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15 UNITED STATES DISTRICT COURT  
16 DISTRICT OF ARIZONA

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

No. CV-16-01065-PHX-DLR

**PLAINTIFFS’ JOINT  
EMERGENCY MOTION FOR  
STAY AND INJUNCTION  
PENDING APPEAL**

**(EXPEDITED CONSIDERATION  
WITHOUT ORAL ARGUMENT  
REQUESTED)**

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1 Pursuant to Federal Rule of Civil Procedure 62(c) and Federal Rule of Appellate  
2 Procedure 8(a)(1), Plaintiffs respectfully request that the Court stay its September 23,  
3 2016 Order (the “Order” or “Op.”) (Doc. 204) and enjoin the implementation and  
4 enforcement of HB2023, pending resolution of Plaintiffs’ appeal of the Order.

## 5 **I. INTRODUCTION**

6 A stay and injunction pending appeal are necessary to prevent irreparable harm to  
7 Plaintiffs, their members and constituents, and thousands of other Arizona voters, which  
8 will result from HB2023’s criminalization of ballot collection, a practice that minority  
9 voters in particular have come to rely upon to exercise their fundamental right to vote.  
10 There is *no evidence* that ballot collection has led to voter fraud in Arizona, and the state’s  
11 purported justifications—that HB2023 “eliminates the perception of fraud, thereby  
12 preserving public confidence in the integrity of elections,” Op. 19-20—are not only  
13 unsupported by the record, they are belied by the fact that, after enacting a *more lenient*  
14 version of the law three years earlier, the Legislature was faced with intense public  
15 backlash and, rather than permit the electorate to vote on it in a referendum, voluntarily  
16 repealed the law. It was error for the Court not even to mention this in assessing the  
17 important question of whether a state may criminalize a practice that its citizens use to  
18 vote, particularly in a case such as this—where there is extensive evidence that the  
19 practice made voting more accessible (for all voters, but in particular for minorities) in a  
20 state with an odious history of discrimination, and *no* credible evidence that the law serves  
21 any legitimate state interest. Indeed, the Court failed to acknowledge or rejected out of  
22 hand substantial evidence of both discriminatory intent and effect (including significant  
23 evidence directly quoting legislators and staff responsible for the legislation), while  
24 crediting Defendants’ unsupported, conclusory, and pretextual explanations for a law that  
25 is plainly a disingenuous partisan effort to make it harder for those not within the majority  
26 party’s traditional base—including, in particular, racial minorities—to vote. Plaintiffs thus  
27 respectfully request that the Court issue a stay and injunction pending appeal, or deny this  
28 motion promptly without further briefing or argument.

## 1    **II.    PROCEDURAL BACKGROUND**

2           HB2023 was enacted on party line votes, passing the Arizona House on February  
3 4, 2016, and the Senate on March 9, then signed into law the same day. *See* Pls.’ Mem. In  
4 Supp. of Mot. for Prelim. Inj. of HB2023 (“PI Mot.”) 8 (Doc. 85). Plaintiffs filed a  
5 Complaint with this Court on April 15 (Doc. 1), which they amended on April 19 (Doc.  
6 12). In an initial scheduling conference on May 10, Plaintiffs stated their readiness to file  
7 a motion for preliminary injunction as soon as May 13, but explained that the motion  
8 would benefit from limited discovery. *See* Status Conf. Tr. at 19:18-23 (Doc. 71). The  
9 Court granted that request and ordered Plaintiffs to file their motion on June 10, with  
10 argument set for August 12. Minute Entry (Doc. 44). In setting the schedule, the Court  
11 stated it would attempt to render a decision before the effective date of HB2023, which  
12 Plaintiffs initially believed was August 20. *See id.* When Plaintiffs discovered that the true  
13 effective date was August 6, they requested the schedule be modified to ensure that the  
14 Court could issue an order before that date. The Court granted the request and rescheduled  
15 argument for August 3. Minute Entry (Doc. 63). The argument took place as scheduled,  
16 and at the culmination of that hearing, the Court stated it would take the matter under  
17 advisement. Minute Entry (Doc. 172). On September 23—less than three weeks before the  
18 approximately 80% of voters who are on the Permanent Early Voting List are scheduled  
19 to begin receiving their ballots for the upcoming election, PI Mot. 1—the Court issued its  
20 Order denying Plaintiffs’ motion. Plaintiffs promptly filed a notice of appeal (Doc. 206).

## 21    **III.    FACTUAL BACKGROUND**

22           As established by the extensive evidence submitted to the Court, as the  
23 overwhelming majority of Arizona’s voters have come to vote using mail-in ballots, ballot  
24 collection has become an important means for effectuating the right to vote, particularly  
25 for racial minorities. PI Mot. 1-4. Hispanic, Native American and African American  
26 voters are more likely to reside in communities without access to secure mailboxes. PI  
27 Mot. 3. Many Native American reservations and overwhelmingly Hispanic communities  
28 near the Mexican border do not have home mail delivery at all. *Id.* at 3, 5-6. Arizona’s



1 minority voters are similarly much more likely to lack reliable transportation to vote in  
2 person or deliver ballots themselves and to have economic or personal circumstances that  
3 make ballot collection particularly important to their exercise of the franchise. *Id.* at 3, 5.

4 That ballot collection has been particularly beneficial to Arizona's minority  
5 communities is no secret. Legislators have been aware of this fact for some time and, for  
6 just as long, Republicans have attempted to restrict the practice. PI Mot. 4-8; Pls.' Reply  
7 In Supp. of PI Mot. 2-3 ("PI Reply") (Doc. 156); Doc. 161-01 ("DOJ File"). Those efforts  
8 were first successful in 2011 with the enactment of SB1412. PI Mot. 4. At the time,  
9 Arizona was still subject to preclearance and, in response to DOJ inquiries about  
10 SB1412's ballot collection restrictions, then-State Elections Director Amy Bjelland, who  
11 worked with members of the Secretary of State's staff and the bill's sponsor Senator  
12 Shooter in drafting SB1412, admitted that SB1412 "was targeted at voting practices in  
13 predominantly Hispanic areas in the southern portion of the state near the Arizona border"  
14 and that "[m]any in the Secretary of State's office were worried about the § 5 review of  
15 S.B. 1412." DOJ File at 111-12; *see also id.* (Bjelland thinks there is a problem that "may  
16 result 'from the different way that Mexicans do their elections'"). An employee of the  
17 Yuma County Recorder's Office similarly reported the bill would impact the City of  
18 Marin, a community near the Mexican border where "almost everyone is Hispanic" and  
19 "where people ... tend to bring up vote by mail ballots in groups." *Id.* at 104, 106. Rep.  
20 Ruben Gallego provided further context, explaining to DOJ that "[t]he percentage of  
21 Latinos who vote by mail exploded" in 2010 because "municipalities in Maricopa County  
22 ... reduced their number of polling places and physical early voting locations." *Id.* at 100.  
23 "This sudden increase in the Hispanic community's use of the vote by mail process caused  
24 Republicans to raise accusations of voter fraud," particularly in Yuma County, even  
25 though the County Recorder "later publicly stated that the claims were baseless." *Id.* at  
26 101. SB1412 was thus "meant to target Hispanic voters who are less familiar with the vote  
27 by mail process and are more easily intimidated due to the anti-Latino climate in the  
28 state." *Id.* Rep. Gallego described "the atmosphere in Arizona [as] scary, particularly for

1 minorities,” and advised that, “[a]nti-immigrant and anti-Latino sentiment is stronger than  
2 ever.” *Id.* He explained that, “since Hispanics have come to voting by mail later [than]  
3 other groups, they are less comfortable with the process and more likely to be dissuaded  
4 from using it than others,” and “[g]iven that Latinos often do not have as easy access to  
5 transportation compared to others, minority voters who are negatively affected by this law  
6 will not be able to mitigate its effects as easily [as] others.” *Id.* Rep. Gallego also pointed  
7 out that SB1412 “could have a retrogressive effect on the ability of Native American  
8 voters to participate in the electoral process” in part “due to the isolated nature of  
9 reservations and their oftentimes communal living structure.” *Id.* Senator Shooter and  
10 others responsible for SB1412 did not respond to DOJ’s requests for information about its  
11 ballot collection restrictions, *id.* at 103, 106, 110; instead, they repealed the law. PI Mot.  
12 4; PI Reply 2 n.2.

13 In 2013, the Republican-controlled Legislature tried again, enacting HB2305,  
14 which banned partisan ballot collection and required others to complete an affidavit  
15 saying they had returned the ballot for the voter. PI Mot. 4. Violation of these restrictions  
16 was made a class 1 misdemeanor. *Id.* HB2305 was wildly unpopular and quickly attracted  
17 an opposition effort. *Id.* After citizen groups collected more than 140,000 signatures to put  
18 it on the ballot for a vote by the people of Arizona, the Legislature repealed HB2305,  
19 avoiding what would have been the legal consequence of a successful referendum effort—  
20 a prohibition on the enactment of similar legislation in the future. *Id.*

21 In 2016, Rep. Ugenti-Rita introduced HB2023. *Id.* at 5. The bill was subject to  
22 impassioned opposition, with members representing minority communities arguing  
23 against it on the grounds that it “disproportionately affects” those populations “and makes  
24 it more difficult for those citizens to vote.” *Id.* They emphasized HB2023’s impacts on  
25 urban communities, where minority voters may receive mail but are likely to lack secure  
26 outgoing mail, as well as rural minority communities, urging legislators specifically “to  
27 consider voters in places like [the predominantly Hispanic community of] San Luis” and  
28 the Tohono O’odham Nation, which lack have mail delivery. *Id.* at 5-6. The response from

1 the lead sponsor was shockingly dismissive. *Id.* (“If you can’t get it done [i.e., the ballot  
2 returned in the mail on time], that is not my problem.”); *see also id.* at 4-5. At the same  
3 time, proponents rejected amendments that could have both addressed their purported  
4 concerns by less burdensome means *and* helped determine conclusively which  
5 communities were particularly reliant upon the practice of ballot collection. *See id.* at 7.

#### 6 **IV. ARGUMENT**

7 The Court has the power to grant a stay or injunction “[w]hile an appeal is pending  
8 from an interlocutory order or final judgment that ... denies an injunction[.]” Fed. R. Civ.  
9 P. 62(c). Whether to grant such a motion is “an exercise of judicial discretion ... [that] is  
10 dependent upon the circumstances of the particular case.” *Lair v. Bullock*, 697 F.3d 1200,  
11 1203 (9th Cir. 2012) (quoting *Nken v. Holder*, 566 U.S. 418, 433 (2009)). That discretion  
12 is guided by four factors: (1) whether the applicant makes a strong showing of likely  
13 success on the merits; (2) whether the applicant will be irreparably harmed absent relief;  
14 (3) whether issuing relief will substantially injure other parties; and (4) where the public  
15 interest lies. *Id.* *See also Se. Alaska Conservation Council v. U.S. Army Corps of Eng’gs.*,  
16 472 F.3d 1097, 1100 (9th Cir. 2006). Although “[t]here is substantial overlap between  
17 these and the factors governing preliminary injunctions,” *id.* at 1203 n.2 (quoting *Nken*,  
18 566 U.S. at 434), several courts have recognized that “[c]ommon sense dictates .... that  
19 the standard cannot ... require that a district court confess to having erred in its ruling” to  
20 grant the motion. *Evans v. Buchanan*, 435 F. Supp. 832, 843 (D. Del. 1977); *Canterbury*  
21 *Liquors & Pantry v. Sullivan*, 999 F. Supp. 144, 149 (D. Mass. 1998). *See also Alliance*  
22 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011) (holding “serious  
23 questions” test for preliminary injunctions and stays pending appeal survives *Winter v.*  
24 *Nat. Resources Def. Council*, 555 U.S. 7 (2008)).

25 In this case, where Plaintiffs have diligently sought relief to protect their members  
26 and constituents, who are among the thousands of Arizonans whose ability to exercise  
27 their fundamental right to vote will be burdened and, in some cases, entirely denied by  
28

1 HB2023—and where there is *no* evidence that ballot collection resulted in fraud, but  
2 substantial evidence that HB2023 was meant to and will make it more difficult for voters  
3 in minority communities to vote (whether by the threat of its enforcement, or harassment  
4 of citizens targeted by the Republican Party, which has publicly acknowledged its  
5 intention to police voters pursuant to HB2023), both the standard elements for relief and  
6 commonsense justify issuing a stay and injunction pending appeal.

7 **A. THE THREAT OF IRREPARABLE HARM ABSENT A STAY AND**  
8 **INJUNCTION IS IMMEDIATE**

9 “Courts routinely deem restrictions on fundamental voting rights irreparable  
10 injury,” recognizing that, “once the election occurs, there can be no do-over and no  
11 redress.” *League of Women Voters of N. Carolina v. N. Carolina* (“LOWV”), 769 F.3d  
12 224, 247 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015). *See also Elrod v. Burns*,  
13 427 U.S. 347, 373 (1976); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012);  
14 *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792  
15 F.2d 323, 326 (2d Cir. 1986); *United States v. City of Cambridge, Md.*, 799 F.2d 137, 140  
16 (4th Cir. 1986). Here, Plaintiffs, their individual members and constituents, as well as  
17 thousands of other Arizona voters, will experience precisely this type of irreparable,  
18 constitutional harm if HB2023 is not enjoined prior to the November election.

19 In concluding Plaintiffs were unlikely to suffer irreparable harm in the absence of a  
20 preliminary injunction, the Court relied solely on the deposition testimony of Sheila  
21 Healy, the current Executive Director of ADP, to find that “representatives of the ADP  
22 admit that they have no way of knowing if any voters will be impacted by the limitation  
23 on ballot collection.” Op. 25. But the Court’s reliance is misplaced; Ms. Healy expressly  
24 testified in her personal capacity and not on behalf of ADP. Ex. A (Tr. 5:19-6:2, 40-25-  
25 41:2).<sup>1</sup> Further, Plaintiffs proffered substantial evidence that thousands of voters—  
26 including specifically Plaintiffs’ core constituencies and registered Democrats—rely on

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27 <sup>1</sup> Defendants did not notice a 30(b)(6) deposition of ADP; they chose to depose  
28 Ms. Healy in her personal capacity. Ex. B. Ms. Healy had been employed at ADP for less  
than a year and not yet participated in a general election at ADP. Ex. A at 21:19-21.

1 ballot collection to vote and that these voters will be harmed if HB2023 bans them from  
2 voting by their preferred method. *See, e.g.*, PI Mot. 1-2, 16-17; PI Reply 21, 22 n.14. The  
3 Court erred in disregarding and minimizing the weight of the evidence that Plaintiffs, their  
4 members and constituencies—as well as thousands of other Arizona voters—will suffer  
5 irreparable harm if HB2023 is not enjoined.

6 **B. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

7 Plaintiffs are highly likely to succeed on the merits, but even if the Court disagrees,  
8 a stay and injunction pending appeal is appropriate, because of the serious questions that  
9 this matter presents, which go to the heart of the fundamental right to vote and the  
10 protections provided for that right by the Constitution and the VRA. This is particularly  
11 true here, where in rejecting Plaintiffs' VRA claim, the Court created a new threshold test,  
12 never before applied by any court, and in evaluating the constitutional claims, applied  
13 tests that run contrary to Supreme Court and Ninth Circuit precedent.

14 **1. HB2023 Violates § 2 of the VRA**

15 Plaintiffs are likely to succeed on their claim that HB2023 violates § 2. A violation  
16 of § 2 may be proven by showing the challenged law (1) imposes a discriminatory burden  
17 on members of a protected class, and (2) viewed in light of “the totality of the  
18 circumstances,” interacts with social and historical conditions such that members of that  
19 class “have less opportunity than other members of the electorate to participate in the  
20 political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b). *See*  
21 *also Veasey v. Abbott*, No. 14-41127, -- F.3d --, 2016 WL 3923868, at \* 17 (5th Cir. July  
22 20, 2016). Because § 2 prohibits “abridgement” as well as denial of voting rights, 52  
23 U.S.C. § 10301(a), Plaintiffs need not show that the practice makes voting *impossible* for  
24 minorities—only that it makes it disproportionately more *burdensome*. *See Thornburg v.*  
25 *Gingles*, 478 U.S. 30, 35-36, 44, 47 (1986). The number of voters affected is not relevant.  
26 “[W]hat matters ... is ... simply that ‘any’ minority voter is being denied equal  
27 opportunities.” *LOWV*, 769 F.3d at 244 (quoting 52 U.S.C. § 10301(a)).  
28

1 Plaintiffs adduced substantial evidence to more than meet their burden of  
2 demonstrating by a preponderance that HB2023 likely violates § 2.<sup>2</sup> But rather than  
3 carefully evaluate that evidence as required, the Court adopted a brand new test, holding a  
4 § 2 violation cannot be proven without “quantitative or statistical evidence comparing the  
5 proportion of minority versus white voters who rely on others to collect their early  
6 ballots.” Op. 8. No court has ever before found that the only way to show disparate impact  
7 is with “quantitative or statistical evidence,” and for good reason. It flies directly in the  
8 face of the Supreme Court’s admonition that courts be mindful that “Congress enacted the  
9 [VRA] for the broad remedial purpose of rid[ding] the country of racial discrimination in  
10 voting,” and must interpret it to “provide[] the broadest possible scope in combating racial  
11 discrimination.” *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (citations and internal  
12 quotation marks omitted). To this end, courts have held that the “totality of the  
13 circumstances” inquiry is relevant not just to the second step of the effects analysis, but  
14 also to the initial inquiry into disproportionate impact. *See, e.g., LOWV*, 769 F.3d at 245  
15 (“In assessing both elements, courts should consider the totality of the circumstances”)  
16 (quotation marks omitted). *See also Gonzalez v. Ariz.*, 677 F.3d 383, 406 (9th Cir. 2012)  
17 (“[A] § 2 analysis requires the district court to engage in a searching practical evaluation  
18 of the past and present reality”) (quotation marks omitted; citing *Gingles*, 478 U.S. at 45).  
19 Indeed, in § 2 vote dilution cases, courts have rejected arguments that there is only one  
20 way for voting rights plaintiffs to meet their burden of proof. *See, e.g., Jenkins v. Red*

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21  
22 <sup>2</sup> The Court further misapplied this standard, considering not whether Plaintiffs  
23 were *likely* to prove that HB2023 violated § 2 or imposed unconstitutional burdens on  
24 voters, but whether Plaintiffs had definitively done so. Op. 8 (stating “based on the current  
25 record” Plaintiffs submitted “insufficient evidence” to show a § 2 violation). Thus, even if  
26 there were a legal basis for the conclusion that Plaintiffs were required to adduce  
27 empirical evidence to succeed on a VRA claim (and as discussed, there is not), holding  
28 Plaintiffs to such a requirement at the preliminary injunction stage was inappropriate. *See,*  
*e.g., Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (“a preliminary injunction is  
customarily granted on the basis of ...evidence that is less complete than in a trial on the  
merits”); *Ross-Whitney Corp. v. Smith Kline & French Labs.*, 207 F.2d 190, 198 (9th Cir.  
1953). Worse, the Court never assessed which way the preponderance of the evidence  
presented to it points. If it had done so, it would have found a disparate burden. *See, e.g.,*  
*Farrakhan v. Gregoire*, No. 96-076, 2006 WL 1889273, at \*3 (E.D. Wash. July 7, 2006),  
*rev’d and remanded on other grounds*, 590 F.3d 989 (9th Cir. 2010).

1 *Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1126 (3d Cir. 1993) (plaintiff may  
2 show a candidate is minority-preferred “with a variety of evidence, including lay  
3 testimony or statistical analyses”); *Sanchez v. State of Colo.*, 97 F.3d 1303, 1320-21 (10th  
4 Cir. 1996) (same); *Cuthair v. Montezuma-Cortez, Colo. Sch. Dist. No. RE-1*, 7 F. Supp. 2d  
5 1152, 1169 (D. Colo. 1998) (“[W]here ... lack of data prevents ... statistical analysis, a  
6 court should rely on other totality of the circumstances to determine if the electoral system  
7 has a discriminatory effect”). And when jurisdictions covered by § 5 bore the burden of  
8 demonstrating that any change to their voting practices had neither the purpose nor effect  
9 of denying or abridging the right to vote on account of race, DOJ did not require that they  
10 do so through statistical evidence, recognizing that, in many circumstances, it would not  
11 be available. *See* Procedures for the Admin. of § 5, as amended, 28 CFR Ch. 1, Part 51,  
12 Subpart C – Contents of Submissions, §§ 51.26-.28.<sup>3</sup> There is no doctrinally sound reason  
13 to impose such a requirement on plaintiffs challenging a voting law under § 2, particularly  
14 where doing so contrary to the statute’s very purpose.

15 A “practical evaluation” of the “past and present reality,” *Gonzalez*, 677 F.3d at  
16 406, must take into account that—not only does Arizona *not track* how mail-in ballots are  
17 delivered to elections administrators—the Legislature affirmatively *rejected* an  
18 amendment to HB2023 that would have enabled Plaintiffs (or the State) to statistically  
19 demonstrate whether certain groups of voters are more reliant upon ballot collection. *See*  
20 *supra*. Under these circumstances, the Court’s brand new requirement cannot be  
21 sustained. To do so would read an enormous loophole into § 2, enabling legislatures to  
22 insulate from challenge laws with disparate impacts, provided the relative impact of that  
23 law on voters cannot be tracked. Indeed, under the Court’s novel construct, a state could  
24 give literacy tests primarily to minority voters, but if it did not track who was tested, it  
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26 <sup>3</sup> Indeed, in support of HB2023’s precursor bill, SB1412, Arizona’s § 5 submission  
27 did not include statistical analysis—or *any other* evidentiary support (must less anything  
28 remotely similar to the substantial evidence submitted by Plaintiffs in this case)—for its  
conclusion that the law did not deny or abridge the right of Arizonans to vote on account  
of race, color, or membership in a language minority group. *See* DOJ File at 73-92.

1 could survive a § 2 challenge. The *en banc* Fifth Circuit rejected a comparable argument  
2 recently in *Veasey*, where defendants contended plaintiffs must show reduced turnout to  
3 prevail on a § 2 claim. 2016 WL 3923868, at \*29. The court rejected the argument,  
4 recognizing it would “present[] problems for pre-election challenges to voting laws, when  
5 no such data is yet available,” and—“[m]ore fundamentally”—would run contrary to the  
6 text of § 2, which prohibits abridgement as well as denial. *Id.* Such a requirement, the  
7 court recognized, would “cripple” the VRA. *Id.* at \*30.

8         The Court’s analysis in the alternative, in which it “[a]ssum[es], *arguendo*, that a §  
9 2 violation could be proved using non-quantitative evidence,” Op. 10, is also deeply  
10 flawed. The Court dismisses out of hand the many declarations submitted by Plaintiffs  
11 from community activists with extensive, personal knowledge about ballot collection’s  
12 real beneficiaries as “anecdotal” and “not compelling,” *id.*; ignores evidence HB2023’s  
13 proponents knew that ballot collection was crucial to minority participation in urban and  
14 rural communities, but pursued legislation restricting the practice despite of, indeed  
15 *because of*, the disproportionate use in particular Hispanic communities; and presumes—  
16 without any evidentiary basis—that the same burdens would fall on white voters. Yet, the  
17 Court credits the State’s contention that HB2023 “is a prophylactic measure intended to  
18 prevent absentee voter fraud” and “eliminates the perception of fraud,” *id.* at 19-20,  
19 without any evidence that HB2023 is necessary to prevent fraud—or to justify anyone’s  
20 “perception” that it may be—save the constant refrain of legislators who have a political  
21 interest in suppressing minority voter turnout. PI Mot. 6-7. Indeed, in crediting the State’s  
22 contention that HB2023 “eliminates the perception of fraud, thereby preserving public  
23 confidence in the integrity of elections,” Op. 19-20, the Court failed to explain how this  
24 conclusion can be squared with the fact that, just three years before HB2023’s enactment,  
25 *more than 140,000 Arizonans* signed a petition to refer a law that would have imposed a  
26 *lesser penalty* for ballot collection to the voters to declare whether they believed that  
27 dangers of fraud and the preservation of public confidence required such a law; rather than  
28 let the voters have their say, the Legislature repealed it. Lichtman Rpt. (Doc. 139-1) at 10.



1 In analyzing the disparate impact question, the Court also erred in failing to  
2 consider the undisputed socio-economic disparities that make ballot collection critical for  
3 minority voters to have equal access to Arizona’s elections, in which the overwhelming  
4 majority of voters now participate by way of mail-in ballot. *See infra*; PI Reply 8. To  
5 conclude, as the Court did, that other means of voting—such as traveling to the polls on  
6 Election Day or to an early voting site—“alleviate[]” burdens on these voters, Op. at 16-  
7 17, ignores that Arizona’s history of discrimination and its continued impacts make these  
8 alternatives less accessible to minorities. That is the very essence of what § 2 is meant to  
9 protect against. Yet, the Court mistakenly assumed that it need not grapple with this ugly  
10 reality, based on its unsupportable conclusion that the VRA requires, in all cases, that  
11 plaintiffs show disparate impact by “quantitative or statistical evidence.” In fact, these  
12 socio-economic disparities are highly relevant to the question of whether the  
13 criminalization of ballot collection has a disparate impact, and are necessarily part of the  
14 “practical evaluation” of the “past and present reality” that the Court should have  
15 considered in assessing Plaintiffs’ VRA claim. *Gonzalez*, 677 F.3d at 406; *see also*  
16 *NAACP v. McCrory*, No. 16-1498, -- F.3d --, 2016 WL 4053033, at \*17 (4th Cir. July 29,  
17 2016) (“These socioeconomic disparities establish that no mere ‘preference’ led African  
18 Americans ... to disproportionately lack acceptable photo ID.”); *LOWV*, 769 F.3d at 245.

19 Because the Court erred in applying the first part of the § 2 test, it did not reach the  
20 second. But Plaintiffs amply demonstrated that they were likely to carry their burden here,  
21 as well, introducing evidence that eight of the nine Senate Factors are present. Arizona has  
22 a long history of discrimination against minorities, extending to every area of social,  
23 political, and economic life, including discriminatory elections practices aimed at minority  
24 groups that have continued in recent decades (*Factors 1 and 3*). *See* PI Mot. 9-10; Pl.’s  
25 Mot. for PI on OOP & Allocation Claims (“OOP PI Mot.”) 12, 18-19; PI Reply 9-10. The  
26 effects of Arizona’s storied and systemic discrimination against minorities in areas such as  
27 education, employment and public life persist today, impacting social, economic, and  
28 political life in profound degrees as reflected in disparate poverty rates, depressed wages,

1 higher levels of unemployment, lower educational attainment, less access to  
2 transportation, residential transiency, and poorer health (*Factor 5*). See PI Mot. 9; PI  
3 Reply 8-10; OOP PI Mot. 12, 14 n.5, 18-19. Arizona’s long history of racial  
4 discrimination and its continued effects are also reflected in official lack of responsiveness  
5 to its minority populations, including as illustrated by the consideration of HB2023 in  
6 which proponents of HB2023 not just ignored the substantial testimony as to the bill’s  
7 likely impact on Arizona’s minority communities, but dismissed them as “not [their]  
8 problem.” (*Factor 8*). PI Mot. 5-6, 10. Arizona also has a demonstrated history of racially  
9 polarized voting, and politicians have relied and continue to rely on both explicit and  
10 subtle appeals to racial prejudice—including in promoting ballot collection laws such as  
11 HB2023 (*Factors 2 and 6*). See PI Mot. 4 n.3, 10-11; OOP PI Mot. 12, 21-22.<sup>4</sup> Given this  
12 background it is not surprising that the rate of electoral success for minority candidates  
13 “has been minimal in relation to the percentage of these groups as part of the general  
14 population.” (*Factor 7*). PI Mot. 10-11; see also OOP PI Mot. 12, 21-22. Finally, the  
15 purported justification for HB2023 is highly tenuous (*Factor 9*). Despite having pressed  
16 for some form of this legislation for years, none of HB2023’s proponents were able to  
17 identify even one concrete example of voter fraud that HB2023 could have guarded  
18 against. See PI Mot. 4-7, 11; PI Reply 13; Mot. Hr’g Tr. at 46:21-47:2 (Doc. 175); see  
19 also *Veasey*, 2016 WL 3923868, at \*32 (explaining in tenuousness finding that “[a]t least

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21 <sup>4</sup> Most recently, Donald Trump made racial appeals in a much-publicized speech in  
22 Phoenix, stating he would build a wall at the Mexican border, transport undocumented  
23 workers “great distances,” and warning that immigration will result in “millions more  
24 illegal immigrants; thousands of more violent, horrible crimes; and total chaos and  
25 lawlessness.” LOS ANGELES TIMES, Transcript: Donald Trump’s Full Immigration  
26 Speech, Annotated (Aug. 31, 2016), available at <http://www.latimes.com/politics/la-na-pol-donald-trump-immigration-speech-transcript-20160831-snap-story.html> (last accessed  
27 Sept. 28, 2016). The crowd reportedly chanted, “Build the wall.” THE ARIZ. REPUBLIC,  
28 Trump in Phoenix: 10-point plan to end illegal immigration (Aug. 31, 2016), available at  
<http://www.azcentral.com/story/news/politics/elections/2016/08/31/donald-trump-immigration-phoenix-arizona-policy-speech-mexico/89615128/> (last visited Sept. 28, 2016).

1 one Representative who voted for SB 14 conceded that he had no evidence to substantiate  
2 his fear of undocumented immigrants voting”).

### 3                   **2. HB2023 Violates the First and Fourteenth Amendments**

4           The Court also made a number of errors in its *Anderson-Burdick* analysis. Those  
5 errors caused the Court to significantly understate burdens that HB2023 imposes on First  
6 and Fourteenth Amendment rights, give too much deference to the state’s proffered  
7 interests, and conclude incorrectly that HB2023 is likely to be found constitutional.

8           With respect to the nature of HB2023’s burdens on voting rights, the Court clearly  
9 erred in writing that HB2023 “does not eliminate or restrict any method of voting, it  
10 merely limits who may possess, and therefore return, a voter’s early ballot.” Op. 16. In  
11 fact, HB2023 *criminalizes* one of the means through which voters can submit their  
12 absentee ballots. The Court also erred in ignoring the clear evidence that, without ballot  
13 collection, many voters would not have been able to vote in previous elections. *See* PI  
14 Reply 15-16. It follows from that evidence that the elimination of ballot collection will  
15 prevent voters from casting ballots in the upcoming general election. *See also* *Veasey*,  
16 2016 WL 3923868, at \*32 (“[I]ncreasing the cost of voting decreases voter turnout—  
17 particularly among low-income individuals, as they are the most cost sensitive.”).

18           The Court further erred in its discussion of the burdens that HB2023 imposes on  
19 particular groups of voters. *See* Op. 16-19. *See generally* *Public Integrity Alliance v. City*  
20 *of Tucson*, No. 15-16142, 2016 WL 4578366, at \*3 n.2 (9th Cir. Sept. 2, 2016) (en banc)  
21 (court may consider “not only a given law’s impact on the electorate in general, but also  
22 its impact on subgroups, for whom the burden, when considered in context, may be more  
23 severe”). Specifically, while the Court wrote that Arizona’s election regime “alleviates”  
24 many of HB2023’s burdens through other voting options, Op. 16-17, it failed to consider  
25 that the alternatives it identified (e.g., a disabled voter’s working with the county recorder  
26 to arrange for a special election board to deliver a ballot) are more burdensome for the  
27 voters who were particularly reliant upon ballot collection than is the simple act of  
28 handing a ballot to a ballot collector. The Court also overlooked that forcing voters to

1 learn about these alternative (and in some cases obscure) methods of voting shortly before  
2 an election imposes a real burden and will unquestionably result in voter confusion and  
3 thus disenfranchisement. Indeed, there is no evidence in the record indicating that these  
4 alternative means of voting will meaningfully offset the burdens imposed by HB2023; on  
5 the contrary, and as the Court points out, even several of the declarants *in this case* are  
6 confused about the limited exceptions to the ban on ballot collection. *See Op. 17 n.8.*

7       The Court also incorrectly concluded that the ban on ballot collection does not  
8 burden associational rights. In holding that “there is nothing inherently expressive or  
9 communicative about receiving a voter’s completed early ballot and delivering it to the  
10 proper place,” *Op. 22*, the Court undervalued the expressive significance of participation  
11 in, and the assistance of others in participating in, the political process—activities at the  
12 very core of the First Amendment’s protections. By participating in ballot collection,  
13 individuals and organizations plainly convey that they support the democratic process, are  
14 committed to having others participate in it, want to ensure that even those who have  
15 difficulty voting are able to participate in the political process, and are willing to invest  
16 resources into ensuring that others can vote. In other words, ballot collectors convey that  
17 voting is important in general and important to them *not only with their words but with*  
18 *their deeds*. *See Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006); *cf.*  
19 *Coal for Sensible & Humane Solutions v. Wamser*, 771 F.2d 395, 398-99 (8th Cir. 1985)  
20 (organization had standing where members were prevented from registering voters);  
21 *People Organized for Welfare & Emp’t Rights (P.O.W.E.R.) v. Thompson*, 727 F.2d 167,  
22 170 (7th Cir. 1984). And, to the extent that individuals or organizations (such as Plaintiff  
23 ADP) participate in ballot collection to assist in the election of candidates from a political  
24 party or a particular candidate, they clearly express their support for and further their  
25 association with that party or candidate. *NAACP v. State of Ala. ex rel. Patterson*, 357  
26 U.S. 449, 460 (1958) (“It is beyond debate that freedom to engage in association for the  
27 advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the  
28 Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech”).

1           The Court made several additional errors in assessing the state’s interests in the  
2 elimination of ballot collection and in balancing those interests against HB2023’s burdens  
3 on voting. To begin with, it is not correct that “[l]aws that do not significantly increase the  
4 usual burdens of voting do not raise substantial constitutional concerns.” Op. 15 (citing  
5 *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198 (2008)). *Crawford* itself  
6 explained that, “[h]owever slight th[e] burden [on voting] may appear, ... it must be  
7 justified by relevant and legitimate state interests sufficiently weighty to justify the  
8 limitation.” 553 U.S. at 191 (controlling op.) (internal quotation marks omitted).  
9 Likewise, the Court erred in assuming the interests proffered by the state necessarily  
10 outweigh burdens imposed by HB2023 because the proffered state interests are “important  
11 regulatory interests.” Op. 19. This approach is inconsistent with the Supreme Court’s  
12 instruction that courts must not “apply[] any ‘litmus test’ that would neatly separate valid  
13 from invalid restrictions” and instead must “make the ‘hard judgment’ that our adversary  
14 system demands.” *Crawford*, 553 U.S. at 190; *cf. Anderson v. Celebrezze*, 460 U.S. 780,  
15 788 (1983) (“[T]he state’s important regulatory interests are *generally* sufficient to justify  
16 *reasonable, nondiscriminatory* restrictions”) (emphases added).

17           The Court compounded these errors by applying rational-basis review to the State’s  
18 proffered interests. *See* Op. 21 (“... Arizona has proffered two important state regulatory  
19 interests that are rationally served by H.B. 2023.”). As the en banc Ninth Circuit explained  
20 earlier this month, “*Burdick* calls for neither rational basis review nor burden shifting.”  
21 *Public Integrity Alliance*, 2016 WL 4578366, at \*4. On the contrary, courts must conduct  
22 a “balancing and means-end fit analysis.” *Id.*; *accord Burdick v. Takushi*, 504 U.S. 428,  
23 434 (1992); *Common Cause Ind. v. Individual Members of the Ind. Election Comm’n*, 800  
24 F.3d 913, 928 (7th Cir. 2015). Under the proper standard, this Court should have found  
25 that the means-end fit between HB2023 and its purported interests is weak, at best, and  
26 that HB2023’s purported goals could have been achieved through means that are less  
27 burdensome on voting rights. *See* PI Mot. 6-8, 12; PI Reply 17-19. The State’s interests in  
28

1 HB2023 are far too limited to justify the law’s burdens on voting rights, and Plaintiffs are  
2 likely to succeed on the merits on this claim, as well.

3 **C. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST**  
4 **STRONGLY SUPPORT PLAINTIFFS’ MOTION**

5 To a large extent, the Court’s conclusion that “the balance of hardships and public  
6 interest weigh against preliminary injunctive relief” was derivative of its incorrect  
7 conclusions on the merits. *See* Op. 25-26. *Compare* Op. 25 (“Plaintiffs’ belief that H.B.  
8 2023 will prevent certain people from voting is speculative”), *with* PI Reply 15-16  
9 (discussing evidence that voters would have been unable to vote in prior elections without  
10 ballot collection). It is thus likely to be overturned on the appeal for the same reasons.

11 The Court also erred in failing to assess whether Plaintiffs’ claim raised a serious  
12 question on the merits and the balance of the hardships tips sharply in their favor. *See All.*  
13 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (finding “‘serious  
14 questions going to the merits’ and a hardship balance that tips sharply toward the plaintiff  
15 can support issuance of an injunction, assuming the other two elements of the *Winter* test  
16 are also met”); *see also id.* at 1135 (“Because it did not apply the ‘serious questions’ test,  
17 the district court made an error of law in denying the preliminary injunction[.]”). This  
18 error was critical. For the reasons explained above and in Plaintiffs’ prior briefing, this  
19 case—at the very least—raises serious questions on the merits. In addition, “[t]he public  
20 interest and the balance of the equities favor prevent[ing] the violation of a party’s  
21 constitutional rights.” *Ariz. Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2016)  
22 (citation and quotation marks omitted); *see also* OOP PI Mot. 28-30; PI Mot. 16-17.

23 And, the state will not suffer any material harm if a stay and injunction is issued.  
24 First, the state has no interest in enforcing unconstitutional laws. *Connection Distrib. Co.*  
25 *v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998); *Newsom ex rel. Newsom v. Albemarle Cty. Sch.*  
26 *Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). Second, to the extent the Court found that the state  
27 is irreparably injured when it is enjoined from effectuating its statutes, Op. 26, that  
28 conclusion is on shaky footing in the Ninth Circuit. As the court of appeals has explained,

1 while individual justices have expressed that view in orders issued from chambers, “[n]o  
2 opinion for the [Supreme Court] adopts this view.” *Latta v. Otter*, 771 F.3d 496, 500 n.1  
3 (9th Cir. 2014). Indeed, it is unclear why a state has any interest in *effectuating* a law that  
4 is distinguishable from the interests (if any) that the law serves. Moreover, it is unclear  
5 whether Arizona *will* enforce the law even if it *can*. County recorders across Arizona have  
6 publicly declined to enforce HB2023 during the upcoming election cycle. *See, e.g.*, Doc.  
7 189-01 at 2. And the Secretary of State has yet to fulfill her duty of issuing an updated  
8 Election Procedures Manual, leaving elections officials across Arizona with no guidance  
9 whatsoever on enforcing the new law. PI Mot. 17. These objective manifestations of the  
10 state’s disinterest in the law plainly undermine the state’s claimed harm.

11 At the same time, partisan actors across Arizona intend to use HB2023 as a vehicle  
12 for the harassment and intimidation of voters. The Arizona Republican Party publicly  
13 confirmed plans to train volunteers to demand identifying information from voters  
14 dropping off multiple ballots at a polling location, encouraging volunteers to follow  
15 suspected violators out into parking lots, record their license plates, and even call the  
16 police. Doc 189-1 at 2-3. These efforts are plainly intended to have a chilling effect on  
17 their targets’ constitutional rights and are further fundamentally incompatible with the  
18 freedom of expression that our democratic system affords. Although these harms to voters  
19 are imminent and profound, there can be no countervailing harm experienced by the state  
20 when it is prevented from enforcing laws *that it has no plans to enforce anyway*. Thus, the  
21 balance of the equities tips sharply in Plaintiffs’ favor, and the Court should have issued a  
22 preliminary injunction under the serious-questions approach.

## 23 **V. CONCLUSION**

24 For the foregoing reasons, Plaintiffs request that the Court stay its September 23  
25 Order and enjoin the implementation and enforcement of HB2023 pending the resolution  
26 of Plaintiffs’ appeal. In the alternative, if the Court intends to deny Plaintiffs’ motion,  
27 Plaintiffs respectfully request that the Court rule on this motion as expeditiously as  
28 possible, without requiring a response from Defendants or oral argument.

1 Dated: September 28, 2016

*s/ Elisabeth C. Frost*

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 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

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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 JOINT  
EMERGENCY MOTION FOR  
STAY AND INJUNCTION  
PENDING APPEAL**

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, along with Plaintiff-Intervenor Bernie 2016, Inc., (collectively, “Plaintiffs”) have notified the Court of their intention to appeal the Court’s Order of September 23, 2016 (Doc. 204), denying Plaintiffs’ Joint Motion For Preliminary Injunction of HB2023 (Doc. 84). In connection therewith, Plaintiffs now move the Court for an order staying its decision and enjoining enforcement of HB2023 pending appeal. Having carefully considered the briefing in this matter, the Court GRANTS the motion and hereby STAYS its order of September 23rd and ENJOINS enforcement of HB2023 pending resolution of Plaintiffs’ appeal by the United States Court of Appeals for the Ninth Circuit.

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15 Pending Appeal]*

16 UNITED STATES DISTRICT COURT  
17 DISTRICT OF ARIZONA

18  
19 Leslie Feldman, et al.,  
20 Plaintiffs,  
21 v.  
22 Arizona Secretary of State's Office, et al.,  
23 Defendants.

No. CV-16-01065-PHX-DLR

**DECLARATION OF SARAH R.  
GONSKI IN SUPPORT OF  
PLAINTIFFS' JOINT  
EMERGENCY MOTION FOR  
STAY AND INJUNCTION  
PENDING APPEAL**

24 I, SARAH R. GONSKI, declare as follows:

25 1. I am an attorney with the law firm of Perkins Coie LLP, and am counsel for  
26 Plaintiffs Leslie Feldman, Luz Magallanes, Mercedes Hymes, Julio Morea, Cleo Ovalle,  
27 Former Chairman and First President of the Navajo Nation Peterson Zah, the Democratic  
28

1 National Committee, the DSCC a.k.a. Democratic Senatorial Campaign Committee, the  
2 Arizona Democratic Party, Kirkpatrick for U.S. Senate, and Hillary for America. I have  
3 personal knowledge of the matters set forth below and can competently testify to their  
4 truth.

5 2. Attached as Exhibit A is a true and correct copy of excerpts from the  
6 transcript of the deposition of Sheila Healy in this matter, held on July 14, 2016.

7 3. Attached as Exhibit B is a true and correct copy of the Notice of Deposition  
8 of Sheila Healy in this matter, which was transmitted to me by opposing counsel via email  
9 on June 30, 2016.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 DATED: September 28, 2016

12  
13 By: s/ Sarah R. Gonski  
14 Sarah R. Gonski  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 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

# Exhibit A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

LESLIE FELDMAN, et al.,	)	
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. CV-16-1065-PHX-DLR
	)	
ARIZONA SECRETARY OF	)	
STATE'S OFFICE, et al.,	)	
	)	
	)	
Defendants.	)	
_____	)	

DEPOSITION OF SHEILA HEALY

Phoenix, Arizona  
July 14, 2016  
9:01 a.m.

Prepared by:  
MICHAELA H. DAVIS  
Registered Professional Reporter  
Certified Realtime Reporter  
Certified LiveNote Reporter  
AZ CR No. #50574

CARRIE REPORTING, LLC  
Certified Reporters  
4032 North Miller Road  
Suite A-100  
Scottsdale, AZ 85251  
(480) 429-7573

(COPY)



1 DEPOSITION OF SHEILA HEALY commenced at 9:01 a.m. on  
2 July 14, 2016 at the law offices of SNELL & WILMER, ONE  
3 ARIZONA CENTER, 400 EAST VAN BUREN, PHOENIX, ARIZONA,  
4 before MICHAELA HERMAN DAVIS, a Certified Reporter, in and  
5 for the County of Maricopa, State of Arizona.

6  
7  
8 \* \* \*

9 A P P E A R A N C E S

10 FOR THE INTERVENOR-DEFENDANTS ARIZONA REPUBLICAN PARTY,  
11 BILL GATES, SUZANNE KLAPP, DEBBIE LESKO, AND TONY RIVERO:

12 SNELL & WILMER  
13 BY: MS. SARA J. AGNE  
14 ONE ARIZONA CENTER  
15 400 EAST VAN BUREN  
16 PHOENIX, ARIZONA 85004-2202

17 FOR DEFENDANTS ATTORNEY GENERAL, SECRETARY OF STATE, AND  
18 THE SECRETARY OF STATE'S OFFICE:

19 OFFICE OF THE ATTORNEY GENERAL  
20 BY: MS. KAREN J. HARTMAN-TELLEZ  
21 STATE OF ARIZONA  
22 1275 WEST WASHINGTON STREET  
23 PHOENIX, ARIZONA 85007

24 FOR MARICOPA COUNTY:

25 MARICOPA COUNTY ATTORNEY'S OFFICE  
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222 NORTH CENTRAL AVENUE  
SUITE 1100  
PHOENIX, ARIZONA 85004

(Continued.)

1 FOR THE PLAINTIFFS:

2 PERKINS COIE, LLP  
3 BY: MS. AMANDA R. CALLAIS  
4 700 13TH STREET NW  
5 SUITE 600  
6 WASHINGTON DC 20005-3960

7 PERKINS COIE, LLP  
8 BY: MS. SARAH R. GONSKI  
9 2901 NORTH CENTRAL AVENUE  
10 SUITE 2000  
11 PHOENIX, ARIZONA 85012

12 FOR INTERVENOR-PLAINTIFF BERNIE 2016, INC.:

13 COPPERSMITH BROCKELMAN PCL  
14 BY: MR. ANDREW S. GORDON  
15 2800 NORTH CENTRAL AVENUE  
16 SUITE 1200  
17 PHOENIX, ARIZONA 85004

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Phoenix, Arizona  
July 14, 2016  
9:01 a.m.

1  
2  
3  
4 SHEILA HEALY, called as a witness herein,  
5 having been first duly sworn, was examined and testified  
6 as follows:

7 \* \* \*

8 E X A M I N A T I O N

9 BY MS. AGNE:

10 Q. Ms. Healy, I'm Sara Agne. We met a bit earlier.  
11 I represent the Arizona Republican Party in the matter of  
12 Feldman, et al., versus Arizona Secretary of State, et al.

13 I'm here to ask you some questions today because  
14 you gave a declaration in this matter. And I understand  
15 you're the executive director of the Arizona Democratic  
16 Party who is also a plaintiff in the matter; is that  
17 correct?

18 A. Yes.

19 MS. CALLAIS: Sara, Amanda Callais. Can I  
20 just interject and just for the record state that  
21 Ms. Healy was noticed in her personal capacity as a  
22 witness in the case and not on behalf of the Arizona  
23 Democratic Party as a representative.

24 MS. AGNE: Okay. Understood.

25 MS. CALLAIS: She'll be testifying today in

1 her personal party.

2 MS. AGNE: Personal capacity only.

3 BY MS. AGNE:

4 Q. Could you state and spell your name for the  
5 record, please?

6 A. Sheila, S-H-E-I-L-A, Healy, H-E-A-L-Y.

7 Q. And then, Ms. Healy, could you give me a little  
8 bit about your education?

9 A. Sure.

10 I went to high school in New York, and I went to  
11 college for three years at Trinity College in Hartford,  
12 Connecticut.

13 Q. What year did you graduate high school?

14 A. 2004.

15 Q. And then what year did you graduate Trinity?

16 A. I didn't graduate actually.

17 Q. What was your degree -- or what was your program  
18 of study?

19 A. I studied history.

20 Q. Any education beyond that?

21 A. No.

22 Q. And then what was your first occupation after  
23 you left Trinity?

24 A. I was a field organizer on the Obama campaign.

25 Q. And was that in 2008?

1 A. Yes. 2007 actually.

2 Q. Began in 2007. Did you continue into 2008?

3 A. Yes.

4 Q. What were your duties as a field organizer?

5 A. I interacted with voters, organized volunteers,  
6 knocked on doors, registered voters, general voter  
7 education.

8 Q. Did you have a particular territory that you  
9 covered?

10 A. Yes. I worked in multiple states starting in  
11 New York, and I worked in several primary states, and then  
12 I was in Ohio for the general election.

13 Q. What were the several primary states?

14 A. New York, New Hampshire, Maryland, Texas, West  
15 Virginia, Philadelphia. Then I was in Pittsburgh for the  
16 transitional team, then I was in Alaska, and then I got  
17 moved to Ohio.

18 Q. When you say you were in Pittsburgh for the  
19 transitional team, was that nearing the election? After  
20 the election?

21 A. It was the transition between the primary and  
22 general elections.

23 Q. After the election, what was your role?

24 A. After the election -- oh, nothing on the Obama  
25 campaign. Everybody got laid off.

1 A. Eight months.

2 Q. What were your duties as deputy political  
3 director?

4 A. To manage a staff, implement a plan, raise  
5 money, and manage political relationships, recruit  
6 candidates.

7 Q. Any of your activities there include ballot  
8 collection?

9 A. No. Due to the restrictive laws in Texas.

10 Q. Did you supervise any volunteers in educating  
11 voters in how to submit an early voting ballot?

12 A. Yes.

13 Q. What sort of education would they provide?

14 A. We would -- we would tell them how to submit an  
15 early ballot, where to do it.

16 Q. Offer to ever get them any help in doing so?

17 A. What do you mean by "help"?

18 Q. The law in Texas, I believe, allows a family  
19 member to submit an early ballot if they are living in the  
20 same residence as the voter. Did you ever offer to  
21 coordinate or educate voters on that particular aspect of  
22 the law?

23 A. I can't remember. It wasn't part of our overall  
24 training.

25 Q. And then supervising the volunteers in that type

1 of education, was that in your first role with the Texas  
2 Democratic Party or your second? Or both?

3 A. Primarily my second.

4 Q. And then what were your other duties in that  
5 role?

6 A. In my second role?

7 Q. Yes.

8 A. I largely raised money and coordinated with  
9 counties, managed a large staff, and coordinated with  
10 campaigns to do direct voter contact.

11 Q. Particular campaigns that the party would work  
12 with?

13 A. Yes.

14 Q. How were those chosen?

15 A. Mainly by who wanted to work with us.

16 Q. And then did you have any other roles with the  
17 Texas Democratic Party?

18 A. No.

19 Q. And at what point did you join the Arizona  
20 Democratic Party?

21 A. In August of 2016. I'm sorry. 2015.

22 Q. And --

23 A. We're not there yet.

24 Q. You were with the -- almost, but ...

25 You were with the --

1 MS. CALLAIS: Next month you start.

2 BY MS. AGNE:

3 Q. You were with the Texas Democratic Party through  
4 then?

5 A. No. I left at the beginning of December in  
6 Texas.

7 Q. December 2014?

8 A. No, December 2015.

9 No. I'm sorry. Very bad at years today.  
10 December 2014.

11 Q. You left the Texas Democratic Party?

12 A. Yes.

13 Q. Where did you go from there?

14 A. I took six months off and did a lot of  
15 interviews and decided what I wanted to do.

16 Q. And then interviewed for the Arizona Democratic  
17 Party position?

18 A. Yes.

19 Q. Have you been the executive director since you  
20 arrived in Arizona?

21 A. Yes.

22 Q. And you came here for that position?

23 A. Yes.

24 Q. Any of your current activities as executive  
25 director involve ballot collection activities?



1 registration activities?

2 A. I manage many staff to register voters.

3 Q. How many staff?

4 A. We have slightly over 115 staff members.

5 Q. Do you also manage volunteers?

6 A. No. Not directly.

7 Q. Do volunteers engage in voter registration  
8 activities?

9 A. Yes.

10 Q. And staff under you manage the volunteers, I  
11 imagine?

12 A. Yes.

13 Q. What are the get out the vote activities of the  
14 party?

15 A. The get out the vote activities we engage in are  
16 typically -- typically revolve around knocking on doors,  
17 making phone calls to our voters, educating them about  
18 issues and candidates, and telling them where to vote, how  
19 to vote, when to vote, and talk to them about voting by  
20 mail.

21 Q. What sorts of things are voters told by the  
22 party about voting by mail?

23 A. We encourage all voters to do so. We encourage  
24 them to sign up for the permanent early voter list.

25 And -- yes.

1 Q. Does the party educate voters about the proper  
2 way to mail in a ballot, an early voting ballot?

3 A. Yes.

4 Q. Do you know the specifics of the information  
5 offered on that?

6 A. Yes. We tell them to fill out their form  
7 completely and mail it in.

8 Q. And when you mention their form, you mean their  
9 ballot?

10 A. Their -- right now we're primarily focussed on  
11 encouraging people to send in a permanent early voter list  
12 application.

13 Q. Okay. At election time in the weeks before the  
14 election when ballots are being filled out, does the party  
15 encourage voters to fill those out and mail those in?

16 A. We are planning on it.

17 Q. And then for the voter registration activities  
18 you described, HB2023 will not impact those, to your  
19 knowledge?

20 A. Impact the voter registration activities?

21 Q. Correct.

22 A. No, not to my knowledge.

23 Q. And the get out the vote activities that you  
24 described, HB2023 will not impact those?

25 A. Well, that, I don't know because we -- I have no

1 way of knowing if and how many voters could be impacted by  
2 our inability to offer to mail their ballot for them. We  
3 imagine that there are those voters and -- yes.

4 Q. For previous elections in Arizona, the May 17th  
5 special election for example, were there voters that asked  
6 the party to mail in their ballots -- or to turn in their  
7 ballots for them that you recall?

8 A. Yes.

9 Q. And what were they told?

10 A. I personally recall a voter dropping off two  
11 ballot applications -- I'm sorry. Now I'm not totally  
12 remembering.

13 I personally recall that a voter in some way  
14 asked us while I was sitting at the front desk or towards  
15 the front desk to mail in ballots for them, but I don't  
16 recall if it was for the May 17th election.

17 Q. And did the party do that for the voter?

18 A. I don't recall.

19 Q. Do you recall any voters asking the party to  
20 mail in a presidential preference election ballot?

21 A. I don't recall.

22 Q. In paragraph 5, the first sentence of your  
23 declaration, you also mention voter protection activities.  
24 What sort of activities are those?

25 A. Typically, in other states that I've worked in

1 and according to our plan this year, we plan to have  
2 lawyers in a boiler room taking questions and concerns  
3 from voters via hotline, any voters who have trouble  
4 voting on election day or during early vote period.

5 Q. Do you know what sort of questions are usually  
6 called in to the hotline?

7 A. In other states that I've worked in, questions  
8 typically pertain to lines, having to vote provisionally,  
9 not knowing where their polling place is, being -- in some  
10 cases being intimidated at the polls. And a myriad of  
11 other problems that can occur.

12 Q. Did the party have this hotline set up for past  
13 elections in Arizona?

14 A. I don't know.

15 Q. For the May 17th special election or the  
16 presidential preference election, you don't know whether  
17 the hotline was set up?

18 A. We did not have a hotline, but we had many calls  
19 coming into headquarters for the presidential preference  
20 election.

21 Q. From voters?

22 A. Yes.

23 Q. And then on election day, are volunteers out in  
24 the community so that they may also call into the hotline,  
25 or is it primarily for voter use?

1 paragraph that these voters should go to their old polling  
2 place -- if the voter has moved, should they go back to  
3 the old polling place?

4 MS. CALLAIS: Can you point to where in the  
5 paragraph you're referring?

6 MS. CUMMINGS: After I read the paragraph, I  
7 thought that she was saying that people should go back to  
8 the old polling place if they had moved. I'm just asking  
9 if that is -- if I have correctly interpreted what she  
10 said in the paragraph.

11 THE WITNESS: No.

12 BY MS. CUMMINGS:

13 Q. You're not saying that?

14 A. No.

15 MS. CUMMINGS: Okay. All right. Thank you.  
16 I have no further questions.

17 THE WITNESS: Thank you.

18 MS. CALLAIS: Read and sign.

19 (WHEREUPON, this deposition concluded at  
20 12:06 p.m.)

21

22

23

24

25

  
\_\_\_\_\_  
SHEILA HEALY

1 STATE OF ARIZONA )  
 ) ss.  
2 COUNTY OF MARICOPA )

3

4 BE IT KNOWN that the foregoing proceedings were  
taken by me, MICHAELA HERMAN DAVIS, a Certified Reporter,  
5 in and for the County of Maricopa, State of Arizona; that  
the witness before testifying was duly sworn to testify to  
6 the whole truth; that the questions propounded to the  
witness and the answers of the witness thereto were taken  
7 down by me in shorthand and thereafter reduced to  
typewriting under my direction; that the witness will read  
8 and sign said deposition; that the foregoing pages are a  
true and correct transcript of all proceedings had, all  
9 done to the best of my skill and ability.

10 I FURTHER CERTIFY that I am in no way related to  
any of the parties hereto, nor am I in any way interested  
in the outcome hereof.

11 I FURTHER CERTIFY that I have complied with the  
ethical obligations set forth in ACJA 7-206(J)(1)(g)(1)  
12 and (2).

13 Michaela Herman Davis 50574  
14 \_\_\_\_\_  
Certified Reporter CR Number  
15  
16 \_\_\_\_\_  
Certified Reporter Date  
17 (Signature)

18  
19 I CERTIFY that this Registered Reporting Firm has  
complied with the ethical obligations set forth in  
ACJA 7-206(J)(1)(g)(1) and (2).

20

21 Carrie Reporting, LLC R1064  
22 \_\_\_\_\_  
Registered Reporting Firm RRF Number  
23  
24 \_\_\_\_\_  
Registered Reporting Firm Date  
(Signature)

25

Please make all changes or correction on this sheet showing page number, line number and reason, if any. If no corrections are needed write "none". Please sign and date the form.

**STATEMENT OF CHANGES AND/OR CORRECTIONS**

Deposition of: Sheila Healy  
 Case Name: Feldman v. AZ Secretary  
 Case No.: CV-16-1065-PHX-DLR  
 Date Taken: 7/14/2016

<u>PAGE</u>	<u>LINE</u>	<u>CHANGE and/or CORRECTION</u>	<u>REASON</u>

  
 \_\_\_\_\_  
 SIGNATURE OF THE DEPONENT

\_\_\_\_\_  
 DATE

# Exhibit B



1 Brett W. Johnson (#021527)  
 2 Colin P. Ahler (#023879)  
 3 Sara J. Agne (#026950)  
 4 Joy L. Isaacs (#030693)  
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15 Timothy A. La Sota (#020539)  
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 20 E-Mail: tim@timlasota.com

21 *Attorneys for Intervenor-Defendants*  
 22 *Arizona Republican Party, Bill Gates, Suzanne*  
 23 *Klapp, Debbie Lesko, and Tony Rivero*

24 IN THE UNITED STATES DISTRICT COURT  
 25 FOR THE DISTRICT OF ARIZONA

26 Leslie Feldman, et al.,  
 27  
 28 Plaintiffs,  
 29  
 30 v.  
 31  
 32 Arizona Secretary of State’s Office, et al.,  
 33  
 34 Defendants.

No. CV-16-1065-PHX-DLR

**NOTICE OF DEPOSITION OF  
 SHEILA HEALY**

**TO ALL PARTIES OF RECORD AND THEIR ATTORNEYS:**


35 **YOU ARE HEREBY NOTIFIED** that, under Fed. R. Civ. P. 26 and 30,  
 36 Defendants Arizona Republican Party; former Councilman Bill Gates; Councilwoman  
 37 Suzanne Klapp; Senator Debbie Lesko; Representative Tony Rivero; Arizona Attorney  
 38 General Mark Brnovich; Arizona Secretary of State’s Office; Michele Reagan, Arizona  
 39 Secretary of State; Maricopa County Board of Supervisors and members Denny Barney,  
 40 Steve Chucuri, Andy Kunasek, Clint Hickman, Steve Gallardo; Maricopa County Recorder

1 Hellen Purcell; and Maricopa County Elections Director Karen Osborne, will take the  
2 deposition upon oral examination of the person identified below at the time and place  
3 stated below before an officer authorized by law to administer oaths, and the deposition  
4 will be recorded by stenographic means.

5  
6 **PERSON TO BE EXAMINED:** Sheila Healy  
7 **DATE AND TIME OF DEPOSITION:** July 14, 2016 at 9:00 a.m.  
8 **PLACE OF DEPOSITION:** SNELL & WILMER L.L.P.  
9 One Arizona Center  
10 400 E. Van Buren, Suite 1900  
11 Phoenix, Arizona 85004-2202

12 DATED this 30th day of June, 2016.

13 SNELL & WILMER L.L.P.

14  
15 By:   
16 Brett W. Johnson  
17 Sara J. Agne  
18 Joy L. Isaacs  
19 One Arizona Center  
20 400 E. Van Buren, Suite 1900  
21 Phoenix, Arizona 85004-2202

22 Timothy A. La Sota  
23 2198 E. Camelback Road, Suite 305  
24 Phoenix, Arizona 85016

25 *Attorneys for Intervenor-Defendants*  
26 *Arizona Republican Party, Bill Gates,*  
27 *Suzanne Klapp, Debbie Lesko, and*  
28 *Tony Rivero*

Snell & Wilmer  
LLP  
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602.382.6000

**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2016, the original of the foregoing was e-mailed and mailed via U.S. Mail to:

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*Attorneys for Leslie Feldman; Luz Magallanes; Mercedes Hymes; Julio Morera; Cleo Ovalle; Former Chairman and First President of the Navajo Nation Peterson Zah; Democratic National Committee; DSCC a.k.a. Democratic Senatorial Campaign Committee; Arizona Democratic Party; Kirkpatrick for Senate; and Hillary for America*

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