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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

13 Arizonans for Fair Elections, et al.,

14 Plaintiffs,

15 v.

16 Katie Hobbs, et al.,

17 Defendants.

No. CV-20-00658-PHX-DWL

**DEFENDANT MARICOPA COUNTY
RECORDER ADRIAN FONTES’
RESPONSE TO PLAINTIFFS’ MOTION
FOR TEMPORARY RESTRAINING
ORDER**

18
19 **INTRODUCTION**

20 Plaintiffs’ complaint and temporary restraining order application are limited ones.
21 Both seek relief only during the pendency of the current COVID-19 pandemic. (Doc. 1 at
22 20-21 [Prayer for Relief]; Doc. 2 at 16 (stating Plaintiffs’ position that “[w]hen this crisis
23 passes, the State’s denial of access to E-Equal no longer needs to be enjoined”).) Defendant
24 Maricopa County Recorder Adrian Fontes (the “Recorder”) is a nominal defendant in this
25 action who takes no position on Plaintiffs’ limited request. If the Court determines that the
26 relief requested is warranted, the Recorder will not disqualify any signatures solely because
27 they were collected using E-Equal when he conducts his certification pursuant to A.R.S. §
28 19-121.02. The Recorder files this response, however, to emphasize the constitutional nature

1 of his Office and the important legislative delegation of authority for initiative-petition
2 signature verification to the county recorders, not to the secretary of state.

3 ARGUMENT

4 The Arizona Constitution created the Office of the Recorder. Ariz. Const. art. XII §
5 3. It expressly provided to the Recorder all the duties and powers that the legislature chooses
6 to grant to that Office. Ariz. Const. art. XII § 4. Courts should not enjoin or alter that
7 delegation of responsibility and authority lightly. In *Marston v. Superior Court*, 109 Ariz.
8 209, 210 (1973), the Arizona Supreme Court ruled that, because of the constitutional
9 delegation of power, the Recorder “may not be enjoined from performing his official acts
10 except in instances in which he is acting illegally or in excess of the powers conferred upon
11 him by law.” In that case, the court considered the power of the county recorder to appoint
12 and remove deputy county registrars. *Id.* at 209-11. The court noted that, although someone
13 might believe a better system could be devised, “it is for the legislature to change the law—
14 not petitioner nor this court.” *Id.* at 211.

15 The legislature expressly delegated to the Recorder the authority and responsibility
16 to verify the validity of initiative petition signatures. A.R.S. § 19-121.02. Plaintiffs suggest
17 that the secretary of state’s E-Equal signature-verification system is at least as good, if not
18 better, than the legislature’s choice. (Doc. 2 at 12, 13-14.) As the *Marston* court recognized,
19 however, whether a better system could be proposed is for the legislature to decide. As
20 Plaintiffs correctly recognize, the State has an important interest in preventing initiative
21 petition signature fraud. (Doc. 2 at 12.) The legislature has chosen to delegate to the
22 Recorder, as part of his signature verification duties, important responsibilities aimed at
23 minimizing such possible fraud. So, for example, the Recorder is responsible to disqualify
24 the signatures of individuals whose signatures do not match their signatures in their voter
25 registration files. A.R.S. § 19-121.02(A)(9). He is also responsible to disqualify signatures
26 of individuals who were not qualified electors on the date they signed the initiative petition,
27 A.R.S. § 19-121.02(A)(5), as well as duplicate signatures from the same elector, A.R.S. §
28 19-121.02(A)(8). The legislature chose to delegate these important fraud-prevention duties

1 to the county recorders, not the secretary of state.

2 **CONCLUSION**

3 As already stated, the Recorder is a nominal defendant who takes no position on
4 Plaintiffs' limited request for relief, and will comply with whatever this Court determines is
5 appropriate.

6 RESPECTFULLY SUBMITTED this 9th day of April, 2020.

7 ALLISTER ADEL
8 MARICOPA COUNTY ATTORNEY

9 BY: /s/ Joseph E. La Rue
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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2020 I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing.

/s/ Joseph E. La Rue

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