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*\* Pro hac vice motions forthcoming*

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

REPUBLICAN NATIONAL COMMITTEE,  
et al.,

Plaintiffs,

v.

STEPHEN RICHER, et al.,

Defendants.

No. CV2022-014827

**PROPOSED INTERVENOR’S  
OPPOSITION TO PLAINTIFFS’  
TRO MOTION**

1 **INTRODUCTION**

2 The Arizona Legislature has expressly provided that “the polls shall be opened in  
3 every precinct at 6:00 a.m. on the day of election and shall be closed at 7:00 p.m.” A.R.S.  
4 § 16-565(A). Plaintiffs provide the Court with no adequate legal or factual basis to set aside  
5 that clear statutory requirement. In both 2016 and 2018, parties asked this court to extend  
6 voting hours due to problems causing delays at polling places in Maricopa County, and in  
7 both 2016 and 2018, Republicans opposed those requests and this Court refused. Nothing  
8 is different this time, so the Court should refuse again. And there is no basis for the Court  
9 to delay the release of tabulated results, either.<sup>1</sup>

10 **BACKGROUND**

11 Polling places in Maricopa County opened on schedule at 6:00 am this morning and  
12 remained open throughout the day. At several voting centers, voters were unable to feed  
13 their ballots directly into certain tabulation machines for those ballots to be scanned. But as  
14 Maricopa County Recorder Stephen Richer explained, even those voters who could not  
15 insert their ballot directly into the tabulator for scanning were always able to place their  
16 ballot into a secure place for safekeeping and later tabulation. As Recorder Richer  
17 explained, “[t]his secure ballot box is retrieved by bipartisan workers at the end of the  
18 evening and brought to our central tabulators. This is the same methodology used for early  
19 voting, and it is the same methodology used on Election Day by most counties (including  
20 Pima County and Yavapai County).”<sup>2</sup>

21 Moreover, as Recorder Richer also explained, “[t]here are 223 voting locations, and  
22 the significant majority of them [were] unaffected.”<sup>3</sup> Voters could therefore cast their  
23 ballots at any of 223 voting center locations that were open, as is permitted by Arizona law  
24

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25 <sup>1</sup> Plaintiffs also ask the Court to order Defendants to count provisional ballots under certain  
26 circumstances; that request is, at a minimum, premature, and can be adjudicated after the  
close of the polls.

27 <sup>2</sup>Statement of @stephen\_richer (Nov. 8, 2022), available at:  
28 [https://twitter.com/stephen\\_richer/status/1590088696581459968](https://twitter.com/stephen_richer/status/1590088696581459968).

<sup>3</sup> *Id.*

1 under a vote center model.<sup>4</sup> And while there were lines at some voting centers at various  
2 points in the day, Maricopa County reported this afternoon that wait times were under 30  
3 minutes at more than 200 voting locations, and under 10 minutes at more than 160 voting  
4 locations.<sup>5</sup>

### 5 LEGAL STANDARD

6 A party seeking injunctive relief must show (1) a strong likelihood of success on the  
7 merits, (2) the possibility of irreparable harm if the relief is not granted, (3) the balance of  
8 hardships favors the party seeking injunctive relief, and (4) public policy favors granting  
9 the injunctive relief. *Fann v. State*, 251 Ariz. 425, 432 ¶ 16 (2021). To meet this burden, the  
10 moving party may establish either (1) probable success on the merits and the possibility of  
11 irreparable injury; or (2) the presence of serious questions and that the balance of hardships  
12 tips sharply in favor of the moving party. *Id.* This is a sliding scale, not a strict balancing of  
13 factors. *Id.* “The greater and less reparable the harm, the less the showing of a strong  
14 likelihood of success on the merits need be. Conversely, if the likelihood of success on the  
15 merits is weak, the showing of irreparable harm must be stronger.” *Id.* (quoting *Smith v.*  
16 *Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410 ¶ 10 (2006)).

### 17 ARGUMENT

18 Plaintiffs are unlikely to succeed on the merits because there is no legal or factual  
19 basis for the Court to set aside the Legislature’s express requirement that polls “shall be  
20 closed at 7:00 p.m.” A.R.S. § 16-565(A). Plaintiffs cannot show irreparable harm because  
21 voters still had the ability and opportunity to vote, despite the identified issues, particularly  
22 because Arizona law requires that all voters who are in line to vote when polls close “shall  
23 be allowed to vote.” *Id.* § 16-565(D). And the balance of hardships weighs against relief,  
24 because delaying the closing of the polls would disrupt the settled expectations of Arizona  
25 voters, violate the Legislature’s express closing-time requirement, and delay the tabulation  
26 and reporting of election results.

27 <sup>4</sup> *Id.*

28 <sup>5</sup> Statement of Maricopa County, @maricopacounty (Nov. 8, 2022), available at  
<https://twitter.com/maricopacounty/status/1590112304385126400>.

1 **I. Plaintiffs are unlikely to succeed on the merits**

2 Plaintiffs are unlikely to succeed on the merits because this court has repeatedly  
3 refused to set aside the Legislature’s express requirement that polling places “shall be closed  
4 at 7:00 p.m.,” A.R.S. § 16-565(A), even in response to significant delays at polling places.

5 In 2016, problems with electronic poll books caused long lines and delays at many  
6 Maricopa County polling places.<sup>6</sup> But this Court, after a hearing, denied an emergency  
7 motion to extend voting hours.<sup>7</sup> Similarly, in 2018, voting rights groups complained of “a  
8 county-wide, systemic failure of the printer systems” that produced on-demand ballot  
9 forms, which caused a “systemic, catastrophic, and recurring failure throughout the day for  
10 multiple hours at a time.” Compl. & TRO Appl. ¶¶ 14–15, *Ariz. Advocacy Network v.*  
11 *Maricopa Cnty. Bd. of Supervisors*, No. CV2018-013943 (Ariz. Maricopa Cnty. Sup. Ct.  
12 Nov. 6, 2018). Despite acknowledging systemic problems, this Court refused to extend  
13 voting hours, explaining that the harm from extending voting hours would outweigh any  
14 benefit to voters from doing so.<sup>8</sup> In each case, Republicans opposed the requests to extend  
15 voting hours, arguing in 2018 that “the system is best served by clear rules that are  
16 understood” and that fairness required the polls be closed on schedule.<sup>9</sup>

17 The Court should deny relief again this year. The Legislature prescribed the hours  
18 that polling places shall open and close, A.R.S. § 16-565(A), and it made no provision for  
19 extending those hours. It is undisputed that Maricopa County polling places in fact opened  
20 on time, at 6:00 am today. While there were some delays and lines throughout the day, no  
21 Maricopa County polling place was ever closed or unable to accept ballots. Even where  
22 tabulation machines were not able to read certain ballots, voters were able to deposit them  
23 in a secure box for tabulation later. *See supra* at 2. Moreover, Maricopa County voters are

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25 <sup>6</sup> Ariz. Capitol Times, *Judge: No voting extension in Maricopa County* (Nov. 8, 2016),  
26 <https://azcapitoltimes.com/news/2016/11/08/democrats-want-2-more-maricopa-county-vote-hours/>.

27 <sup>7</sup> *Id.*

28 <sup>8</sup> Ariz. State Univ., *Arizona Native Vote Election Protection Project: 2018 Election Report*  
at 22–23, [http://newsletters.asucollegeoflaw.com/ilp/wp-content/blogs.dir/9/files/sites/2/2022/06/ILC-Native-Vote-2018-Report\\_Final-12.15.pdf](http://newsletters.asucollegeoflaw.com/ilp/wp-content/blogs.dir/9/files/sites/2/2022/06/ILC-Native-Vote-2018-Report_Final-12.15.pdf)

<sup>9</sup> *Id.*

1 able to vote at *any* of Maricopa County’s 223 polling places, so voters could avoid lines at  
2 crowded polling places by going elsewhere. *Id.* Polling places should therefore close on  
3 time this year, as well.

4 The Apache County Superior Court’s 2020 order delaying the closing of certain  
5 polling places by one hour and fifteen minutes is not to the contrary. *See* Minute Entry:  
6 Hearing, *Navajo Nation v. Wauneka*, No. S100CV202000182 (Ariz. Apache Cnty. Sup. Ct.  
7 Nov. 3, 2020). There, two polling places had opened late, so that they were entirely closed  
8 during part of the time when the Legislature had required them to be open. *See* Compl. ¶¶ 1–  
9 3, *Navajo Nation, supra*. Extending the hours under such circumstance was consistent with  
10 the Legislature’s requirement that polling places be open for a certain number of hours.  
11 Here, in contrast, Maricopa County polling places opened on time and stayed open  
12 throughout the day. The fact that technical issues caused some delays does not justify  
13 extending voting hours this year any more than it did in 2016 and 2018.

14 Because there is no reason to extend voting hours, there is similarly no reason to  
15 suspend the release of early ballot returns as otherwise required by law, as Plaintiffs request.  
16 *See* TRO at 11.

17 **II. Plaintiffs will not suffer irreparable harm absent relief.**

18 Plaintiffs cannot demonstrate that they will be irreparable harmed if their request for  
19 relief is denied. Although certain voters were unable to place their ballots directly into  
20 tabulators, voters still had the ability and opportunity to cast a vote despite the identified  
21 issues. As Chairman Bill Gates of the Board of Supervisors in Maricopa County stated this  
22 morning, the ballot issues have not impacted any voter’s ability to cast a ballot.<sup>10</sup> And that  
23 is not surprising. The underlying issue with the ballots is that certain timing marks were not  
24 dark enough. But this discrete issue does not fundamentally impact how many ballots can  
25 be printed, how many ballots have been printed, how many voters have voted, and how

26 \_\_\_\_\_  
27 <sup>10</sup> *See Maricopa County Officials Give Update on Voting Issues Encountered at Some Vote*  
28 *Centers*, 12 News, YouTube (Nov. 8, 2022) (at 12:30-12:37) (Chairman Gates stating “the  
key for everyone to understand, that everyone is still being able to vote. No one is being  
disenfranchised.”)

1 many voters will vote.

2 This is further supported by statements made by Maricopa County Recorder Richer  
3 this afternoon, where he noted that the only impact on the voting process is that affected  
4 ballots that had been completed by voters be placed in a separate pile to be tabulated in a  
5 central location in accordance with conventional methodologies used in early voting.<sup>11</sup> And  
6 importantly, these ballot tabulation issues have not led to any secondary issues, such as long  
7 lines.<sup>12</sup>

8 Finally, because Plaintiffs' likelihood of success on the merits is weak, *see supra*  
9 Section I, Plaintiffs' showing of irreparable harm must be stronger. *Fann*, 251 Ariz. at 432.  
10 For these reasons alone, Plaintiffs' Motion should be denied.

11 **III. The balance of hardships and public policy weigh strongly against an**  
12 **injunction.**

13 Even if Plaintiffs could demonstrate a likelihood of success on the merits as well as  
14 irreparable harm, the balance of equities and public policy tip against the issuance of a  
15 preliminary injunction. First, any extension to Maricopa County's polling hours will delay  
16 the state's ability to timely report its election results. But more importantly, as the Arizona  
17 Supreme Court has explained, the public interest cuts against changing election laws and  
18 procedures at the last moment. When such laws change "in the middle of an election . . .  
19 they undermine public confidence in our democratic system." *Ariz. Pub. Integrity All. v.*  
20 *Fontes*, 250 Ariz. 58, 61 (2020). There, the Arizona Supreme Court was referring to  
21 procedures occurring while ballots were about to be mailed to voters, still weeks, if not  
22 months, away from Election Day. Here, Plaintiffs are attempting to change voting  
23 procedures and policies with mere *hours* to go on Election Day.

24 Proposed Intervenor is cognizant of the importance of every voter being afforded an  
25 opportunity to vote. But every voter has had such opportunity—for weeks through early

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26 <sup>11</sup> @stephen\_richer, Twitter (Nov. 8, 2022, 4:07 p.m.),  
[https://twitter.com/stephen\\_richer/status/1590088696581459968/photo/1](https://twitter.com/stephen_richer/status/1590088696581459968/photo/1).

27 <sup>12</sup> @maricopacounty, Twitter (Nov. 8, 2022, 5:41 p.m.),  
28 <https://twitter.com/maricopacounty/status/1590112304385126400> (stating "[w]ait times  
are under 30 minutes at more than 200 voting locations, and under 10 minutes at more than  
160 locations!").

1 ballots, which any voter may cast, and at 223 voting locations in Maricopa County today.  
2 Under the circumstances, the public interest is not served by last-minute judicial tinkering  
3 with settled election rules.

4 **CONCLUSION**

5 For these reasons, the Court should deny Plaintiffs' motion for a temporary  
6 restraining order and refuse to order a delay to the closing of polling places or the release  
7 of results.

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1 Dated: November 8, 2022

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 8<sup>th</sup> day of November, 2022, I electronically transmitted  
3 a PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa  
4 County, for filing using the AZTurboCourt System. I further certify that a copy of the  
5 foregoing was sent via email this same date to:

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