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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

ARIZONA REPUBLICAN PARTY, **Plaintiff;** **vs.** **MARICOPA COUNTY BOARD OF SUPERVISORS, et al.** **Defendants.**	**Case No. CV2020-014553** **PLAINTIFF'S RESPONSE TO DEFENDANT/INTERVENORS' MOTIONS TO DISMISS** **(Oral Argument Requested)** **(Assigned to the Honorable John R. Hannah, Jr.)**

Plaintiff Arizona Republican Party ("Plaintiff") hereby responds to the Motions to Dismiss filed by Defendants/Intervenors.

First, Plaintiff objects to Intervenor(s)' allegation that it is simply trying to delay certification of the results. Plaintiff filed this case in the full expectation that the case could be heard and resolved, and that the County could even perform a legal recount (which takes only one day and a half), before November 16th.

However, as of this filing, the County still has not responded to Plaintiff's discovery requests asking whether or not the County can actually do a legal recount, and how long it would

actually take, much less what witness at the county is the most knowledgeable to testify about these matters. This leaves Plaintiff and the Court in an unfortunate lurch.

Contrary to Defendants/Intervenor(s)' legal arguments, it is flatly false to say that there is a "gap" in the "hand-count" statute, A.R.S. § 16-602. The statute plainly says that "[f]or each countywide primary, special, general and presidential preference election…[a]t least two percent of the precincts in that county…shall be selected." Not to retread the Plaintiff's original Application, but the statute plainly says "precincts" for general elections as opposed to "polling places" for presidential preference (primary) elections, evidencing a clear legislative intent to mean what exactly what it says.

Defendants/Intervenors' arguments about laches stray vastly outside of the pleadings, and Plaintiff objects to their effort to throw various forms of inadmissible evidence at the Court, including hearsay upon hearsay (e.g. in the "Kanefield letter"). But suffice it to say, the Court can accept judicial notice of the fact (or at least, no party should disagree) that this elections cycle was the very first time in Maricopa County history that it has used a "vote center" model, allegedly due to COVID-19. Until this election cycle, there was simply no real case or controversy to decide in Maricopa County (which is by far the most populous county in Arizona), because the county used the "precinct" model and properly hand-sampled based on precinct. Further, Plaintiff "stays out" of contests in its own primary election, making it eminently reasonable for it be raising these issues only now in the general election. And perhaps most importantly (and obviously) of all, concern about potential widespread voter fraud has taken on a special significance in this general election, warranting a through focus on these laws and compelling Plaintiff to take action. Finally, given that the county released its report within only day(s) before this suit was filed (or even on

the same day, it remains unclear),[1] Plaintiff did not unreasonably delay the filing of suit. "Laches will generally bar a claim when the delay [in filing suit] is unreasonable and results in prejudice to the opposing party." *League of Arizona Cities & Towns v. Martin*, 219 Ariz. 556, 558, 201 P.3d 517, 519 (2009). "[D]elay alone in asserting an election law violation would not serve as the basis to apply the laches defense"; "it must also be established that the delay resulted in actual prejudice to the adverse parties." *Harris v. Purcell*, 193 Ariz. 409, 412, 973 P.2d 1166, 1169 (1998). Here, the delay is not unreasonable under the circumstances, because there was no real case or controversy to present to the Court until now; but just as importantly (and as partly addressed in the Application for Preliminary Injunction), there is no genuine prejudice to the Defendants because they all still have plenty of time in which to issue a canvass. Finally, Defendants/Intervenor(s) cite authority which stands for the proposition that pre-election procedural issues are waived after an election; but of course we are dealing with a process that by definition occurs only after an election and all votes have been accounted for, which again happened within mere days of this suit being filed (and in fact, all votes were not tabulated until the day *after* it was filed).

In any event, one solution to all of these issues would be to transfer this case to another Division which is able to conduct a hearing on Thursday or Friday, and to order that the county formally respond to the discovery that Plaintiff seeks by midnight Wednesday. The discovery (attached as Exhibit 1 hereto) is very simple, just the three interrogatories identified above—and whatever witness the county designates can testify briefly at the hearing with regard to the issue of whether the statutory "precinct" recount is impossible or not. (If it is possible – and if in reality

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[1] As acknowledged in the Amended Complaint, the county's "vote center" sampling was apparently completed on the 9th; however Plaintiff's counsel did not receive a copy of it until after the suit was filed on the 12th, and it remains unclear to Plaintiff whether it made publicly-available any time before the 12th.

it would take no more than even six days to do – then the county could have already done it at this point and has spent more time arguing about it instead).

Finally, to argue that a political party does not have standing to raise election issues, as both Intervenors do, hardly warrants a response (but here it is anyway). Plaintiff clearly has standing; in no small irony, the Democratic Party sought intervention on the grounds that it also has standing with respect to election issues, and it claims that it has a concrete and particularized interest in protecting the interests of its own "candidates, members and constituents" in the election. But to save the Court any further partisan bickering, it is obvious that both parties have standing to participate in this action (which is why Plaintiff graciously did not object to Intervenor's intervention), as they both have an obvious interest in elections matters and in ensuring the integrity of elections.

RESPECTFULLY SUBMITTED on November 17, 2020.

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