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17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF MARICOPA**

19 Maricopa County Republican Party, Apache
20 County Republican Party, Navajo County
21 Republican Party, and Yuma Country
22 Republican Party;

23 Plaintiffs,

24 State of Arizona, ex rel. Mark Brnovich,
25 Attorney General,

26 Intervenor-Plaintiff,

v.

MICHELE REAGAN, in her official
capacity as Arizona Secretary of State;
EDISON J. WAUNEKA, in his official

Case No.: CV2018-013963

Intervenor-Plaintiffs Complaint

1 capacity as Apache County Recorder;
2 DAVID W. STEVENS, in his official
3 capacity as Cochise County Recorder;
4 PATTY HANSEN, in her official capacity
5 as Coconino County Recorder; SADIE JO
6 BINGHAM, in her official capacity as Gila
7 County Recorder; WENDY JOHN, in her
8 official capacity as Graham County
9 Recorder; BERTA MANUZ, in her official
10 capacity as Greenlee County Recorder;
11 SHELLY BAKER, in her official capacity
12 as La Paz County Recorder; ADRIAN
13 FONTES, in his official capacity as
14 Maricopa County Recorder; KRISTI
15 BLAIR, in her official capacity as Mohave
16 County Recorder; DORIS CLARK, in her
17 official capacity as Navajo County
18 Recorder; F. ANN RODRIGUEZ in her
19 official capacity as Pima County Recorder;
20 VIRGINIA ROSS, in her official capacity as
21 Pinal County Recorder; SUZANNE SAINZ,
22 in her official capacity as Santa Cruz County
23 Recorder; LESLIE M.HOFFMAN, in her
24 official capacity as Yavapai County
25 Recorder; ROBYN STALLWORTH
26 POUQUETTE, in her official capacity as
Yuma County Recorder,
Defendants.

INTRODUCTION

1. State of Arizona, ex rel. Mark Brnovich, Attorney General (Plaintiff) makes the following allegations for its complaint.

1 **JURISDICTION AND VENUE**

2 2. This Court has jurisdiction and venue pursuant to article 6, section 14 of the
3 Arizona Constitution, A.R.S. § 12-123, the Rules of Procedure for Special Action, and
4 other sources.

5 3. A justiciable controversy exists because, without Court intervention, the
6 County Recorders stand to violate under color of state law the rights of Arizona voters
7 under the U.S. Constitution, the Arizona Constitution, and Arizona statutes, and Arizona
8 voters, as well as the State, will suffer immediate and irreparable injury and loss of rights.

9 4. This Court has personal jurisdiction over Defendants.

10 **PARTIES**

11 5. The County Parties are county political committees. Plaintiff -intervenor is
12 the State of Arizona, ex rel. Mark Brnovich, Attorney General. The Attorney General is
13 the chief legal officer of the State and is statutorily authorized to participate in this
14 action.

15 6. Defendant Secretary of State Michele Reagan is the chief elections officer
16 in the state, and is responsible for supervising and issuing directives concerning the
17 conduct of all elections in the state. A.R.S. § 16-142.

18 7. Edison J. Wauneka is the duly elected Apache County Recorder and is
19 named as a defendant in this action solely in his official capacity.

20 8. David W. Stevens is the duly elected Cochise County Recorder and is named
21 as a defendant in this action solely in his official capacity.

22 9. Patty Hansen is the duly elected Coconino County Recorder and is named as
23 a defendant in this action solely in her official capacity.

24 10. Sadie Jo Bingham is the duly elected Gila County Recorder and is named as
25 a defendant in this action solely in her official capacity.

1 11. Wendy John is the duly elected Graham County Recorder and is named as a
2 defendant in this action solely in her official capacity.

3 12. Berta Manuz is the duly elected Greenlee County Recorder and is named as
4 a defendant in this action solely in her official capacity.

5 13. Shelly Baker is the duly elected La Paz County Recorder and is named as a
6 defendant in this action solely in her official capacity.

7 14. Adrian Fontes is the duly elected Maricopa County Recorder and is named
8 as a defendant in this action solely in his official capacity.

9 15. Kristi Blair is the duly elected Mohave County Recorder and is named as a
10 defendant in this action solely in her official capacity.

11 16. Doris Clark is the duly elected Navajo County Recorder and is named as a
12 defendant in this action solely in her official capacity.

13 17. F. Ann Rodriguez is the duly elected Pima County Recorder and is named as
14 a defendant in this action solely in her official capacity.

15 18. Virginia Ross is the duly elected Pinal County Recorder and is named as a
16 defendant in this action solely in her official capacity.

17 19. Suzanne Sainz is the duly elected Santa Cruz County Recorder and is
18 named as a defendant in this action solely in her official capacity.

19 20. Leslie M. Hoffinan is the duly elected Yavapai County Recorder and is
20 named as a defendant in this action solely in her official capacity.

21 21. Robyn Stallworth Pouquette is the duly elected Yuma County Recorder and
22 is named as a defendant in this action solely in her official capacity.

23 **FACTUAL ALLEGATIONS**

24 22. The 2018 general election was held on November 6, 2018. *See* A.R.S. § 16
25 211.

1 23. Arizona has an early voting regime that is far more permissive than those
2 enacted in other states. Every elector may cast an early ballot, either by mail or in-person
3 at various sites throughout every county. *See* Ariz. Rev. Stat. §§ 16-541, -542.

4 24. A ballot returned by mail may be processed only if the signature on the
5 accompanying affidavit matches the signature on file in the putative voter's
6 registration record. *See* Ariz. Rev. Stat. § 16-550(A).

7 25. County elections officials must conduct the signature verification “[u]pon
8 receipt” of the ballot, *id.*, and all issued early ballots must be received by the county
9 recorders' offices no later than 7:00pm on Election Day, *id.* § 16-551(C).

10 26. In the event of discrepant signatures, the county recorder “may attempt to
11 contact the voter to ascertain whether the voter actually voted the early ballot and any
12 reasons why the signatures may not match,” “[i]f time permits.” Ariz. Sec'y of State,
13 ELECTION PROCEDURES MANUAL (2014) at 166.

14 27. On information and belief, certain County Recorders, are allowing voters to
15 cure non-compliant early ballots for a period of five days *after* Election Day.

16 28. The remaining County Recorders, on information and belief, however,
17 terminate a voter's ability to rehabilitate an early ballot at 7:00 p.m. on Election Day—in
18 this case, on November 6, 2018.

19 29. The County Recorders were notified of this discrepancy in a November 4,
20 2018 letter from Arizona Republican Party Chairman Jonathan Lines. They nonetheless
21 failed to adopt a uniform early ballot rehabilitation time period and deadline.

22 30. In implementing and enforcing disparate deadlines by which to rehabilitate
23 facially defective ballots, the County Recorders are subverting the statutory framework
24 securing the uniform administration of statewide elections and imperiling voters' right to
25 the equal protection of the laws, regardless of the county in which they reside.

1 **COUNT ONE**

2 **Equal Protection**

3 U.S. Const. Amend. XIV; 42 U.S.C. § 1983; Ariz. Const. art. II, sections 13 and 21
4 *Arbitrary and Disparate Treatment of Similarly-Situated Voters*

5 31. Plaintiff incorporates by reference the above allegations.

6 32. The U.S. Constitution protects the right of all qualified citizens to vote. The
7 right to vote is fundamental. It is protected by Articles I and II of the Constitution and
8 the Fourteenth Amendment. The Equal Protection Clause of the Fourteenth Amendment
9 to the United States Constitution guarantees voters a substantive right to participate
10 equally with other qualified voters in the electoral process. The Equal Protection Clause
11 applies to the right to vote in state elections and protects the state electoral franchise. *See*
12 *Harper v. Va. Bd. of Educ.*, 383 U.S. 663, 665 (1966).

13 33. Similarly, Article II, section 13 and 21 of the Arizona Constitution
14 guarantees equal treatment when exercising the right to vote.

15 34. By arbitrarily counting and rejecting ballots from identically suited voters,
16 Defendants are systematically denying certain voters the right to vote in violation of the
17 Equal Protection Clause. County Recorders arbitrarily and without explanation or
18 justification provide some post-election opportunity for voters to rehabilitate their facially
19 defective early ballots, but provides no opportunity for others, depending solely on where
20 they live within the State.

21 35. To comply with the Equal Protection Clause of the Fourteenth Amendment
22 to the U.S. Constitution, as well as the Arizona Constitution, all County Recorders must
23 treat voters similarly. In this case, that means, for all early ballots that were received by
24 the County Recorders either through mail or being dropped off prior to 7:00 p.m. on
25 election day and that have a signature on the affidavit on the envelope, the County
26 Recorders must make at least one effort to cure any signature identified as mismatched by

1 attempting to call the voter at the telephone number provided on the envelope or if no
2 phone number is provided, the phone number on file for that voter to verify the validity
3 of the signature and the ballot. Upon successful verification of the signature and ballot,
4 then the County Recorder must deliver the ballot “to the early election boards for
5 processing” in time to be included in the canvas. A.R.S. § 16-551(C).

6 **COUNT TWO**

7 **Equal Protection**

8 U.S. Const. Amd. XIV; 42 U.S.C. 1983; Ariz. Const. art. II, sections 13 and 21

9 *Undue Burden on the Right to Vote*

10 36. Plaintiff incorporates by reference the above allegations.

11 37. Under the Equal Protection Clause, as well as the Art II, section 13 and 21 of
12 the Arizona Constitution, the County Recorder cannot utilize election practices that
13 unduly burden the right to vote. The practices outlined above, in direct violation of
14 Arizona law, impose a severe burden on the right of the voters to rehabilitate their
15 facially defective early ballot if they live outside of the counties that are attempting to
16 cure defective signatures. Refusing to allow voters in other counties to rehabilitate their
17 early ballots following the election, while permitting the same in other counties, does not
18 survive constitutional scrutiny.

19 38. A significant amount of registered voters throughout the State are suffering
20 direct and irreparable injury from the Defendants' disparate treatment of early voters.
21 Without relief from this Court, voters will be deprived of their right to vote in the 2018
22 General Election.

23 39. Based on the foregoing, Defendants, acting under color of state law, have
24 deprived and will continue to deprive voters of equal protection under the law secured to
25 them by the Fourteenth Amendment to the U.S. Constitution, protected by 42 U.S.C.
26 § 1983, and secured by art. II, sections 13 and 21 of the Arizona Constitution. For all

1 early ballots that were received by the County Recorders either through mail or being
2 dropped off prior to 7:00 p.m. on election day and that have a signature on the affidavit
3 on the envelope, the County Recorders must make at least one effort to cure any signature
4 identified as mismatched by attempting to call the voter at the telephone number provided
5 on the envelope or if no phone number is provided, the phone number on file for that
6 voter to verify the validity of the signature and the ballot. Upon successful verification of
7 the signature and ballot, then the County Recorder must deliver the ballot “to the early
8 election boards for processing” in time to be included in the canvas. A.R.S. § 16-551(C).

9 **COUNT THREE**

10 **Due Process**

11 U.S. Const. Amd. XIV; 42 U.S.C. 1983; Ariz. Const. art. II, section 4

12 40. Plaintiff incorporates by reference the above allegations.

13 41. The Due Process Clause of the Fourteenth Amendment of the United States
14 Constitution provides that no state “shall deprive any person of life, liberty, or property,
15 without due process of law.” This provision guarantees substantive due process and
16 prohibits a state from depriving a person of “life, liberty, or property”: without an
17 appropriately compelling government interest.

18 42. The liberties protected by the Due Process Clause include the right to vote
19 and to be free from disparate treatment in the exercise of the electoral franchise.

20 43. By subjecting voters to disparate treatment in the exercise of the electoral
21 franchise without an appropriately compelling government interest, Defendants are
22 denying Arizona voters an equal right to vote in violation of Due Process Clause and
23 without any legitimate government interest. In addition, by not providing notice prior to
24 disregarding a signed and timely received early ballot, the County Recorders are violating
25 voters procedural due process.

1 44. Based on the foregoing, Defendants, acting under color of state law, have
2 deprived and will continue to deprive Plaintiffs of the substantive due process of law
3 secured to them by the Fourteenth Amendment of the U.S. Constitution and protected by
4 42. U.S.C. § 1983, as well as art. II, section 4 of the Arizona Constitution. For all early
5 ballots that were received by the County Recordors either through mail or being dropped
6 off prior to 7:00 p.m. on election day and that have a signature on the affidavit on the
7 envelope, the County Recordors must make at least one effort to cure any signature
8 identified as mismatched by attempting to call the voter at the telephone number provided
9 on the envelope or if no phone number is provided, the phone number on file for that
10 voter to verify the validity of the signature and the ballot. Upon successful verification of
11 the signature and ballot, then the County Recorder must deliver the ballot “to the early
12 election boards for processing” in time to be included in the canvas. A.R.S. § 16-551(C).

COUNT FOUR

Declaratory Relief

15 45. Plaintiff incorporates by reference the above allegations.

16 46. Pursuant to Arizona's Uniform Declaratory Judgment Act (A.R.S. § 12-1831
17 *et seq.*), Plaintiff is entitled to request a judicial determination and declaratory judgement
18 that for all early ballots that were received by the County Recordors either through mail
19 or being dropped off prior to 7:00 p.m. on election day and that have a signature on the
20 affidavit on the envelope, the County Recordors must make at least one effort to cure any
21 signature identified as mismatched by attempting to call the voter at the telephone
22 number provided on the envelope or if no phone number is provided, the phone number
23 on file for that voter to verify the validity of the signature and the ballot. Upon successful
24 verification of the signature and ballot, then the County Recorder must deliver the ballot
25 “to the early election boards for processing” in time to be included in the canvas. A.R.S.
26 § 16-551(C).

1 47. Plaintiff has an interest in Arizona voters' equal right to cast a ballot across
2 the State.

3 48. There is an actual justiciable controversy, and such judgement or decree will
4 terminate the uncertainty and controversy giving rise to this proceeding as required by
5 A.R.S. § 12-1836.

6 49. Accordingly, the Plaintiff is entitled to declaratory relief providing that the
7 County Recorder Defendants must provide a uniform deadline before which a voter may
8 rehabilitate his or her facially invalid early ballot.

9 **COUNT FIVE**

10 **Injunctive Relief**

11 50. Plaintiff incorporates by reference the above allegations.

12 51. Arizona voters will be irreparably harmed if the County Recorders are
13 permitted to implement different processes and deadlines by which an Arizona voter may
14 rehabilitate a facially invalid early ballot, and, therefore, disparate opportunities to vote.

15 52. The balance of equities and considerations of public policy strongly support
16 the issuance of injunctive relief.

17 53. Accordingly, Plaintiff is entitled to injunctive relief enjoining the County
18 Recorder Defendants from implementing disparate deadlines before which a voter may
19 rehabilitate his or her facially invalid early ballot.

20 **COUNT SIX**

21 **Special Action**

22 54. Plaintiff incorporates by reference the above allegations.

23 55. Under Rule 1 of the Rules of Special Action procedure relief previously
24 obtained by the writs of certiorari, mandamus or prohibition is now obtained through
25 special action.

1 56. For all early ballots that were received by the County Recorders either
2 through mail or being dropped off prior to 7:00 p.m. on election day and that have a
3 signature on the affidavit on the envelope, the County Recorders must make at least one
4 effort to cure any signature identified as mismatched by attempting to call the voter at the
5 telephone number provided on the envelope or if no phone number is provided, the phone
6 number on file for that voter to verify the validity of the signature and the ballot. Upon
7 successful verification of the signature and ballot, then the County Recorder must deliver
8 the ballot "to the early election boards for processing" in time to be included in the
9 canvas. A.R.S. § 16-551(C). Failure to do the foregoing constitutes a refusal to perform
10 a mandatory duty, conduct that exceeds the jurisdiction of the county officers, and/or an
11 abuse of discretion by the county officers.

12 **REQUEST FOR RELIEF**

13 Wherefore, Plaintiff prays for judgment in their favor and against Defendants as follows:

14 A. Pursuant to Rule 65(a), the State hereby moves for a temporary restraining
15 order and a preliminary injunction against the County Recorder defendants. For all early
16 ballots that were received by the County Recorders either through mail or being dropped
17 off prior to 7:00 p.m. on election day and that have a signature on the affidavit on the
18 envelope, the County Recorders must make at least one effort to cure any signature
19 identified as mismatched by attempting to call the voter at the telephone number provided
20 on the envelope or if no phone number is provided, the phone number on file for that
21 voter to verify the validity of the signature and the ballot. Upon successful verification of
22 the signature and ballot, then the County Recorder must deliver the ballot "to the early
23 election boards for processing" in time to be included in the canvas. A.R.S. § 16-551(C).

24 B. Such other relief as the Court deems proper.

25
26

1 RESPECTFULLY SUBMITTED this 9th day of November, 2018.

2
3 MARK BRNOVICH
4 ATTORNEY GENERAL

5 */s Brunn (Beau) W. Roysden III*

6 Assistant Attorney General

7 *Attorneys for Intervenor-Defendant State*
8 *of Arizona*

9 The foregoing was e-filed with the
10 Clerk of the Superior Court of Maricopa
11 County on November 9, 2018.

12 Copy of the foregoing e-mailed
13 on November 9, 2018 to:

14 The Honorable Margaret Mahoney
15 Maricopa County Superior Court
16 101 W. Jefferson, ECB 411
17 Phoenix, AZ 85003
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19 Copies of the foregoing were e-served
20 on November 9, 2018 to:

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By: /s/ Lauren Johnson