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

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

No. CV-16-01065-PHX-DLR  
**ORDER**

At issue is Plaintiffs’ Expedited Joint Motion to Strike Portions of Intervenor-Defendant the Arizona Republican Party’s Motion to Dismiss and Extend Time to Respond.<sup>1</sup> (Doc. 118.) The motion is fully briefed. For the following reasons, Plaintiffs’ motion is granted in part.<sup>2</sup>

**BACKGROUND**

The original Plaintiffs brought this lawsuit against several state and county officials (State Defendants) on April 15, 2016, challenging certain aspects of Arizona’s election laws and procedures. (Doc. 1.) They filed an amended complaint several days later. (Doc. 12.) Because the original Plaintiffs anticipated filing a preliminary

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<sup>1</sup> Unless otherwise noted, “Plaintiffs” refers collectively to the original Plaintiffs and to Intervenor Plaintiff Bernie 2016 Incorporated.

<sup>2</sup> The Arizona Republican Party’s request for oral argument is denied because the motion is adequately briefed and oral argument will not help the Court resolve the issues presented. *See* Fed. R. Civ. P. 78(b); LRCiv. 7.2(f).

1 injunction motion, the parties stipulated that the State Defendants may have until 21 days  
2 after the Court rules on the anticipated preliminary injunction motion to answer or  
3 otherwise respond to the amended complaint. (Doc. 31.) On May 9, 2016, the Court  
4 approved the stipulation. (Doc. 36.)

5 During this time, the Court received two motions to intervene: on April 29, 2016,  
6 Bernie 2016 Incorporated moved to intervene as a plaintiff, and on May 9, 2016, the  
7 Arizona Republican Party moved to intervene as a defendant. (Docs. 27, 39.) The  
8 following day, the Court held a telephonic hearing to discuss the briefing schedule for the  
9 anticipated preliminary injunction motion and, with no objection, granted the motions to  
10 intervene. (Doc. 44.) On June 7, 2016, pursuant to stipulation, the Court ordered that  
11 “Defendants and Defendant-Intervenors may have until 21 days after this Court’s ruling  
12 on Plaintiffs’ and Plaintiff-Intervenors’ Motions for Preliminary Injunction to answer or  
13 otherwise respond to the Complaint in Intervention of Bernie 2016, Inc.” (Doc. 70.)

14 Thereafter, the Court held a series of telephonic hearings regarding the preliminary  
15 injunction briefing schedule. (Docs. 57, 63, 122.) The Court bifurcated Plaintiffs’ claims  
16 regarding H.B. 2023 from their claims regarding polling place locations and provisional  
17 ballots. The Court will hold a hearing on the motion to enjoin enforcement of H.B. 2023  
18 on August 3, 2016, and a hearing on the motion regarding polling place locations and  
19 provision ballots on September 2, 2016.

20 On June 17, 2016, shortly after Plaintiffs filed their preliminary injunction  
21 motions, the Arizona Republican Party filed a motion to dismiss Plaintiffs’ complaints  
22 pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).<sup>3</sup> (Doc. 108.)  
23 Plaintiffs jointly move to extend the deadline for responding to the portions of the motion  
24 to dismiss brought under Rule 12(b)(1) until 21 days after the Court rules on the  
25 preliminary injunction motions, and to strike the portions brought under Rule 12(b)(6).

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27 <sup>3</sup> On June 28, 2016, the Court allowed Senator Debbie Lesko, Representative  
28 Tony Rivero, Councilman Bill Gates, and Councilwoman Suzanne Klapp to intervene  
pursuant to Fed. R. Civ. P. 24(b). (Doc. 126.) Thereafter, they joined in the Arizona  
Republican Party’s motion to dismiss. (Doc. 128.)

1 (Doc. 118.) In the event the Court denies the motion to strike, Plaintiffs request that their  
2 response to the entire motion to dismiss be extended until 21 days after the Court rules on  
3 the preliminary injunction motions. (*Id.*)

#### 4 DISCUSSION

##### 5 **I. Motion to Strike**

6 Plaintiffs argue that the Arizona Republican Party's 12(b)(6) motion should be  
7 stricken because it was filed after the Arizona Republican Party's answer. *See* Fed. R.  
8 Civ. P. 12(b) ("A motion asserting any of these defenses must be made before pleading if  
9 a responsive pleading is allowed."). The Court disagrees. Although the Arizona  
10 Republican Party attached a proposed answer to its motion to intervene, as required by  
11 Fed. R. Civ. P. 24(c), it did not file that answer after the Court granted its motion.  
12 Plaintiffs cite no authority stating that a responsive pleading is considered filed when  
13 attached as an exhibit to a motion to intervene. Instead, they argue that the Court should  
14 consider the Arizona Republican Party's failure to file the proposed answer as a technical  
15 defect and deem the answer filed at the time intervention was granted. In its motion to  
16 intervene, however, the Arizona Republican Party explained:

17 The Proposed Intervenor and its counsel understand that the current parties  
18 have stipulated to an extension of time for all Defendants to answer or  
19 otherwise respond to the First Amended Complaint ("FAC"), based on the  
20 expectation of a ruling on Plaintiffs' forthcoming Motion for Preliminary  
21 Injunction. (Dkt. 31.) Given that, Proposed Intervenor respectfully advises  
22 that it plans to file a Motion to Dismiss portions of the FAC, but intends to  
23 do so on the timeline contemplated by the parties' stipulation and only after  
24 properly conferring with Plaintiffs per the Court's Order (Dkt. 5).

25 (Doc. 39 at 2, n.1.) Although it did not formally enter into a similar stipulation with  
26 Plaintiffs, the Court allowed the Arizona Republican Party to intervene on the  
27 understanding that the same extended responsive pleading deadline would govern. The  
28 Arizona Republican Party's decision not to file its proposed answer is consistent with this  
understanding. Accordingly, the Court now clarifies that all Defendants shall have until  
21 days after the Court rules of the preliminary injunction motions to answer or otherwise  
respond to Plaintiffs' complaints. Plaintiffs' motion to strike the Arizona Republican

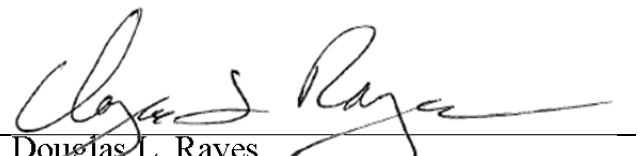
1 Party's 12(b)(6) motion is denied.

2 **II. Motion to Extend Response Time**

3 Plaintiffs alternatively ask that the Court extend the deadline for responding to the  
4 Arizona Republican Party's motion to dismiss until 21 days after the Court rules on the  
5 preliminary injunction motions. The Court finds good cause for the requested extension,  
6 which is consistent with the Court's understanding that responsive pleadings would be  
7 deferred until after the Court rules on the preliminary injunction motions. Moreover, the  
8 issues raised in the motion to dismiss (including the jurisdictional arguments) may also  
9 be raised in the Defendants' responses to Plaintiffs' motions for preliminary injunction to  
10 dispute Plaintiffs' likelihood of success on the merits. Although the Court is mindful that  
11 threshold jurisdictional issues should be resolved as early as practicable, it will be more  
12 economical at this juncture to consider the jurisdictional questions in the context of the  
13 preliminary injunction briefing, especially in light of the practical time constraints  
14 imposed by the upcoming general election. Accordingly,

15 **IT IS ORDERED** that Plaintiffs' Expedited Joint Motion to Strike Portions of  
16 Intervenor-Defendant the Arizona Republican Party's Motion to Dismiss and Extend  
17 Time to Respond, (Doc. 118), is **GRANTED IN PART**. Plaintiffs' motion to strike is  
18 **DENIED**, but their request to extend the response deadline is **GRANTED**. Plaintiffs'  
19 shall have until 21 days after the Court rules on the preliminary injunction motions in  
20 which to respond to the Arizona Republican Party's motion to dismiss.

21 Dated this 6th day of July, 2016.

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26 Douglas L. Rayes  
27 United States District Judge  
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