River Project Agric. Imp. & Power Dist., 39 F. Supp. 3d 1051, 1054-55 (D. Ariz. 2014) (consent decree did not purport to bind all political subdivisions of the state). Regardless, the district court's jurisdiction to enforce the LULAC Consent Decree expired on December 31, 2020. *See* Exh. C at 16. It follows that "the judgment . . . was executed. The case is over." *Taylor v. United States*, 181 F.3d 1017, 1023 (9th Cir. 1999).[2] Even by its own terms, it exerts no ongoing force.

II. The Partial Nullification of H.B. 2492 Irreparably Injures the Legislative Intervenors as Representatives of the State and of the Legislative Institution, and Inflicts a Competitive Injury on the RNC

A. The Suspension of Duly Enacted Laws Inflicts Both Sovereign and Institutional Harms

The injunction exacts two variants of irreparable injury: one to the State itself and one to the legislative institution that the Legislative Intervenors represent.

1. Arizona Law Empowers Legislative Intervenors to Defend the Constitutionality of Arizona's Duly Enacted Laws

An "injunction[] barring the State from conducting this year's elections pursuant to a statute enacted by the Legislature . . . would seriously and irreparably harm the State," if the statute is ultimately determined to be valid. *Abbott v. Perez*,

[2] Central to *Taylor*'s apprehension of a potential separation of powers problem in the congressional termination of an existing consent decree was the fact that the judgment at issue "awarded no prospective relief." 181 F.3d at 1025. Here, the Appellants do not wish to "reopen," *id*., the Decree or to retroactively nullify voter registrations conducted under its auspices. Rather, they seek only a recognition that it cannot prospectively prohibit amendments to Arizona statutes.

585 U.S. 579, 602 (2018); *see also Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." (citation omitted)).

This axiom of sovereignty—which derives from a confluence of federalism protections and separation of powers principles—is not the province of any single state actor. To the contrary, "a State is free to 'empowe[r] multiple officials to defend its sovereign interests," and "the State's executive branch" does not necessarily "hold[] a constitutional monopoly on representing [its] practical interests in court."'" *Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 192, 194 (2022) (citation omitted). Rather, federal courts must look to state law to discern the dispersion of this authority, and must heed "a State's chosen means of diffusing its sovereign powers among various branches and officials." *Id.* at 191. While the Attorney General may represent the State's interests in judicial proceedings, *see* Ariz. Rev. Stat. § 41-193(A)(3), the Arizona Legislature "has also reserved to itself some authority to defend state law on behalf of the State." *Berger*, 597 U.S. at 194.

At least two specific provisions of Arizona law undergird the Legislative Leaders' standing to contest the district court's suspension of the Legislature's enactments. First, Ariz. Rev. Stat. § 12-1841—which is substantively identical to the North Carolina statute that the Supreme Court found "expressly authorized the

legislative leaders to defend the State's practical interests in litigation," *Berger*, 597 U.S. at 193 (citing N.C. Gen. Stat. Ann. § 1-72.2 (2021))—reserves for the Legislative Leaders an "entitle[ment] to be heard," in any proceeding implicating the constitutionality of a state law, to include "interven[ing] as a party" or "fil[ing] briefs in the matter." Ariz. Rev. Stat. § 12-1841(A), (D). The statute embodies Arizona's "policy decision to vest in its legislative leaders an interest in defending the constitutionality of the legislature's enactments" in federal and state courts. *Isaacson v. Mayes*, 2:21-cv-1417, 2023 WL 2403519, at *1 (D. Ariz. Mar. 8, 2023); *see also* Dkt. 535 at 6 ("[T]he Speaker and the President are authorized to defend Arizona's statutes and the Court declines to limit their right to represent the Arizona Legislature's interests"). Because the district court's partial injunction "implicat[es] the constitutionality" of H.B. 2492 in relation to Congress' and the States' respective powers under the Presidential Electors Clause, *see* U.S. Const. art. II, § 1, the Elections Clause, *see id.* art. I, § 4, and the Supremacy Clause, *see id.* art. VI, Arizona law expressly entitles the Legislative Leaders to protect the State's sovereign interests by defending the constitutionality of Arizona's voting laws in federal court.

Second, the Arizona Constitution incorporates explicit protections of state sovereignty against unconstitutional federal incursion. *See* Ariz. Const. art. II, § 3. The provision affirms that the State may "pursu[e] any . . . available legal remedy" to counter perceived unconstitutional federal overreach, and contemplates that "the

people or their representatives [may] exercise" authority to that end. *Id.* This intended bulwark against unlawful federal encroachment is vested collectively in the elected branches of Arizona state government. When, as here, a federal court or a federal statute truncates powers that arguably are entrusted to the State, legislative "representatives" may seek appropriate relief on its behalf.

2. Curtailment of the Legislature's Authority to Select Presidential Electors and to Structure Methods of Registration and Voting in Arizona Elections Irreparably Injures the Institution

The Legislative Leaders may seek redress of injuries to the legislative institution they represent. An extrinsic constraint on a legislative body's lawmaking functions inflicts a cognizable institutional injury, and the Arizona Legislature has inherent autonomy to pursue and defend claims in furtherance of its institutional interests and prerogatives. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 800 (2015) (Arizona Legislature had standing to bring claim that initiative measure "strips the Legislature of its alleged prerogative to initiate redistricting"); *Forty-Seventh Legislature v. Napolitano*, 143 P.3d 1023, 1028 (Ariz. 2006).

The injunction thwarts the Legislature from disallowing individuals who have not proved their U.S. citizenship from participating in Arizona's selection of its presidential electors or from utilizing Arizona's generous mail-in voting option. It also elevates the Secretary of State's improvident promises in the LULAC Consent

decree over the laws of the State. In doing so, the injunction abrogates the Arizona Legislature's constitutional power to prescribe qualifications to vote for presidential electors, U.S. Const. art. II, § 1; *Carson*, 978 F.3d at 1060 ("[W]hen a state legislature enacts statutes governing presidential elections, it operates 'by virtue of a direct grant of authority' under the United States Constitution" (citation omitted)), to presumptively determine the "manner" of voting in federal elections, *see* U.S. Const. art. I, § 4 (state "Legislature" may regulate the "manner" of federal elections, subject to congressional "alter[ation]"), and to safeguard the purity of all elections in Arizona, *see* Ariz. Const. art. VII, § 12; *Priorities USA v. Nessel*, 978 F.3d 976, 981-82 (6th Cir. 2020) (citing parallel provision in Michigan Constitution and explaining that, when an election law is enjoined, "[t]he legislature has lost the ability to regulate that election in a particular way").

In short, the Arizona Legislature has sustained an injury because its "specific powers are disrupted" by the injunction. *Id.* at 982. The Legislative Leaders may seek redress of this harm on the institution's behalf, as both chambers have adopted rules empowering the Legislative Intervenors to "bring or assert in any forum on behalf of the[ir houses] any claim or right arising out of any injury to [their houses'] powers or duties under the Constitution or Laws of this state." State of Arizona, *Senate Rules*, 56th Legislature 2023-2024, Rule 2(N), https://bit.ly/3WXFLDv;

State of Arizona, *Rules of the Ariz. House of Representatives*, 56th Legislature 2023-2024, Rule 4(K), https://bit.ly/3HuL9bz.

B. The Injunction Inflicts a Competitive Injury on the RNC

In overriding the Legislature's determination that Federal Only voters may not vote for Arizona's presidential electors or vote by mail, the injunction distorts the competitive environment underpinning the 2024 election in a manner that is unfavorable to the RNC and Republican candidates. "Competitive standing recognizes the injury that results from being forced to participate in an 'illegally structure[d] competitive environment.'" *Mecinas v. Hobbs*, 30 F.4th 890 898 (9th Cir. 2022) (citation omitted); *see also Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding that "the potential loss of an election" due to allegedly unlawful attributes of the electoral system is an injury). "Voluminous" authority shows that candidates and parties suffer injury when their "chances of victory would be reduced." *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 & n.4 (5th Cir. 2006) (collecting cases).

According to Plaintiffs/Appellees' own expert, only 14.3% of Federal Only voters are registered as members of the Republican Party, while Republicans comprise 34.5% of the total active registered voter population in Arizona. *See* Trial Ex. 340, attached as Exhibit D. The judicially mandated inclusion of these individuals in the presidential electorate necessarily impairs the relative competitive

position of the Republican presidential nominee. *See Mecinas*, 30 F.4th at 898 ("ongoing, unfair advantage conferred to. . . rival candidates" was an injury).[3]

III. The Balance of Equities and Public Policy Support a Partial Stay

When, as here, a governmental party seeks a stay, "its interest and harm merge with that of the public." *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017); *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021) (preliminary injunction context). The administration of the 2024 election in accordance with safeguards devised by Arizonans' elected representatives to limit the franchise to verified United States citizens is a public interest of the highest order. *See Mi Familia Vota v. Hobbs*, 977 F.3d 948, 954 (9th Cir. 2020) ("States have 'an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes.'" (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997))).

There is no countervailing harm that an injunction is necessary to remediate. The district court found that "Plaintiffs offered no witness testimony or other 'concrete evidence' to corroborate that the Voting Laws' DPOC Requirements will in fact impede any qualified elector from registering to vote or staying on the voter rolls," Dkt. 709 at 92, and that "[t]he Voting Laws do not impose an excessive

[3] *See also Priorities USA v. Nessel*, 860 Fed. Appx. 419, 421 (6th Cir. 2021) (it suffices for just one appellant to demonstrate injury).

burden on any specific subgroup of voters," *id.* at 95. *See A. Philip Randolph Institute of Ohio v. LaRose*, 831 Fed. App'x 188, 192 (6th Cir. 2020) (concluding that stay of order authorizing counties to deploy ballot drop-boxes "is unlikely to harm anyone" by preventing them from voting).

Finally, the Supreme Court's admonition against last-minute judicially imposed alterations to a state's election procedures, *see Purcell v. Gonzalez*, 549 U.S. 1 (2006), does not apply here. If the district court's injunction was erroneously issued, *Purcell* is no barrier to appellate intervention. *See Merrill v. Milligan*, 142 S. Ct. 879, 882 (2022) (Mem.) (Kavanaugh, J., concurring) ("Correcting an erroneous lower court injunction of a state election law does not itself constitute a *Purcell* problem."). Indeed, if anything, it is the district court's injunction—which was issued just three months before the primary election and dilutes statutory election safeguards—that implicates *Purcell* concerns. *See* 549 U.S. at 4 ("Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.").

And the state and county parties cannot contrive a putative *Purcell* problem by willfully refusing for more than a year to implement duly enacted state laws, despite the absence of any court order enjoining their enforcement. *Purcell* encapsulates a maxim of federalism: federal courts should refrain from dictating state election procedures in temporal proximity to an election. *See Democratic Nat'l*

Comm. v. Wis. State Legislature, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring) ("It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent."). If the district court erred in interdicting the implementation of voter registration reforms adopted nearly two years ago (and it did), *Purcell* neither requires nor licenses this Court to compound the federal judiciary's mistaken incursion into Arizona's democratic process.

CONCLUSION

The Court should stay the district court's injunction pending appeal to the extent the injunction prohibits the implementation or enforcement of Arizona statutes that (1) restrict Federal Only voters from voting for president; (2) restrict Federal Only voters from voting by mail, or (3) are inconsistent with the LULAC Consent Decree.

Dated: June 25, 2024

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CERTIFICATE OF COMPLIANCE

This Motion complies with the type-volume limitation of Rule 27(d)(2)(A) because it contains 5,191 words, excluding the parts that can be excluded. This Motion further complies with the typeface requirements of Rules 27(d)(1)(E) and 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface using the Microsoft Word in 14-point Times New Roman font.

Dated: June 25, 2024 */s/ Thomas Basile*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 25, 2024. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: June 25, 2024 */s/ Thomas Basile*