

Multiple Documents

Part	Description
1	Main Document
2	Exhibit Defendant's Exhibits to Reply

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

14 Arizona Alliance for Retired Americans, *et*
15 *al.*

16 Plaintiffs,

17 v.

18 Katie Hobbs, in her official capacity as
19 Secretary of State for the State of Arizona,
20 *et al.*

21 Defendants.

No. 2:22-CV-01374-GMS

REPLY ISO MOTION FOR STAY

22
23
24 Defendant Mark Brnovich, in his official capacity as Attorney General for the State
25 of Arizona (the “AG”), and Intervenor-Defendant Yuma County Republican Committee
26 (the “YCRC”) (collectively “Defendants”) reply in response to the Secretary of State Katie
27 Hobbs’ (the “Secretary’s”) *Response to the Emergency Motion for a Stay*, couched as a
28 “Notice” that asserts this Court’s September 26th Order “does not enjoin Arizona’s existing

1 voter registration list maintenance procedures[.]” Doc. 92 at 2. Not only does that misstate
2 the plain language of this Court’s Order, it misstates the facts.

3 This Court was remarkably clear, the current practices and procedures *have* been
4 unmistakably called into question:

5 Defendants assert that the Cancellation and Removal Provisions merely
6 codify existing procedures, so enjoining them would “call into question
7 decades old laws and procedures that cancel duplicate voter registrations.”
8 (Doc. 70 at 23.) ***However, if the State’s decades old laws and procedures
9 are preempted, calling them into question does not cut against the public
10 interest.*** “[T]he right to vote is sacrosanct and preservative of all other
11 rights,” so it is clearly in the public interest that Arizona’s election
12 procedures comply with the NVRA and constitutional due process. *Ariz.
13 Democratic Party v. Ariz. Republican Party*, No. CV-16-03752-PHX-JJT,
14 2016 WL 8669978, at *13 (D. Ariz. Nov. 4, 2016). And where “a case
concerns a statewide election” and “threatens to interfere with [the] ability to
vote . . . the Ninth Circuit has made clear this implicates the public interest
in a particularly acute way.” *Shelley*, 344 F.3d at 919; *Short v. Brown*, No.
218CV00421TLNKJN, 2018 WL 1941762, at *6 (E.D. Cal. Apr. 25, 2018),
aff’d, 893 F.3d 671 (9th Cir. 2018).

15 Doc. 87 at 21-22 (emphasis added). Despite this clear language, the Secretary has proffered
16 an interpretation of statutes and procedures that ignores what this Court plainly stated.
17 Instead, she boldly asserted “that the PI Order provides certainty that no new procedures
18 are required for the upcoming election[.]” Doc. 92 at 2.

19 Not only has she overstepped her role,¹ the Secretary’s flawed “interpretation” of
20 the plain language of this Court’s Order starkly contrasts with AG’s interpretation that this
21 Court intended to call into question the existing procedures. This disagreement exemplifies
22 the confusion caused by last-minute orders proscribing the conduct of election

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24 ¹ Although the Secretary, for purposes of complying with the National Voter Registration
25 Act, is considered Arizona’s Chief Election Officer (A.R.S. § 16-142(A)(1)), the Attorney
26 General is the Chief Legal Officer (A.R.S. § 41-192(A)). As such, the Attorney General,
27 not the Secretary, may issue binding legal opinions. See A.R.S. § 41-193(A)(7). Moreover,
28 statutory interpretation falls under the purview of the courts—not the Secretary. *Leibsohn
v. Hobbs*, No. CV-22-0204-AP/EL, 2022 WL 4352090, at ¶ 22 (Ariz. Sept. 20, 2022)
(rejecting the Secretary’s interpretation of a statute in the election procedures manual that
“contradict[ed] statutory requirements” and emphasizing that it is the “Court’s role, not the
Secretary’s, to interpret [the] meaning” of election laws).

1 administrators. Courts have made it clear that “as we rapidly approach the election, the
2 public interest is well served by preserving Arizona’s existing election laws, rather than by
3 sending the State scrambling to implement and to administer a new procedure. . .at the
4 eleventh hour. Indeed, the Supreme Court ‘has repeatedly emphasized that lower federal
5 courts should ordinarily not alter the election rules on the eve of an election.’” *Arizona*
6 *Democratic Party v. Hobbs*, 976 F.3d 1081, 1086 (9th Cir. 2020) (citations omitted). Yet
7 the September 26th Order did just that. There is now a fundamental disagreement as to the
8 interpretation of the Court’s Order, which will directly impact the administration of an
9 already on-going General Election.

10 Furthermore, based on information and belief, while the Secretary has asserted that
11 “no new procedures are required[,]” she held meeting on or around 4:00pm on September
12 29, 2022, with county recorders that reportedly stated otherwise.² As far as Defendants
13 understand:

- 14 - The Secretary plans issue *new* guidance following this Court’s Order to clarify the
15 procedures;
- 16 - The guidance will be based off of the 2014 Elections Procedures Manual (“EPM”);³
- 17 - The statewide Arizona Voter Information Database (“AVID”) is not equipped to
18 allow duplicate registrations between counties;
- 19 - The Secretary interprets the way AVID works as to simply “merge” old and new
20 registrations in the new county and not “cancel” the old registration, therefore the

21 ² Although the Defendants are pursuing a declaration from one of the call participants as to
22 the oral statements made, because time was of the essence to make this filing, Defendants
23 filed in advance of a written declaration. Regardless, Defendants were able to obtain a
24 contemporaneous email sent between county recorders (Ex. 1) as well as an email from the
25 Secretary of State’s Elections Director Kori Lorick, outlining the Secretary’s position that
the current procedures are not enjoined, not because they aren’t preempted by the NVRA,
but because the Court failed to enjoin the existing procedures (Ex. 2). In fact, Lorick
admitted this Court *did* “raise some questions on the appropriateness of existing voter
registration procedures[.]” Ex. 2 at DEF-007.

26 ³ Notably, this court and the Arizona Supreme Court has deemed the 2014 EPM as
27 superseded by the 2019 EPM; further, by the Secretary’s own admission, “she has no
28 currently available means of binding the counties” to enforce the 2014 procedures. Doc.
87 at 11 (quoting Doc. 73 at 9-10). *See also Leibsohn*, 2022 WL 4352090 at n.3 (Ariz.
Sept. 20, 2022) (identifying the 2019 EPM as being effect as no 2021 EPM was approved).

1 existing system does not give rise to possible conflicts with, and is not pre-empted
2 by, the NVRA. Doc. 73 at 4-5 (describing merging process); Trans. at 56:5-15.

3 The foregoing information is internally inconsistent and undermines the Secretary's
4 "Notice." On one hand, if there are no new procedures required, there would be no need
5 for the Secretary to issue any guidance. But if the Secretary issues new guidance
6 (a) directing county recorders to wait to "cancel" a voter's prior voter registration until
7 after (b) the voter receives a notice and (c) confirms in writing that his or her re-registration
8 form at a new address is in fact a request to cancel their old registration—this guidance
9 will do more harm than the Cancellation Provision ever could. Namely, the system's
10 inability to accommodate two registrations means that a voter who thought he or she had
11 re-registered at his new address just before the registration deadline expired, will not be
12 able to vote that that new address because of this new notice and waiting period.

13 On the other hand, if the Secretary's existing procedures remain unchanged, then
14 the Order fails to provide the relief requested by Plaintiffs. Namely, as AVID cannot have
15 two duplicative active voter registrations at once,⁴ counties will necessarily continue to
16 *cancel* outdated registrations, even if the Secretary describes it as *merging* records.

17 Clearly, this Court's Order has injected even more confusion as to the state of the
18 existing laws.⁵ This is precisely the harm to the public interest for which the *Purcell*
19 doctrine intended to ameliorate. Simply, "federal district courts ordinarily should not

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21 ⁴ Plaintiffs have been unmistakable in the relief sought is to require Arizona to allow voters
22 to be actively registered to vote in more than one county, as they wrongly assert "it is
perfectly legal... to be registered to vote in more than one jurisdiction." Doc. 31 at 4; *see*
A.R.S. § 16-101(B)(one residence rule).

23 ⁵ In addition to 16-168(J) and the procedures outlined in the 2019 EPM, other provisions
24 of long-standing Arizona law have similarly been called into question. *See, e.g.*, A.R.S.
25 §§ 16-164(A) ("On receipt of a new registration form that effects a change of precinct,
political party, address or name, the county recorder shall indicate electronically in the
26 county voter registration database that the registration has been canceled and the date and
reason for cancellation."); 16-166(B) ("If the elector provides the county recorder with a
27 new registration form or otherwise revises the elector's information, the county recorder
shall change the general register to reflect the changes indicated on the new registration. If
28 the elector indicates a new residence address outside that county, the county recorder shall
forward the voter registration form or revised information to the county recorder of the
county in which the elector's address is located.")

1 enjoin state election laws in the period close to an election.” *Merrill v. Milligan*, 142 S.Ct.
2 879 (2022) (Mem.) (Kavanaugh, J., concurring) (citing *Purcell v. Gonzalez*, 549 U.S. 1
3 (2006) (per curium)); *Moore v. Harper*, 142 S.Ct. 1089, 1089 (2022) (Mem.) (Kavanaugh,
4 J., concurring); *Republican Nat’l Comm. v. Dem. Nat’l Comm.*, 140 S.Ct. 1205, 1206-77
5 (2020) (per curium); *Yazzie v. Hobbs*, 977 F.3d 964, 968-69 (9th Cir. 2020) (dismissing
6 “last-minute challenge to decades-old rule” under the *Purcell* doctrine); *Mi Familia Vota*
7 *v. Hobbs*, 977 F.3d 948, 953 (9th Cir. 2020) (relying on *Purcell* doctrine as a “factor
8 supporting government’s likelihood of success on the merits”).

9 Finally, as to the Felony Provision, as this Court pointed out, the AG cannot bind
10 the future AG—but neither will this Court’s *temporary, preliminary injunction*. Doc. 87
11 at 6 n.1. In fact, both the current AG’s tenure and the preliminary injunction likely have
12 the *same* lifespan. *Id.* at 7 (noting the current AG will remain in office for approximately
13 “three more months”). Accordingly, staying the Order will not result in an imminent threat
14 to the Plaintiffs, as the AG’s interpretation of the Felony Provision of SB 1260 does not
15 implicate criminal culpability in the Plaintiffs’ intended course of conduct (voter outreach
16 and registration activities). *Id.* at 5-6.

17 For the foregoing reasons, the Defendants respectfully urge this Court to stay the
18 September 26th Order enjoining the Cancellation and Felony Provisions of SB 1260
19 pending appeal. Absent a stay, Defendants respectfully request this court conduct a hearing
20 as soon as possible (including this afternoon) to resolve the apparent discrepancies between
21 the Secretary’s assertions to this Court and her various statements made to county
22 recorders. Specifically, the record must provide sufficient facts to determine whether the
23 Secretary’s planned course of conduct will run afoul of this Court’s Order and/or is
24 preempted by the NVRA so that the appropriate appeals may be heard, notwithstanding the
25 Secretary’s averment to this Court. Simply, the Court took issue with *how* Arizona has
26 administering voter registration for decades. But, the Secretary of State is unilaterally
27 ignoring the Order’s reality and impact on an orderly administration of the General Election
28 in the State of Arizona.

1 RESPECTFULLY SUMMITTED this 30th day of September, 2022.

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CERTIFICATE OF SERVICE

1 I certify that, on September 30, 2022, I electronically transmitted the attached
2 document to the Clerk's Office using the CM/ECF System for filing, which automatically
3 sends a Notice of Electronic Filing to all counsel of record.
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