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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Mi Familia Vota, *et al*,

12 Plaintiffs,

13 v.

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

16 Defendant.
17

No: CV-20-01903-PHX-SPL

**ARIZONA SECRETARY OF STATE'S
RESPONSE IN OPPOSITION TO
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

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I. INTRODUCTION

1
2 For 30 years, Arizona law has required voters to register to vote at least 29 days
3 before an election. *See* A.R.S. § 16-120 (“Deadline”).¹ This year, the Deadline that
4 applies to the upcoming November 3rd General Election (“General Election”) falls on
5 Monday, October 5, 2020.

6 The Plaintiffs here—two organizations and one individual engaged in voter
7 registration efforts (Compl., ¶¶ 15-17)—waited until a mere *three business days* before
8 the Deadline to bring this lawsuit. And they seek the extraordinary remedy of a
9 mandatory injunction to alter the Deadline. Plaintiffs seek to move the Deadline from 29
10 days before early voting begins, to 7 days before Election Day, contending that
11 enforcement of the Deadline during the COVID-19 pandemic is unconstitutional “as
12 applied during these circumstances.” *See* Plaintiffs’ Emergency Motion for Temporary
13 Restraining Order and Preliminary Injunction (“Motion”) at 2.

14 Plaintiffs fail to satisfy their high burden of showing that the facts and the law
15 clearly favor them to warrant a mandatory injunction. *First*, Plaintiffs are not likely to
16 succeed on the merits of their First or Fourteenth Amendment claims. Their claims
17 suffer from several jurisdictional defects, including that Plaintiffs lack Article III
18 standing and have failed to join indispensable parties to this lawsuit—i.e., the county
19 recorders in Arizona’s 15 counties. Additionally, Plaintiffs’ eleventh-hour request is
20 unreasonable and should be dismissed based on either the *Purcell* doctrine, *see Purcell*
21 *v. Gonzalez*, 549 U.S. 1, 5 (2006), or the related doctrine of laches. And contrary to
22 Plaintiffs’ allegations, Arizona’s Deadline is constitutional; the COVID-19 pandemic
23 does not compel a different conclusion.

24 *Second*, Plaintiffs fail to show that enforcement of the existing deadline will
25 result in irreparable injury. Plaintiffs’ theory of irreparable injury is non-cognizable and

26
27 ¹ In 1990, the Arizona Legislature modified the previous 50-day voter registration
28 deadline, which had been in place since at least 1979, *see* Ex. A, to a 29-day deadline
that is still in force today. *See* 1990 Ariz. Legis. Serv. 321 (H.B. 2074).

1 self-inflicted. Moreover, available data does not suggest that voters have been, or will
 2 be, unable to register in time to vote by the October 5th deadline despite diligent efforts
 3 to do so. In fact, the data shows (contrary to Plaintiffs’ assertions) that more Arizonans
 4 have registered to vote this year than in the 2016 presidential election year.

5 *Third*, the balance of equities and public interest considerations tip sharply
 6 against Plaintiffs. Plaintiffs oversimplify and minimize the significant hardships to
 7 election officials that would result from a last-minute judicial modification of Arizona’s
 8 Deadline. This type of extraordinary relief is also certain to cause voter confusion and
 9 erode public confidence in the integrity of Arizona’s election processes, which “has
 10 independent significance.” *See Crawford v. Marion County Election Bd.*, 553 U.S. 181,
 11 197 (2008). Granting Plaintiffs’ Motion would amount to an “overbroad injunction” that
 12 is not “narrowly tailor[ed]” to “specific threatened harms[.]” *See Stormans, Inc. v.*
 13 *Selecky*, 586 F.3d 1109, 1142 (9th Cir. 2009) (reversing grant of preliminary injunction
 14 where the district court “fail[ed] to properly consider the balance of hardships and the
 15 public interest” and “enter[ed] an overbroad injunction”).

16 II. BACKGROUND

17 A. Arizona’s Voter Registration Deadline and the COVID-19 Pandemic

18 Since March of 2020, people throughout the world have encountered various
 19 challenges as a result of the COVID-19 pandemic. Plaintiffs have been well aware of the
 20 pandemic’s effect on their voter registration activities, alleging that at least since March
 21 30, their in-person registration efforts were restricted. Compl. ¶ 58. Governor Ducey’s
 22 stay-at-home order expressly *exempted* constitutionally protected speech activities such
 23 as voter registration efforts. Ariz. Exec. Order No. 2020-18 (Mar. 30, 2020) at 3.

24 Meanwhile, the Deadline of October 5, 2020, has been highly publicized through
 25 a variety of formats for months in anticipation of the General Election. For example:

- 26 • The Arizona 2020 General Election Publicity Pamphlet, which is
 27 posted on the Secretary’s website and mailed “to every household that
 28 contains a registered voter[.]” *see* A.R.S. § 19-123(B), states:
 “**DEADLINE:** You must register to vote by **October 5, 2020** to

1 participate in the November 3, 2020 General Election.” The Publicity
 2 Pamphlet, which has already been mailed this year, informs voters that
 3 they may register online or by using voter registration forms included
 4 in the Pamphlet.²

- 5 • On September 21, 2020, the Secretary issued a press release to
 6 recognize National Voter Registration Day, September 22, 2020. The
 7 Secretary announced: “National Voter Registration Day is a perfect
 8 opportunity to remind people that the voter registration deadline to
 9 participate in the 2020 General Election is October 5, which is just a
 10 few weeks away.”³
- 11 • On September 22, 2020, the Arizona Republic published an article
 12 reminding voters that “[t]he deadline to register to vote in Arizona is
 13 Oct[ober] 5, less than two weeks away” and that “[o]nly people who
 14 register before the deadline can vote in the Nov. 3 election for
 15 president, U.S. Senate and a host of other offices.” See The Arizona
 16 Republic, *How to register to vote in Arizona on National Voter
 17 Registration Day (or any day before the deadline)* (Sept. 22, 2020).⁴
- 18 • The “Arizona Voter Registration Form” itself, which the Secretary
 19 provides on her website and included in the Publicity Pamphlet, is
 20 accompanied by an instruction that states: “You must register at least
 21 29 days before the election (or the next business day if that deadline
 22 falls on a holiday).” See Ex. B.

23 In light of COVID-19, the Secretary, as the State’s Chief Election Official, has
 24 taken affirmative steps to enable voters to more easily register to vote. See Ex. C
 25 (Declaration of Bo Dul). For example, ServiceArizona was updated to allow voters with
 26 nonstandard addresses to register online. *Id.* at ¶ 4. The Secretary also created a unique
 27 URL program to allow the recognized political parties and nonpartisan civic engagement
 28 organizations to conduct online voter registration drives and track and identify voters
 who register through the organization’s unique URL. *Id.* at ¶ 5.

² https://azsos.gov/sites/default/files/2020_General_Election_Publicity_Pamphlet_Englis_h.pdf. This Court should take judicial notice of records that are publicly available on the Secretary’s website and not subject to reasonable dispute. See Fed. R. Evid. 201(b); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (taking judicial notice of official information posted on governmental website).

³ <https://azsos.gov/about-office/media-center/press-releases/1224>.

⁴ <https://www.azcentral.com/story/news/politics/elections/2020/09/22/register-vote-arizona-how-to-deadlines-request-mail-in-ballot/3493021001/>

1 The Secretary also developed detailed procedures and trained staff to provide
2 voter registration assistance to Arizonans who call 1-877-THE-VOTE. *Id.* at ¶ 8. These
3 procedures, consistent with existing laws and deadlines, include assistance with
4 initiating the submission of a voter registration form by the October 5th deadline for
5 eligible registrants who cannot use ServiceArizona. This may be because these
6 individuals lack certain forms of identification or do not have internet access and a
7 printer and cannot obtain a paper form in time to submit it by the deadline. *Id.* These
8 new procedures ensure voters can submit a registration application on or before the
9 Deadline without having to engage in in-person contact that could transmit COVID-19.

10 **B. Plaintiffs’ Last-Minute Request for A Mandatory Injunction**

11 By asking this Court to extend the Deadline to a date that Plaintiffs prefer,
12 Plaintiffs undermine the Secretary’s work aimed at administering a safe and secure
13 General Election consistent with existing law and timelines. *See* Motion at 1-2. Notably,
14 Plaintiffs stated during the status conference on October 1 that they engaged in voter
15 registration efforts “on the street” in late August. And they have known about COVID-
16 19 since March. Yet Plaintiffs still waited until *September 30th* to bring this lawsuit.

17 In support of their request for extraordinary relief, Plaintiffs allege that “voter
18 registration this year is significantly lower than in 2016, the last Presidential year.”
19 Compl., ¶ 61. Plaintiffs further contend that in 2016, between January and August,
20 “146,214 new voters registered[,]” compared to “only 62,565 registrations” during the
21 same period this year. *Id.* Although Plaintiffs do not explain the basis for their
22 calculations, it appears that they relied on quarterly reports published by the Secretary.
23 Plaintiffs’ calculations based on these reports are superficial at best because the total
24 number of registered voters fluctuates throughout the year as a result of list maintenance
25 when records are inactivated or cancelled, election activity, promotions like National
26 Voter Registration Day, and other factors. In any event, the Secretary’s data below,
27 which is more comprehensive and up-to-date than Plaintiffs’ data, shows that overall,
28 voter registrations have *increased* and surpassed the number of registrations in 2016:

- 1 • The number of active voters with an original registration date between
2 January 1, 2020 and October 1, 2020 is **389,284**.
- 3 • The total number of active voters as of October 1, 2020, is **4,160,915**,
4 which represents an *increase* of **234,266** since January 1, 2020. The
5 total number of active voters also exceeds the number of active
6 registered voters as of the voter registration deadline for the 2016
7 general election (3,588,466) by approximately half a million voters.
- 8 • On Voter Registration Day alone (September 22, 2020), 40,294
9 Arizonans registered to vote or updated their registration online. And
10 approximately 4,730 Arizonans did so using paper registration forms.

11 *See* Ex. C at ¶¶ 10-11.

12 The data does not support Plaintiffs’ allegation that enforcement of the existing
13 October 5, 2020 deadline, “[a]s applied during the ongoing COVID-19 emergency,” will
14 “severely burden[] Plaintiffs’ ability to exercise core political speech and associational
15 rights in voter registration drives[.]” Compl., ¶ 109. Instead, the data suggests that the
16 Secretary’s proactive efforts to communicate the Deadline and encourage timely voter
17 registrations have been successful and that voters are *not* encountering significant
18 difficulties registering to vote during the pandemic.

19 **III. ARGUMENT**

20 Plaintiffs seeking a preliminary injunction have the burden to show: 1) that they
21 are likely to succeed on the merits; 2) that they are likely to suffer irreparable harm in
22 the absence of preliminary relief; 3) that the balance of equities tips in their favor; and 4)
23 that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555
24 U.S. 7, 20 (2008). The balance of the equities and public interest factors merge when the
25 State is a party. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)
26 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). When a plaintiff seeks to change the
27 status quo, as in this case, the plaintiff’s burden is much heavier. *Marlyn Nutraceuticals,*
28 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009). A mandatory
injunction is not issued in doubtful cases, *id.* at 879, and should not be granted “unless

1 the facts and law clearly favor the plaintiff.” *Comm. of Cent. Am. Refugees v. I.N.S.*, 795
2 F.2d 1434, 1441 (9th Cir. 1986).

3 **A. Plaintiffs Are Not Likely to Succeed on the Merits of their Claims**

4 As a threshold matter, Plaintiffs are unlikely to succeed on the merits of their
5 claims because their complaint suffers from numerous jurisdictional defects.

6 **i. Plaintiffs lack standing.** At the preliminary injunction stage, plaintiffs must
7 make a clear showing of each element of standing to sue in federal court under Article
8 III of the Constitution. *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013). A
9 plaintiff seeking to establish standing must demonstrate that “(1) it has suffered an
10 ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not
11 conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of
12 the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will
13 be redressed by a favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*
14 *(TOC) Inc.*, 528 U.S. 167, 180-81 (2000) (quotation omitted).

15 The organizational Plaintiffs contend that “[b]ecause of the pandemic
16 restrictions,” they “have only been able to register approximately 23,000 new voters
17 instead of their targeted 55,000.” Motion at 4. Plaintiffs cite no authority for their
18 apparent proposition that an organization can establish an Article III injury by simply
19 pointing to the organization’s goal and stating that they failed to achieve it. And by
20 Plaintiffs’ own admission, they fail to establish causation because they attribute their
21 alleged injury (failure to achieve a self-imposed goal of registering 55,000 new voters)
22 to circumstances and factors outside the Secretary’s control. This is insufficient. *See*
23 *Spokeo v. Robbins*, 136 S. Ct. 1540, 1547 (2016) (injury must be “fairly traceable” to a
24 defendant to meet the “irreducible constitutional minimum” of standing to proceed);
25 *Thompson v. Dewine*, 959 F.3d 804, 810 (6th Cir. 2020) (“And we must remember, First
26 Amendment violations require state action. ... So we cannot hold private citizens’
27 decisions to stay home for their own safety against the State.”).

28

1 Plaintiffs' injuries are also not redressable. Plaintiffs have failed to name
2 indispensable defendants—Arizona's 15 county recorders who are statutorily
3 responsible for receiving voter registrations 29 days before an election, *see* A.R.S. § 16-
4 120(A). County recorders are indispensable to this litigation because the relief Plaintiffs
5 seek—an extension of the Deadline to October 27—will require county elections
6 officials to expend significant resources to process voter registration forms during the
7 early voting period, on an expedited basis, to ensure that (1) early ballots are sent to
8 voters who want them; and (2) registration rolls are updated to accurately reflect voter
9 registrations that are not finalized until a few days before Election Day.

10 Plaintiffs appear to have overlooked this problem, and many other downstream
11 consequences as a result of their extremely tardy request. But the election officials who
12 are best situated to address these glaring issues have not been named as defendants.
13 This renders Plaintiffs' claims non-redressable. *See Carroll v. Nakatani*, 342 F.3d 934,
14 945 (9th Cir. 2003) (holding injury not redressable where plaintiffs failed to name
15 United States as a party despite knowing the government's participation was required);
16 *Schnabel v. Lui*, 302 F.3d 1023, 1029 (9th Cir. 2002) (failure to join indispensable
17 parties warrants dismissal under Federal Rule of Civil Procedure 12(b)(7)).⁵

18
19
20 ⁵ Although this Court previously rejected the Secretary's argument that county officials
21 were necessary parties in a previous challenge to Arizona's voter registration deadline in
22 *Arizona Democratic Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL 6523427
23 (D. Ariz. 2016), the plaintiffs in that case sought narrow relief: an order that would allow
24 voters whose registration applications were received *one* day after the deadline (which
25 fell on a holiday that year) to vote in the 2016 general election. Here, in contrast, the
26 relief Plaintiffs seek—a three-week extension of the deadline—imposes a much more
27 severe burden on county officials. Thus, "resolving the action in [the counties'] absence
28 may as a practical matter impair or impede [their] ability to protect that interest." *Salt
River Project Agr. Imp. And Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012)
(citing Fed. R. Civ. P. 19(a)(1)(B)(ii)). And although Plaintiffs note that the Secretary
has authority to promulgate official election rules (Motion at n.1), those rules could not
have promulgated a registration deadline that contravenes Arizona law, and any update
to the Election Procedures Manual must be approved by the Governor and Attorney
General to take effect. *See* A.R.S. § 16-452 (election procedures are intended to
"achieve and maintain the maximum degree of correctness").

1 **ii. *The Purcell and Laches Doctrines Warrant Dismissal.*** In *Purcell*, the
2 Supreme Court affirmed the cardinal rule that federal courts should not alter election
3 rules on the eve of an election. 549 U.S. 1, 5 (2006). The Court explained that “[c]ourt
4 orders affecting elections ... can themselves result in voter confusion and consequent
5 incentive to remain away from the polls.” *Id.* at 4-5. This risk of voter confusion will
6 only increase “[a]s an election draws closer.” *Id.* In *Republican National Committee v.*
7 *Democratic National Committee*—within the first month of the pandemic—the Supreme
8 Court granted a stay of a district court injunction that changed absentee ballot deadlines
9 to “allow[] ballots to be mailed ... after election Day.” 140 S.Ct. 1205, 1207 (2020). The
10 Court emphasized that the injunction changed the election rules “close to the election
11 date” and “in essence enjoined nonparties to th[e] lawsuit.” *Id.* By doing so, the Court
12 concluded, the district court “contravened [the Supreme Court’s] precedents ...
13 repeatedly emphasiz[ing] that lower federal courts should ordinarily not alter the
14 election rules on the eve of an election.” *Id.* (citations omitted). Plaintiffs’ requested
15 relief here falls squarely within the *Purcell* doctrine.

16 For similar reasons, Plaintiffs’ claims should be dismissed under the laches
17 doctrine based on Plaintiffs’ unreasonable delay in bringing suit. *See Jarrow Formulas,*
18 *Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 838 (9th Cir. 2002) (courts consider “the
19 length of delay, which is measured from the time the plaintiff knew or should have
20 known about its potential cause of action” and assess the reasonableness of the period of
21 inaction) (citation omitted). The Deadline is not new. It has existed for three decades.
22 And the pandemic has been ongoing for the past seven months. Plaintiffs admit they
23 were fully aware of the challenges presented by the pandemic; yet they waited until
24 *three business days* prior to the Deadline to file suit. This is objectively unreasonable.

25 And Plaintiffs’ delay prejudices the Secretary. Like the Plaintiffs, the Secretary
26 faces new challenges relating to COVID-19. But the Secretary has taken proactive
27 measures to ensure that Arizonans can register to vote. *See Ex. C.* This litigation
28 undermines and diverts resources from those efforts. *See Garcia v. Griswold*, 2020 WL

1 4926051, *4 (D. Colo. Aug. 21, 2020) (reasoning plaintiffs “are not strongly likely to
2 succeed on the merits” where Colorado Secretary of State “is likely to succeed in
3 proving a laches defense”).

4 **iii. Jurisdictional Defects Aside, Plaintiffs’ Claims Fail on the Merits.** Plaintiffs
5 also fail to state a claim upon which relief can be granted. The federal Constitution
6 authorizes State legislatures to prescribe the “Times, Places and Manner of holding
7 Elections . . .” U.S. Const. art. I, § 4, cl. 1. States “retain broad authority to structure and
8 regulate elections.” *Short v. Brown*, 893 F.3d 671, 676 (9th Cir. 2018). The
9 *Anderson/Burdick* framework applies to Plaintiffs’ claims, and the level of scrutiny
10 depends on the severity of the burden. *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992);
11 *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). Under this framework, courts “must
12 first consider the character and magnitude of the asserted injury to the rights . . . that the
13 plaintiff seeks to vindicate.” *Short*, 893 F.3d at 676. If the asserted injury evidences no
14 burden, there is “no reason to call on the State to justify its practice.” *Ariz. Libertarian*
15 *Party v. Reagan*, 798 F.3d 723, 732 n.12 (9th Cir. 2015). In *Burdick*, the Supreme Court
16 recognized that “[e]lection laws will invariably impose some burden upon individual
17 voters,” and that as a result, “there must be a substantial regulation of elections if they
18 are to be fair and honest and if some sort of order, rather than chaos, is to accompany the
19 democratic processes.” 504 U.S. at 433 (internal quotation marks and citation omitted).
20 Minimal burdens from generally applicable and even-handed regulations are justified by
21 a State’s important regulatory interests. *Timmons v. Twin Cities Area New Party*, 520
22 U.S. 351, 358 (1997).

23 Here, complying with Arizona’s longstanding statutory Deadline is not
24 burdensome, and the Deadline is easily justified by the State’s interests. Far short of an
25 “extensive restriction,” a reasonable, generally-applicable election deadline—the
26 quintessential time regulation—does not impose a meaningful burden on the right to
27 vote. *See Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973) (upholding constitutionality
28 of deadline to register with a political party to participate in primary election); *Barilla v.*

1 *Ervin*, 886 F.2d 1514, 1524 (9th Cir. 1989) (upholding pre-election deadline to reregister
2 after moving within a county), *overruled on other grounds by Simpson v. Lear Astronics*
3 *Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1989). In *Barilla*, for example, the Ninth Circuit
4 upheld a voter registration deadline despite the fact that plaintiffs had been denied the
5 ability to vote because their mailed-in registrations were received after, but mailed
6 before, the deadline. *Id.* at 1517. The Ninth Circuit rejected the argument that strict
7 scrutiny should apply and instead followed the Supreme Court’s lead in *Rosario* that the
8 *Anderson/Burdick* balancing test is the appropriate standard for review of election
9 deadlines. *See id.* at 1523-25. “What is at issue here is not a ‘ban’ on plaintiffs’ right to
10 vote, [as would be required for strict scrutiny to apply] but rather, a ‘time limitation’ on
11 when plaintiffs had to act in order to be able to vote.” *Id.* at 1525. The deadline “easily”
12 satisfied that test. *Id.* Likewise, Arizona’s Deadline is also constitutional.

13 **iv. Any Incidental Burden Is Justified by the State’s Interests.** The State’s
14 interests easily satisfy the balancing test required by the *Anderson/Burdick* framework.
15 Those interests include finality, promoting voter confidence, orderly election
16 administration, and “protecting the integrity, fairness, and efficiency of [] ballots and
17 election processes.” *Timmons*, 520 U.S. at 364; *see also Purcell*, 549 U.S. at 4
18 (“Confidence in the integrity of our electoral processes is essential to the function of our
19 participatory democracy.”); *Crawford*, 553 U.S. at 192-97 (recognizing state’s interest in
20 promoting voter confidence and improving election administration). Having a voter
21 registration deadline fall on the 29th day prior to a general election is imminently
22 reasonable so that elections officials may compile the lists of eligible voters to
23 administer an honest and orderly election. *See Marston v. Lewis*, 410 U.S. 679, 681
24 (1973); *Perry v. Judd*, 471 F. App’x 219, 226 (4th Cir. 2012) (“Ballots and elections do
25 not magically materialize. They require planning, preparation, and studious attention to
26 detail if the fairness and integrity of the electoral process is to be observed.”).

27 Further, extending the registration deadline by three weeks would cause a host of
28 other problems for elections officials. Plaintiffs want a registration deadline of October

1 27—which would fall *after* the October 23 deadline for voters to request an early ballot
2 in Arizona. *See* A.R.S. § 16-542; Ex. C at ¶ 13. Arizona’s voter registration forms
3 provide a designated space for a voter to request placement on the permanent early voter
4 list. *See* Ex. B. If a voter checks that box and the form is received by county officials at
5 or near the October 23 deadline to request a ballot, there is no guarantee that the form
6 will be processed in time for local elections officials to send a ballot, much less for the
7 voter to return it by 7:00 p.m. on Election Day. *See* A.R.S. § 16-550. Thus, voters who
8 expect to receive an early ballot may not receive one. Additionally, early voting begins
9 October 7. *See* A.R.S. § 16-542. If the Deadline were extended, election officials would
10 have to simultaneously process voter registrations and early ballots. Arizona already has
11 high rates of early voting, but with the pandemic those numbers are sure to be higher. A
12 Court order asking election officials to process voter registrations while simultaneously
13 processing early ballots—where election officials have had no time to prepare at this late
14 stage—presents a significant burden. As this Court noted in 2016 in a similar lawsuit,
15 “the voter registration deadline is only one step in a series of orchestrated events that
16 must take place before the election, and officials must strategically undertake a
17 multitude of critical tasks imposed by law.” *See Reagan*, 2016 WL 6523427 at *11.

18 Plaintiffs’ request for a mandatory injunction would add additional (as of yet
19 undetermined) steps in a delicate framework that has been refined to accurately process
20 millions of votes in a safe, secure, and efficient manner. “[N]othing about [the process
21 entailed with Plaintiffs’ request] can be accurately described as mere administrative
22 inconvenience or “easily manageable.” *Id.* The State’s interests in enforcing the
23 Deadline easily justify the limited burden imposed on Plaintiffs.

24 ***v. The COVID-19 Pandemic Does Not Render the Deadline Unconstitutional.***

25 Finally, Plaintiffs’ arguments relating to COVID-19 do not strengthen their claims.
26 Given the uncertainty and instability surrounding COVID-19, the State has an even
27 stronger interest in adhering to Deadline to ensure the orderly administration of the
28 election and preserve public confidence in the integrity of the election. *See Crawford*,

1 553 U.S. at 197.⁶ Again, Plaintiffs primarily rely on their own self-imposed goal to
2 register 55,000 voters to argue that their failure to reach that goal means that Arizona's
3 Deadline is unconstitutional. *See* Motion at 6. But the State's overall registration totals
4 suggest that Arizonans have been able to timely register, despite COVID-19. In fact,
5 more Arizonans are registered to vote in 2020 than were registered to vote by the voter
6 registration deadline for the General Election in 2016. That voters have not chosen to
7 register to vote by using Plaintiffs' services does not call into question the
8 constitutionality of the Deadline. And an order from this Court extending the Deadline
9 will not have anything to do with whether Arizonans will decide to have Plaintiffs assist
10 them in registering to vote.

11 The cases Plaintiffs cite do not help them either. *See* Motion at 7-8. Plaintiffs
12 omit several distinguishing facts from all of these cases, the first of which is that most
13 were decided within the first two months of the pandemic. Second, an important fact
14 was whether the government's orders restricting activities outside the home exempted
15 constitutionally protected speech activities. *See Fair Maps Nevada v. Cegavske*, No.
16 3:20-cv-00271, 2020 WL 2798018, at *13 (D. Nev. May 29, 2020) (emphasizing "the
17 Stay at Home Order did not permit circulators to be out collecting signatures"); *Esshaki*
18 *v. Whitmer*, No. 2:20-CV-10831-TGB, 2020 WL 1910154, at *4 (E.D. Mich. Apr. 20,
19 2020) (granting candidate relief where governor's stay-at-home order did not exempt
20 free speech activities).⁷ Third, the cases Plaintiffs cite involved requirements that the
21 activity be conducted in-person. *See Libertarian Party of Illinois v. Pritzker*, No. 20-CV-

22
23 ⁶ *See also* Michael Morley, *Election Emergencies: Voting in the Wake of Natural*
24 *Disasters and Terrorist Attacks*, 67 Emory L.J. 545, 593 (2018) (states have "important
25 interests in adhering to voter registration deadlines in the wake of election emergencies
26 to allow them to focus their resources on recovering from the emergency, ensuring the
accuracy of voter registrations they have received, relocating polling places as needed,
ensuring adequate staffing for the voting period, and otherwise minimizing the likelihood
of errors or delays in voting.").

27 ⁷ Additionally, in *Esshaki*, "the State conceded at oral argument that the signature-
28 gathering due date [April 21] could be moved back to May 8, 2020 without significant
impairment of the State's interests." 2020 WL 1910154 at *7.

1 2112, 2020 WL 1951687, at *1 (N.D. Ill. Apr. 23, 2020); *Goldstein v. Sec'y of*
2 *Commonwealth*, 484 Mass. 516, 520, 142 N.E.3d 560, 566 (2020). But in cases where—
3 as here—the orders exempted constitutionally protected speech activities and there are
4 no in-person requirements, COVID-19 was an insufficient reason to grant the relief
5 requested. *See, e.g., Thompson*, 959 F.3d at 810 (upholding election regulations for
6 signature-gathering in support of initiatives and stating that “we believe that Ohio’s
7 express exemption [of First Amendment protected activity] is vitally important here.”);
8 *Common Sense Party v. Padilla*, 2020 WL 3491041, at *1 (E.D. Cal. June 26, 2020).

9 *Padilla*, which specifically addressed voter registration activities, is instructive
10 here. In that case, the Common Sense Party sued to enjoin enforcement of a California
11 law that required a minimum number of registered voters for a party to qualify for
12 recognition on the presidential election ballot. *Padilla*, at *1. The Party alleged the
13 pandemic prevented them from registering a sufficient number of voters. *Id.* In denying
14 relief, the court cited the numerous ways plaintiffs could register voters without direct
15 physical contact and the fact that the governor’s orders exempted election-related
16 activities. *Id.* at *6. The court concluded “a short window where in-person solicitation
17 may not have been permitted does not qualify as a ‘severe’ burden.” *Id.* These
18 circumstances are present here. Plaintiffs do not have to take action within a limited
19 window of time to accomplish their election-related objectives. *See, e.g., Pritzker*, 2020
20 WL 1951687, at *4. There is no time window; a person in Arizona can register to vote
21 years in advance of an election.⁸

22 In short, neither the facts nor the law “clearly favor” Plaintiffs. *See Comm. of*
23 *Cent. Am. Refugees*, 795 F.2d at 1441; *see also Soules v. Kawaiians for Nukoli Campaign*
24 *Comm.*, 849 F.2d 1176, 1182–83 (9th Cir. 1988)) (while courts have a duty to ensure
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26 ⁸ Cases dealing with the aftermath of a hurricane, and the attendant effects on voters’
27 rights *immediately* after a storm, are also inapposite. *See* Motion at 7-8 (citing *Fla.*
28 *Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1254 (N.D. Fla. 2016), and *Ga. Coal*
for the People’s Agenda, Inc. v. Deal, 214 F. Supp. 1344 (S.D. Ga. 2016)).

1 that elections “conform to constitutional standards,” courts must “undertake that duty
2 with a clear-eyed and pragmatic sense of the special dangers of excessive judicial
3 interference with the electoral process”).

4 **B. Plaintiffs Have Not Demonstrated Irreparable Harm**

5 Because Plaintiffs’ likelihood of success on the merits is extremely low, their
6 threshold requirement for showing irreparable harm is heightened. *See Save Our*
7 *Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1120 (9th Cir. 2005). Plaintiffs cannot satisfy
8 this heightened threshold for several reasons, even in light of COVID-19.

9 First, Plaintiffs’ claim of irreparable injury (failure to achieve their organization’s
10 goal of registering 55,000 voters) allegedly caused by the Deadline is not cognizable.
11 *See Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020) (“[s]elf-inflicted wounds
12 are not irreparable injuries”). There are numerous election regulations with which voters
13 must comply to have their vote counted. If an organization wishes for certain voters’
14 ballots to be counted, the organization must educate those voters on how to comply with
15 those deadlines. No irreparable injury could be claimed for resources diverted to
16 educating voters on any *constitutional* election regulation. Again, Plaintiffs’ failure to
17 show any likelihood of success on the merits dooms their claim of irreparable injury.

18 Plaintiffs’ claim here that the Deadline is unconstitutional is not related to any
19 increased hardship associated with the pandemic. While the pandemic creates significant
20 challenges in an election year, it does not justify rewriting Arizona’s 30 year-old statute
21 on the eve of an election. The very real reasons it made sense to temporarily suspend
22 election laws in other states to account for COVID-19 when it first emerged do not
23 support enjoining the Deadline seven months after COVID-19 began community spread.

24 **C. The Balance of Equities and the Public Interest Favor the Secretary**

25 Enjoining the Deadline is not in the public interest, and the balance of equities
26 favors the Secretary. “[D]istrict courts must give serious consideration to the balance of
27 equities.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010) (citation
28 omitted). In doing so, courts must consider “all of the competing interests at stake.” *Id.*

1 “[T]he less certain the district court is of the likelihood of success on the merits, the
2 more plaintiffs must convince the district court that the public interest and balance of
3 hardships tip in their favor.” *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d
4 914, 918 (9th Cir. 2003). This burden is even higher when, as here, Plaintiffs seek a
5 mandatory injunction that would require this Court to rewrite state law for the coming
6 election. *See Comm. of Cent. Am. Refugees*, 795 F.2d at 1441.

7 Of course, Plaintiffs and the Secretary alike benefit from ensuring public health
8 and safety. *See Grand River Enterprises Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 169
9 (2d Cir. 2005) (“public health” is a “significant public interest”). But the facial
10 constitutionality of the Deadline is not disputed, and the public interest is not served by
11 enjoining the statute. Plaintiffs’ requested relief only increases potential burdens
12 associated with this last-minute request. Critically, Plaintiffs do not acknowledge the
13 clear tension between their proposed deadline and other statutory deadlines with which
14 county officials must comply. Plaintiffs’ proposal would conflict with information in the
15 Secretary’s Publicity Pamphlet and other official election communications that have
16 already been published and disseminated. *See Ex. C*.

17 Finally, Plaintiffs overlook important public interest implications associated with
18 enjoining the statute. Enjoining any state law, particularly a well-established and
19 generally-applicable election law, has significant consequences. The State’s legislative
20 process is entitled to respect, and a state “suffers an irreparable injury whenever an
21 enactment of its people or their representatives is enjoined.” *Coal. v. Econ. Equity v.*
22 *Wilson*, 122 F.3d 718, 719 (9th Cir. 1997). The Deadline does not violate the
23 Constitution. Plaintiffs have not established that the balance of equities and public
24 interest favor an injunction, and COVID-19 does not alter this outcome.

25 IV. CONCLUSION

26 Plaintiffs have not demonstrated that the law or the facts clearly favor them to
27 warrant a mandatory injunction. Accordingly, the Court should deny Plaintiffs’ Motion.

28 RESPECTFULLY SUBMITTED this 2nd day of October, 2020.

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