

1 Matthew D. Brinckerhoff (NY Bar # 2415537)*
 Jonathan S. Abady (NY Bar # 2415222)*
 2 Zoe Salzman (NY Bar # 4663308)*
 Nick Bourland (NY Bar # 5576129)*
 3 EMERY CELLI BRINCKERHOFF ABADY
 WARD & MAAZEL LLP
 4 600 Fifth Avenue, 10th Floor
 New York, New York 10020
 5 (212) 763-5000
 mbrinckerhoff@ecbawm.com
 6 jabady@ecbawm.com
 zsalzman@ecbawm.com
 7 nbourland@ecbawm.com

8 [Additional counsel cont. on next page]

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

11 Mi Familia Vota; Arizona Coalition for
 12 Change; and Ulises Ventura,

13 Plaintiffs,

14 v.

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

17 Defendant.

No. _____

**PLAINTIFFS' EMERGENCY
 MOTION FOR TEMPORARY
 RESTRAINING ORDER AND
 PRELIMINARY INJUNCTION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

(ORAL ARGUMENT REQUESTED)

**(EXPEDITED RULING
 REQUESTED)**

18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

1 Mary R. O'Grady (AZ Bar #011434)
2 Joshua D. Bendor (AZ Bar # 031908)
3 OSBORN MALEDON, P.A.
4 2929 North Central Avenue, Suite 2100
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 mogrady@omlaw.com
8 jbendor@omlaw.com

9 John Bonifaz (MA Bar # 562478)**
10 Gillian Cassell-Stiga (NY Bar # 5069877)**
11 Ben Clements (MA Bar # 555082)**
12 Ronald Fein (MA Bar # 657930)**
13 FREE SPEECH FOR PEOPLE
14 1320 Centre Street, Suite 405
15 Newton, Massachusetts 02459
16 (617) 249-3015
17 jbonifaz@freespeechforpeople.org
18 gillian@freespeechforpeople.org
19 bclements@freespeechforpeople.org
20 rfein@freespeechforpeople.org

21 * *Admitted Pro Hac Vice*

22 ** *Pro Hac Vice Applications to be filed*

23
24
25
26
27
28
Attorneys for Plaintiffs

1 Plaintiffs Mi Familia Vota (“MFV”), Arizona Coalition for Change (“ACFC”),
2 and Ulises Ventura move the Court pursuant to Federal Rule of Civil Procedure 65 for a
3 temporary restraining order and preliminary injunction enjoining Defendant from
4 enforcing the October 5, 2020 deadline required by Ariz. Rev. Stat. § 16-120 (the
5 “Voter Registration Cutoff”) and ordering Defendant to direct the County Recorders to
6 extend the Voter Registration Cutoff to a date no earlier than 5:00 pm on October 27,
7 2020.¹

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **PRELIMINARY STATEMENT**

10 Every election year, Plaintiffs MFV and ACFC organize a grassroots campaign
11 to register people to vote. Plaintiff Ulises Ventura is a voter registration organizer for
12 MFV. Plaintiffs work tirelessly over many months to expand the franchise to as many
13 Arizonans as possible, going door-to-door and holding registration drives at busy
14 supermarkets, public schools, churches, and community centers. This year, their plan
15 was to register 55,000 voters. In just two months, between January 13 and March 20,
16 2020, they registered *16,507* new voters.

17 But then COVID-19 struck Arizona. In an effort to stop the spread of the virus,
18 the Governor took extraordinary measures. A state of emergency was declared; schools
19 were closed statewide; gatherings of ten people or more were forbidden; restaurants,
20 bars, gyms, and movie theaters were closed; and, on March 30, the Governor issued a
21 stay-at-home order and mandated social distancing in public.

22 Plaintiffs were unable to hold registration drives or do door-to-door registration
23 safely and lawfully. Plaintiffs attempted to register voters instead through online
24 advertisements and text and phone drives, but these efforts were a poor substitute for in-
25 person registration. Arizona’s online voter registration portal requires a driver’s license

26 ¹ Defendant “Secretary has the authority to promulgate rules and procedures for
27 elections, such as voter registration, which encompasses determining voter registration
28 deadlines” and the County Recorders must defer to the Secretary. *Arizona Democratic
Party v. Reagan*, No. 16. Civ. 03618, 2016 WL 6523427, at *6 (D. Ariz. Nov. 3, 2016).

1 (which not all voters have) and many people in the communities Plaintiffs serve lack the
2 technology and capability to register online. MFV, for example, averaged only 193
3 registrations per week, a dramatic decrease from the 1,523 voters they registered the
4 week before the shutdown. The State’s own data confirms there has been a 65%
5 decrease in voter registrations this year as compared to 2016, the last presidential
6 election year. After Arizona began to reopen at the end of the summer, Plaintiffs ramped
7 up their voter registration efforts and registration numbers began to climb.

8 Now, Plaintiffs’ efforts face another threat. Arizona law provides that: “An
9 elector shall not vote in an election called pursuant to the laws of this state unless the
10 elector has been registered to vote . . . before midnight of the twenty-ninth day
11 preceding the date of the election.” Ariz. Rev. Stat. Ann. § 16-120. This year, therefore,
12 Arizonans must register by October 5, or lose their right to vote in the November 3
13 election.² The impending Voter Registration Cutoff threatens to precipitously end
14 Plaintiffs’ voter registration efforts just weeks after they resumed. Plaintiffs brought this
15 lawsuit as soon as they realized their revamped registration efforts were working and an
16 extension of the Voter Registration Cutoff would allow them to register thousands of
17 additional voters.

18 Registering citizens to vote involves the expression of core political speech and
19 associational rights safeguarded by the First and Fourteenth Amendments. This year—
20 on the heels of five months of State-imposed shutdowns and social distancing—the fast-
21 approaching Voter Registration Cutoff severely burdens Plaintiffs’ right to register their
22 fellow Arizonans to vote. The Voter Registration Cutoff is unconstitutional as applied
23 under these circumstances and can be extended until October 27 without causing more
24

25 ² Separate provisions provide a “mailbox rule” for registrations submitted by mail
26 by the twenty-ninth day before the election. See Ariz. Rev. Stat. § 16-134(C)(1)–(2).
27 Thus, while the county recorder may process registrations received by mail after this
28 deadline, for an individual voter or for those, like Plaintiffs, who seek to aid citizens in
registering to vote, the registrations must be completed and submitted by the twenty-
ninth day before the election.

1 than a de minimis administrative inconvenience to the State. To avoid an irreversible
2 constitutional injury to Plaintiffs and the disenfranchisement of thousands of voters, the
3 Voter Registration Cutoff must be extended.

4 **ARGUMENT³**

5 A plaintiff seeking a temporary restraining order or preliminary injunction must
6 show that: “(1) she is likely to succeed on the merits, (2) she is likely to suffer
7 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in
8 her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786
9 F.3d 733, 740 (9th Cir. 2015) (quotation marks and citation omitted); *Stuhlberg Int’l*
10 *Sales Co. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting
11 that the analysis for temporary restraining orders and preliminary injunctions is
12 “substantially identical”). Although all four elements must be satisfied, the Ninth
13 Circuit employs a “sliding scale” approach, where “a stronger showing of one element
14 may offset a weaker showing of another.” *Corner Edge Interactive LLC v. Johnson*, No.
15 19 Civ. 5404, 2020 WL 1548068, at *5 (D. Ariz. Mar. 5, 2020) (quoting *Alliance for the*
16 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). “Serious questions going
17 to the merits, coupled with a balance of hardships tipping sharply in the plaintiff’s
18 favor,” can support issuance of preliminary relief, so long as the plaintiff also makes a
19 showing on the two remaining elements. *Id.* (quoting *Alliance for the Wild Rockies*, 632
20 F.3d at 1135).

21 Here, all four elements support granting emergency relief. As applied during the
22 ongoing COVID-19 emergency, the Voter Registration Cutoff violates the First and
23 Fourteenth Amendments and severely burdens Plaintiffs’ ability to exercise core
24 political speech and associational rights in voter registration and get-out-the-vote
25 (“GOTV”) campaigns. Because the State cannot claim any serious harm from the

26 ³ For a complete recitation of the facts, Plaintiffs incorporate by reference and
27 refer the Court to Plaintiffs’ Complaint and the Declarations of Flavio Bravo (“Bravo
28 Decl.”), Reginald Bolding (“Bolding Decl.”), Joel Edman (“Edman Decl.”), and expert
Virginia Martin (“Martin Decl.”).

1 enjoining of unconstitutional behavior and extension of the Voter Registration Cutoff,
2 and the public interest weighs strongly in favor of allowing Arizonans to exercise their
3 Constitutional rights and expand the voting franchise, this Court should grant Plaintiffs’
4 motion for a temporary restraining order and a preliminary injunction.

5 **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR**
6 **CLAIMS**

7 The organizational plaintiffs have standing. All Plaintiffs are likely to succeed on
8 their claims that the Voter Registration Cutoff as applied following months of COVID-
9 19-related stay-at-home restrictions and social distancing measures severely burdens
10 Plaintiffs’ First and Fourteenth Amendment rights.

11 **A. The Organizational Plaintiffs Have Standing to Seek an Injunction**

12 MFV and ACFC have Article III standing because they “can demonstrate: (1)
13 frustration of [their] organizational mission; and (2) diversion of [their] resources to
14 combat the particular [conduct] in question.” *Am. Diabetes Ass’n v. U.S. Dep’t of the*
15 *Army*, 938 F.3d 1147, 1154 (9th Cir. 2019) (quotation marks and citation omitted).

16 MFV’s mission is “uniting Latino, immigrant, and allied communities to promote
17 social and economic justice through citizenship workshops, voter registration, and voter
18 participation” and “public education, voter registration, and voter engagement.” Bravo
19 Decl. ¶ 2. Similarly, ACFC’s mission is “to empower everyday people to transform
20 their community by building civic power, just and equitable schools, and safer
21 neighborhoods.” Bolding Decl. at ¶ 2. ACFC’s “civic engagement team’s primary
22 mission is to register people to vote.” Bolding Decl. ¶ 3. Because of the pandemic
23 restrictions, Plaintiffs have only been able to register approximately 23,000 new voters
24 instead of their targeted 55,000. *Id.* ¶ 29; Bravo Decl. ¶ 37. Enforcement of the Voter
25 Registration Cutoff this year will frustrate Plaintiffs’ mission by preventing them from
26 registering thousands of additional voters. *See Fair Maps Nev. v. Cegavske*, No. 20 Civ.
27 271, 2020 WL 2798018, at *14–16 (D. Nev. May 29, 2020) (holding that organizational
28 plaintiff had standing to challenge statutory election deadline because the organization

1 was “collecting [ballot initiative] signatures until COVID-19 and the Stay at Home
2 Order made it impossible to collect signatures in person.”).

3 Plaintiffs diverted resources because of the impending Voter Registration Cutoff.
4 For example, MFV paid voter registration workers higher salaries, re-allocated staff to
5 do voter registration work, and developed a health and safety protocol for renewed in-
6 person registration. Bravo Decl. ¶¶ 29–32. ACFC hosted drive-through registration
7 events; reassigned employees from other projects to voter registration work; and
8 engaged in unplanned fundraising and re-budgeting. Bolding Decl. ¶¶ 23–27.

9 **B. The October 5 Registration Cutoff Violates Plaintiffs’ First and**
10 **Fourteenth Amendment Rights**

11 A state’s election laws, including those that “govern the registration and
12 qualification of voters,” inevitably affect “the individual’s . . . right to associate with
13 others for political ends.” *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Voter
14 registration efforts are protected by both the First Amendment and the Due Process
15 Clause of the Fourteenth Amendment.⁴ *See Dietrich v. John Ascuaga’s Nugget*, 548
16 F.3d 892, 896 (9th Cir. 2008) (“[T]he First Amendment plainly protects Plaintiff’s
17 activities—gathering signatures for a political petition and registering voters.”) (citing
18 *Morse v. Frederick*, 551 U.S. 393, 403 (2007)).

19 Challenges to state election laws that burden constitutional rights are analyzed
20 under the *Anderson-Burdick* balancing test, which courts use to “weigh the character
21 and magnitude of the burden the State’s rule imposes on those rights against the
22 interests the State contends justify that burden, and consider the extent to which the
23 State’s concerns make the burden necessary.” *Timmons v. Twin Cities Area New Party*,

24
25 ⁴ *See NAACP v. Alabama*, 357 U.S. 449, 460 (1958) (“It is beyond debate that
26 freedom to engage in association for the advancement of beliefs and ideas is an
27 inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth
28 Amendment, which embraces freedom of speech.”). As noted below, Plaintiffs’
Fourteenth and First Amendment claims are analyzed in concert under the *Anderson-*
Burdick test.

1 520 U.S. 351, 358 (1997) (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). First
2 Amendment and due process claims are both “folded into the *Anderson-Burdick*
3 inquiry,” *Soltysik v. Padilla*, 910 F.3d 438, 449 n.7 (9th Cir. 2018), and addressed
4 “collectively using a single analytical framework,” *Dudum v. Arntz*, 640 F.3d 1098,
5 1106 n.15 (9th Cir. 2011).

6 “[T]he rigorousness of [the court’s] inquiry into the propriety of a state election
7 law depends upon the extent to which a challenged regulation burdens First and
8 Fourteenth Amendment rights.” *Burdick*, 504 U.S. at 434. Laws that impose “severe
9 restrictions” must be “narrowly drawn to advance a state interest of compelling
10 importance. *Id.* (quotation marks and citation omitted).

11 **1. The Burden Imposed by the Voter Registration Cutoff Is**
12 **Severe**

13 Strict enforcement of the Voter Registration Cutoff following five months of
14 COVID-19 stay-at-home orders, social distancing, and related restrictions imposes a
15 severe burden on Plaintiffs’ constitutional rights, triggering exacting review under
16 *Anderson-Burdick*. See *Esshaki v. Whitmer*, 813 Fed. App’x 170, 171 (6th Cir. 2020)
17 (“[T]he district court properly applied the *Anderson-Burdick* test” and “correctly
18 determined that the combination of the State’s strict enforcement of the ballot-access
19 provisions and the Stay-at-Home Orders imposed a severe burden on plaintiffs’ ballot
20 access, so strict scrutiny applied.”).

21 In 2020, Plaintiffs’ target was to register 55,000 voters. Bravo Decl. ¶ 5; Bolding
22 Decl. ¶ 8. Before the shutdown, MFV alone was on track to register 41,568. Bravo Decl.
23 ¶ 7. But during the 5-month government-imposed shutdown, Compl. ¶¶ 37–47,
24 Plaintiffs’ teams of organizers found themselves unable to register voters door-to-door
25 and in busy public settings without running afoul of the Governor’s orders, county and
26 city restrictions, CDC guidance, and the public health consensus. Bravo Decl. ¶¶ 8–17;
27 Bolding Decl. ¶¶ 11–15. Plaintiffs’ voter registration numbers plummeted. MFV
28 averaged only 193 registrations per week as compared to 1,523 the week before the

1 shutdown. Bravo Decl. ¶ 23. Similarly, ACFC averaged only 89 registrations per week
2 from April through July. Bolding Decl. ¶ 21. Simply put, Plaintiffs “lost 5 months of in-
3 person voter registration.” Bravo Decl. ¶ 24. According to the Secretary’s own data,
4 there has been a 65% decrease in voter registrations as compared to 2016.⁵ “Like [the
5 pandemic], the voter registration deadline” is now “also approach[ing] and b[earing]
6 down” on the State of Arizona. *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250,
7 1254 (N.D. Fla. 2016).

8 Courts around the country have recognized the severe burden that the pandemic
9 and related shut-down orders place on election-related constitutional rights and have
10 ordered the remedy requested here—an extension on statutory deadlines. *See, e.g.,*
11 *Cegavske*, 2020 WL 2798018, at *14–16 (ordering Nevada to extend its statutory ballot
12 initiative petition deadline, which impermissibly inhibited plaintiffs’ First Amendment
13 rights, as applied during COVID-19); *Democratic Nat’l Comm. v. Bostelmann*, No. 20
14 Civ. 249, 2020 WL 5627186, at *17–22 (W.D. Wis. Sept. 21, 2020), *stay request denied*
15 *and interim stay vacated*, Nos. 20-2835 & 20-2844, 2020 WL 5796311 (7th Cir. Sept.
16 29, 2020) (ordering the extension of Wisconsin’s statutory 2020 general election voter
17 registration and absentee ballot deadlines which, in light of COVID-19, substantially
18 burden plaintiffs’ constitutional rights); *Esshaki*, 813 Fed. App’x at 171 (upholding the
19 district court’s preliminary injunction prohibiting enforcement of Michigan’s ballot
20 petition signature deadline, which imposed severe burden during COVID-19);
21 *Gallagher v. N.Y. State Bd. of Elections*, No. 20 Civ. 5504, 2020 WL 4496849, at *16–
22 18, 23 (S.D.N.Y. Aug. 3 2020) (enjoining New York to disregard its statutory mail-in
23 ballot postmark deadline, which “in light of the ongoing COVID-19 pandemic” imposed
24 an “exceptionally severe” burden on plaintiffs); *Libertarian Party of Ill. v. Pritzker*, No.
25 20 Civ. 2112, 2020 WL 1951678, at *2–5 (N.D. Ill. Apr. 23, 2020) (adopting a joint

26
27 ⁵ Between January and August 2016, 146,214 new voters registered. In the same
28 period this year, the State processed only 62,565 registrations. Compl. ¶ 61; Martin
Decl. ¶ 44.

1 proposed order extending ballot petition signature deadlines where, as applied in
2 combination with COVID-19 restrictions, the effect of the requirements insurmountably
3 burdened plaintiffs); *Goldstein v. Sec’y of the Commonwealth*, 484 Mass. 516, 525
4 (Mass. 2020) (applying state *Anderson-Burdick* equivalent and ordering Massachusetts
5 to extend deadlines for submission of nominating papers where statutory requirements
6 imposed a severe burden, as applied during COVID-19). Beyond the COVID-19
7 context, courts have also granted preliminary injunctive relief where statutory voter
8 registration deadlines severely burdened constitutional rights in the wake of a natural
9 disaster. *See Scott*, 215 F. Supp. 3d at 1257 (statutory voter registration cutoff date, as
10 applied in the wake of hurricane-related emergency restrictions and closures, likely
11 severely burdened individuals’ right to vote); *Ga. Coal. for the People’s Agenda, Inc. v.*
12 *Deal*, 214 F. Supp. 3d 1344, 1345–46 (S.D. Ga. 2016) (same).

13 *Cegavske*, a recent District of Nevada decision, is particularly instructive here. In
14 *Cegavske*, as here, plaintiffs brought an as-applied challenge to a state statutory election
15 filing deadline. *Cegavske*, 2020 WL 2798018, at *1. The organizational plaintiff in
16 *Cegavske*, Fair Maps Nevada (“FMN”), like Plaintiffs here, engaged in core First
17 Amendment election-related organizing activity—in FMN’s case, by collecting
18 signatures in support of a ballot initiative. *Id.* at *3, 11. FMN’s signature-gathering
19 activity involved the same sort of close human contact required for Plaintiffs to help
20 voters fill out registration forms. FMN collected approximately 10,000 signatures prior
21 to the emergence of COVID-19, *id.*, like MFV and ACFC, who registered 16,507
22 voters. Nevada’s Governor, like Arizona’s, took significant measures to combat
23 COVID-19, including declaring a state of emergency, issuing a stay-at-home order, and
24 forbidding group gatherings. *Id.* at *3. Nevada’s stay-at-home orders and social
25 distancing restrictions “effectively barred [FMN] from circulating their initiative
26 petition for signature” throughout the stay-at-home order, *id.* at *1, meaning FMN, like
27 Plaintiffs, found its electoral organizing efforts hamstrung. FMN filed suit and argued
28 that Nevada’s statutory filing deadline, as applied in concert with Nevada’s COVID-19

1 restrictions, “made collecting signatures in-person prohibitive and even dangerous—so
 2 the Secretary [of State] should extend the Deadline.” *Id.* at *4. The *Cegavske* court
 3 agreed and held that the Secretary of State’s refusal to extend the filing deadline
 4 “significantly inhibited [FMN’s] chances of collecting the threshold signatures to
 5 qualify their initiative,” *id.* at *14, and therefore violated FMN’s First Amendment
 6 rights,⁶ *id.* at *15. The court issued a preliminary injunction and directed the Nevada
 7 Secretary of State to extend the deadline. *Id.* at *16–18.

8 This Court should do the same here. The public health threat posed by COVID-
 9 19 cannot be enjoined, but the Voter Registration Cutoff as applied in these pandemic
 10 circumstances is subject to this Court’s constitutional scrutiny. Only the relief ordered
 11 in *Cegavske* and the many other cases cited above—an injunction and extension of the
 12 Voter Registration Cutoff—will protect Plaintiffs’ constitutional rights.

13 **2. No State Interest Sufficiently Justifies the October 5, 2020**
 14 **Cutoff**

15 The Secretary cannot provide sufficient justification for enforcement of the Voter
 16 Registration Cutoff given the severe burden imposed on core constitutional rights and
 17 the limited inconvenience of an extension.

18 **a. The State Cannot Justify the Severe Burden on**
 19 **Plaintiffs’ Constitutional Rights**

20 Any administrative inconvenience the Secretary may experience as a result of an
 21 extension of the Voter Registration Cutoff is insufficient to justify imposing a severe
 22 burden on Plaintiffs’ constitutional rights. “While [inconvenience] is a valid
 23

24 ⁶ Because *Cegavske* challenged a deadline created by statutes that implement
 25 Nevada’s ballot initiative process, the court applied the Ninth Circuit’s test in *Angle v.*
 26 *Miller*, 673 F.3d 1122 (9th Cir. 2012), which “took what is basically the *Anderson-*
 27 *Burdick* framework and applied it to the specific context of Nevada’s initiative process
 28 for amending the Nevada Constitution.” *Cegavske*, 2020 WL 2798018, at *11. The
 standard in *Angle* is functionally identical to *Anderson-Burdick*. *See id.* at *14
 (weighing whether Nevada’s statute providing the submission deadline is narrowly
 tailored to advance a compelling state interest to survive First Amendment scrutiny).

1 governmental interest,” it is not “compelling under the circumstances here—during an
2 unprecedented pandemic.” *Cegavske*, 2020 WL 2798018, at *15.

3 In two apposite cases arising from a hurricane that struck the Southeast prior to
4 the 2016 election, courts weighed urgent requests to extend voter registration deadlines
5 and found that any administrative inconvenience to defendants was insufficient to
6 justify burdening plaintiffs’ constitutional rights. *See generally Scott*, 215 F. Supp. 3d
7 1250; *Deal*, 214 F. Supp. 3d 1344. The *Scott* court reasoned that it would be
8 “nonsensical to prioritize [voter registration] deadlines” over constitutional rights,
9 “especially given the circumstances” of the state of emergency. 215 F. Supp. 3d at 1258.
10 Likewise, in *Deal*, the court noted that the defendants’ “administrative hurdles pale[d]
11 in comparison to the physical, emotional, and financial strain [individuals] faced in the
12 aftermath of [the] Hurricane.” 214 F. Supp. 3d at 1345; *see also Carey v. Population*
13 *Servs. Int’l*, 431 U.S. 678, 691 (1977) (“[T]he prospect of additional administrative
14 inconvenience has not been thought to justify invasion of fundamental constitutional
15 rights.”). Under emergency situations, affording impacted individuals extra time to
16 register to vote is “small consolation on behalf of their government.” *Deal*, 214 F. Supp.
17 3d at 1345–46.

18 The same relief is appropriate here, where Plaintiffs have faced a greater
19 emergency—both in duration and community impact—than a single hurricane. Arizona,
20 on the other hand, faces precisely the same administrative inconvenience the Florida
21 and Georgia defendants faced in *Scott* and *Deal*. As the court concluded in *Cegavske*:
22 “If there is any time where business as usual is impossible, this is it. Thus, the Court
23 does not find severe inconvenience a compelling government interest given these
24 extraordinary circumstances.” 2020 WL 2798018, at *15.

25 **b. Any Inconvenience to the Secretary Will Be Minimal**

26 Any inconvenience the Secretary might experience will also be minimal.
27 According to Virginia Martin, an expert in elections administration, “an extension of
28 Arizona’s voter registration deadline is highly feasible. I see no reason why counties

1 could not accept registrations until seven days before the election and then successfully
2 process them.” Martin Decl. ¶ 35. Updating poll books, both paper and electronic,
3 causes only “negligible” inconvenience to election officials. *Id.* ¶ 36. “Arizona recorders
4 and poll inspectors routinely adapt to a voter roll that changes . . . during the early
5 voting period and up to and including election day.” *Id.* ¶ 38.

6 *First*, “Arizona already allows for changes to its voter roll after voting has
7 begun.” *Id.* ¶ 37 (citing Ariz. Rev. Stat. § 16-134). Officials process four categories of
8 overseas voter registrations as late as 7:00 p.m. on election day, belying any claim by
9 the Secretary that Arizona is unable to accept new registrations after October 5.⁷

10 *Second*, Arizona already allows early voting to begin just *two days* after the
11 Voter Registration Cutoff. Ariz. Rev. Stat. § 16-541.⁸ That means that, as a matter of
12 course, Arizonians can register to vote on October 5 and cast their ballot by voting early
13 just two days later on October 7. “In recent years, the Arizona Association of Counties,
14 on behalf of the various County Recorders, as well as several County Recorders
15 individually, have supported proposed legislation that would have allowed them to

17 ⁷ See Ariz. Rev. Stat. § 16-103(A), (C) (qualified registrants temporarily absent
18 from the state may register by submitting an affidavit to the county recorder up until
19 7:00 p.m. on election day); *id.* § 16-103(B), (C) (designated overseas voters, including
20 military servicemembers, federal employees, and their families, may register to vote via
21 federal postcard application up until 7:00 p.m. on election day); *id.* § 16-103(E) (U.S.
22 citizens who have never resided in the U.S. and whose parent is a citizen who is
23 registered to vote in Arizona may register using a federal write-in early ballot, as long as
24 it is received by the county recorder by 7:00 p.m. on election day); *id.* § 16-103(D)
(these same designated overseas voters, if discharged from overseas service in the 90
25 days before election day, may register to vote by 5:00 p.m. on the Friday before election
26 day); *id.* § 16-134(C)(1) (in case of registration by mail, a registration is valid if “[t]he
27 form is postmarked twenty-nine days or more before an election and is received by the
28 county recorder by 7:00 p.m. on the day of that election”).

⁸ See, e.g., Maricopa Cnty. Elections Dep’t, *Where Do I Vote?*,
<https://recorder.maricopa.gov/pollingplace/> (last visited Sept. 30, 2020) (click: “vote
centers” for early voting locations); Pima Cnty. Recorder’s Office, *Early Voting Sites*,
<https://www.recorder.pima.gov/EarlyVotingSites> (last visited Sept. 30, 2020); Yuma
Cnty. Ariz., *Early Voting*, [https://www.yumacountyaz.gov/government/recorder/voter-
information/early-voting](https://www.yumacountyaz.gov/government/recorder/voter-information/early-voting) (last visited Sept. 30, 2020).

1 extend the in-person early voting period right up until the close of business on the day
 2 before the election.” Edman Decl. ¶ 6 (citing HB 2237 (2019); HB 2206 (2018); SB
 3 1466 (2018)). This is in line with the national trend: 40% of states plus the District of
 4 Columbia allow same-day registration, and North Dakota requires no registration at all.
 5 Martin Decl. ¶ 43.

6 *Third*, Arizona already allows voters to simultaneously update their voter
 7 registration addresses and cast their votes the same day. Ariz. Rev. Stat. § 16-
 8 411(b)(5).⁹ “As a practical matter, this process (whether paper or electronic) works
 9 similarly to how same-day registration would work” Edman Decl. ¶¶ 4–5.

10 *Fourth*, Arizona already uses electronic poll books which allow for swift and
 11 frequent updating with new voter registrations.¹⁰ See Edman Decl. ¶ 4.

12 *Fifth*, all 15 Arizona counties subscribe to the Electronic Registration
 13 Information System (“ERIC”), an interstate system which makes it easier to “register
 14 more eligible citizens to vote.” Compl. ¶ 104; Martin Decl. ¶ 40.

15 For all these reasons, any inconvenience experienced by the Secretary as a result
 16 of an extension of the Voter Registration Cutoff will be minimal at worst, well short of
 17 the “severe inconvenience” deemed *insufficient* in *Cegavske*, 2020 WL 2798018, at *15,
 18 and certainly insufficient to justify severely burdening Plaintiffs’ constitutional rights.

19 **II. PLAINTIFFS FACE IRREPARABLE HARM**

20 “It is well established that the deprivation of constitutional rights unquestionably
 21 constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
 22 (quotation marks and citation omitted). Here, where the Voter Registration Cutoff
 23

24 ⁹ See, e.g., Pima Cnty. Recorder’s Office, *Provisional Voter FAQ*,
 25 https://www.recorder.pima.gov/faq_voter_provisional (last visited Sept. 30, 2020)
 (noting that a voter can vote in person and then use a provisional ballot form to update
 26 their voter registration record with a new residence address).

27 ¹⁰ See Nat’l Conference of State Legislatures, *Electronic Poll Books | e-Poll Books*
 (Oct. 25, 2019), [https://www.ncsl.org/research/elections-and-campaigns/electronic-](https://www.ncsl.org/research/elections-and-campaigns/electronic-pollbooks.aspx)
 28 [pollbooks.aspx](https://www.ncsl.org/research/elections-and-campaigns/electronic-pollbooks.aspx) (last visited Sept. 30, 2020) (noting that Ariz. Rev. Stat. Ann. §§ 16-571,
 16-444 authorize the use of e-poll books).

1 squarely threatens the First and Fourteenth Amendment rights of voter registration
2 organizers, it is clear “that irreparable harm is *likely*, not just possible.” *Alliance for the*
3 *Wild Rockies*, 632 F.3d at 1131. Because Plaintiffs are likely to succeed on the merits
4 that the Voter Registration Cutoff violates their First and Fourteenth Amendment rights,
5 the Court should “necessarily find[] irreparable harm.” *Cegavske*, 2020 WL 2798018, at
6 *17.

7 As the court noted in *Scott*, “[t]his isn’t golf: there are no mulligans. Once the
8 voter registration deadline passes, ‘there can be no do-over and no redress.’” *Scott*, 215
9 F. Supp. 3d at 1258 (quoting *League of Women Voters of N.C. v. North Carolina*, 769
10 F.3d 224, 247 (4th Cir. 2014)). Plaintiffs will suffer irreparable injury if this Court does
11 not extend the Voter Registration Cutoff.

12 **III. THE NARROW ORDER SOUGHT BY PLAINTIFFS IS IN THE PUBLIC** 13 **INTEREST AND WILL NOT HARM THE STATE**

14 The remaining elements—the balancing of equities and the public interest—also
15 favor Plaintiffs. “When the government is a party, these last two factors merge.” *Drakes*
16 *Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citation omitted). “To
17 determine which way the balance of the hardships tips, a court must identify the
18 possible harm caused by the preliminary injunction [or TRO] against the possibility of
19 the harm caused by not issuing it,” and then weigh “the hardships of each party against
20 one another.” *Univ. of Haw. Prof’l Assembly v. Cayetano*, 183 F.3d 1096, 1108 (9th Cir.
21 1999). As to the public interest, “[i]n exercising their sound discretion, courts of equity
22 should pay particular regard for the public consequences” of issuing preliminary relief.
23 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (quotation omitted).

24 Here, “[t]hese two factors also weigh in favor of issuing a preliminary injunction
25 [and TRO] that only declares [Ariz. Rev. Stat. § 16-120] unconstitutional as applied to
26 Plaintiffs by the Secretary under the unique factual circumstances of this case,”
27 *Cegavske*, 2020 WL 2798018, at *18, for the following four reasons. *First*, as explained
28 above, the violation of Plaintiffs’ constitutional rights outweighs any administrative

1 inconvenience the Secretary may suffer. *Second*, Plaintiffs were effectively prohibited
2 from registering voters for five months due to the stay-at-home order, social distancing
3 mandates, and related pandemic restrictions, “so it is both unreasonable and unfair not
4 to extend a statutory deadline for a corresponding period of time.” *Id.* at *15. *Third*, an
5 injunction is in the public interest, as “it is always in the public interest to prevent the
6 violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (quotation
7 marks and citation omitted). *Fourth*, the public’s interest in “permitting as many
8 qualified voters to vote as possible,” *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th
9 Cir. 2012), is plainly served by extending the voter registration deadline—an act that
10 will result in more Arizonans voting in this and future elections.

11 **CONCLUSION**

12 Plaintiffs are likely to succeed on their claims that, in the midst of the COVID-19
13 pandemic, enforcement of the Voter Registration Cutoff violates Plaintiffs’ First and
14 Fourteenth Amendment rights. The Court should enter a temporary restraining order and
15 preliminary injunction extending the deadline to a date no earlier than October 27, 2020.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 30th day of September, 2020.

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

By s/ Zoe Salzman

Matthew D. Brinckerhoff
Jonathan S. Abady
Zoe Salzman
Nick Bourland

OSBORN MALEDON, P.A.

Mary R. O'Grady
Joshua D. Bendor

FREE SPEECH FOR PEOPLE

John Bonifaz
Gillian Cassel-Stiga
Ben Clements
Ronald Fein

Attorneys for Plaintiffs