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**UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA**

Leslie Feldman, et al.,	)	Case No. CV-16-01065-PHX-DLR
	)	
Plaintiffs,	)	
	)	<b>STATE DEFENDANTS' RESPONSE</b>
v.	)	<b>TO JOINT MOTION TO DISMISS</b>
	)	<b>COUNTY DEFENDANTS</b>
Arizona Secretary of State's Office, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

Defendants Secretary of State Michele Reagan, the Arizona Secretary of State's Office, and Attorney General Mark Brnovich (the "State Defendants") hereby respond to the Joint Motion to Dismiss County Defendants (the "Joint Motion," Dkt. No. 203) filed by the Plaintiffs, including Plaintiff-Intervenor, and the Maricopa County Board of Supervisors, its members, Maricopa County Recorder Helen Purcell and Maricopa County Elections Director Karen Osborne (collectively, the "County Defendants"). As the Joint Motion states, the State Defendants "do not consent to the dismissal of County Defendants." *Id.* at 2.

1 In the Joint Motion Regarding Possibility of Settlement Between Plaintiffs and  
 2 Maricopa County and Related Request of Extension of Time, the Plaintiffs and County  
 3 Defendants asserted that their settlement “has no bearing on Plaintiffs’ claims in this case  
 4 regarding HB2023 or out-of-precinct voting.” Dkt. No. 191, at 2. The State Defendants  
 5 explained in that Motion, however, they “do not agree that dismissal of the County  
 6 Defendants from all claims ‘would have no bearing on Plaintiffs’ claims in this case  
 7 (against Defendants other than the County Defendants) regarding . . . out-of-precinct  
 8 voting,’” because the County Defendants are responsible for conducting elections. *Id.* at  
 9 2-3.<sup>1</sup>

10 Arizona charges its counties with the processing and counting of ballots generally,  
 11 A.R.S. §§ 16-531, -604, and with the counting of provisional votes specifically, A.R.S. §  
 12 16-584(E). Indeed, Plaintiffs’ Amended Complaint notes that the county recorder “is  
 13 responsible for . . . determining whether provisional ballots are acceptable.” Dkt. No. 12,  
 14 ¶ 36. If the Court were to grant any of Plaintiffs’ requested relief regarding out-of-  
 15 precinct votes, the County Defendants (and the boards of supervisors and election  
 16 officials in all other counties using a precinct-based system for the 2016 General  
 17 Election) would be the ones to implement that relief. As such, they are necessary parties.  
 18 *See* Fed. R. Civ. P. 19(a)(1)(A) (requiring joinder of parties necessary to provide  
 19 complete relief); Fed. R. Civ. P. 65(d)(2) (limiting those against whom an injunction is  
 20 binding to the parties, parties’ officers, agents, and employees, and those in “active  
 21 concert or participation” with the foregoing); *cf. Pediatric Specialty Care, Inc. v. Ark.*  
 22 *Dep’t of Human Servs.*, 364 F.3d 925, 933 (8th Cir. 2004) (reversing injunction against  
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24 <sup>1</sup> The State Defendants do not object to the dismissal of claims against the County  
 25 Defendants that are based on the County Defendants’ decisions regarding e-pollbook  
 26 allocation and polling locations for the November 8, 2016 General Election. Plaintiffs’  
 27 counsel has informed the State Defendants that they do not intend to maintain those  
 28 claims against the remaining Defendants.

1 non-party government agency that served only in a supervisory role and did not act in  
2 concert with state agency that decided to terminate Medicaid program).

3 For these reasons, the State Defendants oppose dismissal of the claims related to  
4 out-of-precinct votes, but do not oppose dismissal of the claims related to e-pollbook  
5 allocation and polling locations.

6 RESPECTFULLY SUBMITTED this 23rd day of September, 2016.

7 MARK BRNOVICH  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 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/ Karen J. Hartman-Tellez

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