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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

REPUBLICAN NATIONAL COMMITTEE, et al., Plaintiffs, v. STEPHEN RICHER, et al., Defendants, and ADP and DSCC, Intervenor-Defendants.	No. CV2022-013185 **INTERVENOR-DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT** (Assigned to the Honorable Katherine Cooper)

INTRODUCTION

This case challenges Maricopa County's procedures for hiring and supervising election workers in an election that occurred two weeks ago, for which all ballots have already been counted. Plaintiffs initiated this action barely a month before election day, and never filed a motion for emergency relief after filing the operative Amended Complaint.

Plaintiffs originally alleged that Defendants were going to violate Arizona's "Equal Access Statutes," which require parity between political parties on certain election boards, but they were soon forced to admit that Defendants had in fact achieved parity in their hiring. *See* Am. Compl. ¶ 7. Plaintiffs have now amended their Complaint to make a similar allegation about the election workers engaged in any recount. *See id.* ¶ 8. But Plaintiffs do not allege facts showing any statutory violation. The statute governing election workers who hand-count ballots during audits and recounts does not require absolute parity or even the participation of Republican election workers—it requires only that no more than 75% of the workers be members of a single political party. *See* A.R.S. § 16-602(B)(7). And if that requirement cannot be met, the statute provides the consequence: the hand count audit is cancelled. *See id.* Plaintiffs allege nothing suggesting that Defendants will violate these modest requirements. The Court should accordingly dismiss Plaintiffs' Amended Complaint for failure to state a claim.

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Separately, Plaintiffs' claims are barred by laches. They waited far too long to sue, even though the factual basis for even their latest allegations has been available to them for months, and they still do not seek emergency relief on their operative Amended Complaint, regarding an election that is very nearly over.

Finally, Plaintiffs lack a viable cause of action. They invoke mandamus and the Uniform Declaratory Judgments Act. But mandamus will only compel performance of a clear statutory duty; it will not prohibit actions or control the exercise of official discretion. Plaintiffs do not identify any clear statutory duty that they seek to compel. And the Uniform Declaratory Judgments Act requires a present legal controversy under the facts as they exist today, but Plaintiffs rely on speculative allegations about a hypothetical state of affairs

under a future recount.

For all of these reasons, the Court should dismiss Plaintiffs' Amended Complaint in its entirety.

BACKGROUND

Plaintiffs filed this lawsuit just a month before the 2022 general election, alleging that Defendants—Maricopa County election officials—were on the verge of violating the Equal Access Statutes, a set of laws governing the composition of elections boards, by appointing fewer Republicans than Democrats to those boards. *See generally* Verified Special Action Compl. (Oct. 5, 2022). Plaintiffs based their allegations largely on the composition of elections boards during the August 2 primary, which Plaintiffs alleged included a disproportionate number of Democrats. *Id.* ¶¶ 18–22. Plaintiffs alleged that this disparity resulted from Defendants' imposing demanding hours requirements and working conditions on election workers, which Plaintiffs alleged meant that Republicans were unwilling to participate. *Id.* ¶¶ 27–37. The Arizona Democratic Party and the DSCC moved to intervene as defendants on October 10, and the Court granted that motion at a status conference on October 21.

The Court's docket reflects that Plaintiffs filed the operative Amended Complaint on October 21, the same day as the status conference. *See* First Am. Compl. The Amended Complaint abandons Plaintiffs' allegations that Defendants were on the verge of violating the Equal Access Statutes' parity requirements during the general election itself. *See id.* ¶ 7. Instead, the Amended Complaint focuses on the election workers Defendants will appoint in the event of a recount, arguing that Defendants may not impose day and hour requirements on those workers. *Id.* ¶¶ 8–9. And while election day has now come and gone and the time for any recount is fast-approaching, Plaintiffs still have not filed any application for emergency relief with respect to the Amended Complaint.

LEGAL STANDARD

Dismissal for failure to state a claim is appropriate where "as a matter of law [] plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of

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proof." *Coleman v. City of Mesa*, 230 Ariz. 352, 356 ¶ 8 (2012) (quoting *Fid. Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224 ¶ 4 (1998)). "[C]ourts must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts, but mere conclusory statements are insufficient." *Id.* at 356 ¶ 9, 284 P.3d at 667. In addition to the complaint's allegations, courts may consider "public records regarding matters referenced in a complaint" when adjudicating a motion to dismiss under Arizona Rule of Civil Procedure 12(b)(6). *Id.*

ARGUMENT

The Amended Complaint fails to state a claim upon which relief can be granted because it does not allege a statutory violation, because Plaintiffs' claims are barred by laches, and because Plaintiffs improperly seek mandamus relief without showing a clear statutory duty and seek a declaratory judgment based on a speculative dispute.

I. Plaintiffs do not allege a statutory violation.

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The Amended Complaint fails at the threshold because it does not allege a statutory violation. Plaintiffs say they base their claims on "parity" requirements in the "Equal Access Statutes," which require certain election boards be composed of equal numbers of the two largest political parties. *See* A.R.S. §§ 16-531(A), -551(A), -621(B)(2). But as Plaintiffs now admit, Defendants are complying with those parity requirements. Am. Compl. ¶ 7 (alleging that the county has "now come into compliance with the law requiring parity in the general labor pool for board workers"). Plaintiffs allege that there was a lack of parity during the primary, but they seek only prospective relief and do not allege any lack of parity now. *See id.* pp. 16–17 (demand for relief).

Moreover, with all Maricopa County ballots already tabulated[1] and no motion for emergency relief pending, Plaintiffs' claims now focus on the prospect of a hand count audit following a recount. *See* Am. Compl. ¶¶ 8, 19(d), 43, 46–47. But the statute governing such audits does not require parity in any event. It does not even require that Republicans be

[1] *See* Maricopa Cnty. Elections Dep't, *Maricopa County Elections Results Updated* (Nov. 21, 2022), https://elections.maricopa.gov/news-and-information/elections-news/maricopa-county-election-results-updated-november-21-2022.html.

included. Rather, for the election boards involved in hand count audits, including after a recount, Arizona law demands only that "not more than seventy-five percent of the persons performing the hand count shall be from the same political party." A.R.S. § 16-602(B)(7); *see also id.* § 16-663(B) (providing that § 16-602 applies to hand count audits during a recount); Ariz. Sec'y of State, Election Procedures Manual 234 (2019 ed.) ("EPM")(in a hand-count audit following a recount, "[t]he same procedures for a precinct hand count shall be followed" except for a larger initial sample of precincts)[2] The statute places the burden of meeting even that requirement on the political parties, not on Defendants, providing that "[t]he county chairman of each political party shall designate and provide the number of election board members as designated by the county officer in charge of elections who shall perform the hand count under the supervision of the county officer in charge of elections." A.R.S. § 16-602(B)(7).

Specifically, "[f]or each precinct that is to be audited, the county chairmen shall designate at least two board workers who are registered members of any or no political party to assist with the audit." *Id.* If there are insufficient persons available after such designation, then election officials, "with the approval of at least two county party chairpersons in the county in which the shortfall occurs, shall substitute additional individual electors who are provided by any political party from anywhere in the state without regard to party designation to conduct the hand count," with party chairpersons having approval rights only over members of their own party. *Id.* (emphasis added). "For the hand count to proceed, not more than seventy-five percent of the persons performing the hand count shall be from the same political party." *Id.*

Plaintiffs allege no facts to show that Defendants will violate these requirements. Even in the primary election, Defendants allege that the Central Counting Place Boards (which they say include boards involved in the hand count audit, Am. Compl. ¶¶ 43, 47) was composed of 28 percent Republican workers and 47 percent Democratic workers, *id.*

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[2] Available at https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf.

¶ 26, far below the 75 percent limit for members of a single political party, A.R.S. § 16-602(B)(7). Plaintiffs allege that Republicans are actively "recruit[ing] members to the Central Counting Place Boards," Am. Compl. ¶ 48, and that the County has also "already begun such efforts," *id.* ¶ 57. Nowhere do Plaintiffs allege any basis for concluding that they and the County will not be able to recruit enough non-Democrats to staff the boards with less than 75 percent Democrats, in a county where there are more registered Republicans than registered Democrats. *Id.* ¶ 27. And even were that to happen, the statute provides the consequence: the hand count will not proceed, and the electronic count will be the final count. A.R.S. § 16-602(B)(7). To allege a violation of the statute governing the composition of hand count boards, Plaintiffs would need to allege some reason to conclude that Defendants will not follow that rule, and they provide none.

Rather than allege a lack of parity, Plaintiffs focus primarily on Defendants' imposing days and hours requirements on election workers, including those Plaintiffs appoint. *See, e.g.*, Am. Compl. ¶¶ 7–9, 20, 36–37, 52–55. Plaintiffs admit that they *do not know* whether Defendants will impose such requirements on boards involved in recounts—the only live area of dispute—much less what the requirements will be. *Id.* ¶ 52. But even assuming that Defendants impose such requirements, they would not violate any statute. Arizona law expressly authorizes Defendants to "prohibit persons from participating in the hand count if they are taking actions to disrupt the count or are *unable to perform the duties as assigned*." A.R.S. § 16-602(B)(7) (emphasis added); *see also id.* § 16-621(A) ("All proceedings at the counting center shall be under the direction of the board of supervisors or other officer in charge of elections and shall be conducted in accordance with the approved instructions and procedures manual issued pursuant to § 16-452 under the observation of representatives of each political party and the public."); EPM at 195 ("Central counting place operations are conducted under the direction of the Board of Supervisors or the officer in charge of elections."). These provisions directly contradict Plaintiffs' conclusory allegation that "Defendants have no authority to impose any requirements on the Republican Party's direct board appointees." Am. Compl. ¶ 37.

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Plaintiffs therefore fail to allege any violation of the Equal Access Statutes, because they admit that Defendants are currently complying with those statutes, they provide no basis to conclude that Defendants will violate the relatively loose parity requirements applicable to hand count audits during any recount, and the governing statutes and the EPM directly contradict their allegation that Defendants cannot impose requirements on Plaintiffs' appointees.

II. Plaintiffs' claims are barred by laches.

The Court should also dismiss Plaintiffs' Amended Complaint under the doctrine of laches. Laches will "bar a claim when the delay [in filing suit] is unreasonable and results in prejudice to the opposing party." *League of Ariz. Cities & Towns v. Martin*, 219 Ariz. 556, 558 ¶ 6 (2009) (quoting *Sotomayor v. Burns*, 199 Ariz. 81, 83 ¶ 6 (2000)). Here, Plaintiffs waited as long as possible—months after they were aware of the election procedures in question from the August 2 primary—to initiate this lawsuit and then to amend their complaint to address the possibility of a recount, even though none of Plaintiffs' allegations depend on any facts they could not have known months ago. Because Plaintiffs delayed excessively and unreasonably before filing this lawsuit, with prejudice to Defendants and the Court, laches is appropriate. *See Mathieu v. Mahoney*, 174 Ariz. 456, 461 (1993) ("Last-minute election challenges, which could have been avoided, prejudice not only defendants but the entire system"). Courts regularly apply laches at the motion to dismiss stage. *See, e.g., McComb v. Super. Ct. In & For Cnty. of Maricopa*, 189 Ariz. 518, 524, 943 P.2d 878, 884 (App. 1997).

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A. Plaintiffs unreasonably delayed filing their lawsuit.

When determining whether a delay was unreasonable for the purposes of laches, courts "examine the justification for delay, including the extent of plaintiff's advance knowledge of the basis for challenge." *Harris v. Purcell*, 193 Ariz. 409, 412 (1998). The plaintiff's "diligence in preparing and advancing his case" is key. *Id*. at 413.

Plaintiffs "have an affirmative duty to bring their challenges as early as practicable." *Mathieu*, 174 Ariz. at 460. Plaintiffs have not done so here under any interpretation of when

they had "knowledge of the basis for [their] challenge." In *Mathieu*, the Arizona Supreme Court held that laches barred an action filed on September 15 challenging a ballot initiative that had become public two months earlier ahead of election day on November 3. *Id.* at 456. "[A]t minimum," the Court explained, the complaint was barred because it was filed more than a month after the date when "the Proposition was certain to be placed on the ballot," when the Secretary of State certified the question. *Id*. at 459. In similar cases, courts do not hesitate to use Arizona's laches doctrine to bar late-filed election challenges. *See Sotomayor v. Burns*, 199 Ariz. at 82 (holding that laches barred claim filed several months after ballot measure was publicized and the day before ballot printing); *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920 (D. Ariz. 2016) (barring challenge to election procedures brought months after the public received notice of those procedures and three weeks before relevant deadline).

Plaintiffs' claims are based entirely on factual information that has been available to Plaintiffs for months. Their concerns about the partisan composition of Maricopa County's election boards appear to have been sparked by Arizona's primary elections. *See* Am. Compl. ¶¶ 21–30. Those elections took place on August 2, over two months before Plaintiffs filed their first complaint on October 4, and Defendants were required to hire election workers even before that. *See* A.R.S. § 16-531 (requiring Defendants to hire election workers from lists provided by political parties "not less than twenty days before a general or primary election"). Yet Plaintiffs waited more than a month after those elections before seeking any additional information about alleged hiring disparities, and two months before filing suit, barely a month before the November 8 general election.

Plaintiffs' reliance on a September 16 email from Maricopa County does not justify their delay because they impermissibly delayed the public records request that gave rise to it. As Plaintiffs admit, they did not make this request until September 9, over a month after the primary election and six weeks after the July 13 deadline for hiring election workers. Moreover, the information obtained in response to the records request may not have been necessary for filing in the first place. *See Ariz. Pub. Integrity All. Inc. v. Bennett*, No. CV-

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14-01044-PHX-NVW, 2014 WL 3715130, at *2 (D. Ariz. June 23, 2014) (holding that plaintiffs' decision to wait for official documentation before filing an election case did not excuse delay where plaintiffs "could have attested in sworn affidavits" to the information forming the basis for their lawsuit). After all, that information goes only to a lack of parity during the primary election, yet Plaintiffs persist in pressing their claims even though they admit in the Amended Complaint that the county achieved parity during the general election. *See* Am. Compl. ¶ 7.

Plaintiffs now focus on the procedures they fear will be used during a recount, but they still do not know anything about the procedures that will be used. They allege based "[u]pon information and belief" that the County "has not yet decided its day and hour requirements" for a recount, *id.* ¶ 52, and they base their allegations on what a recount will involve on a statute enacted in May 2022 and on the burden involved in the "last statewide recount, . . . in 2010," *id.* ¶¶ 45, 51. The factual basis for Plaintiffs' Amended Complaint was therefore available to them months ago, and there is no justification for Plaintiffs' delay in filing suit.

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B. Plaintiffs' excessive delay impairs the county, intervenors, and the Court.

In addition to being unreasonable, a plaintiff's delay "must also result in prejudice, either to the opposing party or to the administration of justice" for its claim to be barred by laches. *League of Ariz. Cities,* 219 Ariz. at 558 ¶ 6. Delay is usually prejudicial if it has "deprive[d] judges of the ability to fairly and reasonably process and consider the issues." *McLaughlin v. Bennett*, 225 Ariz. 351, 353 ¶ 6 (2010) (quoting *Mathieu*, 174 Ariz. at 461). In election cases, courts consider prejudice to the "entire system" of election administration. *Mathieu*, 174 Ariz. at 461. That includes prejudice "to the courts, candidates, citizens who signed petitions, election officials, and voters." *Libertarian Party*¸ 189 F. Supp. 3d at 923. Ultimately "[t]he real prejudice caused by delay in election cases is to the quality of decision making in matters of great public importance." *See Sotomayor*, 199 Ariz. at 83 ¶ 9.

Prejudice abounds from Plaintiffs' unreasonable delay in this case. Plaintiffs filed

suit only a month before election day. They subsequently filed an Application for Order to Show Cause on October 13 to expedite proceedings and attempt to resolve this case before the election. By then, early voting in Arizona had already begun and the election was well underway. Granting the relief sought—some combination of hiring additional workers and modifying the County's procedures for recruiting, hiring, training, and assigning election workers—would therefore have been impossible without severely impairing Maricopa County's election administration as well as the rights of candidates, voters, and parties. And while Plaintiffs have now dropped their demand for relief in time for the election itself, their demand for relief in time for a recount is equally prejudicial. Plaintiffs amended their complaint to add recount-related claims on October 20, two weeks before the general election. These additions concern two types of recounts: a "pre-canvass hand audit" and a "post-canvass automatic recount." Am. Compl. ¶¶ 43–44. The former was already imminent when Plaintiffs amended their complaint: political parties are required to designate the necessary election workers by the Tuesday before election day, November 1, just 12 days after Plaintiffs filed their amended complaint. A.R.S. § 16-602(b)(7). Counties must then complete the pre-canvass audit by November 28, the deadline for the county canvass. *Id.* § 16-642(A). That deadline is now just six days away, yet Plaintiffs *still* have not sought emergency relief. Any such relief would now disrupt an audit process that is well underway.

As for any post-canvass recount, it will occur shortly after the Secretary of State's statewide canvass on December 5, less than two weeks from today. *See Id.* §§ 16-648(A), -662, -663. The possibility of such a recount has been evident since at least May, when the threshold for such a recount was amended. Am. Compl. ¶ 45. Yet Plaintiffs waited until late October to raise the issue in their Amended Complaint, and they have not yet filed any emergency motion regarding such a recount. Plaintiffs themselves allege that Defendants are already recruiting election workers for any recount. *Id.* ¶¶ 56–57. Yet the relief they seek would disrupt those efforts at the last minute.

Plaintiffs' delay also imposes unreasonable demands on this court. Lawsuits filed so

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shortly before an election "deprive judges of the ability to fairly and reasonably process and consider the issues . . . leaving little time for reflection and wise decision making." *Mathieu*, 174 Ariz. at 461 (discussing a general election lawsuit filed in mid-September). Granting relief in time for a pre-canvass audit is now all but impossible, and granting relief for a post-canvass recount would require extraordinarily expedited briefing and an extraordinarily expedited decision from the Court, all due entirely to Plaintiffs' unjustified delay in seeking relief and the fact that they still have not filed any emergency motion Plaintiffs' behavior here demonstrates how "[u]nreasonable delay can [ ] prejudice the administration of justice by compelling the court to 'steamroll through . . . delicate legal issues'" *Lubin v. Thomas*, 213 Ariz. 496, 497 (2006).

Some disruption and emergency litigation is an "inevitable" consequence of election litigation. *Mathieu*, 174 Ariz. at 461. What matters for purposes of laches is "a party's failure to diligently prosecute" their case. *Lubin*, 213 Ariz. at 498 ¶ 11. Plaintiffs here have not diligently prosecuted any part of their complaint. Instead, they have strategically delayed time and again and pushed any request for relief to the last possible moment. As a result, their claim is barred by laches.

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III. Plaintiffs have no cause of action.

Finally, Plaintiffs also have no viable cause of action. They rely on mandamus and the Uniform Declaratory Judgments Act, but neither provides them with a cause of action under these circumstances.

A. Mandamus is inappropriate because there is no clear statutory duty.

Plaintiffs' claims do not meet the requirements for mandamus. Mandamus relief is available only "to compel a public officer to perform an act which the law specifically imposes as a duty." *Sears v. Hull*, 192 Ariz. 65, 68 ¶ 11 (1998) (quoting *Bd. of Ed. v. Scottsdale Ed. Ass'n*, 109 Ariz. 342, 344 (1973)). It "will lie only 'to require public officers to perform their official duties when they refuse to act,' and not 'to restrain a public official from doing an act.'" *Id.* (quoting *Smoker v. Bolin*, 85 Ariz. 171, 173 (1958)). And "a

mandamus action cannot be used to compel a government employee to perform a function in a particular way if the official is granted any discretion about how to perform it." *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 465 ¶ 12 (2007). All these requirements apply fully to suits under Arizona's special action rules, which "must also meet the general requirements for mandamus." *Id.* at 464 ¶ 9.

Plaintiffs ground their mandamus demand on the allegation that "[t]he County is threatening to proceed unlawfully by putting in place policies for the Hand Count Boards for which it has no authority or which constitute an abuse of discretion." Am. Compl. ¶ 68 (citing Ariz. R.P. Spec. Act. 3(b)). But that is a request to "restrain [Defendants] from doing an act," which mandamus does not allow. *Sears*, 192 Ariz. at 68 ¶ 11 (quoting *Smoker,* 85 Ariz. at 173). Moreover, while Plaintiffs contend that Defendants' day and hour requirements for workers on the Central Counting Place Boards are too "onerous," Am. Comp. ¶¶ 6, 9, they do not point to any statute specifically imposing a duty on Defendants to set less onerous requirements, as would be required for mandamus relief, *see Sears*, 192 Ariz. at 68 ¶ 11. Rather, they ask the Court to interfere with Defendants' exercise of discretion over those matters, which is beyond the scope of mandamus. *Yes on Prop 200*, 215 Ariz. at 465 ¶ 12. In any event, Arizona law expressly vests Defendants with authority to establish board-appointee requirements and duties. *See* A.R.S. § 16-602(B)(7) (providing that county officials may remove election workers from hand count boards "if they are taking actions to disrupt the count or are unable to perform the duties as assigned"); *see also id.* § 16-621(A); EPM at 195.

Plaintiffs' allegations that Defendants' day and hour requirements make it "impossible for the GOP to recruit hundreds of volunteers," Am. Compl. ¶ 58, do nothing to change this, because Plaintiffs still do not identify any clear statutory duty that Defendants are refusing to perform. And regardless, as explained above, the governing statute places the burden of recruiting adequate workers for the hand count audit on the political parties, not on Defendants, and provides the consequence (cancellation of the audit) if inadequate workers are available. *See* A.R.S. § 16-602(B)(7). There is therefore no

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adequate basis for a writ of mandamus here.

B. A declaratory judgment action is unavailable.

In addition to mandamus relief, Plaintiffs seek a declaration "that Defendants' current policies and practices violate the Equal Access Statutes and the EPM." Am. Compl. at 17. But this claim, too, is fatally flawed. For "declaratory judgment jurisdiction" to vest in an Arizona court, "the claimant must show sufficient facts to establish a controversy which is real and not merely colorable." *Land Dep't v. O'Toole*, 154 Ariz. 43, 47 (1987) (citation omitted). To be real and not merely colorable, the claim for "declaratory relief should be based *on an existing state of facts*, not those which may or may not arise in the future." *Id.* (citation omitted) (emphasis added). Plaintiffs fail to meet this bar.

As outlined in the Amended Complaint, Plaintiffs' base their grievance with the Defendants' requirements for poll workers during a recount—their sole remaining claim—entirely on speculation and contingency. Plaintiffs admit that they do not know whether Defendants will apply day and hour requirements to election workers involved in a recount, much less what those day- and hour-requirements will be. *See* Am. Compl. ¶ 52 (alleging that "the County *has not yet decided* its day and hour requirements for the Central Counting Place Boards" during a recount (emphasis added)). It is therefore entirely speculative whether Defendants will impose the sort of requirements that Plaintiffs claim are unlawful, so there can be no present dispute under an "existing state of facts" over the lawfulness of Defendants' requirements. *Land Dep't*, 154 Ariz. at 47.

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Moreover, it is even more speculative whether any requirements imposed will prevent Plaintiffs from recruiting an adequate number of Republican election workers. Plaintiffs say that such recruiting is in progress, but they do not allege any details about their success. Am. Compl. ¶ 48. Plaintiffs admit that they and Defendants were able to recruit enough Republicans to meet the parity requirements during the election itself, and they provide no explanation for why they will not similarly succeed for any recount. *Id.* ¶ 7. How many workers will be needed is highly speculative, because the number of ballots that must be hand-counted during a recount is variable. *See* Am. Compl. ¶ 46 (admitting that the

number of ballots to be recounted by hand is dependent on the "circumstances," and only "[u]nder certain circumstances" is "a hand-recount of a substantially larger number of ballots, or even all of the ballots in Maricopa County, . . . required" (citing A.R.S. §§ 16-602(B)–(F), 16-663(B)). At the initial stage, no more than five percent of the precincts in a county are randomly selected for hand recount. *See* A.R.S. § 16-663(B). A broader hand count will occur only if that initial hand recount produces results that differ substantially from the electronic count—a contingency that Plaintiffs provide no reason to believe will occur. *See id.*

In sum, Plaintiffs fail to allege that Defendants have actually imposed any election worker requirements for a recount and that Plaintiffs have actually been unable to recruit sufficient numbers of election workers as a result of those (not yet existent) requirements. Plaintiffs therefore fail to allege a "real" controversy based on "an existing state of facts," *Land Dep't*, 154 Ariz. at 47, requiring dismissal of their claim for declaratory judgment.

CONCLUSION

For these reasons, the Court should dismiss the Amended Complaint.

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1 Dated: November 22, 2022

Respectfully submitted,

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16 **Pro hac vice motions forthcoming*

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GOOD FAITH CONSULTATION CERTIFICATE

Pursuant to Rules 12(j) and 7.1(h) of the Arizona Rules of Civil Procedure, Defendant-Intervenors Arizona Democratic Party and DSCC, through undersigned counsel, certify that they attempted in good faith to confer with counsel for Plaintiffs regarding the issues raised in this Motion but were unable to so confer before the time for filing.

/s/ Daniel A. Arellano

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2022, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa County, for filing using the AZTurboCourt System. I further certify that a copy of the foregoing was sent via email this same date to:

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