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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Voto Latino Foundation, Priorities USA, and
Shelby Aguallo,

Plaintiffs,

v.

Katie Hobbs, in her official capacity as
Arizona Secretary of State,

Defendant.

No. 2:19-cv-05685-DWL

**PLAINTIFFS' REPLY IN
SUPPORT OF THEIR MOTION
FOR PRELIMINARY
INJUNCTION**

INTRODUCTION

1
2 In Arizona’s most recent election, 90% of voters voted with a mail ballot. This does,
3 in some respects, make Arizona a “national leader” on vote by mail as the Secretary asserts.
4 Doc. 43 at 4. But it also raises the stakes of ensuring that Arizona’s vote-by-mail system
5 protects Arizonans’ voting rights—particularly where the state has pushed its voters to use
6 mail balloting by closing or consolidating hundreds of polling locations in the past several
7 years. *See* Doc. 22 at 7. The Secretary, notably, does not dispute that the current deadline
8 to receive ballots (“Election Day Receipt Deadline” or “Deadline”) has disenfranchised
9 thousands each election; that Hispanic and Latino, Native American, and rural voters have
10 been disparately disenfranchised; or that the opportunities to vote in person will be reduced,
11 if available at all, because of COVID-19. The reality is that in this year’s elections,
12 Arizonans will be more dependent than ever on the mail to vote. And Arizonans will be
13 forced to rely on a system that has disenfranchised at least 17,000 eligible voters, through
14 no fault of their own. With the pandemic straining the vote-by-mail system in
15 unprecedented ways, the rate of disenfranchisement in this year’s elections threatens to be
16 catastrophic.

17 The adoption of a postmark system is necessary to protect thousands of Arizonans’
18 most basic constitutional right. More than a dozen states are using a postmark system
19 without difficulty. To appreciate the enfranchising effect of that approach, one need only
20 look to Wisconsin’s recent election in which more than 100,000 voters’ absentee ballots
21 were counted specifically because the Supreme Court ordered the state to use a postmark
22 system.¹ This Court should act similarly to prevent widespread disenfranchisement in
23 Arizona. The administrative changes needed for the state to make this change are minimal
24 and are heavily outweighed by the compelling interest in protecting Arizonans’ right to
25 participate in their democracy.

26
27 ¹ Richard Pildes, *How Many Absentee Ballots in WI Came In on Time Because of the*
28 *Court Decision to Extend the Receipt Deadline?* Election Law Blog (Apr. 15, 2020),
<https://electionlawblog.org/?p=110746>.

LEGAL STANDARD

The injunction Plaintiffs seek—to enjoin the State from rejecting certain ballots arriving after the Deadline—would “prevent[] future constitutional violations,” and it thus is “a classic form of prohibitory injunction.” *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017). But even if the relief were characterized as a mandatory injunction, it is still warranted. This is not a “doubtful case.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (quotation omitted). Absent an injunction, there is “a risk of extreme or very serious damage” to Plaintiffs’ and countless Arizonans’ right to vote. *Hernandez*, 872 F.3d at 997 (quotation omitted). “Mandatory injunctions are most likely to be appropriate,” where, as here “the status quo . . . is exactly what will inflict the irreparable injury upon complainant.” *Id.* (quotation and citation omitted).

ARGUMENT

I. Plaintiffs are likely to succeed on the merits.

A. The Election Day Receipt Deadline inflicts severe burdens on voters.

The Secretary does not dispute that the Deadline disenfranchises several thousand voters each election—she just finds this insubstantial. Ninth Circuit precedent, however, finds the opposite.² See *Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989, 1015 (9th Cir. 2020) (en banc) (rejecting the notion that disenfranchisement of 3,709 voters is minimal or trivial). The Secretary asks this Court to uphold the Deadline because “99%” of Arizona voters have historically gotten their ballot in before it. Doc. 43 at 2. But *Anderson-Burdick* looks not at voters who are unburdened by the law; instead, it looks at the impact on the voters who must carry the burdens. See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198, 201 (controlling op.) (explaining that “[t]he burdens that are relevant . . . are those imposed on persons who are eligible to vote but do not possess a [photo ID],” and “that most voters already possess [valid identification to vote] would not save the statute”);

² Plaintiffs’ estimate of the number of disenfranchised voters is likely severely understated. Several counties do not record the number of late ballots received. See Doc. 23-1 at ¶ 32. And Plaintiffs cannot precisely quantify the substantial number of voters who receive their ballot too late to return it by the Deadline and thus do not attempt to do so. See Bixby Decl. ¶ 5; Armour Decl. ¶¶ 4-7.

1 *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016) (“The right to vote is personal and is
2 not defeated by the fact that 99% of other people can secure the necessary credentials
3 easily.”). That many voters have not been disenfranchised by the Deadline is not enough to
4 save the statute when thousands have been and thousands more will be at serious risk of
5 disenfranchisement this year. *See* Ex. A ¶ 2.³

6 The Secretary does not dispute that given the pandemic, in person voting—the
7 previous “fail-safe” for voters who miss the mail Receipt Deadline—is likely to be
8 significantly curtailed or eliminated. *See* Atkeson Rpt. ¶ 3. Dr. Atkeson’s report, submitted
9 by the Secretary, demonstrates that these “fail-safes” were inadequate even before COVID-
10 19. *See id.* at 18-19 (Table 2) (showing in 2018 three counties had no drop boxes for mail
11 ballots, six had no more than three, and five had a single early voting location); *see also* Ex.
12 B at 5. The Secretary largely not does dispute that the Deadline disparately disenfranchises
13 Latino and Hispanic, Native American, and rural voters. In fact, Dr. Atkeson acknowledges
14 that Arizona’s Native American voters “have very poor mail service and often no in person
15 mail delivery,” *id.* at ¶ 52, and that rural areas have fewer resources and less reliable mail
16 service, leading to greater rates of disenfranchisement, *see id.* ¶ 79. The Secretary discounts
17 these disparate rates of disenfranchisement as “part of life’s vagaries.” Doc. 43 at 15. But
18 the difficulties specific subgroups face in complying with a voting law because of “life’s
19 vagaries” is precisely what *Crawford* focused on in assessing the burden of the law. And,
20 while the Secretary asks this Court to find no burden on voting rights here because the
21 *Crawford* Court did not find a significant burden on voters in that case, she ignores that the
22 *Crawford* Court was careful to emphasize that it was constrained by a lack of evidence. The
23 *Crawford* plaintiffs did not present evidence of voters who the challenged provision
24 disenfranchised, making it impossible to “to quantify [] the magnitude of the burden.” 553
25 U.S. at 200 (controlling op.). Here, the evidence is extensive. Thousands of voters are
26 disenfranchised by the Deadline each election; even the Secretary does not dispute that.

27 _____
28 ³ Dr. Ansolabehere’s rebuttal report, *see* Ex. A, also explains why his methodology
in his first report is sound.

1 The Secretary’s reliance on *Rosario*, *Barilla*, and other cases that sanction “time-
2 regulations” in elections to justify disenfranchisement here is also misplaced. The voter
3 registration deadlines in *Rosario* and *Barilla* were found constitutional precisely because
4 voters had ample opportunity to register and willfully or negligently failed to do so. *See*
5 *Rosario v. Rockefeller*, 410 U.S. 752, 762 (1973) (finding no burden on right to vote because
6 plaintiffs “chose to disregard” deadline); *Barilla v. Ervin*, 886 F.2d 1514, 1525 (9th Cir.
7 1989) (describing plaintiffs’ “willful or negligent failure to register on time”). That same
8 reasoning supported this Court’s holding in *Isabel v. Reagan*, where the voter’s “inability
9 to vote was caused by his own failure” to register on time. 394 F. Supp. 3d 966, 983 (D.
10 Ariz. 2019). In contrast, Plaintiffs have presented evidence that voters are unable to meet
11 the Deadline for reasons wholly outside their control. *See* Bixby Decl. ¶ 5 (describing the
12 “substantial number of calls and texts from Arizona voters who had . . . received their mail
13 ballot too late to send it back in the mail” and were unable to return it by Election Day);
14 Armour Decl. ¶ 4 (stating he could not do anything “to help voters who had not received
15 their ballot until either the weekend before or the Monday before Election Day” and whose
16 only viable method of return was the mail). The Secretary’s reliance on these cases ignores
17 that voters do not have access to mail ballots until a certain date, while voter registration
18 forms are always available to voters. Moreover, while there is no reason to delay registering
19 to vote, there is value in waiting to cast a ballot to benefit from any information that
20 develops in the last week of an election.

21 And while the Secretary attempts to characterize absentee voting as a luxury or
22 choice, that argument, too, runs contrary to the law. Simply put, once a state “has authorized
23 the use of absentee ballots, any restriction it imposes on the use of those absentee ballots
24 [must comply with the Constitution].” *Doe v. Walker*, 746 F. Supp. 2d 667, 681 (D. Md.
25 2010); *cf. also Obama for America v. Husted*, 697 F.3d 423, 430-31 (6th Cir. 2012).
26 Contrary to the Secretary’s assertion, Plaintiff Aguallo, who has been disenfranchised by
27 the Deadline before, has not “voluntarily elected to vote by mail.” Doc. 43 at 23. Aguallo
28 attends school far from her home in Greenlee County and must vote by mail. The time it

1 takes for her ballot to travel from Tucson to Greenlee is outside her control.⁴ Nor is it
2 sufficient to imply (as the Secretary does) that Aguallo (or countless others like her) could
3 simply travel to vote in person, *particularly* during the pandemic. Unless an injunction
4 issues, the Deadline stands to disenfranchise Aguallo and thousands of Arizonans *despite*
5 their best efforts to vote—not because they failed to act, making the cases cited by the
6 Secretary inapposite.

7 **B. These burdens on voters are not adequately justified by state interests.**

8 None of the interests the Secretary puts forward for the Deadline “make it necessary”
9 to disenfranchise thousands of Arizonans. *Anderson v. Celebrezze*, 460 U.S. 780, 789
10 (1983). The Secretary cannot credibly argue *both* that the number of ballots rejected because
11 they come in after the Deadline is infinitesimal *and* that counting these ballots would put
12 too large a strain on the system. Even if more voters begin to return their ballots closer to
13 Election Day under a postmark deadline, as the Secretary speculates, her own expert notes
14 that Arizona “ha[s] the organization and staff necessary to qualify and count VBM quickly.”
15 Atkeson Rpt. ¶ 121. Moreover, Arizona has a new law that permits counties to begin
16 counting ballots up to two weeks in advance of Election Day. *See id.*; A.R.S. § 16-550(b).
17 Thus, Arizona need not have *any* outstanding ballots to process come Election Day. As for
18 the Secretary’s concerns about verifying signatures and counting ballots simultaneously,
19 that is precisely what elections officials in Arizona *already do*. Ballots are evaluated for a
20 proper signature upon receipt, *see* A.R.S. § 16-550, and then are forwarded for counting.
21 This is a rolling process and doing both jointly is not novel. The cost to operate an Early
22 Ballot Board for a few additional days, similarly, is at most a small financial burden that is
23 insufficient to justify broad disenfranchisement. *See infra* n.7 (listing cases).

24 Separately, the Secretary has not credibly explained why the state cannot finish the
25 canvass within 20 days for general elections—a full 13 days after Plaintiffs’ proposed cut-

26
27 ⁴ Greenlee County recommends that voters mail ballots *at least 10 days* before
28 Election Day because its mail travels to a Phoenix processing center and then returns to
Greenlee. *See* McCool Decl. at 12. The same is true of Yuma County. *See* Pouquette Decl.
¶ 6 ([M]ail travels from Yuma, to Phoenix, then back down to Yuma.”).

1 off for receiving ballots—or even for primary elections, particularly where the Provisional
2 Ballot Board is authorized to “convene and begin ballot processing any time after
3 provisional ballots are delivered to the officer in charge of elections.” 2019 Elections
4 Manual at 206.⁵ And while counties should be able to finish their canvasses in this
5 timeframe, should any delays arise, the Secretary is authorized to postpone the canvass on
6 a day-by-day basis until all county returns are received. *See* A.R.S. § 16-648(C).

7 The Secretary’s claim that the Deadline “increases confidence” in Arizona’s
8 elections has it exactly backwards. The Deadline injects significant and needless uncertainty
9 into the voting process, threatening substantial numbers of voters with disenfranchisement
10 based on an indiscernible target—neither voters nor election officials can accurately predict
11 the Pre-Election Cutoff for mailing a ballot to ensure the ballot arrives on time. *See* Ex. B
12 at 1-2. In every general election cycle for the past several years, Arizona counties have
13 changed their guidance on this point from 4 days, to 5 days, to 6 days, to 10
14 days—sometimes offering inconsistent guidance in the same election. Doc. 22 at 4-5. The
15 status quo is chaos, not confidence. Perhaps understanding this, the Secretary has admitted
16 the cutoff to mail ballots is “imprecise.” Doc. 30 at 10. And she is right. This is why an
17 injunction is necessary.

18 Finally, the Secretary’s claim that a postmark system is not feasible is irreconcilable
19 with the fact that over a dozen states successfully manage postmark regimes. Indeed,
20 Wisconsin implemented a postmark system *in a matter of days* after the Supreme Court’s
21 decision in *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1206
22 (2020). Here, Arizona’s officials would have multiple months.

23 **C. The Deadline violates Arizona voters’ procedural due process rights.**

24

25 ⁵ Plaintiffs acknowledge that a provisional ballot cannot be approved for counting
26 until the Board has verified that a voter has not also voted by mail. But there is no reason
27 the Board cannot determine whether a provisional ballot meets all other requirements for
28 counting—including determining whether the voter was actually registered, or whether the
ballot was properly signed, and contact that voter for curing while the count continues. The
Board would then have a full three days to do one last check—to determine whether those
still eligible provisional ballots were cast by someone who had already voted by mail.

1 Application of the three factors relevant to assessing Plaintiffs’ due process claim
2 also establish a likelihood of success. *See Nozzi v. Hous. Auth. of City of L.A.*, 806 F.3d 1178,
3 1192–1200 (9th Cir. 2015) (identifying the factors). *First*, “the right to vote is a ‘liberty’
4 interest” protected by due process, *Raetzel v. Parks/Bellefont Absentee Election Bd.*, 762 F.
5 Supp. 1354, 1357 (D. Ariz. 1990), which extends to mail voting, *see, e.g., Saucedo v.*
6 *Gardner*, 335 F. Supp. 3d 202, 215 (D.N.H. 2018). The Secretary does not dispute this.
7 Instead, she asserts only that the burden on this interest “is minimal.” Doc. 43 at 21. Not so.
8 The “degree of potential deprivation that may be created” by the Deadline—disenfranchising
9 thousands—is extraordinarily high. *Mathews v. Eldridge*, 424 U.S. 319, 341 (1976). *Second*,
10 the risk of “erroneous deprivation” of that right due to the rejection of ballots based on the
11 Receipt Deadline is significant. *Id.* at 335. Currently, the date by which a voter must mail a
12 ballot to have a reasonable certainty it will be counted varies from county to county and from
13 one election to another. For this and other reasons set forth in Plaintiff’s Memorandum, Doc.
14 22 at 3–9, the Deadline is far from a “fair” or “reliab[le]” procedure for ensuring that
15 Plaintiffs’ liberty interest in voting, and voting by mail, is guaranteed. *Id.* at 343.⁶ *Third*, the
16 public interest favors protecting voting rights. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). As
17 the Secretary points out, Plaintiffs have proposed a “substitute” procedure for counting
18 ballots. *Nozzi*, 806 F.3d at 1193. And, as explained below, *see infra* at n.7, the
19 “administrative burden” of instituting it will be minimal. *Nozzi*, 806 F.3d at 1193.

20 **II. Plaintiffs and thousands of Arizona voters will suffer irreparable harm.**

21 While the Secretary focuses on the Arizonans whose votes are *not* discarded because
22 of the Deadline, she ignores the more than 17,000 voters who have been disenfranchised
23 due to the Deadline in general elections from 2008 to 2018. Doc. 23-1 at 41; Ex. A ¶ 31.
24 And she ignores the more than 2,700 Arizonans whose ballots arrived after the Deadline in
25

26 ⁶ The Secretary points out that on the face of Arizona’s mail ballots, voters are
27 informed that they must be delivered by Election Day and voters are able to track their
28 ballots online. Doc. 43 at 22. These mechanisms, however, fail to give adequate clarity to
voters as to when their ballot must be mailed. Notably, these mechanisms have failed to
protect the thousands of Arizonans that have been disenfranchised.

1 the March 2020 PPE, as well as the roughly 18,700 to 20,000 Arizonans projected to be
2 disenfranchised in November. Doc. 33-1 at 7, 10. This is not just a “bleak picture of Arizona
3 election administration,” Doc. 44-1 at 9—it is the reality imposed by the Deadline.

4 Disenfranchisement inflicts irreparable harm. *See League of Women Voters of N.C.*
5 *v. North Carolina* (“LOWV”), 769 F.3d 224, 247 (4th Cir. 2014), *cert. denied*, 135 S. Ct.
6 1735 (2015); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And the
7 threat that the Deadline will cause disenfranchisement is only more severe in the context of
8 the ongoing public health crisis and its effects on the mail service. *First*, many Arizonans
9 will be voting by mail for the first time and will be less likely to know when they need to
10 mail their ballot. Doc. 33-1 at 5. *Second*, USPS is grappling with crises that threaten to not
11 only exacerbate the agency’s well-documented woes in Arizona and in the state’s Latino
12 and Native American communities in particular, *see* Doc. 22 at 8–9, 12, but to shutter the
13 entire agency, Doc. 33-36. Thus, the Secretary’s generalization that “it is completely within
14 [voters’] control to avoid” disenfranchisement is baseless. Doc. 43 at 23.

15 Wisconsin’s recent experience underscores the necessity of Plaintiffs’ requested
16 relief. While the Secretary is correct that Arizona is not Wisconsin and the volume of ballots
17 received post-Election Day here may be less than the volume there, *see* Doc. 33-1 at 7, she
18 overlooks challenges unique to Arizona that result in more severe burdens on voters because
19 of the Deadline that will only worsen because of the pandemic and USPS’s struggles. *First*,
20 Arizona is a larger and more populous state than Wisconsin; distances are greater and even
21 intra-county mail must be routed through Phoenix. Doc. 44-2 ¶ 6; Doc. 23-2 at 15. As Yuma
22 County Recorder Pouquette observes, “[m]any people are unaware” of this, meaning a voter
23 may not know it will take more than five days for a ballot to arrive by a deadline. Doc. 44-
24 2 ¶ 6. *Second*, many Latino and Native American communities, especially those in rural
25 regions, face challenges with mail voting and poor postal infrastructure, a lack of trust in
26 the postal system, and longer delivery times. Doc. 23-2 at 14–17; *see also Hobbs*, 948 F.3d
27 at 1006. These challenges have worsened during the pandemic, as the March PPE revealed.
28 *See* Doc. 33-1 at 10 (showing higher rate of late ballots in rural Graham and Santa Cruz

1 Counties compared to Maricopa County).

2 Finally, Voto Latino and Priorities USA do not assert economic injuries, as the
3 Secretary mistakenly claims. The Deadline irreparably harms them because it forces them
4 to divert resources to help their constituencies overcome the law’s burden—resources that
5 would otherwise be used to engage in candidate advocacy, voter registration, and other core
6 missions—and which cannot be retroactively applied to those activities once the election is
7 over. Doc. 22-6, Doc. 22-10; *see Ga. Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp.
8 3d 1251, 1268 (N.D. Ga. 2018) (finding irreparable harm where plaintiff’s organizational
9 mission would be harmed and it would have to engage in more voter efforts).

10 **III. The balance of the equities and the public interest favor an injunction.**

11 “The public interest and the balance of the equities favor ‘prevent[ing] the violation
12 of a party’s constitutional rights.’” *Ariz. Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th
13 Cir. 2016) (alteration in original) (citation omitted). This is more urgent when voting rights
14 are at issue because “[t]he public has a strong interest in exercising the fundamental political
15 right to vote.” *LOWV*, 769 F.3d at 248 (citations omitted). More than 17,000 votes have not
16 counted because of the Deadline. Many Arizonans stand to lose the fundamental right to
17 vote in the November general election. While many changes to electoral processes generate
18 administrative tasks, administrative conveniences do not justify burdens on voting rights.⁷

19 Nor are Plaintiffs’ irreparable injuries outweighed by the inconveniences the
20 Secretary identifies (at 27–29)—many of which do not comport with Plaintiffs’ requested
21 relief. *First*, Plaintiffs seek a rule accepting ballots containing *any* indicia of when a ballot
22 is received. *See* Doc. 22 at 5 n.4.⁸ Instituting such a rule is not impractical; many states have

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24 ⁷ *See, e.g., Taylor v. Louisiana*, 419 U.S. 522, 535 (1975) (“administrative
25 convenience” cannot justify practices that impinge upon fundamental rights); *see also*
26 *Frontiero v. Richardson*, 411 U.S. 677, 690 (1973) (plurality op.); *United States v. Berks*
Cty., Pa., 250 F. Supp. 2d 525, 541 (E.D. Pa. 2003); *Johnson v. Halifax Cty.*, 594 F. Supp.
161, 171 (E.D.N.C. 1984).

27 ⁸ The use of the term “postmark” is intended to encompass any indicia, such as a
28 barcode or other marking, made by the USPS to track when a ballot enters the postal system.
Where a ballot does not bear a postmark date, it should be presumed to have been mailed
on or before Election Day unless a preponderance of the evidence demonstrates otherwise.

1 such rules. They require officials to accept ballots based on the dates of these indicia, but,
2 in the absence of any markings (for perhaps the reasons the Secretary identifies, at 27–28)
3 election officials then examine the verification date on the ballot or a voter’s accompanying
4 affidavit to ensure they were cast on or before Election Day. *See, e.g.*, Md. Code Regs.
5 33.11.03.08(3)(b)(ii); Wash. Rev. Code Ann. § 29A.40.110(4). In other states, officials look
6 at other markings on the ballot’s envelope, such as an intelligent mail barcode tracking
7 system. *See, e.g.*, 10 Ill. Comp. Stat. Ann. 5/19-8; Iowa Code Ann. § 53.17A. Moreover,
8 USPS is fully capable of date-stamping a ballot even when postage is prepaid. *See Ex. C.*

9 Further, enjoining the Deadline will lessen confusion—not lead to more of it. *Supra*
10 at 7; *see also* Johnson Decl. ¶ 5. Many important aspects of modern life do not operate by
11 the receipt date, but by the date mail is sent. Doc. 22 at 4. Nonetheless, to bolster her
12 reasoning that a predictable and familiar postmark deadline somehow leads to more
13 confusion, the Secretary reasons (at 28) that instructions sent to voters *must still* inform
14 them of the 7:00 p.m. deadline even if the Deadline is extended. This argument ignores the
15 Secretary’s duty to “prescribe duties to achieve and maintain the maximum degree of
16 correctness” over early voting and her duty to publish the Election Procedures Manual.
17 A.R.S. § 16-452(A)–(B); *see also Democratic Nat’l Comm. v. Reagan*, 329 F. Supp. 3d 824,
18 842 (D. Ariz. 2018), *rev’d on other grounds*, 948 F.3d 989 (explaining how court can order
19 Secretary “to prescribe such a procedure in the Election Procedures Manual, which county
20 election officials then would be bound by law to follow”). No confusion would result if the
21 Secretary inserts a provision in the Manual to account for any changes to the receipt
22 deadline. Moreover, it is unlikely that a local election official would knowingly print and
23 distribute inaccurate instructions when Yuma County Recorder Pouquette, for instance,
24 explains “I want every valid vote counted.” Doc. 44-2 ¶ 4.

25 Every equity the Secretary articulates is ultimately about printing paper—
26 instructions, pamphlets, and guides. These minimal administrative burdens are woefully
27 outweighed by the vindication of the “precious” and “fundamental” right to vote. *Isabel v.*
28 *Reagan*, No. CV-128-03217, 2019 WL 5684195, at *5 (D. Ariz. Nov. 1, 2019) (citations

1 omitted); *see also supra* at 10 n.7. And, even with minimal administrative burdens, the
2 Secretary helpfully notes that “officials [have] plenty of time to prepare for any increase in
3 the use of mail voting.” Doc. 43 at 26. This further weighs the equities in Plaintiffs’ favor.
4 *Cf. Martin v. Kemp*, 341 F. Supp. 3d 1326, 1340 (N.D. Ga. 2018) (rejecting argument that
5 new election procedure days before election was burdensome).

6 Finally, Plaintiffs’ requested relief to count ballots arriving after Election Day will
7 not somehow lead to more disenfranchisement, as the Secretary speculates. *See* Ex. A ¶¶
8 37-43. If it is true that Plaintiffs’ requested five-business-day extension (seven total days)
9 will lead to more disenfranchisement, then the State has no business advocating for a mere
10 six days for voters to send in their ballots. *See* Doc. 44-1 at 22–24. Plaintiffs’ requested
11 relief is a fail-safe to ensure that as many Arizonans’ votes are counted as possible—more
12 urgent now because of the public health crisis. “The vindication of constitutional rights . . .
13 serve[s] the public interest almost by definition,” including when the voting rights are at
14 stake. *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla.
15 2012). Courts have repeatedly extended deadlines to advance this interest in the face of
16 unexpected events.⁹ This Court should do the same.

17 CONCLUSION

18 For these reasons, Plaintiffs respectfully request that this Court issue a preliminary
19 injunction as set forth in the proposed order. Such an injunction is appropriately “tailored
20 to remedy the specific harm” imposed by the deadlines set forth in A.R.S. § 16-548(A), and
21 relevant portions of the 2019 Elections Procedures Manual. *Lamb-Weston, Inc. v. McCain*
22 *Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991).

23
24
25 ⁹ For instance, when Hurricane Matthew swept through Florida and Georgia in 2016,
26 federal courts crafted remedies to extend registration deadlines to protect “the right of
27 aspiring eligible voters to register and to have their votes counted.” *Fla. Democratic Party*
28 *v. Scott*, 215 F. Supp. 3d 1250, 1259 (N.D. Fla. 2016). Similarly, a court ordered several
county boards of elections to extend precincts’ operating hours after unexpected severe
weather and ballot shortages prevented voters from reaching the polls and, once there,
casting their ballots. *Obama for Am. v. Cuyahoga Cty. Bd. of Elections*, 1:08-cv-562-PAG,
ECF No. 6 (N.D. Ohio Mar. 4, 2008).

1 Dated: May 12, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/Michelle DePass