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27 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

28 **IN AND FOR THE COUNTY OF MOHAVE**

29 ARIZONA REPUBLICAN PARTY, et
30 al.;

31 Plaintiffs,

32 vs.

33 KATIE HOBBS, et al.;

34 Defendants.

No. S8015CV202200594

**MARICOPA COUNTY DEFENDANT'S
MOTION FOR RECONSIDERATION
OF ORDER DATED MAY 26, 2022
SETTING JUNE 1 BRIEFING
DEADLINE**

(Honorable Lee F. Jantzen)

1 Pursuant to Rule 7.1(E), Defendant Rey Valenzuela (the “Maricopa County
2 Defendant”)¹ respectfully requests reconsideration of this Court’s Order, filed May 26, 2022,
3 setting a briefing deadline of June 1, 2022 on Plaintiff’s Application for an Order to Show
4 Cause.

5 MEMORANDUM

6 Yesterday, May 25, 2022, Plaintiffs filed a document called “Request to Set Deadline
7 to File Written Responses to Application for Order to Show Cause Pursuant to ARCP 7.3”
8 (hereafter, “Request”). The Request asked the Court to amend its May 18, 2022 Order, to
9 require the defendants in this matter to file any written responses to Plaintiff’s application
10 for an order to show cause by May 31, 2022.

11 Today, while the Maricopa County Defendant was in the process of filing this
12 document as a Response Opposing Plaintiffs’ Request, this Court issued an Order, dated
13 May 26, 2022, essentially granting Plaintiffs’ Request. The Order set a briefing deadline of
14 12 noon on June 1—**a mere three business days from now**, to brief the enormous question
15 of the constitutionality of Arizona’s early voting law.

16 As explained below, the Maricopa County Defendant has not begun briefing, believing
17 that the purpose of the OSC hearing was to discuss a briefing and/or trial schedule and other
18 procedural matters, as is often the case. Further and more to the point: this accelerated pace
19 is not necessary. This is not “an expedited elections case,” and there is no need to be on a
20 rocket-docket pace. Finally, a four-day deadline to brief these important constitutional
21 issues will prejudice the Defendants’ ability to adequately brief and defend early voting. It
22 will also hinder the administration of justice and judicial economy.

23 The Maricopa County Defendant therefore respectfully requests that this Court
24 reconsider its Order and adhere to the usual briefing deadlines set by the Arizona Rules of
25 Civil Procedure.

26 ¹ Plaintiffs named Rey Valenzuela, Maricopa County’s Co-Director of Elections, as the only
27 Maricopa County defendant. Maricopa County Recorder Stephen Richer will soon file a
28 motion to substitute himself as a defendant in place of Mr. Valenzuela.

ARGUMENT

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2 **1. This is not “an expedited election-related matter” for which expedited**
3 **briefing would be warranted.** Plaintiffs characterize their action as an “an election case”
4 and an “expedited election-related matter[.]” Request at 2. The Plaintiffs’ include
5 “[Expedited Election Case]” in the Caption of their Complaint. But this is not an expedited
6 election case and calling it one does not change that fact. Expedited election cases are those
7 matters designated by statute for expedited review and to which Rule 10 of the Arizona Rules
8 of Civil Appellate Procedure applies; namely, candidate nomination petition challenges
9 (A.R.S. § 16-351) and contests of elections (A.R.S. §§ 16-671 – 16-678). Each of those, by
10 statute, set an accelerated schedule for the parties and the courts. This challenge is not one
11 of those. Rather, it is an ordinary civil action challenging early voting procedures that have
12 been used in Arizona in their current form since 1991. As such, it is subject to the regular
13 deadlines provided for by the Arizona Rules of Civil Procedure. This means that the
14 Maricopa County Defendant’s Answer or other response to the Complaint is due on June 7,
15 2022, and his response to the Preliminary Injunction Motion is due on June 13, 2022. Ariz.
16 R. Civ. P. 7.1(a)(3); 12(a).

17 **2. Plaintiffs have been dilatory in pursuing their claims, undercutting any**
18 **claimed emergency.** The lawsuit Plaintiffs filed in this Court is essentially the same action
19 that they filed as a special action in the Arizona Supreme Court on February 25, 2022. The
20 Supreme Court denied jurisdiction on April 5, 2022. Plaintiffs then waited six weeks, until
21 May 17, 2022, to file this action in the Mohave County Superior Court. They then waited
22 another three days, until May 20, 2022, to file their preliminary injunction motion, and
23 waited another five days, until May 25, 2022, to file their Request.

24 Meanwhile, this Court entered an Order on May 18, 2022, setting a June 3 Order to
25 Show Cause Hearing. The Court did not set a response deadline. This was not unusual.
26 Courts regularly set the initial OSC hearing as a “return hearing” in order to discuss the
27 briefing schedule, hearing dates, and other procedural matters with the parties. Because no
28 briefing deadline was included in the May 18, 2022 Order, the Maricopa County Defendant

1 reasonably believed that the Court intended to use the Hearing for those types of
2 housekeeping matters, and a briefing schedule would be set at the Hearing. As a result, the
3 Maricopa County Defendant has not begun briefing this issue.

4 This Court's May 26, 2022 Order, setting the defendants' briefing deadline as noon
5 on June 1, 2022, will short circuit the defendants' ability to adequately respond to Plaintiffs'
6 attempt to upend the entire election administration system that has been in place for more
7 than thirty years. There is no need to do this, especially considering the dilatory actions of
8 the Plaintiffs.

9 **3. The Plaintiffs' Request is not in the interest of justice and hinders judicial**
10 **economy.** Early voting is wildly popular in Arizona, utilized by the vast majority of
11 Arizonans to cast their ballots. It has been in use in its current form since 1991. This lawsuit,
12 which seeks an Order that early voting violates the state Constitution and cannot be used in
13 future elections, warrants thoughtful, unhurried briefing by the parties to assist the Court
14 with its consideration of the questions presented. The Plaintiffs had decades before filing in
15 the Supreme Court to develop their theories and arguments, and six weeks to refine their
16 claims between the time the Supreme Court denied jurisdiction of their original action and
17 they brought the case at bar.

18 The Defendants need adequate time to present a thoughtful and thorough response
19 to Plaintiffs' arguments. Giving the Defendants a mere six days (*only three of which are*
20 *business days*) to respond, over a three-day holiday weekend, is not in the interest of justice.
21 It also is not in the interest of judicial economy. The briefing schedule set by the May 26,
22 2022 Order makes it unlikely that the Defendants will be able to produce the type of briefing
23 that will adequately defend Arizona law and also be helpful to this Court as it considers the
24 monumental question of the constitutionality of early voting in Arizona.

25 **4. The *Purcell* principle counsels against a ruling that will enjoin early**
26 **voting during the elections in 2022, making a rushed briefing schedule unnecessary.** As
27 Justice Kavanaugh recently explained, the *Purcell* principle, derived from the Court's
28 decision in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), stands for the proposition that "federal

1 courts ordinarily should not enjoin a state’s election laws in the period close to an election[.]”
2 *Merrill v. Milligan*, 595 U.S. ___, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring).
3 This *Purcell* principle has been relied upon so frequently by federal courts that it “reflects a
4 bedrock tenet of election law: When an election is close at hand, the rules of the road must
5 be clear and settled.” *Id.* at 880–81. *See Republican Nat’l Comm. v. Democratic Nat’l*
6 *Comm.*, 140 S. Ct. 1205, 1207 (2020) (collecting cases). This is because “[l]ate judicial
7 tinkering with election laws can lead to disruption and to unanticipated and unfair
8 consequences for candidates, political parties, and voters, among others.” *Merrill*, 142 S.
9 Ct. at 881. Indeed, “state and local election officials need substantial time to plan for
10 elections[,]” which “require enormous advance preparations by state and local officials, and
11 pose significant logistical challenges.” *Id.* at 880. Indeed, the Maricopa County Board of
12 Supervisors recently approved a detailed 2022 election plan that has been in the works for
13 many months. *See* [https://recorder.maricopa.gov/site/pdf/FINAL%20-](https://recorder.maricopa.gov/site/pdf/FINAL%20-%202022%20Elections%20Plan.pdf)
14 [%202022%20Elections%20Plan.pdf](https://recorder.maricopa.gov/site/pdf/FINAL%20-%202022%20Elections%20Plan.pdf).

15 The *Purcell* principle is a *federal* rule applicable to *federal* courts, cautioning *them*
16 to avoid upending state election laws too near in time to an election. But the risks to
17 candidates, political parties, voters, and elections administration identified by the *Purcell*
18 principle are equally present when *state* courts enjoin those laws.² As a result, even if this
19 Court ultimately agrees with Plaintiffs—something that the Maricopa County Defendant
20 asserts the Court should *not* do—it should not enjoin early voting for the 2022 primary and
21 general election. This means that Plaintiffs’ requested, rushed briefing schedule is
22 unnecessary.

23 **5. The Maricopa County Defendant, along with some of the other county**
24 **recorder defendants, intend to file a Motion to Dismiss.** In addition to representing the
25

26 ² Maricopa County outlined some of the specific risks of eliminating early voting for the
27 2022 elections in its Brief of Amicus Curiae filed in the Arizona Supreme Court in *Arizona*
28 *Republican Party v. Hobbs*, No. CV-22-0048-SA on March 15, 2022. *See*
[https://www.azcourts.gov/Portals/201/2022_03_15_04392967-0-0000-](https://www.azcourts.gov/Portals/201/2022_03_15_04392967-0-0000-BriefOfAmicusCuriaeMaricopaCou.PDF)
[BriefOfAmicusCuriaeMaricopaCou.PDF](https://www.azcourts.gov/Portals/201/2022_03_15_04392967-0-0000-BriefOfAmicusCuriaeMaricopaCou.PDF).

1 Maricopa County Defendant, the Maricopa County Attorney's Office will be representing
2 numerous other county recorders in this matter. Six recorders have already agreed to
3 MCAO's representation, and several others are considering it. Undersigned counsel will file
4 a notice of appearance on their behalf on May 27, 2022.

5 The Maricopa County Defendant and some of the other county recorders intend to
6 file a motion to dismiss this matter, which they believe can be decided as a matter of law
7 without need of testimony or evidence, other than that of which this Court may take judicial
8 notice. A motion to dismiss is currently due prior to the response to Plaintiffs' motion for
9 preliminary injunction. Principles of judicial economy counsel that motions to dismiss
10 should be decided prior to the motion for preliminary injunction or any trial on the merits.
11 The Plaintiffs' proposed briefing schedule would upend that logical, orderly flow.

12 **6. The Maricopa County Defendant, along with some of the other county**
13 **recorder defendants, intend to move for a change of venue.** Prior to the June 3, 2022
14 hearing, the Maricopa County Defendant and several of the other county recorders will also
15 move to transfer venue to Maricopa County, where Plaintiffs' counsel, defendant Hobbs and
16 her counsel, the Maricopa County Defendant, and counsel for the Maricopa County
17 Defendant and numerous other county recorders reside. The Maricopa County Defendant
18 respectfully asks this Court to reconsider its Order and decline to set a briefing schedule
19 different than that provided by the Rules of Civil Procedure prior to having opportunity to
20 review the change of venue motion.

21 CONCLUSION

22 For the foregoing reasons, this Court should reconsider its May 26, 2022 Order,
23 setting a deadline of noon on June 1, 2022 for the Defendants to file responsive briefs to
24 Plaintiffs' Order to Show Cause Application. This Court should issue an Order reaffirming
25 the June 3, 2022 Hearing, but clarifying that it will be used to discuss briefing schedules, the
26 parties' plans for motions, and other housekeeping matters.

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2 RESPECTFULLY SUBMITTED this 26th day of May, 2022.

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14 ORIGINAL of the foregoing E-FILED
15 this 26th day of May, 2022 with
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