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**ARIZONA COURT OF APPEALS  
DIVISION TWO**

REPUBLICAN NATIONAL  
COMMITTEE; REPUBLICAN PARTY  
OF ARIZONA, LLC; and YAVAPAI  
COUNTY REPUBLICAN PARTY,

Plaintiff-Appellants,

v.

ADRIAN FONTES, in his official  
capacity as Arizona Secretary of State,

Defendant-Appellee,

ARIZONA ALLIANCE FOR RETIRED  
AMERICANS, VOTO LATINO,  
DEMOCRATIC NATIONAL

No. CA-CV 2024-0241

Maricopa County Superior Court  
No. CV2024-050553

**ARIZONA ALLIANCE FOR  
RETIRED AMERICANS AND  
VOTO LATINO'S RESPONSE IN  
OPPOSITION TO MOTION FOR  
EXPEDITED BRIEFING  
SCHEDULE**

COMMITTEE, and ARIZONA  
DEMOCRATIC PARTY,

Intervenor-Defendant-  
Appellees.

Plaintiffs-Appellants the Republican National Committee, Republican Party of Arizona, LLC, and Yavapai County Republican Party (“Plaintiffs”) have not established the good cause required for this Court to suspend its rules to expedite the appeal of the trial court’s decision. Not only does this Court rarely grant such requests, *see* Sec’y of State’s Resp. in Opp. to Mot. for Expedited Briefing Schedule at 2 (citing *1 Ariz. Appellate Handbook 2.0*, Ch. 5, Sec. 3(B) (2020)), this case should not be deemed the rare exception, first, because Plaintiffs failed to act with any reasonable diligence in pursuing expedition. Having taken no steps to expedite their appeal for six weeks, Plaintiffs should not be permitted to now rush the parties and this Court to resolve their claims in a mere matter of weeks, particularly given the lateness in the election cycle and the radical nature of the relief that Plaintiffs seek. Moreover, granting and implementing the relief Plaintiffs seek—much of which will make it more difficult to vote—would lead to widespread chaos in Arizona’s impending election, and threatens to disenfranchise untold numbers of lawful Arizona voters. Indeed, Plaintiffs seek nothing short of a radical judicial reshaping of Arizona’s election administration and procedures less than a month before election officials are due to begin mailing out ballots.

On May 14, the Maricopa County Superior Court dismissed Plaintiffs’ Special Action Complaint seeking to invalidate the entirety of Arizona’s 268-page Elections Procedures Manual (“EPM”), and alternatively declare unlawful and enjoin numerous individual provisions of Arizona election law. Plaintiffs’ primary argument is that although the Secretary of State’s promulgation of the EPM complied with the specific statutory process in A.R.S. § 16-452(A), the Secretary violated the Administrative Procedure Act (“APA”) because he did not provide notice in precisely the right way and allowed a 15-day notice-and-comment period instead of a 30-day period. Opening Br. at 25–26. The APA, however, has never once been applied to the EPM in its nearly fifty-year history, and for good reason: the statutes that govern the EPM process provide their own distinctly different processes, and there is no argument that those were violated here. Plaintiffs alternatively argue that eight key provisions in the EPM are invalid, even though not one of them actually conflicts with any enforceable Arizona law. *Id.* at 26-43; May 14, 2024, Minute Entry at 4. As relief, Plaintiffs seek a court order that would either throw out the entire EPM (Plaintiffs’ preference) or (in the alternative) invalidate individually challenged provisions of the EPM. Many of these provisions, however, protect voters’ ability to cast ballots—including as they relate to procedures for list maintenance, challenging voter qualifications, the treatment of qualified voters who inadvertently cast ballots in the wrong precinct, and voters who must vote their early ballots from out of state.

Plaintiffs noticed their appeal on July 3, after the superior court entered final judgment; they then waited *six weeks* to seek any kind of expedition of their appeal. Now, they propose a schedule that would result in briefing concluding on September 13, *five weeks* after voters began requesting mail ballots, which is just one of the many election procedures Plaintiffs seek to change in this appeal. The conclusion of briefing runs right up against other key election deadlines, including the deadline to mail ballots to Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) voters on September 21 and the start of early voting on October 9.<sup>1</sup> And Plaintiffs’ proposed schedule does not account for argument in this Court or further appeals to the Arizona Supreme Court, which would inevitably push even closer to election day itself. While Plaintiffs have had more than three months to formulate their arguments on appeal since the trial court issued its order, they demand a schedule that affords Defendants a mere three weeks to respond, drastically truncating the 40-day response period provided by Arizona Rule of Civil Appellate Procedure 15(a)(2) and prejudicing Defendants.

More importantly, it is simply too late to grant the relief Appellants seek without sowing widespread election chaos and confusion and disenfranchising voters across the state. Plaintiffs’ only justification for their request to expedite is that “the relief Plaintiffs request will require changes to the administration of the upcoming general election.”

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<sup>1</sup> See *Election Calendar 2023–2024* at 15–16, ARIZ. SEC’Y OF STATE, available at [https://apps.azsos.gov/election/2024/2024\\_Election\\_Calendar.pdf](https://apps.azsos.gov/election/2024/2024_Election_Calendar.pdf).

Mot. at 2–3. But that is precisely why the Court should *deny* Plaintiffs’ request to expedite—it is far too late to implement their radical, wide-ranging relief, which includes a request that Arizona courts order that the entire EPM be thrown out, leaving election administrators without hundreds of pages of statutorily-required guidance from the Secretary of State covering topics from voter registration to mail voting to counting ballots and certifying election results—guidance the Legislature requires to “achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency” for election procedures across the state. A.R.S. § 16-452(A). Granting relief now all but guarantees widespread disorder and disarray, with differing procedures being implemented haphazardly across the state, election laws being enforced arbitrarily and disparately, and inefficient and entirely different procedures, all during a critical general election. Plaintiffs’ belated and wildly disruptive expedited proposal should be rejected on this basis alone.

Plaintiffs’ alternative requests for relief—most of which seek to increase barriers to voting—are no less disruptive or disenfranchising. For example, they seek to force county recorders to implement voter registration cancellation procedures just days before early voting begins (Count II), to prevent qualified voters from casting ballots for president (Count III), and to revoke the long-established procedures for voters to request mail ballots to be sent out of state (Count VII). As noted, voters have already been able to make such requests for *five* weeks. Changing the rules this late in the game

to make it more difficult to obtain and cast a ballot will cause not only confusion, but also threatens to disenfranchise lawful Arizona voters through no fault of their own.

Given the substance and scope of the relief they seek, Plaintiffs have simply waited too long to now insist on speed to the extreme prejudice to voters, election administrators, and Defendants, as well as this Court, which would be asked to remake election procedures and consider novel election and voting issues on an expedited timeline, long after those procedures have been implemented and relied on. *See Sotomayor v. Burns*, 199 Ariz. 81, 83 ¶ 9 (2000) (“[L]itigants and lawyers in election cases must be keenly aware of the need to bring such cases with all deliberate speed or else the quality of judicial decision making is seriously compromised.” (cleaned up)).

### **CONCLUSION**

Because there is no reasonable possibility that Plaintiffs’ requested relief could be implemented without injecting chaos into Arizona’s elections and disenfranchising untold numbers of Arizonans, there is no reason—much less good cause—to artificially shorten the briefing schedule. The motion to suspend this Court’s rules to expedite briefing should be denied.

DATED this 29th day of August, 2024.

COPPERSMITH BROCKELMAN PLC

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## CERTIFICATE OF SERVICE

I certify that on August 29, 2024, Intervenor-Defendant-Appellees Arizona Alliance for Retired Americans and Voto Latino electronically filed their Response in Opposition to Motion for Expedited Briefing Schedule and served a copy of the same, via email on the following persons:

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RESPECTFULLY SUBMITTED this 29th day of August, 2024.

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# Arizona Court of Appeals

## Division Two

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