

Roy Herrera (032901)
Daniel A. Arellano (032304)
Jillian L. Andrews (034611)
HERRERA ARELLANO LLP
530 East McDowell Road
Suite 107-150
Phoenix, Arizona 85004
(602) 567-4820
roy@ha-firm.com
daniel@ha-firm.com
jillian@ha-firm.com

*Attorneys for Intervenor-
Defendants Arizona Democratic
Party, DSCC, DCCC, and
Democratic National Committee*

**ARIZONA COURT OF APPEALS
DIVISION ONE**

ARIZONA REPUBLICAN
PARTY, et al.,

Plaintiffs/Appellants,

v.

KATIE HOBBS, et al.,

Defendants/Appellees,

ARIZONA DEMOCRATIC
PARTY, et al.

Intervenor-Defendants/Appellees.

No. 1-CA-CV 22-0388

Mohave County Superior Court
No. S-8015-CV-202200594

**INTERVENOR-
DEFENDANTS' RESPONSE
TO MOTION FOR
EXPEDITED
CONSIDERATION**

(Additional counsel listed on inside cover)

M. Patrick Moore Jr.*
HEMENWAY & BARNES LLP
75 State Street
Boston, Massachusetts 02109
(617) 557-9715
pmoore@hembar.com

** Pro hac vice application to be
filed*

*Attorneys for Intervenor-
Defendant Democratic National
Committee*

Elisabeth C. Frost*
Maya Sequeira*
Richard A. Medina*
William K. Hancock*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
(202) 968-4513
efrost@elias.law
msequeira@elias.law
rmedina@elias.law
whancock@elias.law

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Intervenor-Defendants-Appellees Arizona Democratic Party, Democratic National Committee, DSCC, and DCCC (collectively “Intervenors”) oppose Appellants’ motion, pursuant to ARCAP 3, 5(b), and 6(b), to expedite this appeal.

The Court should deny Appellants’ motion because they have failed to show the “good cause” required by ARCAP 3(a) and 5(b) to justify expediting this appeal. Based upon a tortured reading of unrelated provisions of the Arizona Constitution, Appellants seek truly extraordinary relief: an injunction prohibiting no-excuse mail-in voting from being utilized in the upcoming 2022 general election for all but a small number of voters. The superior court correctly rejected Appellants’ outlandish claims on the merits. But even if Appellants were likely to succeed on appeal (and they are not), it is simply too late to grant the relief they request.

Appellants request nothing less than a wholesale revision of Arizona’s election infrastructure mere months before the coming general election that would severely limit access to no-excuse mail-in voting for millions of voters. Those voters have come to rely on that means of accessing the franchise for over thirty years. In fact, no-excuse mail-in

voting is how the overwhelming majority of Arizonans exercise their right to vote: in 2020, nearly 90 percent of ballots cast in Arizona were early ballots.¹

At the same time, Arizona's election administration is now structured around most voters exercising their right to vote by early ballot. This means that there are far fewer in-person polling locations, and nowhere near the number that would be necessary to accommodate the state's 4.29 million registered voters, should nearly all of them suddenly be required to vote in person on election day. Appellants' requested relief would disenfranchise lawful voters who are unable to travel to the polls on election day or whose personal circumstances make it impossible for them stand in what could be outrageously long lines to vote. Indeed, Appellants invite a scenario that is likely to be even worse than the 2016 presidential primary elections, when the state's election infrastructure failed the electorate to devastating effect, with some

¹ See Voter Registration Statistics – Jan. 2020, Ariz. Sec. of State, available at: <https://azsos.gov/elections/voter-registration-historical-election-data>.

voters having to wait as long as five hours just to cast their ballots.² In recent elections, even minor issues in election administration, such as computer issues or issues with provisional ballots, have resulted in voters having to wait in extended lines to vote. The relief that Appellants seek would tax the system far more, rendering the state's election system unrecognizable and, as a practical matter, inaccessible, for countless lawful voters.

Even Appellants acknowledge in their motion for an expedited briefing schedule that their requested relief would require substantial changes to the administration of the upcoming general election, and state and county election officials will “need adequate time to prepare.” Mot. at 2. But anything remotely resembling “adequate time to prepare” for an election infrastructure change this massive has long since passed. The election is just four months away. Voters may begin requesting mail-in ballots on August 7, just over a month from now and six days after Appellants’ proposed date for the completion of briefing and oral

² See CBS News, *Officials’ comments on long voting lines in Phoenix spark uproar* (Mar. 14, 2016), available at <https://www.cbsnews.com/news/phoenix-long-voting-lines-arizona-presidential-primary-blame-voters-election-2016/>.

argument.³ As the County Defendants thoroughly explained in their briefing below, it will be impossible for the counties to make the changes that Appellants seek—even on Appellants’ proposed expedited timeline. R. 48 at 4, 12. And the threatened injury to Arizona voters would be nothing short of catastrophic.

Not only is there is no good cause to expedite this appeal, the time constraints that Appellants identify are entirely of their own making. They have had thirty years to bring their claims, and only now, in the middle of a statewide election year, do they belatedly demand the immediate dismantling of a decades-old system on which millions of Arizona voters have come to rely. They filed an earlier iteration of this lawsuit in the Arizona Supreme Court over four months ago, seeking substantially the same relief that the Superior Court denied here. *See Arizona Republican Party v. Hobbs*, No. CV-22-0048-SA (Ariz. Feb. 25, 2022). The Supreme Court issued an order declining jurisdiction three

³ Counties will begin mailing early ballots for the August 2 primary tomorrow, July 6. *See* A.R.S. § 16-542(C). Although Appellants are no longer seeking relief before the primary election, granting their requested relief for the general election will inevitably lead to even greater confusion among voters, who will have to adapt to an entirely different voting method within the same election year.

months ago, on April 5, 2022. Appellants then waited another *six weeks* to initiate this action in the Mohave County Superior Court. And they waited a further nine days after the Superior Court rejected their claim to file their appeal, and another two weeks to request expedited review.

Appellants' motion to expedite should thus be rejected for another reason: far from establishing good cause, their dilatory approach to this "emergency" litigation renders their request barred by the doctrine of laches. "In the context of election matters, the laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice." *Lubin v. Thomas*, 213 Ariz. 496, 497 ¶ 10 (2006). Here, where the voting rights of millions of Arizonans are at stake, Appellants' unreasonable delay directly threatens the other parties in this action and granting the request for expedited relief will hinder, not support, the administration of justice.

For all of these reasons, Appellants' application for expedited consideration of this appeal should be denied, and the court should consider this appeal in the ordinary course after briefing on the schedule provided by the Rules of Civil Appellate Procedure.

RESPECTFULLY SUBMITTED this 5th day of July, 2022.

HERRERA ARELLANO LLP

/s/ Daniel A. Arellano

Roy Herrera

Daniel A. Arellano

Jillian L. Andrews

1001 North Central Avenue

Suite 404

Phoenix, Arizona 85004

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