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16 **UNITED STATES DISTRICT COURT**
 17 **DISTRICT OF ARIZONA**

18 Mi Familia Vota, et al.,

19 Plaintiffs,

20 vs.

21 Katie Hobbs, et al.,

22 Defendants.

23 Case No: 2:21-cv-01423-DWL

24 **THE STATE'S REPLY TO**
 25 **PLAINTIFFS' OPPOSITION TO AMICI**
 26 **STATES' MOTION FOR LEAVE TO**
 27 **FILE AN AMICUS BRIEF**
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REPLY IN SUPPORT OF MOTION FOR LEAVE

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2 The Attorney General (the “State”) responds briefly to Plaintiffs’ opposition (Doc.
3 106) to the motion for leave of 14 states to file an amicus brief (Doc. 102). Plaintiffs’
4 opposition is meritless for four reasons.

5 *First*, Federal Rule of *Appellate* Procedure 29(a) does not apply in district court.
6 This Court is of course free to look to that rule for guidance. But the Amici States’ motion
7 is no more “untimely” under FRAP 29(a) than it “violates” Supreme Court Rule 37(2) for
8 not giving Plaintiffs 10-day advanced notice. And while Plaintiffs cite to *JZ v. Catalina*
9 *Foothills Sch. Dist.*, No. CV-20-00490-TUC-RCC, 2021 WL 5396089 (D. Ariz. Nov. 18,
10 2021), that case stands as an obvious outlier to the multitude of times this Court (and
11 others) have otherwise accepted amicus briefs without importing inapposite deadlines.

12 *Second*, even if the 7-day deadline for FRAP 29(a) applied, the Amici States have
13 sought *leave* to file. The very concept of leave is that it permits parties to take actions that
14 otherwise they could not absent leave—including due to putative deadlines. Plaintiffs are
15 in essence opposing Amici States’ request for leave because they are seeking leave. That
16 is circular reasoning at best.

17 *Third*, if analogies to FRAP 29(a) are to be drawn here, this Court should also look
18 to FRAP 29(a)(2)’s recognition that States are entitled to special consideration for
19 submitting amicus briefs that typically does not require them (or the United States) to
20 obtain leave or consent where all other parties must. But Plaintiffs’ analogy to FRAP 29(a)
21 tellingly ignores that part of the rule entirely.

22 *Fourth*, it would be distinctly inequitable to deny leave here where the United States
23 has filed a *de facto* amicus brief supporting Plaintiffs. “[O]ur Constitution establishes a
24 system of dual sovereignty between the States and the Federal Government.” *Gregory v.*
25 *Ashcroft*, 501 U.S. 452, 457 (1991). This Court should afford the 15 sovereign states
26 seeking leave here the same respect that it accords to the federal government.

27 Moreover, Plaintiffs’ suggestion that these States’ voice is unworthy of being
28 heard—even where they have similar sovereign interests in administering elections that

1 Plaintiffs’ claims threaten—is peculiar. Having asserted claims that could upend the
2 electoral systems of *most* other States if accepted, Plaintiffs cannot reasonably shut their
3 voices out of this case. Indeed, those States likely could have intervened as of right given
4 the potential for adverse precedent that could invalidate their electoral systems. (Alaska
5 and Idaho, for example, are located in the Ninth Circuit and do not have any early voting
6 list at all, rather than one merely limited by the Periodic Voting Requirement.)

7 The State does not object to Plaintiffs’ obtaining leave to file a response to the
8 Amici States’ brief. But any such response should not become an opportunity for a *de facto*
9 surreply on the State’s motion to dismiss (a concern heightened by Plaintiffs taking all 14
10 days to respond to a simple motion for leave, such that a response to the Amici States could
11 now serve that purpose under the instant timing). This Court should accordingly limit any
12 response strictly to its stated purpose.

13 **CONCLUSION**

14 This Court should grant the Amici States’ motion for leave.

15
16 Respectfully submitted this 9th day of February, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2022, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

s/ Drew C. Ensign

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