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27 **IN THE UNITED STATES DISTRICT COURT**
28 **FOR THE DISTRICT OF ARIZONA**

American Encore, an Arizona non-profit corporation; Karen Glennon, an Arizona individual; America First Policy Institute, a non-profit corporation,

Plaintiffs,

vs.

Adrian Fontes, in his official capacity as Arizona Secretary of State; Kris Mayes, in her official capacity as Arizona Attorney General; Katie Hobbs, in her official capacity as Governor of Arizona,
Defendants.

Case No.: CV-24-01673-PHX-MTL

Notice of Supplemental Authority

NOTICE OF SUPPLEMENTAL AUTHORITY

1
2 Plaintiffs hereby notify the Court of a ruling bearing on this matter that was issued
3 yesterday in *Arizona Free Enterprise Club (“AZFEC”) v. Fontes*, CV 2024-0026760
4 (Maricopa Cnty. Sup. Ct 2024) (“8/28 Ruling”), which is attached hereto. As explained in
5 previous briefing, *see* ECF No. 47 at 19–20, *AZFEC* involves a state law free-speech claim
6 under the Arizona Constitution, challenging the same 2023 EPM Speech Restriction that
7 Plaintiffs have challenged here under the federal constitution.

8 *AZFEC* Plaintiffs sought and obtained declaratory and injunction relief against the
9 Speech Restriction. *See id.* The *AZFEC* defendants appealed the court’s order and sought
10 a stay pending appeal of the declaratory and injunctive relief. *Id.*

11 It its 8/28 Ruling (at 2–3), the *AZFEC* Court (1) stayed the declaratory relief
12 because, as a permanent remedy, it was not presented before the court at the preliminary
13 injunction hearing which had not been consolidated with a trial on the merits, but (2) denied
14 the stay as to the injunctive relief. Particularly relevant here, the *AZFEC* Court again
15 rejected defendants’ construction of the Speech Restriction as purely “‘guidance’ for
16 election official.” *Id.* at 2. That argument, recycled here, is wrong for the same reasons.

17 The *AZFEC* Court explained that defendants had failed “to tell the Court why
18 Plaintiffs’ position was wrong”—that is, they failed to demonstrate that “the EPM is non-
19 binding assistance to help others enforce voting regulations.” *Id.* The *AZFEC* Court
20 repeated its “disagree[ment] with Defendants’ position and found the disputed section was
21 *not* guidance but, instead, an overreach by the Secretary of State that restricted free
22 speech.” *Id.* And the court found Defendants contrary arguments “without merit.” *Id.*

23 The court went on to “reiterate[] its prior finding: ‘[I]t is always in the public interest
24 to prevent the violation of a party’s constitutional rights.’” *Id.* It also “concur[ed] with
25 Plaintiffs’ position that the injunction is properly tailored, the *Purcell* principle is
26 inapplicable, and Defendants have failed to show how they will be harmed by the
27 injunction.” *Id.* at 3.

28 The arguments that the *AZFEC* Court has now twice rejected are the same ones

1 advanced by Defendants here. This additional authority bolsters Plaintiffs’ claim that the
2 Speech Restriction is an unconstitutional restriction of the speech rights of everyday
3 Arizonans. It also reaffirms Plaintiffs’ argument that, as an unconstitutional prohibition on
4 protected speech, the Speech Restriction should be enjoined, especially because such an
5 injunction does not harm Defendants.

6 Dated this 29th day of August 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August 2024, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for parties that are registered CM/ECF users will be served by the CM/ECF system pursuant to the notice of electronic filing.

/s/ Andrew Gould

Attorney for Plaintiffs

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