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15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

17 Strong Communities Foundation of
18 Arizona Inc., and Yvonne Cahill,

19 Plaintiffs,

20 vs.

21 Stephen Richer in his official capacity as
22 Maricopa County Recorder, and Maricopa
23 County,

24 Defendants.

No. 24-CV-02030-PHX-KLM

**MARICOPA COUNTY DEFENDANTS'
RESPONSE TO PLAINTIFFS'
UNOPPOSED MOTION FOR STAY
PENDING APPEAL**

1 In their Unopposed Motion for Stay Pending Appeal, Doc. 108, Plaintiffs correctly
 2 state that no Defendant, including the Maricopa County Defendants, oppose their Motion.
 3 [Doc. 108 at 1.] The Maricopa County Defendants submit this brief Response, however, to
 4 correct what they perceive to be misstatements of relevant fact and law in Plaintiffs' Motion.¹

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 6 **I. The Issues on Appeal and Those Raised in the MJP are Not “Nearly Identical.”**

7 Plaintiffs assert that “the issues before the Ninth Circuit are nearly identical to those
 8 raised in the MJP[.]” and so “[t]he additional briefing in this Court would be largely
 9 purposeless[.]” [Doc. 108 at 8.] That is not correct. True, whether Plaintiffs have standing
 10 is at issue in both the Ninth Circuit appeal and the Maricopa County Defendants' Motion for
 11 Judgment on the Pleadings (“MJP”). [Doc. 95.] But the MJP also argues that, even if
 12 Plaintiffs have standing to maintain their lawsuit, the First Amended Complaint still fails to
 13 state a claim upon which relief can be granted and so fails as a matter of law. [Doc. 95 at 9-
 14 15.] And it asserts that the County Defendants are improper defendants and must be
 15 dismissed. [*Id.* at 16.] Thus, if no stay pending appeal is granted, there will be substantial
 16 issues briefed before this Court that will have no relation to the issues being briefed at the
 17 Ninth Circuit. And, this Court could find that Plaintiffs' First Amended Complaint fails as
 18 a matter of law, irrespective of the standing issue raised in both the MJP and on appeal.
 19 Thus, it would not be “largely purposeless” to allow parallel briefing in the Ninth Circuit
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24 _____
 25 ¹ To be clear, taking a position of “no opposition” to a motion should not be interpreted as
 26 *supporting* the motion. And, when the Maricopa County Defendants told Plaintiffs that
 27 they did not oppose their Motion, they reasonably believed that Plaintiffs would not misstate
 28 facts and law to this Court. Because Plaintiffs have done so, *and in a way that unfairly
 prejudices the position of the Maricopa County Defendants in this litigation*, the Maricopa
 County Defendants are obligated to respond.

1 and this Court.

2 **II. Purcell v. Gonzalez Does Not Counsel in Favor of a Stay, as Plaintiffs Allege in**
3 **Their “Public Interest” Argument.**

4 Plaintiffs incorrectly rely on *Purcell v. Gonzalez*, 549 U.S. 1 (2006) to argue that the
5 Public Interest favors a stay pending appeal. [Doc. 108 at 9.] That is the *only* argument they
6 make concerning the Public Interest factor: they do not argue any other. But the *Purcell*
7 Principle is not applicable here in the way that Plaintiffs claim. The *Purcell* Court, as
8 Plaintiffs correctly note, was concerned about conflicting court orders affecting elections
9 causing voter confusion and disincentivizing voters from going to the polls. [*Id.* (citing
10 *Purcell*, 549 U.S. at 4-5.) Here, *Election Day is November 5, 2024—a mere five days from*
11 *today*. No Ninth Circuit Order will issue on Plaintiffs’ appeal before November 5. Plaintiffs’
12 Opening Brief is not even due to be filed until November 13, 2024. [Ex. 1, Preliminary
13 Injunction Time Schedule Notice.] And this Court is not going to issue an Order on the MJP
14 before Election Day, either. *Purcell* does not have any application to whether parallel
15 briefing should occur.

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19 **III. The Supreme Court’s Decision in *Beals* Does Not “Suggest[] Six Justices Reject**
20 **Defendants’ Argument in This Case.**

21 Plaintiffs also state that the Supreme Court’s decision to grant Virginia’s stay
22 application in *Beals v. Va. Coalition for Immigrant Rights*, 24A407, is instructive for this
23 case. [Doc. 108 at 3.] Specifically, they claim that it “suggest[s] that six Justices reject the
24 Defendants’ argument in this case that the requested relief here would violate the NVRA’s
25 90-day blackout provision.” [*Id.*] But the Supreme Court Order granting the stay in that
26 matter did not provide any explanation for *why* the six Justices voted to grant the stay.
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1 Further, Virginia claimed that it only wanted to purge voters who had either “personally
2 informed Virginia’s Department of Motor Vehicles (DMV) that they are not citizens,” or
3 “presented noncitizen residency documents to DMV and were then positively identified as
4 noncitizens through” SAVE. *Virginia’s Emergency Application for Stay*, 24A407, October
5 28, 2024, at 1, available at [https://www.supremecourt.gov/DocketPDF/24/24A407/-
6 330363/20241027231346621_Application%20for%20Stay%20SCOTUS%20vpf.pdf](https://www.supremecourt.gov/DocketPDF/24/24A407/-330363/20241027231346621_Application%20for%20Stay%20SCOTUS%20vpf.pdf). That
7 is very different from the relief Plaintiffs request here.
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10 Regardless, because the Justices did not provide their reasons for granting Virginia’s
11 stay application, it is inappropriate to claim that the stay “suggest[s]” the Supreme Court
12 disagrees with the Defendants’ arguments in this matter.

13 **IV. The *Mi Familia Vota* Court’s Analysis of the “Reason to Believe” Provision Has**
14 **No Application Here.**

15 Finally, Plaintiffs assert that the “injury” that Ms. Cahill—a naturalized citizen—
16 suffered when she was subjected to a SAVE check when she registered to vote is the same
17 as the injury at issue in *Mi Familia Vota v. Fontes*, 719 F.Supp.3d 929 (D. Ariz. Feb. 29,
18 2024), and suggest that this Court should have reached the same result as the *Mi Familia*
19 *Vota* court. [Doc. 108 at 5.] Not so.
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21 The SAVE check at issue in the *Mi Familia Vota* matter was that commanded by
22 A.R.S. § 16-165(I), which is not at issue in this lawsuit. That statutory provision required
23 the county recorders to “compare persons who are registered to vote in that county and who
24 the county recorder *has reason to believe* are not United States citizens and persons who are
25 registered to vote without satisfactory evidence of citizenship” with only SAVE (which
26 requires a specific immigration enumerator, and therefore can only be used to confirm the
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1 citizenship of naturalized citizens). *Id.* It was the “reason to believe” provision that the *Mi*
2 *Familia Vota* court found violated the Different Practices Provision of 52 U.S.C. §
3 10101(a)(2)(A), because “county recorders can only ever conduct SAVE checks on
4 naturalized citizens who county recorders have ‘reason to believe’ are non-citizens.” 719
5 F.Supp.3d at 995.
6

7 But the situation for Ms. Cahill and others who register to vote without providing
8 documentary proof of citizenship (“DPOC”) is different. Arizona law commands the county
9 recorders to compare all such voter registrants who use the Federal Form with (1) the
10 department of transportation databases (*i.e.*, MVD records); (2) the social security
11 administration databases; and (3) SAVE, among others. A.R.S. § 16-121.01(D). So, while
12 only naturalized citizens can be subjected to a SAVE check, native-born citizens will be
13 subjected to checks in the other databases. The *Mi Familia Vota* court found that series of
14 database verifications meant that *all* voters who do not submit DPOC are “subject[ed] to
15 additional citizenship investigation procedures,” 719 F.Supp.3d at 1001, and so the SAVE,
16 MVD, and SSA checks together did not violate federal law, *id.* at 1002.
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19 Thus, Plaintiffs’ contention that Ms. Cahill, should she ever “need to re-register in
20 Arizona for any reason, . . . would be injured again[.]” [Doc. 108 at 5], is incorrect.² She is
21 not in the same position as the naturalized citizens with whom the *Mi Familia Vota* court
22 was concerned, who—unlike native-born citizens—could be subjected to additional checks,
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25 ² The Maricopa County Defendants note the odd posture of Plaintiffs in this litigation. They
26 appear to assert that SAVE citizenship verification violates Ms. Cahill’s rights under the
27 law. Generally when rights are violated, the remedy is to enjoin the offending provision.
28 But Plaintiffs do not want SAVE citizenship verifications to be enjoined; rather, they want
to subject *more* citizens to them.

1 through *only* SAVE, whenever a county recorder subjectively decided that he had “reason
2 to believe” they were noncitizens. *Those* were the naturalized citizens who, unlike native-
3 born citizens, “will always be at risk of county recorders’ subjective decision to further
4 investigate ... [their] citizenship status[.]” [Doc. 108 at 5 (*quoting Mi Familia Vota*, 719
5 F.Supp.3d at 995).] Should Ms. Cahill ever re-register to vote, she will only be subject to
6 the § 16-121.01(D) multi-database citizenship check that *all* registrants without DPOC
7 undergo, which the *Mi Familia Vota* court found was lawful. Plaintiffs’ contention to the
8 contrary is incorrect.

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11 RESPECTFULLY SUBMITTED this 31st day of October, 2024.

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22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on October 31, 2024, I caused the foregoing document to be
24 electronically transmitted to the Clerk’s Office using the CM/ECF System for filing and
25 served a copy by email on Plaintiffs’ counsel, with a courtesy copy to the Honorable Krissa
26 M. Lanham, as follows.

27 Honorable Krissa M. Lanham
28 District Court Judge
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