

Table of Contents

Table of Contents

<i>I. Introduction</i>	1
<i>II. Interest of Amicus Curiae</i>	1
<i>III. Argument</i>	2
A. Promptly resolving the legal issues identified in the Petition is essential	3
B. The legal issues raised are of first impression and statewide importance.	5
1. The Recorders will abide by the Secretary’s guidance absent a court order to the contrary and urges this Court to deny Petitioner Richer relief.	5
2. If this Court does not rule quickly, voters in Arizona counties will be treated differently, in violation of their rights.....	7
<i>IV. Conclusion</i>	8

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Table of Authorities

Cases

<i>Ariz. Indep. Redistricting Comm’n v. Brewer</i> , 229 Ariz. 347 (2012);.....	2
<i>Arizona Republican Party v. Fontes</i> , No. 1 CA-CV 22-0388, 2023 WL 193620 (Ariz. Ct. App. Jan. 17, 2023).....	7
<i>Arizonans for Second Chances, Rehabilitations, and Public Safety v. Hobbs</i> , 249 Ariz. 396 (2020).....	2, 5
<i>Charfauros v. Bd. of Elections</i> , 249 F.3d 941 (9th Cir. 2001).....	8
<i>Crerand v. State</i> , 176 Ariz. 149 (Ct. App. 1993).....	7
<i>Dunn v. Blumstein</i> , 405 U.S. 330 (1972).....	8
<i>Fairness & Accountability in Ins. Reform v. Greene</i> , 180 Ariz. 582 (1994).....	5
<i>Harris v. Purcell</i> , 193 Ariz. 409 (1998).....	3
<i>Jennings v. Woods</i> , 194 Ariz. 314 (1999).....	5
<i>McLaughlin v. Bennett</i> , 225 Ariz. 351 (2010).....	3
<i>Mi Familia Vota v. Fontes</i> , 111 F.4th 976 (9th Cir. 2024).....	4
<i>Republican Nat’l Comm. v. Democratic Nat’l Comm.</i> , 589 U.S. 423 (2020).....	7
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	8
<i>State ex rel. Brnovich v. City of Tucson</i> , 251 Ariz. 45 (2021).....	4
<i>Tobin v. Rea</i> , 231 Ariz. 189 (2013).....	5
<i>Valley Nat’l Bank of Phoenix v. Glover</i> , 62 Ariz. 538 (1945).....	7

Statutes

52 U.S.C. § 20302(a)(8)(A).....	3
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Other Authorities

2023 EPM, Ch. 1, § II6
2023 EPM, Ch. 1, § IX.....6
Ariz. Const. art. 2, § 214, 7
Letter from Adrian P. Fontes, Secretary of State to Arizona County Recorders (Sept.
17, 2024)5, 6

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I. Introduction

Election officials recently discovered a systemic ministerial issue affecting approximately 98,000 Arizonans (the “Affected Voters”). The Affected Voters are already registered as full ballot voters, and they have all attested to being U.S. citizens. Because of a coding error, however, it is unclear whether the Affected Voters provided documentary proof of citizenship (“DPOC”), as required to be a full ballot voter under Arizona law. Secretary of State Adrian Fontes issued guidance to all Arizona County Recorders, urging them—at this late stage—to maintain the Affected Voters as full ballot voters. Maricopa County Recorder Stephen Richer asks this Court to instead declare that they be federal only voters instead.

Coconino County Recorder Patty Hansen and Pima County Recorder Gabriella Cazares-Kelly (the “Recorders”) submit this amicus brief to underscore three things: (1) it is vital that this Court accept jurisdiction to quickly provide clarity and avoid voter confusion; (2) absent instruction otherwise, the Recorders intend to comply with Secretary Fontes’s guidance to protect Arizonans’ right to vote, and (3) non-uniform treatment of the Affected Voters across the state risks violating their constitutional rights. The right to vote is indisputably fundamental. The Court should act now to preserve it.

II. Interest of Amicus Curiae

Arizona County Recorders are charged with election administration responsibilities, including registering qualified individuals in their counties to vote and ensuring that qualified voters are not improperly removed from voter rolls. Pursuant to these duties, the Recorders intend to follow Secretary Fontes's guidance to maintain the Affected Voters' registration as full ballot voters for the 2024 General Election, and they oppose the relief sought by Petitioner Richer to suddenly downgrade the Affected Voters' registration and force them to either forego voting in state elections or make a mad dash to submit DPOC to cast their votes in state races. Such a change at the eleventh hour will burden voters and cause confusion. The Recorders submit this brief to respectfully ask this Court to expeditiously resolve this matter so that they can continue serving their county's voters without unduly burdening their right to vote.

III. Argument

It is crucial that this Court exercise its discretion to accept special action jurisdiction and quickly resolve the issues before it, before imminent election administration deadlines, and to ensure that County Recorders across Arizona administer the election in a uniform manner. This Court should accept jurisdiction because "the legal issues raised require[] prompt resolution and are of first impression and statewide importance." *Ariz. Indep. Redistricting Comm'n v. Brewer*, 229 Ariz. 347, 351 ¶ 14 (2012); *see also Arizonans for Second Chances*,

Rehabilitations, and Public Safety v. Hobbs, 249 Ariz. 396, 404-05 ¶ 20 (2020) (granting jurisdiction over election-related special action).

A. Promptly resolving the legal issues identified in the Petition is essential.

“In election matters, time is of the essence because disputes concerning election and petition issues must be initiated and resolved, allowing time for the preparation and printing of absentee voting ballots.” *Harris v. Purcell*, 193 Ariz. 409, 412 (1998); *see also McLaughlin v. Bennett*, 225 Ariz. 351, 353 ¶ 5 (2010). That is certainly true here. County Recorders and the Affected Voters need clarity about whether the Affected Voters will be full ballot or federal only voters prior to important and imminent deadlines.

First, County Recorders must mail UOCAVA ballots on Saturday, September 21st, just *three days* from now. *See* 52 U.S.C. § 20302(a)(8)(A). The deadline for finalizing early ballots to be mailed to thousands of voters across the state follows closely. Though the deadline for mailing early ballots is October 9th, counties must first finalize lists of federal only and full ballot voters to whom early ballots will be sent and send those lists to the printers. These finalization deadlines vary by county: for Coconino County, early ballot lists must be finalized by September 30th; for Pima County by September 26th. County Recorders *must have clarity* by the finalization deadlines whether the Affected Voters will be categorized as federal only or full ballot voters. Without clarity from this Court,

County Recorders will not act uniformly across the state as explained below, sowing administrative chaos and voter confusion.

Second, as soon as possible, the Affected Voters themselves need to know the elections in which they are eligible to vote. If new “barriers to voting” must be erected and the Affected Voters’ full ballot status downgraded to federal only, *State ex rel. Brnovich v. City of Tucson*, 251 Ariz. 45, 52 ¶ 30 (2021) (citing Ariz. Const. art. 2, § 21), this Court should make that change now to give the Affected Voters as much time as possible to learn about and overcome those barriers. Should this Court grant Recorder Richer the relief he seeks, Affected Voters should be given every opportunity to be notified of their downgraded registration status and to cure any defects. With each passing day, it becomes harder for the Affected Voters to “navigate an arcane web of shifting and confusing rules that will without a doubt dissuade some who are otherwise eligible and willing from exercising the fundamental right to vote.” *Mi Familia Vota v. Fontes*, 111 F.4th 976, 985 (9th Cir. 2024). The Court should therefore resolve this case immediately.

This Court has repeatedly exercised original jurisdiction in cases like this one—election disputes with impending deadlines—because, absent this Court’s intervention, “time constraints” dictate that “there [i]s no adequate remedy in any

other procedure or forum.” *Fairness & Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 586 (1994).¹ The Recorders implore the Court to do so now.

B. The legal issues raised are of first impression and statewide importance.

1. The Recorders will abide by the Secretary’s guidance absent a court order to the contrary and urges this Court to deny Petitioner Richer relief.

The legal issue presented is novel and new. On September 17, 2024, Secretary Fontes sent a letter to all Arizona County Recorders, addressing the recently discovered issue with voter registration. *See* Letter from Adrian P. Fontes, Secretary of State to Arizona County Recorders (Sept. 17, 2024), attached as APP-0043-44 to Pet. Richer’s Emergency Mot. for Special Action. In this letter, Secretary Fontes provided guidance that, given the discovery of the issue on the eve of UOCAVA ballots being sent out and early ballot lists being finalized, County Recorders should continue to categorize the Affected Voters as full ballot voters. *Id.* Absent a court order stating that the Affected Voters must be downgraded to federal only voters, the Recorders will abide by Secretary Fontes’s guidance. They urge the Court to clarify that Secretary Fontes’s guidance must be followed, so that all counties will treat the Affected Voters uniformly.

¹ *See also Arizonans for Second Chances, Rehabilitations, and Public Safety*, 249 Ariz. at 404-05 ¶ 20; *Tobin v. Rea*, 231 Ariz. 189, 193 ¶ 8 (2013); *Jennings v. Woods*, 194 Ariz. 314, 317 n.2 (1999).

As Secretary Fontes states in his guidance, we are now well within the “quiet period” designated by the National Voter Registration Act, where election officials cannot systematically remove voters from the voter rolls within ninety days of a primary or general election for federal office. Moreover, every Affected Voter has attested that they are a citizen; some, if not many, may also have already provided DPOC, entitling them to full ballot status. *Id.* Further, many of the Affected Voters likely have been registered as full ballot voters for years or even decades. To suddenly, and so close to the election, downgrade voters to federal only status because of an administrative system error—not voter error—would improperly burden the Affected Voters’ fundamental right to vote.

As laid out in detail in the EPM, County Recorders must assiduously facilitate qualified individuals’ right to vote.² Changing the Affected Voters’ status without following the proper procedures violates voters’ rights. Moreover, adopting such a change to the status quo—especially so soon before voting begins—will add new “barriers to voting” for the Affected Voters and therefore burden their right under the Arizona Constitution to “free and equal” elections.

² *See, e.g.*, 2023 EPM, Ch. 1, § II(A)(2)(b) (County Recorder “must” send letter to federal only voters notifying of federal only status and procedure to cure, within ten days of receiving registration form without DPOC); *id.* at Ch. 1, § IX(C)(2)(c) (County Recorder “shall” send prepaid postage mail requesting confirmation of DPOC from possible noncitizens, give those individuals thirty-five days to cure errors, and send additional notice of cancellation).

Brnovich, 251 Ariz. at 52 ¶ 30 (citing Ariz. Const. art. 2, § 21). “[T]o prevent ‘judicially created confusion’” and protect the Affected Voters’ fundamental right to vote, the Recorders request that this Court make clear that Arizona will not “‘alter the election rules on the eve of an election.’” *Arizona Republican Party v. Fontes*, No. 1 CA-CV 22-0388, 2023 WL 193620, at *2 (Ariz. Ct. App. Jan. 17, 2023), *review denied* (June 2, 2023) (quoting *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020)).

2. **If this Court does not rule quickly, voters in Arizona counties will be treated differently, in violation of their rights.**

Because the Recorders intends to maintain the Affected Voters as full ballot voters, while Recorder Richer intends to downgrade the Affected Voters to federal only registration, delay or mixed messages from this Court could threaten the Affected Voters’ rights to equal protection under the U.S. and Arizona Constitutions. The Equal Protection clauses of both constitutions “generally require that all persons subject to state legislation shall be treated alike under similar circumstances.” *Crerand v. State*, 176 Ariz. 149, 151 (Ct. App. 1993) (citing *Valley Nat’l Bank of Phoenix v. Glover*, 62 Ariz. 538 (1945)). These guarantees are essential in the context of elections, where laws that deny the right to vote deprive citizens of “a fundamental political right, . . . preservative of all

rights.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)).

Regulations that burden the right to vote must be “appropriately defined and uniformly applied.” *Charfauros v. Bd. of Elections*, 249 F.3d 941, 951 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (July 6, 2001) (quoting *Dunn*, 405 U.S. at 343). But without the Court’s prompt instruction, Maricopa County would adopt one set of policies and Coconino and Pima Counties—and all other counties that follow the Guidance of the Secretary of State—another, leaving the Affected Voters to be treated differently based solely on the county in which they live. The Court must avoid this outcome and ensure uniform application of election laws across our state.

IV. Conclusion

The Recorders respectfully urge this Court to accept jurisdiction, promptly rule on this matter, and declare that the Affected Voters can maintain their status as full ballot voters for the upcoming 2024 General Election.

RESPECTFULLY SUBMITTED this 18th day of September, 2024.

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