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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, et al.,

Defendants.

AND CONSOLIDATED CASES.

Case No. 2:22-cv-00509-SRB
(Lead)

ARIZONA SECRETARY OF STATE ADRIAN FONTES' RESPONSE TO INTERVENOR-DEFEDANTS' MOTION FOR A PARTIAL STAY OF THE INJUNCTION PENDING APPEAL

(Before the Hon. Susan R. Bolton)

No. CV-22-00519-PHX-SRB
No. CV-22-01003-PHX-SRB
No. CV-22-01124-PHX-SRB
No. CV-22-01369-PHX-SRB
No. CV-22-01381-PHX-SRB
No. CV-22-01602-PHX-SRB
No. CV-22-01901-PHX-SRB

Adrian Fontes, Arizona's Secretary of State ("Secretary Fontes") and Chief Election Officer, asks this Court to deny the Intervenor-Defendants Motion for a Partial Stay of the Injunction Pending Appeal (the Motion) because a stay this close to an election is bound to create chaos and confusion, and undermine the credibility of our elections and related processes. *See* Doc 730.

Our elections are a cornerstone of our democracy. Preserving their integrity and reliability are paramount among Secretary Fontes' responsibilities. He takes that responsibility *very* seriously. That is why, although a nominal party to this action, he was willing to stipulate to the relief sought from the beginning so as to facilitate this action's swift resolution, and in turn, preclude it from in any way interfering with the upcoming 2024 election cycle. This Court, the litigating parties, and even the nominal parties worked extremely hard to ensure that this action was tried, and a decision rendered, in advance of 2024 election-related deadlines to minimize this action's interference with election-related preparation and execution.

This Court entered its Judgment on May 2, 2024. *See* Doc. 720. Now, just weeks before early voting begins, the Intervenor-Defendants seek a stay. While Secretary Fontes takes no position on the legal arguments made in the Motion, given its timing, he opposes entry of a stay.

"In election matters, time is of the essence …." *Harris v. Purcell*, 193 Ariz. 409, 412, ¶ 15 (1998). "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). "The Supreme Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1027 (D. Ariz. 2022), aff'd sub nom. *Lake v. Fontes*, 83 F.4th 1199 (9th Cir. 2023), cert. denied, 23-1021, 2024 WL 1706042 (U.S. Apr. 22, 2024) (cleaned up). This is why the Purcell Doctrine exists and "discourages courts from creating or altering election rules close to elections to avoid voter confusion." *Mi Familia Vota v. Hobbs*, 492 F. Supp. 3d 980, 985 (D. Ariz. 2020) (citing *Purcell*, 549 U.S. 1 at 4-5). Entry of a stay will, in effect, alter election rules and procedures on the cusp of the 2024 election cycle.

The 2024 election cycle, including for the office of President of the United States, is upon us. *See* Secretary Fontes' Decl. attached hereto at ¶ 4. Secretary Fontes' Office has worked with election officials across Arizona for many months to prepare for the 2024 election cycle. *Id.* at ¶ 4. The total number of active/inactive Federal Only voters in Arizona

is 35,430. *See id*. at ¶ 5. Of those, 19,130 are active presumably in-person voters, and 4,195 are on the Arizona Early Voter List. *Id.* at ¶ 5. In the 2020 election, the voter turnout was nearly 80%. *Id.* at ¶ 6; *see also* 2020_general_state_canvass.pdf (azsos.gov). Secretary Fontes expects, and believes Arizona's counties are preparing, for at least, a similar turnout in 2024. *Id.* at ¶ 6.

It cannot be sincerely contested that the processes and procedures that must be put in motion so that our 2024 elections in Arizona can occur timely and without voter confusion are well under way. For example:

- On May 1, 2024, election officials sent voters their 90-day notice. *See* A.R.S. § 16-544(D); Secretary Fontes' Decl. at ¶ 7.
- The deadline to print sample ballots is June 20, 2024. *See* A.R.S. § 16-461; Secretary Fontes' Decl. at ¶ 8.
- Early voting begins, and the initiative filing deadline, is on July 3, 2024. *See* A.R.S. § 16-542(C); Secretary Fontes' Decl. at ¶ 9.
- Signature rosters are printed on July 20, 2024, the DPOC cure deadline is on July 25, 2024, and early voting ends on July 30, 2024. *See* A.R.S. § 16-542(E) (early voting); Election Procedures Manual at p. 7 (incorporating LULAC Consent Decree requirements related to DPOC); A.R.S. § 16-166(A) (signature rosters); Secretary Fontes' Decl. at ¶ 10.[1]
- Non-partisan election challenges must be filed by July 22, 2024 and decided by August 1, 2024. *See* Secretary Fontes' Decl. at ¶ 11.
- The Presidential Primary Election occurs on July 30, 2024. *See* Secretary Fontes' Decl. at ¶ 12.

[1] The Election Procedures Manual has the force of law in Arizona. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63, ¶ 16, 475 P.3d 303, 308 (2020) ("Once adopted, the EPM has the force of law; any violation of an EPM rule is punishable as a class two misdemeanor."). The Election Procedures Manual incorporates the relevant portion of the LULAC Consent Decree. *See* Secretary Fontes' Decl. at ¶ 10; Election Procedures Manual at 7. Thus, the Intervenor/Defendants' argument about the viability of the LULAC Consent Decree fails insomuch as it is and shall remain part of the Election Procedures Manual, and thus, the law in Arizona.

- The deadline for the Secretary of State to transmit a 5% random sample of signatures related to ballot measures is August 1, 2024. *See* A.R.S. § 19-121.01; Secretary Fontes' Decl. at ¶ 13.
- The deadline for counties to complete review of ballot-related signature samples is August 22, 2024. *See* Secretary Fontes' Decl. at ¶ 14.
- The deadline to print publicity pamphlets is August 29, 2024. *See* Secretary Fontes' Decl. at ¶ 15.

Entering a stay, at this stage, will only create confusion and chaos for voters and election officials alike. *See* Secretary Fontes' Decl. at ¶ 16. The Election Procedures Manual reflects and accounts for, among other things, this Court's Judgment. *See* Secretary Fontes' Decl. at ¶ 17. The Election Procedures Manual has been approved by Secretary Fontes, Arizona's Governor, and even Arizona's Attorney General. *See id.* Secretary Fontes' office understands that Counties across Arizona have implemented processes and procedures, or are well into the process of doing so, reliant and complaint with those set forth in the Election Procedurals Manual. *Id.* To be sure, at this juncture in Arizona Elections, time is not only of the essence, but it is in short supply. Election officials across Arizona are preparing for what is expected to be a very active 2024 election cycle. Last minute state-wide policy changes like those requested in the Motion, no matter how small they may seem to some, can (and Secretary Fontes believes will) drastically impact how affected votes are collected and processed. *Id.* Such confusion and chaos on the cusp of an election will undoubtedly cause voters to harbor doubts about our election procedures, our election officials, and our elections themselves. That risk alone, in the context of this action, strongly cautions against "creating or altering election rules close to elections to avoid voter confusion." *Mi Familia Vota*, 492 F. Supp. 3d at 985; *see also* Secretary Fontes' Decl. at ¶ 17 (expressing agreement with this sentiment).

Accordingly, Secretary Fontes asks this Court to preserve the status quo and deny the Motion.

RESPECTFULLY SUBMITTED: May 21, 2024.

SHERMAN & HOWARD L.L.C.

By /s/ *Craig A. Morgan*
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Shayna Stuart
Jake Rapp
Attorneys for Defendant Arizona Secretary of State Adrian Fontes

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2024, I caused a true and correct copy of the foregoing document, to be filed with Clerk of the Court of the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for all parties who have appeared will be served by the CM/ECF system pursuant to the notice of electronic filing.

/s/ *Ella Meshke*