

Multiple Documents

Part	Description
1	12 pages
2	Exhibit Exhibits A-B

1 Brett W. Johnson (#021527)
Sara J. Agne (#026950)
2 Joy L. Isaacs (#030693)
SNELL & WILMER L.L.P.
3 One Arizona Center
400 E. Van Buren, Suite 1900
4 Phoenix, Arizona 85004-2202
Telephone: 602.382.6000
5 Facsimile: 602.382.6070
E-Mail: bwjohnson@swlaw.com
6 sagne@swlaw.com
jisaacs@swlaw.com

7
8 Timothy A. La Sota (#020539)
TIMOTHY A. LA SOTA, PLC
2198 E. Camelback Road, Suite 305
9 Phoenix, Arizona 85016
Telephone: 602.515.2649
10 E-Mail: tim@timlasota.com

11 *Attorneys for Intervenor-Defendant*
Arizona Republican Party

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 Leslie Feldman, et al.,
16 Plaintiffs,
17 v.
18 Arizona Secretary of State’s Office, et al.,
19 Defendants.

No. CV-16-1065-PHX-DLR

**RESPONSE IN OPPOSITION TO
EXPEDITED JOINT MOTION TO
STRIKE PORTIONS OF
INTERVENOR-DEFENDANT THE
ARIZONA REPUBLICAN PARTY’S
MOTION TO DISMISS AND
EXTEND TIME TO RESPOND**

(Oral Argument Requested)

22 In contravention of any notion of respect for judicial economy, Plaintiffs ask this
23 Court to strike portions of Intervenor-Defendant’s Motion to Dismiss (Doc. 108)
24 (“Motion”) and simultaneously seek to extend their time to respond to threshold
25 *jurisdictional* considerations about their claims until weeks after this Court resolves
26 questions of preliminary relief on those same claims. This should not be countenanced.

27 In fact, this Court should do the opposite of what Plaintiffs ask, and resolve
28 Intervenor-Defendant the Arizona Republican Party’s Motion concurrently with Plaintiffs’

Snell & Wilmer
LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

1 motions for preliminary injunctive relief, which is the common procedure. *See Tohono*
2 *O’odham Nation v. Ducey*, 130 F. Supp. 3d 1301, 1308 (D. Ariz. 2015) (“The Court will
3 address the merits of Defendants’ motions to dismiss before turning to the Nation’s
4 motion for preliminary injunction.”).

5 **I. Plaintiffs Fail to Establish Any Grounds for Striking Any Portion of the**
6 **Motion to Dismiss (Doc. 108).**

7 Plaintiffs ask the Court to strike only those portions of the Motion based on Federal
8 Rule of Civil Procedure 12(b)(6). (*See* Doc. 118, at 6.) They do not ask that the Court to
9 strike jurisdictional issues raised under in the Motion to Dismiss under Federal Rule of
10 Civil Procedure Rule 12(b)(1).¹ Plaintiffs fail to show any basis, however, for striking *any*
11 portion of the Motion to Dismiss. They contend that the filing of the Motion to Dismiss
12 violated the Federal Rules of Civil Procedure, but this is simply incorrect.

13 Plaintiffs correctly state that a Rule 12(b)(6) motion must be made before a
14 responsive pleading. (Doc. 118, at 6 (citing Rule 12(b)).) And that is precisely what
15 happened here. The Intervenor-Defendant never formally filed an answer to Plaintiffs’
16 Amended Complaint or the Intervenor-Plaintiff’s Complaint-in-Intervention. Instead, and
17 as Plaintiffs concede (*id.*), the Intervenor-Defendant only attached a *proposed* Answer to
18 its Motion for Intervention. In so doing, the Intervenor-Defendant complied with Federal
19 Rule of Civil Procedure 24(c), which states that an intervention motion should be
20 “accompanied by a pleading that sets out the claim or defense for which intervention is
21 sought.” Because the proposed Answer was never actually filed as the Intervenor-
22 Defendant’s responsive pleading, it cannot preclude a later Rule 12(b)(6) motion.

23 Plaintiffs also argue that a Rule 12(b)(6) motion is untimely because it supposedly
24 should have been filed within 21 days of the Intervenor-Defendant’s intervention. *Id.* at 6
25 (citing Fed. R. Civ. P. 12(a)(1)(A)(1)). This argument fails to recognize the parties’
26 agreement to alter the default Rule 12 deadlines. In a May 5, 2016 stipulation, the original

27 _____
28 ¹ Under Federal Rule of Civil Procedure 12(h)(3), jurisdictional defects can be raised at any time.

1 parties agreed that defendants would “have *until* 21 days following the Court’s ruling on
 2 Plaintiffs’ forthcoming Motion for Preliminary Injunction to answer or otherwise respond
 3 to the Amended Complaint.” (Doc. 31, at 2 (emphasis added).) A few days later, the
 4 parties (now including the Intervenor-Defendant) agreed to a similar extension for the
 5 time to answer or otherwise respond to the Complaint-in-Intervention.

6 When the Intervenor-Defendant moved to intervene in this action, it expressly
 7 stated that it intended to file a motion to dismiss concerning the original Plaintiffs’
 8 Amended Complaint “on the timeline contemplated by the parties’ [May 5] stipulation.”
 9 (Doc. 39, at 2 n.1.²) Plaintiffs never raised any objections to this, and though they try,
 10 cannot credibly do so now. (*See* Tr. of Proceedings, dated 5/10/2016, at 6:11–14, pertinent
 11 portions attached as Exhibit A (recording no objections, and the silence of Plaintiffs at the
 12 Court’s call for any, to the intervention of the Arizona Republican Party).³ Having stayed
 13 silent at the time of intervention, Plaintiffs have no legitimate basis for now arguing that
 14 the Motion to Dismiss was due within 21 days of when the Intervenor-Defendant’s
 15 intervention was granted. If Plaintiffs believed that the Intervenor-Defendant’s time to
 16 answer or otherwise respond to the Amended Complaint was different than the other
 17 Defendants and different than the Complaint-in-Intervention⁴ response deadline, they

18 _____
 19 ² The Intervenor-Defendant’s statement in its intervention motion that it intended to move
 20 to dismiss “portions” of the Amended Complaint was made when the Intervenor-
 21 Defendant was still evaluating the Amended Complaint and, therefore, was not certain of
 22 the scope of the future motion to dismiss. When Intervenor-Defendant realized that strong
 23 grounds existed for dismissing the Amended Complaint and Complaint-in-Intervention in
 24 their entirety because of jurisdictional issues, its counsel communicated this intent to
 25 Plaintiffs’ counsel in advance of and at a telephone conference that took place before the
 26 Motion to Dismiss was filed. This is exactly what is contemplated by the Court’s Order
 27 (Doc. 5). Plaintiffs’ counsel did not suggest at this conference that they were somehow
 28 prejudiced by a full motion to dismiss as opposed to a partial one.

³ It is disingenuous for Plaintiffs to now claim, as they seem to do repeatedly, that they are
 “at a loss about” the Intervenor-Defendant’s interest in this case. (*See, e.g.*, Doc. 111, at 5
 n.1.) Intervenor-Defendant was made a party after a proper motion and accompanying
 pleading were filed, and Plaintiffs never objected to that occurring. Continued references
 by Plaintiffs questioning why the Intervenor-Defendant is a party are simply unproductive
 and irrelevant to the important issues before the Court.

⁴ Intervenor-Defendant also notes that Plaintiffs represent that Intervenor-Plaintiff filed its
 proposed Complaint in Intervention the “same day” as when the Intervenor-Plaintiff was
 granted leave to intervene. The actual docket notification for Doc. 53 records that the

1 should have raised that issue in response to the Motion for Intervention.

2 The Intervenor-Defendant also respectfully submits that striking the Rule 12(b)(6)
3 portions of the Motion to Dismiss, as requested by Plaintiffs, would be pointless and a
4 waste of judicial resources. The same arguments raised under Rule 12(b)(6) may also be
5 raised in a motion for judgment on the pleadings under Rule 12(c). Fed. R. Civ. P.
6 12(h)(2)(B). Accordingly, even if Plaintiffs are correct in their assertions (and they are
7 not), the appropriate relief would be for this Court to treat the Motion to Dismiss as a
8 motion for judgment on the pleadings. *See id.*; *see Aldabe v. Aldabe*, 616 F.2d 1089, 1093
9 (9th Cir. 1980) (per curiam) (concluding that when Rule 12(b)(6) motions were filed after
10 a party filed an answer, “the best approach is . . . treating the motion to dismiss as a
11 motion for judgment on the pleadings”); *see also* Fed. R. Civ. P. 12(h)(3). This would
12 promote judicial economy by avoiding two different motions, presumably with different
13 briefing schedules, on the jurisdictional and other defects with the Amended Complaint
14 (Doc. 12) and Complaint-in-Intervention (Doc. 53) that are dispositive of this case.

15 **II. Plaintiffs Fail to Establish Good Cause for Delaying the Sensible Motion to**
16 **Dismiss Briefing Schedule Established by Local Rule.**

17 While objecting to Defendants’ reasonable request for additional time based on the
18 disclosure of nearly 100 GB of data and over 30 filings peppered off on a Friday evening
19 nearly two months after Plaintiffs filed their Complaint, Plaintiffs also ask for an
20 extension to respond to the Motion to Dismiss until 21 days after the Court rules on their
21 pending motions seeking preliminary injunctions. Because the hearings on Plaintiffs’
22 preliminary injunctions will not be completed until August 12, 2016, Plaintiffs’ proposed
23 extension would effectively give them several months to address threshold issues. There is
24 no legitimate basis for such a significant delay on those important, gatekeeper-type issues.

25
26
27
28 Intervenor-Plaintiff did not actually file until two days later—1:31 p.m. on May 12, 2016.
(*See* Notice of Electronic Filing, dated May 12, 2016, attached as Exhibit B.)

Snell & Wilmer
LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

1 **A. The Motion to Dismiss Raises Threshold Issues that Should be**
2 **Addressed *Before* the Court Reaches the Merits of Plaintiffs’**
3 **Preliminary Injunction Motions.**

4 The Plaintiffs’ requested extension should be denied because they cannot establish
5 any good reason for delaying, for several months, the sort of threshold issues raised in the
6 Motion to Dismiss. These issues should be resolved at the outset of a case—before the
7 Court examines the merits of Plaintiffs’ claims. Fed. R. Civ. P. 12(b)(1); *Sinochem Intern.*
8 *Co. Ltd. v. Malaysia Intern. Shipping Corp.*, 549 U.S. 422, 430-31 (2007) (“[A] federal
9 court generally may not rule on the merits of a case without first determining that it has
10 jurisdiction over the category of claim in suit (subject-matter jurisdiction).”).

11 Most fundamentally, the Motion to Dismiss asserts that Plaintiffs do not have
12 standing to raise several of the claims and issues asserted in the Amended Complaint.
13 “[N]o principle is more fundamental to the judiciary’s proper role in our system of
14 government than the constitutional limitation of federal-court jurisdiction to actual cases
15 or controversies.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (internal
16 quotations and citation omitted). Article III standing is indeed “the threshold question in
17 every federal case, determining the power of the court to entertain the suit.” *Warth v.*
18 *Seldin*, 422 U.S. 490, 498 (1975). Thus, standing issues should be addressed *before* a
19 federal court turns to the merits of a plaintiff’s claims. *See Steel Co. v. Citizens for a*
20 *Better Env’t*, 523 U.S. 83, 88-89 (1998) (Article III standing “would normally be
21 considered a threshold question that must be resolved in [a plaintiff’s] favor *before*
22 proceeding to the merits”) (emphasis added); *Rivera v. Wyeth- Ayerst Labs.*, 283 F.3d 315,
23 319 (5th Cir. 2002) (holding that “district court erred by not demanding such a showing
24 [of Article III standing] *before* it” addressed class certification issues) (emphasis added).

25 Plaintiffs contend that the threshold issues raised by the Motion to Dismiss could
26 be dealt with as part of briefing on the “likelihood of success of merits” prong of the
27 preliminary injunction standard. (Doc. 118, at 9.) This Court need not even reach the
28 preliminary injunction standard, however, on issues or claims for which Plaintiffs have no
standing, or unripe, or are otherwise deficient based on the pleadings. In addition,

1 conflating the briefing on the Motion to Dismiss and the preliminary injunction motions
2 would only promote confusion given the different standards applicable to those motions.

3 Plaintiffs' request for an extension confirms the point, arguing that the "extensive
4 evidence" submitted in support of preliminary injunction motions somehow undermines
5 the Motion. (Doc. 118, at 11.) Plaintiffs never actually identify, specifically or otherwise,
6 which evidence they believe does that or exactly how any of the evidence undermines any
7 argument in the Motion. To the contrary, the Motion to Dismiss explains that the
8 jurisdictional and other defects are apparent from the face of the Amended Complaint and
9 cannot be changed by any extrinsic evidence. Plaintiffs have the burden to show
10 jurisdiction, and they cannot meet this burden by simply pointing to the existence of
11 hundreds of pages of expert reports and declarations and massive amounts of electronic
12 data.

13 **B. The Timing of the Motion to Dismiss Complied with the Parties'**
14 **Stipulations in this Matter.**

15 Plaintiffs argue that the proposed extension is reasonable because the parties'
16 stipulations prevented motions to dismiss from being filed until *after* the preliminary
17 injunction motions were decided. (*See* Doc. 118, at 7-8.) But the stipulations said no such
18 thing. The May 5, 2016, stipulation instead stated that defendants "have *until* 21 days
19 following the Court's ruling on [the preliminary injunction motions] to answer or
20 otherwise respond to the Amended Complaint," and the June 2, 2016 stipulation said the
21 same regarding the Complaint-in-Intervention of Bernie, 2016, Inc. (Doc. 31, at 2;
22 Doc. 65, at 2 (emphasis added).)

23 Of course, just because the Defendants have "until" 21 days after the preliminary
24 injunction decision to answer or otherwise respond to Plaintiffs' operative complaints, that
25 does not mean that they are obligated to wait until that deadline. Under the stipulations,
26 Defendants instead have the option of answering or moving to dismiss the operative
27 complaints *at any point* before the deadline.

28 Moreover, even if the parties did stipulate to not file Rule 12(b)(1) motions until

1 after preliminary injunction proceedings (and they did not), such a stipulation would be
2 void and unenforceable. The parties have no authority to delay consideration of
3 jurisdictional issues, like Article III standing, which can be raised at any time. *See Fed. R.*
4 *Civ. 12(h)(3)*. Standing cannot be conferred by agreement. *See Rosen v. Tenn. Comm’r of*
5 *Finance and Admin.*, 288 F.3d. 918, 931 (6th Cir. 2002).

6 **C. Plaintiffs Cannot Demonstrate Any Prejudice from Being Required to**
7 **Demonstrate Subject-Matter Jurisdiction and the Sufficiency of their**
8 **Pleadings.**

9 Plaintiffs contend that they will be prejudiced without an extension of time on the
10 Motion to Dismiss briefing until after the preliminary injunction motions are decided. But
11 the facts directly undermine this claimed prejudice and is contrary to the exact arguments
12 Plaintiffs have raised in objecting to Defendants’ reasonable request for an extension of
13 time to address their belated motion for preliminary injunction.

14 First, Plaintiffs have more than adequate resources to prepare their response to the
15 Motion to Dismiss without needing an extension of several months. Their caption lists six
16 different attorneys for the Plaintiffs and three attorneys for the Intervenor-Plaintiffs, with
17 additional counsel on the signature page. These ten attorneys were able to prepare and file
18 a 12-page motion to strike and for extension of time *within 3 business days* of when the
19 Motion to Dismiss was submitted. Of course, this same time could have been spent
20 responding to the merits of the Motion to Dismiss. The suggestion that the same ten
21 attorneys—who repeatedly seek to remind the Court that they are election lawyers who
22 practice nationally under short timelines (Doc. 10, at 10:24–28)—cannot prepare a
23 response to the Motion to Dismiss until after the preliminary injunction motions are
24 decided is simply not credible.⁵

25 ⁵ Plaintiffs’ motion contends that “several of the attorneys for the Original Plaintiffs” are
26 currently involved with appellate briefs. (Doc. 118, at 10.) The motion does not contend,
27 however, that *all* ten attorneys representing the original Plaintiffs or the Intervenor-
28 Plaintiffs are involved with those appellate matters. In any event, it seems likely that *all*
counsel in this matter—whether on the Plaintiffs or Defendants side—are busy juggling
several different matters in this election season. That certainly is true of counsel for the
Intervenor-Defendant. Those obligations in other matters do not, however, justify
postponed briefing on important threshold issues such as Article III standing and ripeness
in this case. Furthermore, Plaintiffs failed to cite which actual cases have timing conflicts

1 Second, while Plaintiffs complain about being “forced to expend additional
2 resources” on the Motion to Dismiss, such expenses are not unreasonable given that the
3 Motion to Dismiss addresses such threshold issues as Article III standing, ripeness, laches,
4 and the sufficiency of the Amended Complaint (Doc. 12) on which this action is based.
5 Having brought this action in federal court, Plaintiffs bear the burden—at *all* stages of this
6 litigation—to show that subject matter jurisdiction is proper. *See Spokeo*, 136 S. Ct. at
7 1547.

8 Third, when Defendants sought an extension of time to respond to one of Plaintiffs’
9 preliminary injunction motions, (Doc. 106), Plaintiffs opposed on the grounds that short
10 deadlines are “routinely imposed” in election matters. (Doc. 111, at 3.) There is, therefore,
11 no legitimate basis for a several month extension on the type of fundamental issues raised
12 by the Motion to Dismiss. And, as Plaintiffs admit, (Doc. 118, at 9), the Court’s resolution
13 of Intervenor-Defendant’s Motion will “obviously be highly relevant to the Court’s
14 resolution of the motions for preliminary injunction.” Intervenor-Defendant completely
15 agrees, and the Court should resolve both simultaneously. *See Tohono O’odham Nation*,
16 130 F. Supp. 3d at 1308.

17 Fourth, there is nothing abnormal or burdensome about concurrent briefing and
18 adjudication of motions to dismiss and preliminary injunction motions, and it often makes
19 the most sense to proceed thus. *See Tohono O’odham Nation*, 130 F. Supp. 3d at 1308; *see*
20 *also Meredith v. Oregon*, 321 F.3d 807, 816 (9th Cir. 2003) (“Like subject matter
21 jurisdiction . . . resolution of [an] abstention issue [on a motion to dismiss] is critical
22 because, if the district court is required to . . . dismiss the suit, then it has no authority to
23 rule on a party’s motion for a preliminary injunction.”); Fed. R. Civ. P. 12(h)(3) (“If the

24 _____
25 with this one and why Plaintiffs are unable to seek extensions in those cases. Their own
26 request acknowledges that they plan to be able to have counsel prepared to argue a case
27 before a U.S. Court of Appeal on August 2, as well as counsel prepared to argue in this
28 case on H.B. 2023 issues *the following day*, on August 3. (*See* Doc. 118, at 10:24–28.)
Surely counsel well-coordinated enough to accomplish that—and the August 3 argument
was specifically set at Plaintiffs’ request—can respond to Intervenor-Defendant’s Motion
on the rather generous timetable granted by the local rules. *See* LRCiv. 12.1(b); 56.1(d)
(granting thirty days after service for Plaintiffs to respond to the Motion).

Snell & Wilmer
LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

1 court determines at any time that it lacks subject-matter jurisdiction, the court must
2 dismiss the action.”). This approach furthers the interest in judicial economy by allowing
3 a court to disregard, in deciding a preliminary injunction, claims and issues over which it
4 has no subject matter jurisdiction or on which a plaintiff has failed to state a viable claim
5 for relief.

6 Fifth, Plaintiffs contend that they would have objected to intervention had they
7 known that the Intervenor-Defendant would file a motion to dismiss during the
8 preliminary injunction proceeding, but such second-guessing is irrelevant. Plaintiffs’
9 argument is also illogical. The Intervenor-Defendant made clear in its intervention motion
10 that it planned to file a motion to dismiss, so Plaintiffs cannot be honestly surprised that
11 the Intervenor-Defendant followed through with this statement. *See Aldabe*, 616 F.2d at
12 1093 (“The motions to dismiss were not based on new arguments for which appellant
13 could claim to have been unprepared.”). In any event, no rule or other requires for an
14 intervening party to develop and declare a litigation plan proposal when seeking
15 intervention under Rule 24. The fact is the parties recognized the Intervenor-Defendant’s
16 interest in this case (which, among other things, is presumably the same as the Plaintiffs,
17 which is to ensure fair elections) and, once allowed to intervene, it has all the same rights
18 as the other parties. The constant reference to the Intervenor-Defendant’s “interests” in
19 this case and whether it should be allowed time or the same page limits to brief arguments
20 is inappropriate. Simply, the Arizona Republican Party’s intervention was not objected to
21 and Plaintiffs cannot now argue that it wished it could raise an objection.

22 Sixth, Plaintiffs’ contention that they need months to respond to the Motion to
23 Dismiss is highly dubious in light of their repeated attacks on the merits of Motion to
24 Dismiss. For example, Plaintiffs assert that the Motion to Dismiss has “highly
25 questionable merit,” and that the Court is “very likely to reject [the] arguments” raised in
26 the Motion. (Doc. 118, at 3, 10.) Defendant-Intervenor strongly disagrees with these
27 characterizations. But if Plaintiffs truly believe that the Motion to Dismiss is so lacking in
28

1 merit, they should have no issue in responding to it within a normal (or even expedited)
2 timeframe.⁶

3 In short, the only purported “prejudice” to Plaintiffs is having the Court consider
4 well-reasoned threshold jurisdictional issues and other defects with the operative
5 complaints before deciding whether an injunction is warranted. Plaintiffs simply do not
6 want the Court to consider the fact that the 2016 General Election is completely different
7 than the presidential preference election (“PPE”), including the allocation of polling
8 places based on precincts rather than vote centers, and that elected leaders and
9 government staff have not yet determined the location of polling places for the General
10 Election for specific precincts. Plaintiffs do not want the Court to consider the fact that all
11 county officials responsible for counting provisional ballots are not parties in this case, or
12 that out-of-precinct votes have been rejected in Arizona since at least 2006. (Doc. 12,
13 ¶ 81.) Nor do Plaintiffs want the Court to consider the fact that the prohibition on the
14 activity of ballot harvesting does not meaningfully impact any protected Constitutional
15 right. Instead, Plaintiffs only want the Court to consider their arguments in a silo of the
16 PPE, which will not occur again for the next four years.

17 Conclusion

18 For the foregoing reasons, Intervenor-Defendant respectfully requests that
19 Plaintiffs’ Motion and Request (Doc. 118) be denied in its entirety.

20
21
22
23 ⁶ Interestingly, while the Plaintiffs make inflammatory statements about the purported
24 lack of merit of the Motion to Dismiss, the two cases they cite as alleged support for the
25 statement that the Motion is “very likely to [be] reject[ed]” do *not* involve elections and
26 have nothing to do with the facts alleged in this case. *See Internet Specialties W., Inc. v.*
27 *Milon-DiGiorgio Enters., Inc.*, 559 F.3d 985, 992 (9th Cir. 2009) (holding that laches did
28 not apply in trademark infringement action under Lanham Act when defendant had not
developed brand recognition of its mark during time that plaintiff delayed exercise of
rights); *Boardman v. Pac. Seafood Grp.*, No. 15-35257, 2016 WL 1743350, at *7 (9th Cir.
May 3, 2016) (in antitrust action, holding that plaintiffs established likelihood of
irreparable harm from proposed merger when they presented evidence concerning market
concentration and lessening of competition).

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 23rd day of June, 2016.

Respectfully submitted,

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

Brett W. Johnson
Sara J. Agne
Joy L. Isaacs
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202

Timothy A. La Sota
2198 E. Camelback Road, Suite 305
Phoenix, Arizona 85016

*Attorneys for Intervenor-Defendant
Arizona Republican Party*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2016, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a notice of electronic filing to the EM/ECF registrants.

/s/ Tracy Hobbs

24349172

Snell & Wilmer
LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Leslie Feldman, et al.,)	
)	
Plaintiffs,)	
)	CV 16-01065-PHX-DLR
vs.)	Phoenix, Arizona
)	May 10, 2016
Arizona Secretary of)	10:35 a.m.
State's Office, et al.,)	
)	
Defendants.)	
)	

BEFORE: THE HONORABLE DOUGLAS L. RAYES, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Telephonic Hearing re: Scheduling and Discovery)

Official Court Reporter:

David C. German, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, SPC-39
Phoenix, Arizona 85003-2151
(602) 322-7251

PROCEEDINGS TAKEN BY STENOGRAPHIC COURT REPORTER
TRANSCRIPT PREPARED BY COMPUTER-AIDED TRANSCRIPTION

1 there going to be an objection to either motion?

2 MR. GORDON: Your Honor, this is Andrew Gordon for
3 Plaintiff-Intervenor Bernie 2016, Inc., and both the State
4 defendants and the County defendants collectively have agreed
5 that we may intervene, and we've seen no objection from
6 anyone.

10:38:30

7 THE COURT: Okay. Then --

8 MR. GORDON: And the plaintiffs have also agreed.

9 THE COURT: Okay. Then I'm going to grant the motion
10 to intervene from the Sanders parties.

10:38:40

11 How about the Arizona Republican Party; any
12 objections to the intervention?

13 Okay. Apparently not. So I'm going to grant that
14 motion as well.

15 All right. Now I want to find out, I guess,
16 Miss Frost, what is the scope of this preliminary injunction
17 you're seeking? What are you going to be asking the Court to
18 do?

10:38:57

19 MS. FROST: Yes, Your Honor.

20 So we -- our motion for a preliminary injunction will
21 address the three issues identified in our complaint and
22 specifically will be seeking narrowly-tailored relief to
23 protect voters from each of these issues as they relate to the
24 general election in particular.

10:39:08

25 So those three issues are the polling allocation

10:39:25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, DAVID C. GERMAN, Official Court Reporter, 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 proceedings and testimony reported by me on the date specified herein regarding the afore-captioned matter are contained fully and accurately in the notes taken by me upon said matter; that the same were transcribed by me with the aid of a computer; and that the foregoing is a true and correct transcript of the same, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 8th day of June, 2016.

s/David C. German
DAVID C. GERMAN, RMR, CRR

EXHIBIT B

Hobbs, Tracy

From: azddb_responses@azd.uscourts.gov
Sent: Thursday, May 12, 2016 1:32 PM
To: azddb_nefs@azd.uscourts.gov
Subject: Activity in Case 2:16-cv-01065-DLR Feldman et al v. Arizona Secretary of State's Office et al Intervenor Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered on 5/12/2016 at 1:31 PM MST and filed on 5/10/2016

Case Name: Feldman et al v. Arizona Secretary of State's Office et al
Case Number: [2:16-cv-01065-DLR](#)
Filer: Bernie 2016 Incorporated
Document Number: [53](#)

Docket Text:
[INTERVENOR COMPLAINT filed by Bernie 2016 Incorporated.\(EJA\)](#)

2:16-cv-01065-DLR Notice has been electronically mailed to:

Amanda R Callais acallais@perkinscoie.com, rroberts@perkinscoie.com

Andrew S Gordon agordon@csblaw.com, ghadley@cblawyers.com

Brett William Johnson bwjohnson@swlaw.com, docket@swlaw.com, thobbs@swlaw.com

Bruce V Spiva bspiva@perkinscoie.com

Daniel Clayton Barr DBarr@perkinscoie.com, docketphx@perkinscoie.com, sneilson@perkinscoie.com

David Andrew Gaona Agaona@cblawyers.com, ghadley@cblawyers.com

Elisabeth C Frost efrost@perkinscoie.com, docketwdc@perkinscoie.com

James P Driscoll-MacEachron james.driscoll-maceachron@azag.gov, SolicitorGeneral@azag.gov

Joseph I Vigil vigilj@mcao.maricopa.gov, andern01@mcao.maricopa.gov, gagick@mcao.maricopa.gov,
kautzman@mcao.maricopa.gov

Joy Lisanne Isaacs jisaacs@swlaw.com, ctassielli@swlaw.com, docket@swlaw.com

Kara Karlson Kara.Karlson@azag.gov, SolicitorGeneral@azag.gov

Karen J Hartman-Tellez karen.hartman@azag.gov, adminlaw@azag.gov

M Colleen Connor connorc@mcao.maricopa.gov, garcia@mcao.maricopa.gov

Malcolm Seymour , III mseymour@gsblaw.com

Marc E Elias melias@perkinscoie.com, lbull@perkinscoie.com

Roopali H Desai rdesai@cblawyers.com, smcalister@cblawyers.com

Sara Jane Agne sagne@swlaw.com, docket@swlaw.com, thobbs@swlaw.com

Sarah Rae Gonski sgonski@perkinscoie.com, dgraziano@perkinscoie.com, mmanchester@perkinscoie.com

Thomas P Liddy liddyt@mcao.maricopa.gov, andern01@mcao.maricopa.gov,
kautzman@mcao.maricopa.gov

Timothy Andrew LaSota tim@timlasota.com

2:16-cv-01065-DLR Notice will be sent by other means to those listed below if they are affected by this filing:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=5/12/2016] [FileNumber=14883856-0] [55a0ff2ca509867296cf52c76ac53cd0156aa09f7eb4316cc91bebe6a831cd2d3ed97b43a49899cb3aa336b147b4b536e4ef061f1ca651a582610c0de6837a47]]

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