)*
 Amanda R. Callais (WDC# 1021944)*
 PERKINS COIE LLP
 700 Thirteenth Street N.W., Suite 600
 Washington, D.C. 20005-3960
 Telephone: (202) 654-6200
 Facsimile: (202) 654-6211
 MElias@perkinscoie.com
 BSpiva@perkinscoie.com
 EFrost@perkinscoie.com
 ACallais@perkinscoie.com

Attorneys for Plaintiffs Leslie Feldman, Luz Magallanes, Mercedes Hymes, Julio Morera, Cleo Ovalle, Former Chairman and First President of the Navajo Nation Peterson Zah, the Democratic National Committee, the DSCC, the Arizona Democratic Party, Kirkpatrick for U.S. Senate, and Hillary for America

s/ Roopali H. Desai

Roopali H. Desai (# 024295)
Andrew S. Gordon (# 003660)
D. Andrew Gaona (# 028414)
COPPERSMITH BROCKELMAN PLC
2800 N. Central Avenue, Suite 1200
Phoenix, Arizona 85004

Malcolm Seymour*
GARVEY SCHUBERT BAKER
100 Wall Street, 20th Floor
New York, New York 10005-3708
Telephone: (212) 965-4533
MSeymour@gsblaw.com

*Attorneys for Intervenor-Plaintiff
Bernie 2016, Inc.*

**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and a Notice of Electronic Filing was transmitted to counsel of record.

s/ Daniel R. Graziano

04005-0022/131591454.1

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Leslie Feldman, et al.,)	
)	No. CV-16-1065-PHX-DLR
Plaintiffs,)	
)	
vs.)	Phoenix, Arizona
)	May 26, 2016
Arizona Secretary of State's)	2:37 p.m.
Office, et al.,)	
)	
Defendants.)	

BEFORE: THE HONORABLE DOUGLAS L. RAYES, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TELEPHONIC CONFERENCE

Official Court Reporter:
Candy L. Potter, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc 36
Phoenix, Arizona 85003-2151
(602) 322-7246

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

CV-16-1065-PHX-DLR - May 26, 2016

T E L E P H O N I C
A P P E A R A N C E S

For Intervenor-Plaintiff Bernie Sanders:

Coppersmith Brockelman

By: **Roopali H. Desai**, Esq.

David Andrew Gaona, Esq.

2800 North Central Avenue, Suite 1200

Phoenix, Arizona 85004

For the Individual Plaintiffs, DNC, DSCC, the Arizona
Democratic Party and Kirkpatrick for Senate:

Perkins Coie

By: **Amanda R. Callais**, Esq.

700 13th Street NW, Suite 600

Washington, DC 20005

Perkins Coie

By: **Daniel Clayton Barr**, Esq.

Sarah Rae Gonski, Esq.

P.O. Box 400

Phoenix, Arizona 85001

For the Defendants Arizona Secretary of State's Office,
Secretary of State Michele Reagan, and Attorney General
Mark Brnovich:

Office of the Attorney General

By: **Karen J. Hartman-Tellez**, Esq.

James P. Driscoll-MacEachron, Esq.

Kara Karlson, Esq.

1275 West Washington Street

Phoenix, Arizona 85007

For the Defendants Maricopa County Board of Supervisors,
Maricopa County Recorder and Maricopa County Elections
Director:

Maricopa County Attorney's Office

By: **M. Colleen Connor**, Esq.

222 North Central Avenue, Suite 1100

Phoenix, Arizona 85004

For the Intervenor Defendant Arizona Republican Party:
Snell & Wilmer

By: **Brett William Johnson**, Esq.

Sara Jane Agne, Esq.

1 Arizona Center

400 East Van Buren

Phoenix, Arizona 85004

CV-16-1065-PHX-DLR - May 26, 2016

1 MR. DRISCOLL-MACEACHRON: No problem. This is Jim
2 Driscoll-MacEachron on behalf of the Secretary of State Michele
3 Reagan, Secretary of State's Office and the Attorney General's
4 Office.

5 I also will be out of town the afternoon -- the 28th
6 and 29th, coming back -- I think I'll be back on the 1st. So
7 while it's possible to be there on the 2nd, if you have an
8 option that would be on the 26th or the 27th, that would be
9 preferable for us as well.

15:00:23

10 MR. BARR: Your Honor, this is Dan Barr with Perkins
11 Coie.

15:00:45

12 I just mention this -- Miss Desai mentioned it as
13 well, but Mark Elias, who is the lead counsel in this case,
14 will be at the Democratic National Convention July 25th through
15 the 28th. So he won't be available for a hearing during that
16 time.

15:00:59

17 MS. DESAI: Your Honor, this is Roopali Desai.

18 It sounds like all counsel, with the exception of
19 Mr. Johnson, is available on August 3rd, which is the initial
20 date that the Court proposed. I would request that that be the
21 date that we set for this hearing.

15:01:18

22 THE COURT: Well, let me ask, Mr. Johnson, what will
23 your participation be in this hearing?

24 MR. JOHNSON: I would be arguing on behalf of the
25 Arizona Republican Party. So I'm lead counsel for the Arizona

15:01:35

CV-16-1065-PHX-DLR - May 26, 2016

1 Republican Party.

2 And, Your Honor, in regard to the ballot harvesting,
3 the Republican Party was significantly interested in the
4 passage of that bill, supported that bill, et cetera. So we
5 will have full briefing from the Arizona Republican Party. And
6 my client's going to be expecting me to do that argument.

15:01:51

7 THE COURT: And what's your schedule again? August 3?

8 MR. JOHNSON: Yes, Your Honor. I'll be gone from July
9 28th through August 6th.

10 THE COURT: So what I have now are -- are there three
11 attorneys who aren't available on August 3, or just two?

15:02:15

12 MS. DESAI: Your Honor, this is Roopali Desai.

13 I think only one lawyer is not available on August
14 3rd, and that's Mr. Johnson.

15 THE COURT: Okay. And on July 26th, how many are
16 unavailable then?

15:02:31

17 MS. DESAI: Your Honor, I'm unavailable on behalf of
18 Plaintiff-Intervenors Bernie Sanders.

19 MR. BARR: Your Honor, Mr. Elias and the others with
20 our office are unavailable during the last week of July because
21 of the Democratic National Convention.

15:02:47

22 THE COURT: So -- and the effective date is August 6,
23 the date that Mr. Johnson gets back.

24 MR. JOHNSON: Right.

25 MS. DESAI: That's correct, Your Honor.

15:03:07

CV-16-1065-PHX-DLR - May 26, 2016

1 THE COURT: And with regard to the Republican National
2 Convention, all of you have to be there?

3 MR. JOHNSON: I think you meant the Democratic
4 National Convention.

5 THE COURT: The Democratic National Convention. You
6 all have to be there? 15:03:21

7 MR. BARR: Your Honor, my understanding is Mr. Elias
8 will be there. I don't know if his boss will be there or not.
9 I mean, I will out of the country at this time as well, but
10 that is not a factor here for the Court to consider. 15:03:38

11 THE COURT: All right. Tell me who has to be at the
12 Democratic National Convention.

13 MS. CALLAIS: Your Honor, this is Amanda Callais for
14 the plaintiffs. Mark Elias has to be at the Democratic
15 National Convention. I do not have Miss Frost's schedule, so I
16 do not know if she will be or have to be at the Convention. 15:03:56

17 THE COURT: And what's he going to do on the hearing
18 on this issue?

19 MS. CALLAIS: Mr. Elias is lead counsel, and he would
20 be arguing on behalf of the plaintiff with respect to this
21 issue. 15:04:11

22 THE COURT: All right.

23 MS. DESAI: And, Your Honor, this is Roopali Desai.

24 And I would be out of the country the week of July
25 25th, and will be arguing on behalf of Plaintiff-Intervenor 15:04:24

CV-16-1065-PHX-DLR - May 26, 2016

1 Bernie Sanders. I'm lead counsel for the campaign.

2 THE COURT: Okay. So it looks like August 3 is going
3 to be our date then.

4 All right. Anything else?

5 MS. HARTMAN-TELLEZ: Yes, Your Honor. This is Karen
6 Hartman-Tellez.

15:04:39

7 Now that we have set this schedule for the HB 2023
8 issue, I'm wondering if we may actually be able to push the
9 dates out for the briefing of the other issues, which are not
10 as pressing, so that we aren't doing everything -- prepping for
11 this hearing and drafting responses and all at the same time.

15:05:02

12 THE COURT: I would prefer not changing anything now.
13 We've got things in place. I think -- all -- this is an issue
14 you'd have to cover anyway, all we're doing is accelerating the
15 hearing on this issue.

15:05:29

16 MS. CALLAIS: Your Honor, this is Amanda Callais for
17 the plaintiffs, and we would certainly be opposed to pushing
18 out the rest of the dates. As we stated in the initial call,
19 we do have significant concerns about the Purcell doctrine and
20 what happens when decisions are made too close to elections.

15:05:44

21 And then second, I actually just wanted a
22 clarification on the date for the HB 2023 expert disclosure and
23 the expectations --

24 THE COURT: June 10, the petition and the disclosure.

25 MR. JOHNSON: No, Your Honor, she's talking about the

15:06:01

CV-16-1065-PHX-DLR - May 26, 2016

C E R T I F I C A T E

I, CANDY L. POTTER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 20th day of June, 2016.

s/Candy L. Potter
Candy L. Potter, RMR, CRR

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Leslie Feldman, et al.,

Plaintiffs,

v.

Arizona Secretary of State's Office, et al.,

Defendants.

No. CV-16-01065-PHX-DLR

**[PROPOSED] ORDER
GRANTING PLAINTIFFS' JOINT
MOTION TO STRIKE PORTIONS
OF INTERVENOR-DEFENDANT
THE ARIZONA REPUBLICAN
PARTY'S MOTION TO DISMISS
AND EXTENDING TIME FOR
RESPONSE**

Before the Court is Plaintiffs' and Plaintiff-Intervenor's (together, "Plaintiffs") Joint Motion to Strike Portions of Intervenor-Defendant the Arizona Republican Party's Motion to Dismiss and Extend Time to Respond. Finding good cause existing, the motion is GRANTED.

THE COURT HEREBY FINDS AND ORDERS that sections of Intervenor-Defendants' Motion to Dismiss (Doc. 108) that argue that Plaintiffs have failed to state a claim for which relief may be granted are improper and are hereby stricken.

THE COURT FURTHER FINDS GOOD CAUSE to extend the time for Plaintiffs to respond to any remaining portions of Intervenor-Defendant's motion to dismiss until 21 days after the Court rules on both of the pending motions for a preliminary injunction.

General Information

Court	United States District Court for the District of Arizona; United States District Court for the District of Arizona
Federal Nature of Suit	Civil Rights - Voting[441]
Docket Number	2:16-cv-01065