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27 **Pro Hac Vice Forthcoming*

28 **ARIZONA SUPERIOR COURT**
COUNTY OF MARICOPA

29 DONALD J. TRUMP FOR PRESIDENT,
30 INC., et al.,

31 Plaintiffs,

32 v.

33 KATIE HOBBS, et al.,

34 Defendants,

35 and

36 ARIZONA DEMOCRATIC PARTY,

37 Intervenor-
38 Defendant.

Case No.: CV2020-014248

**INTERVENOR-DEFENDANT'S
MOTION TO DISMISS PLAINTIFFS'
COMPLAINT**

1
2 Intervenor-Defendant the Arizona Democratic Party moves to dismiss Plaintiffs’ Verified
3 Complaint. This motion is based upon the Memorandum of Points & Authorities below, all
4 pleadings, paper, and exhibits on file in this matter, and oral argument.

5 INTRODUCTION

6 The people have spoken. After careful and cautious analysis of the ballot counts in states
7 across the nation, every major news outlet has declared Joe Biden the President-elect of the United
8 States. Just hours after these calls were made, Plaintiffs Donald J. Trump for President, Inc. (the
9 “Trump Campaign”), the Republican National Committee, and the Arizona Republican Party
10 (collectively, “Plaintiffs”)—apparently dissatisfied with the outcome—filed their Complaint,
11 seeking to halt the certification of votes in Arizona and inject uncertainty and confusion into the
12 democratic process. This lawsuit should be seen for what it is: a last-ditch effort by an unsuccessful
13 presidential campaign to sow doubt and mistrust in a legitimately conducted election. Nearly a
14 dozen other state and federal courts across the nation have resoundingly rejected similar
15 unsubstantiated claims of voting irregularities and fraud made by the Trump Campaign and various
16 Republican entities, and the same result should follow here.

17 Plaintiffs’ evidence in support of their claims is thin. In their Complaint, Plaintiffs plead
18 their theory of systematic mistabulation by Maricopa County’s voting machines “upon information
19 and belief” *nearly 20 times*. Put simply, their allegations of disenfranchisement are premised on
20 speculation, not fact. Even accepting the truth of their allegations, the number of overvotes from
21 in-person Election Day voting in Maricopa County falls well short of any figure that would change
22 the outcome of Arizona’s presidential contest or any other race. Because Plaintiffs’ grievances
23 cannot be redressed through this lawsuit, their claims fail for lack of standing. And because
24 Plaintiffs sat on their rights for nearly a week during a time-sensitive vote tabulation process
25 instead of seeking to correct alleged issues with ballots as they arose, their claims are barred by
26 the equitable doctrine of laches. For these reasons and those that follow, this Court should promptly
27 dismiss this case.
28

1 **BACKGROUND**

2 At bottom, Plaintiffs’ grievance is based on Maricopa County voters’ use of Sharpie pens
3 to mark their ballots. This Complaint follows a similar lawsuit that a right-wing organization, the
4 Public Interest Legal Foundation, spearheaded but then quickly voluntarily dismissed. *See*
5 *Aguilera v. Fontes*, Case No. 2020-014083 (Maricopa Cnty. Super. Ct. Nov. 4, 2020). Just hours
6 later, Plaintiffs—all of whom intervened in the original lawsuit—announced online that they
7 would seek another bite at the apple.

8 Plaintiffs’ suit alleges that some ink from Sharpies might have bled through ballots and
9 thereby created apparent “overvotes,” which occur when a voter selects more than one candidate
10 in a particular race. Plaintiffs claim that some indeterminable number of in-person voters on
11 Election Day initially had their ballots rejected by a tabulation device due to apparent overvotes.
12 Plaintiffs claim that poll workers manually overrode that determination (or instructed voters to do
13 so) by pressing a green button on the tabulation machine. In their telling, the “green button”
14 override will count the ballot for all races other than the apparently overvoted race. As evidence
15 for this theory, Plaintiffs include a declaration from one voter who *believes* her vote was not
16 counted due to this chain of events. Her belief stems only from the fact that she or a poll worker
17 pressed the green manual override button. (The second voter whose declaration Plaintiffs attach
18 alleges only that she believes here vote did not count because she did not see a “checkmark” after
19 the tabulator *accepted* her ballot.) Plaintiffs also attach declarations from poll observers alleging
20 that poll workers informed voters to press the green button when the tabulation devices flagged
21 potential irregularities. One such declarant noted that following poll workers’ attempts to scan
22 ballots at the end of the day, any “non-accepted ballots were placed into a sealed, clear plastic
23 pouch.” Garre Decl. ¶ 11. Plaintiffs offer no more than that.

24 **ARGUMENT**

25 **I. Plaintiffs lack standing to bring their claims.**

26 The Arizona Supreme Court “has, as a matter of sound judicial policy, required persons
27 seeking redress in the courts first to establish standing, especially in actions in which constitutional
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1 relief is sought against the government.” *Bennett v. Napolitano*, 206 Ariz. 520, 524 (2003).
2 Although Arizona courts are not strictly bound by federal standing doctrine, the Arizona standing
3 standard is a “rigorous” one, and federal case law on standing is “instructive” to Arizona courts.
4 *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140–41 (2005) (quoting *Bennett*, 206 Ariz. at
5 525). To demonstrate standing on a claim, parties must “allege a distinct and palpable injury”
6 rather than an “allegation of generalized harm that is shared alike by all or a large class of citizens.”
7 *Sears v. Hull*, 192 Ariz. 65, 69 (1998) (citing *Warth v. Seldin*, 422 U.S. 490, 499, 501 (1975));
8 *Harris Bank, N.A.*, No. 1 CA-CV 15-0368, 2016 WL 7368612, at *3 (Ariz. Ct. App. Dec. 20,
9 2016) (“the injury must be distinct and palpable so that the plaintiff has a personal stake in the
10 outcome.”). They must also seek relief that is likely to redress their alleged grievances. *See*
11 *Bennett*, 206 Ariz. at 525 (citing *Allen v. Wright*, 468 U.S. 737, 751 (1984)); *see also Lujan v.*
12 *Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (“[I]t must be ‘likely,’ as opposed to merely
13 ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’”) (quoting *Simon v. E.*
14 *Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 43 (1976)).¹ “[A]t the pleading stage, the plaintiff must
15 ‘clearly . . . allege facts demonstrating’ each element [of standing],” *ThermoLife Int’l LLC v.*
16 *Sparta Nutrition LLC*, No. CV-19-01715-PHX-SMB, 2020 WL 248164, at * (D. Ariz. Jan. 16,
17 2020) (alterations in original) (quoting *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016)), and
18 must demonstrate standing for each form of relief sought. *Friends of Earth, Inc. v. Laidlaw Env’t*

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21 ¹ While the Arizona Supreme Court has recently observed that Arizona courts “apply a more
22 relaxed standard for standing in mandamus actions,” *Ariz. Pub. Integrity All. v. Fontes*, No. CV-
23 20-0253-AP/EL, 2020 WL 6495178 ¶ 11 (Ariz. Nov. 5, 2020), this is not a true mandamus action
24 in which Plaintiffs may be “beneficially interested.” A.R.S. § 12-2021. That is because Plaintiffs
25 do not seek to compel Arizona election officials to address election-day ballots as specifically
26 prescribed by law in elections going forward but rather to *retrospectively* address ballots *that have*
27 *already been cast*, and by a procedure of sifting through and identifying already-cast ballots that
28 is nowhere specified in statute or the Election Procedures Manual. *See Sears*, 192 Ariz. at 68 ¶ 11
(observing that “[m]andamus does not lie if the public officer is not *specifically* required by law
to perform the act” and that “the requested relief in a mandamus action must be the performance
of an act and such act must be non-discretionary” (internal quotation marks omitted, emphasis
added)).

1 *Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000).

2 Here, Plaintiffs lack standing because they cannot establish how their alleged injury will
3 be remedied by their requested relief. In each of their four claims, Plaintiffs request that this Court
4 issue declaratory and injunctive “remedies requiring the Recorder and the Board of Supervisors to
5 provide for the review and adjudication by the Ballot Duplication Board of all ballots generated
6 and cast at voting centers on Election Day that have not been tabulated because [of] ostensible
7 overvotes.” Compl. ¶¶ 54, 62, 72, 81. This review, Plaintiffs allege, will, “upon information and
8 belief . . . yield up to *thousands* of additional votes for President Trump.” *Id.* ¶¶ 50, 58, 68, 77
9 (emphasis added). But, according to Maricopa County, the number of overvotes from in-person
10 Election Day voting in the County totaled just 180. *See Election Day Overvotes*, Maricopa County
11 Ex. 30. Even if every one of these votes were cast for President Trump—a highly unlikely scenario
12 given the allocation of votes for the two candidates across Maricopa County as a whole—it would
13 still leave him well short of prevailing in the contest for Arizona’s 11 electoral votes. *See Featured*
14 *Races*, Ariz. Sec’y of State, <https://results.arizona.vote/#/featured/18/0> (last visited Nov. 10,
15 2020).

16 Plaintiffs also allude to races for “other contested offices in Maricopa County” that might
17 be affected by the alleged overvotes. Compl. ¶ 4; *see also, e.g., id.* ¶ 41 (“[T]abulation of these
18 ballots would yield up to thousands of additional votes for President Trump and other Republican
19 candidates in the November 3, 2020 general election.”). But they fail to identify *who* these other
20 candidates are, let alone whether their races would be decided by the overvotes at issue.² Indeed,
21 Maricopa County’s Exhibit 30 data demonstrates that the number of overvotes for every other
22 closely contested race in the county is nowhere near the level of being electorally dispositive. For
23 example, in the hotly contested Legislative District 28 (where Democrat Christine Marsh currently
24 leads by only 631 votes), the number of overvotes totals *three*. Maricopa County Ex. 30.

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26 ² For example, current vote totals indicate that U.S. Senator-elect Mark Kelly bested incumbent
27 Martha McSally by more than 80,000 votes. *See Featured Races*, Ariz. Sec’y of State,
28 <https://results.arizona.vote/#/featured/18/0> (last visited Nov. 10, 2020).

1 Accordingly, Plaintiffs have fallen far short of “clearly alleging” a redressable injury
2 needed to confer standing. Because a complete victory in this lawsuit would not redress Plaintiffs’
3 alleged grievances, they lack standing to bring their claims, and their Complaint should be
4 dismissed. At the very least, the “Trump Campaign—which “is the principal campaign committee
5 of President Donald J. Trump,” *id.* ¶ 7, and represents no other candidate—lacks standing to assert
6 these claims and their Complaint should be dismissed.

7 **II. Plaintiffs’ claims are barred by laches.**

8 Even if Plaintiffs had standing, the equitable doctrine of laches bars their claims. Laches
9 prevents a lawsuit from proceeding when plaintiffs’ delay in filing suit is unreasonable and
10 prejudices other parties. *Sotomayor v. Burns*, 199 Ariz. 81, 82–83 (2000). In considering whether
11 laches bars a late lawsuit, courts (1) “examine the justification for delay, including the extent of
12 plaintiff’s advance knowledge of the basis for challenge”; (2) analyze “whether the delay by the
13 challenging party was unreasonable”; and (3) consider whether “the delay resulted in actual
14 prejudice to the adverse parties.” *Harris v. Purcell*, 193 Ariz. 409, 412 (1998) (citing *Mathieu v.*
15 *Mahoney*, 174 Ariz. 456, 459 (1993)). Arizona courts consider not only the prejudice the plaintiffs’
16 delay causes to other parties, but also whether the delay “places an unreasonable burden on the
17 court.” *Id.* Timeliness is particularly critical in lawsuits challenging the electoral process. “In
18 election matters, time is of the essence” because the results of election litigation can affect other
19 deadlines. *Id.* As the Supreme Court of Arizona has recognized, “[t]o wait until the last moment
20 places the court in a position of having to steamroll through the delicate legal issues in order to
21 meet” election deadlines. *Mathieu*, 174 Ariz. at 459.

22 Despite this urgency, Plaintiffs waited *nearly a full week* to file a lawsuit seeking
23 extraordinary injunctive and mandamus relief. This unreasonable and unexplained delay, if their
24 requested relief were granted, would prejudice diligent election officials who—on top of their
25 regular duties—would have to identify apparent overvotes or ballots with “other putative defects
26 or irregularities” out of *millions* cast; provide these for review, adjudication, and duplication by
27 the Ballot Duplication Board; and then tabulate and canvass all the adjudicated votes. Compl. 15–
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1 16. This undertaking would have to occur while election officials are facing looming deadlines of
2 their own. Importantly, officials must verify all provisional ballots by November 13—this Friday.
3 A.R.S. § 16-135(D). They must then finish canvassing all returns from the general election no later
4 than November 23, which is less than two weeks away. A.R.S. § 16-642(A).

5 These imminent deadlines, combined with Plaintiffs’ unreasonable and inexplicable delay,
6 will prejudice officials who are working tirelessly to ensure that every ballot is properly verified,
7 every valid vote is tabulated, and all other processes that take place prior to the canvass are
8 completed within specific statutory timeframes. Plaintiffs’ requested remedies will also prejudice
9 this Court, which would have to “wait until the last moment” to “steamroll through the delicate
10 legal issues” so that election officials can meet these statutory deadlines. *Mathieu*, 174 Ariz. at 459
11 (quoting *Fidanque*, 297 Or. at 718).

12 There was nothing preventing Plaintiffs from filing this action on or immediately after
13 Election Day, which *might* have permitted timely adjudication of their claims and implementation
14 of their requested relief. The voters who allegedly tried to insert their ballots into the tabulator and
15 received notification of an overvote or undervote did so only on Election Day. *See, e.g.*, Swoboda
16 Decl. ¶ 6; Barcello Decl. ¶ 3; Larsen Decl. ¶ 3; Willoughby Decl. ¶ 3. Although these voters could
17 have secured immediate redress at their respective polling places, none of them sought any
18 remedies—administrative or judicial—until Plaintiffs filed this suit, after the tabulation of results
19 of the election were well underway. Plaintiffs’ inexcusable delay is all the more glaring given that
20 another set of plaintiffs filed an almost identical action the day after Election Day. *See Aguilera v.*
21 *Fontes*, Case No. 2020-014083 (Maricopa Cnty. Super. Ct. Nov. 4, 2020). Needless to say, such
22 gamesmanship does not constitute a compelling “justification for delay.” *Harris*, 193 Ariz. at 412.

23 In sum, Plaintiffs’ unacceptably delayed lawsuit presents has already created—and would
24 certainly lead to more—prejudice for Defendants and elected officials. It is therefore barred by
25 laches, and this Court should dismiss the Complaint.

26 **III. Courts across the country have dismissed similar lawsuits by these Plaintiffs.**

27 In considering Plaintiffs’ claims, this Court need not—and should not—close its eyes to
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1 the fact that Plaintiffs have filed similarly meritless lawsuits in multiple state and federal courts
2 and have thus far been denied relief in every forum. *See Donald J. Trump for President, Inc. v.*
3 *Benson*, No. 20-000225-MZ, slip op. at 3–5 (Mich. Ct. Cl. Nov. 6, 2020) (denying Trump
4 Campaign’s emergency motion to cease all counting and processing of absentee ballots and noting
5 that plaintiffs provided no admissible evidence supporting their claims); *Donald J. Trump for*
6 *President, Inc. v. Phila. Cnty. Bd. of Elections*, Civ. No. 20-5533, slip op. at 1 (E.D. Pa. Nov. 5,
7 2020), ECF No. 5 (denying Trump Campaign’s emergency motion to stop Philadelphia County
8 Board of Elections from counting ballots); *In re Enf’t of Election Laws & Securing Ballots Cast*
9 *or Received After 7:00 P.M. on Nov. 3, 2020*, No. SPCV2000982-J3, slip op. at 1 (Ga. Super. Ct.
10 Nov. 5, 2020) (denying Trump Campaign’s petition to segregate certain ballots and noting that
11 “there is no evidence the ballots referenced in the petition [were invalid]” and “there is no evidence
12 that the Chatham County Board of Elections or the Chatham County Board of Registrars has failed
13 to comply with the law”); *Kraus v. Cegavske*, No. 20 OC 00142 1B, slip op. at 9 (Nev. Dist. Ct.
14 Oct. 29, 2020) (finding Trump Campaign’s claims regarding poll watching and signature matching
15 without merit and explaining that “[t]here is no evidence that any vote that should lawfully not be
16 counted has been or will be counted” and “[t]here is no evidence that any election worker did
17 anything outside of the law, policy, or procedures”), *aff’d*, No. 82018, slip op. at 2–3 (Nev. Nov.
18 3, 2020) (“[Appellants’] request for relief to this court is not supported by affidavit or record
19 materials supporting many of the factual statements made therein.”); *see also Stokke v. Cegavske*,
20 No. 2:20-cv-02046-APG-DJA (D. Nev. Nov. 6, 2020), ECF No. 27 (denying plaintiffs’ motion for
21 preliminary injunction and temporary restraining order to halt ballot counting in Clark County,
22 Nevada); *Stoddard v. City Election Comm’n*, No. 20-014604-CZ, slip op. at 2–3 (Mich. Cir. Ct.
23 Nov. 6, 2020) (denying Election Integrity Fund’s motion for preliminary injunction to prohibit
24 Detroit from certifying results and explaining that “[b]oth Republican and Democratic inspectors
25 were present [for the counting of absentee ballots]” and “plaintiffs do not offer any affidavits or
26 specific eyewitness evidence to substantiate their assertions”).

27 This lawsuit is yet one more attempt by the President’s unsuccessful reelection campaign
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1 to alter the results of a properly administered general election—or, at the very least, to cast doubt
2 on the integrity of the election and the veracity of the results. But once again, Plaintiffs’ claims are
3 unmoored from both law and fact, with allegations strung together by rank speculation and
4 selective generalization. This Court should follow the lead of its sister jurisdictions across the
5 country and dismiss this case.

6 **CONCLUSION**

7 For the reasons stated above, Plaintiffs’ Complaint should be dismissed.
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2 DATED this 10th day of November, 2020
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**Pro hac vice application to be filed*

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