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**IN THE UNITED STATES DISTRICT COURT  
 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

**PLAINTIFFS' OPPOSITION TO  
 DEFENDANTS' MOTION FOR  
 STAY OF DISTRICT COURT  
 PROCEEDINGS AND DEADLINES  
 PENDING APPEAL**

## INTRODUCTION

Plaintiffs respectfully move this Court to deny Defendants' Motion for Stay of Proceedings. Defendants are actively engaged in discovery in a substantially similar related State court proceeding, including depositions of America First Policy Institute's representatives on the Speech Restriction. As a result, Defendants cannot allege they will experience any hardship by moving forward with discovery in the present matter. Simply put, there is no hardship by merely being required to litigate this case just as they are doing in the related State court case, and a stay is not required to ensure the ordinary business of this Court continues. Respectfully, if Defendants seek to end this litigation, they simply need to enact a new EPM that removes the enjoined provisions.

## BACKGROUND

On September 27, 2024, the Court denied Defendants' Motions to Dismiss and granted Plaintiffs' Motions for Preliminary Injunction. ECF No. 62. In granting Plaintiffs' Preliminary Injunctions, the Court enjoined enforcement of both the Canvassing Provision and the Speech Restriction Provision of the 2023 EPM. *Id.*

Unfortunately, following this Court's ruling, the Secretary did not remove the enjoined provisions from the EPM, nor has he clearly indicated that he will remove the unlawful provisions from the upcoming EPM (goes into effect January 2026).

Running parallel to this case is a sister case pending in Arizona state court. While the State matter deals with Arizona constitutional provisions, as opposed to the U.S. Constitution, in terms of the Speech Restriction, it is a substantially similar case. The judge in the related State proceeding also preliminarily enjoined the Speech Restriction in a lengthy, detailed Order.<sup>1</sup> Further, after an aborted attempt to appeal and stay the State Court's preliminary injunction on appeal, which Defendants eventually voluntarily dismissed (relevant Motion and Order are attached hereto as "Exhibits 1 & 2," respectively), Defendants have aggressively moved forward with written discovery and

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<sup>1</sup> This Order can be accessed [here](#).

depositions in the State EPM case. It is worth noting that the discovery process Defendants seek to pause in this matter will be highly duplicative of what they are actively pursuing in the State case. As a result, there will be little to no waste of judicial or Party resources if this matter proceeds forward. Plaintiffs view the issues at play in the present matter to be primarily legal, as opposed to factual. Plaintiffs in the State case will be filing a Motion for Summary Judgement to convert that preliminary injunction to a permanent injunction and intend on filing a substantially similar Motion in this case in the coming weeks.

### LEGAL STANDARD

Courts have authority to stay proceedings pursuant to their docket management power. This power was first recognized in *Landis v. North American Co.*, 299 U.S. 248 (1936), where the Supreme Court explained “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Id.* at 254.

The Ninth Circuit has since “identified three non-exclusive factors courts must weigh when deciding whether to issue a docket management stay: (1) ‘the possible damage which may result from the granting of a stay’; (2) ‘the hardship or inequity which a party may suffer in being required to go forward’; and (3) ‘the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law.’” *Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 842 (9th Cir. 2023) (quoting *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)). However, even if there are “efficiencies to be gained by a stay, the district court must also weigh the relative hardships that a stay might cause.” *Pub. Emps. Ret. Ass’n of N.M. v. Earley*, 100 F.4th 1076, 1087 (9th Cir. 2024). As “the Supreme Court made clear that ‘if there is even a fair possibility that the stay . . . will work damage to someone else,’ the party seeking a stay ‘must make out a clear case of hardship or inequality in being required to go forward.’” *Earley*, 100 F.4th at 1087 (quoting *Landis*, 299 U.S. at 254-55). Furthermore, “being required to defend a suit, without more, does not constitute a clear case of hardship or inequity[.]” *Lockyer*, 398 F.3d at 1112 (internal quotation marks omitted).

## ARGUMENT

The *Landis* factors clearly favor Plaintiffs’ position—the Court should deny Defendants’ stay request.

### **I. A stay of proceedings will damage Plaintiffs’ ability to prosecute their case.**

As Defendants are aware, Plaintiffs anticipate filing a Motion for Summary Judgment, which will address the same issues raised in the preliminary injunction and seek to make the preliminary injunction permanent. Both parties must be afforded the opportunity to prove their respective cases. A stay of proceedings would only benefit Defendants’ ability to defend the case, while hindering Plaintiffs’ ability to prosecute the same. Here, there is more than just a “fair possibility” of damage to Plaintiff as “[a]lthough the requested stay is likely of limited duration, granting the stay would nevertheless delay resolution of this action” in which Plaintiffs alleges “future harm of great magnitude and seeks [permanent] injunctive relief.” *Mexicanos v. Diamondback Shooting Sports Inc.*, 2025 U.S. Dist. LEXIS 13597, at \*6 (D. Ariz. Jan. 4, 2025). Furthermore, although the Ninth Circuit’s decision in Defendants’ interlocutory appeal “may affect the scope of this action, it is not clear how or to what degree it will do so.” *Id.* Given the uncertainty, it would be imprudent to stay proceedings.

Additionally, while the Ninth Circuit has scheduled oral argument for July 15, 2025, the procedures adopted by the Ninth Circuit regarding appeals of preliminary injunctions do not require a ruling by any particular date. *See* Ninth Circuit Rules 3-3, 34-3. Indeed, the nature of the issues presented suggests that even once the Ninth Circuit issues a decision, “one or more parties may file a petition for rehearing en banc, a petition for certiorari at the Supreme Court, or both. This long, open-ended timeline counsels against a stay.” *Bernstein v. Virgin Am., Inc.*, 2018 U.S. Dist. LEXIS 114763, \*9-10 (N.D. Cal. July 9, 2018) (citing *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979) (“A stay should not be granted unless it appears likely the other proceedings will be concluded within a reasonable time in relation to the urgency of the claims presented to

the court."))). Here, it is unlikely that there will be a ruling from the Ninth Circuit prior to the promulgation and adoption of the 2026 EPM. As such, moving towards final judgment in this Court is crucially important to prevent the disenfranchisement of voters, and the censorship of their speech, in the 2026 election cycle.

Furthermore, this Court has already rejected Defendants' attempts via the *Pullman* abstention doctrine to stay Count II of Plaintiffs' Complaint concerning the Speech Provision. ECF No. 62 at 25-28. This Court ruled that despite some commonalities between the parties and claims made in State court, Defendants had not met the high bar required for a federal court to abstain and noted that "[p]arallel state-court proceedings do not detract from" a federal court's 'virtually unflagging' obligation to hear and decide cases." *Id.* (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (citation omitted)). This Court should not allow Defendants to practically and improperly obtain via a stay of proceedings what they were unable to obtain via the *Pullman* abstention.

## **II. Requiring Defendants to defend the suit does not constitute hardship.**

It is indisputable that if Defendants' Motion to Stay Proceedings is denied, Defendants will spend additional resources defending their suit. However, the Ninth Circuit has spoken conclusively on this issue, as the *Lockyer* Court noted, "being required to defend a suit, without more, does not constitute a 'clear case of hardship or inequity' within the meaning of *Landis*." *Lockyer*, 398 F.3d at 1112. Defendants cannot escape their obligation to litigate this case merely because they would spend resources doing so.

## **III. The orderly course of justice does not support a stay.**

Plaintiffs intend to file a Motion for Summary Judgment, seeking to convert the preliminary injunction in this matter to a permanent injunction. Defendants' desire to conserve taxpayer resources would be more plausible if they moved to stay proceedings when they appealed the Court's grant of Plaintiffs' preliminary injunction motions, almost seven months ago. Only now, and months later, do Defendants wish to stay proceedings.

Additionally, as was mentioned above, while the Ninth Circuit's decision in Defendants' interlocutory appeal "may affect the scope of this action, it is not clear how or

1 to what degree it will do so.” *Mexicanos*, 2025 U.S. Dist. LEXIS 13597, at \*6. The mere  
2 application for an appeal does not automatically stay proceedings in this Court. The  
3 business of this Court should not be put on hold indefinitely to await an eventual ruling  
4 from the Ninth Circuit that may or may not impact this litigation.

5 **CONCLUSION**

6 For the foregoing reasons, Defendants’ motion for a stay of proceedings has not  
7 come anywhere close to establishing under *Landis*, “a clear case of hardship or inequality  
8 in being required to go forward.” *Earley*, 100 F.4th at 1087 (quoting *Landis*, 299 U.S. at  
9 254-55). Plaintiffs respectfully request that this Court deny Defendants’ motion.

10 Dated this 10th day of June 2025.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of June, 2025, 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  
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