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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Arizona Democratic Party and the Democratic
National Committee,

Plaintiffs,

v.

Michele Reagan, Arizona Secretary of State,

Defendant.

No.

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

1 Plaintiffs the Arizona Democratic Party (“ADP”) and the Democratic National
 2 Committee (“DNC”) (collectively, “Plaintiffs”), by and through their undersigned
 3 attorneys, file this Complaint for Injunctive and Declaratory Relief against Defendant
 4 Michele Reagan, in her official capacity as the Secretary of State of the State of Arizona
 5 (“Defendant” or “Secretary”). Upon information and belief, Plaintiffs allege the
 6 following:

7 **NATURE OF THE CASE**

8 1. The right to vote is “a fundamental matter in a free and democratic society.”
 9 *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966) (citation and quotation
 10 marks omitted). “No right is more precious in a free country than that of having a voice in
 11 the election of those who make the laws under which, as good citizens, we must live.
 12 Other rights, even the most basic, are illusory if the right to vote is undermined.”
 13 *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Plaintiffs bring this lawsuit to protect this
 14 most precious of rights.

15 2. A substantial number of Arizona voters are at risk of unlawful
 16 disenfranchisement in the November 8, 2016 General Election (“November 8 Election”)
 17 due to Defendant’s insistence that this year’s voter registration deadline fall on October 10,
 18 2016, a federal and state holiday (Columbus Day).

19 3. Because the deadline fell on a holiday, and the final day of a three-day
 20 weekend, many of the typical and most popular avenues for registration used by Arizona
 21 voters—including in-person registration at motor vehicle offices and registration by
 22 postmarking registration forms in the U.S. Mail—were simply unavailable on October 10
 23 (a holiday). The post office was also closed on Sunday, October 9, and Motor Vehicle
 24 Department (“MVD”) offices were closed on October 8 and 9 for the weekend.
 25 Accordingly, for a significant number of voters who tried to register on or shortly before
 26 the registration deadline, the promise of being able to register on that date was illusory.

27 4. Arizona’s registration deadline of October 10, 2016 violates the National
 28 Voter Registration Act (“NVRA”), the First and Fourteenth Amendments of the United

1 States Constitution, and Arizona state law.

2 5. In light of the foregoing, a substantial number of voters are at immediate
3 risk of unlawful and unnecessary disenfranchisement in the November 8 Election. To
4 avoid such irreparable injury, this Court should enjoin Defendant from disqualifying any
5 eligible voter from voting a regular ballot in the November 8 Election if the voter
6 submitted an otherwise valid voter registration application before midnight on October 11,
7 2016. These voters should not be turned away at the polls, but instead allowed to exercise
8 their fundamental right to vote.

9 JURISDICTION AND VENUE

10 6. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the
11 deprivation under the color of state law of rights secured by the U.S. Constitution, as well
12 as 52 U.S.C. § 50210 to remedy Defendant's violations of the NVRA.

13 7. This Court has jurisdiction to hear Plaintiffs' claims pursuant to 28 U.S.C.
14 §§ 1331, 1343(a)(3), 1357, and 1367.

15 8. This Court has jurisdiction over Defendant, as she is sued in her official
16 capacity as an elected official in Arizona or Maricopa County. Further, Defendant works
17 or resides in the State of Arizona.

18 9. Venue in this district is proper under 28 U.S.C. § 1391(b) because a
19 substantial part of the events or omissions giving rise to the claims occurred in this
20 judicial district and in this division.

21 10. This Court has the authority to grant declaratory and injunctive relief
22 pursuant to 28 U.S.C. §§ 2201 and 2202. Further, this Court has the authority to enter a
23 declaratory judgment and to provide preliminary and permanent injunctive relief pursuant
24 to Rules 57 and 65 of the Federal Rules of Civil Procedure.

25 PARTIES

26 11. Plaintiff Arizona Democratic Party is a state committee, as defined by 52
27 U.S.C. § 30101. ADP's purpose is to elect candidates of the Democratic Party to public
28 office throughout the State of Arizona. To accomplish this purpose, ADP engages in

1 vitally important activities, including supporting Democratic Party candidates in national,
2 state, and local elections through fundraising and organizing efforts; protecting the legal
3 rights of voters; and ensuring that all voters have the meaningful ability to cast ballots in
4 Arizona. ADP has members and constituents from across Arizona, including many voters
5 who regularly support and vote for candidates affiliated with the Democratic Party, as
6 well as voters who would do so but for the unconstitutional procedure challenged in this
7 litigation.

8 12. Defendant's refusal to extend the voter registration deadline, as required by
9 both state and federal law and the U.S. Constitution, has disenfranchised voters who
10 registered or attempted to register on October 11, 2016. It is likely that citizens who
11 would have registered as Democrats or voted for Democrats registered on October 11 ,
12 thereby decreasing the overall likelihood that ADP will be successful in its efforts to help
13 elect Democratic candidates to public office. The Arizona Democratic Party brings these
14 claims on behalf of those citizens, as well as in its own right.

15 13. Plaintiff the Democratic National Committee is a national committee, as that
16 term is defined and used by 52 U.S.C. §30101, dedicated to electing local, state, and
17 national candidates of the Democratic Party to public office throughout the United States.
18 The DNC has members and constituents across the United States, including voters in
19 Arizona. To accomplish its mission, among other things, the DNC works closely with
20 Democratic public officials and assists state parties and candidates by contributing money;
21 making expenditures for their benefit; and providing active support through the
22 development of programs benefiting Democratic candidates.

23 14. Defendant's refusal to allow those who registered on October 11, 2016 to
24 vote in the November 8 Election also directly harms the DNC, its members, and
25 constituents. It is likely that citizens who would have registered as Democrats or voted for
26 Democrats registered on October 11, 2016. As a result, the Defendant's decision further
27 decreases the likelihood that the DNC will be successful in its efforts to help elect
28 candidates of the Democratic Party to public office.

1 22. Plaintiffs had informed relevant Arizona state and county officials that, even
2 if certain registration options (such as online registration) remained available on
3 Columbus Day, some of the most popular, and federally mandated, options would not be.

4 23. Historically, over 40% of voter registration applications in Arizona are
5 submitted either through the U.S. Mail or in-person at MVD offices. Neither of those
6 options were available on Columbus Day, since post offices and MVD offices were closed.

7 24. The Secretary's own statistics further underscored the importance of an
8 unambiguous deadline with all registration options available. Those statistics showed that
9 over the previous three presidential election cycles, the top three days in Arizona voter
10 registration volume were the three registration deadline dates for those cycles: 21,442
11 voters in 2004, 38,872 voters in 2008, and 24,390 voters in 2012. These numbers
12 demonstrate that voters often wait until the deadline to register. Therefore, the fact that the
13 Secretary's imposed deadline fell on a federal and state holiday, when not all registration
14 options were available and the postal service and other government services and offices
15 were closed, significantly impacts Arizonans' ability to register in time for the November
16 8 Election.

17 25. By refusing to extend the registration deadline, Defendants needlessly,
18 predictably and unlawfully prevented many Arizona citizens from exercising their
19 fundamental right to vote.

20 26. Moreover, the State's online registration option was only available to
21 residents with a driver's license and internet access. Therefore, this option was
22 unavailable to many Arizona citizens, a disproportionate share of whom are racial or
23 language minorities.

24 27. Arizonans who are new citizens, many of whom are also racial and language
25 minorities, experienced serious problems registering both online and at MVD offices due
26 to their recent citizenship status. The MVD records for these voters did not accurately
27 reflect their U.S. citizenship, so they were unable to register online using their MVD-
28 issued driver's license numbers. They were also unable to go to the MVD office to

1 correct their citizenship status because those offices were closed on Columbus Day.

2 28. Plaintiff ADP kept its field offices open throughout Columbus Day to
3 collect in-person registrations, but these efforts were too little, too late, given the
4 widespread confusion as to what registration options were available on that day.

5 29. On October 11, 2016, Plaintiff ADP had a number of Arizonans show up to
6 its field offices seeking to register to vote for the upcoming election. They came wanting
7 to register, and Plaintiff ADP helped them do so, but based on the deadline the Secretary
8 imposed, they were too late to be eligible to vote in the November 8 Election. These
9 Arizonans were understandably frustrated and disappointed to learn that they would be
10 turned away at the polls in the upcoming election.

11 **CLAIMS FOR RELIEF**

12 **COUNT I**

13 **(Violation of the National Voter Registration Act)**

14 30. Plaintiffs reallege and incorporate by reference all prior paragraphs of this
15 Complaint and in the paragraphs in the counts below as though fully set forth herein.

16 31. The purpose of the National Voter Registration Act (“NVRA”) is to, among
17 other things, “establish procedures that will increase the number of eligible citizens who
18 register to vote in elections for Federal office.” 52 U.S.C. § 20501(b)(1).

19 32. To accomplish this, the NVRA requires that states provide for voter
20 registration via several methods: registration with an application for a driver’s license, 52
21 U.S.C. § 20504; registration by mail, 52 U.S.C. § 20505; and in-person registration at
22 registration sites or government offices, 52 U.S.C. § 20506.

23 33. Section 8 of the NVRA, 52 U.S.C. § 20507(a)(1), requires each state to
24 ensure that an eligible applicant is registered to vote in an election if “the valid voter
25 registration form of the applicant” is: i) “submitted to the appropriate State motor vehicle
26 authority;” ii) “postmarked;” iii) “accepted at the voter registration agency;” or iv)
27 otherwise “received by the appropriate State election official . . . not later than the lesser
28

of 30 days, or the period provided by State law, before the date of the election.” 52 U.S.C. § 20507(a)(1)(A)-(D).

34. Arizona law requires that voter registration forms be “received . . . prior to midnight of the twenty-ninth day preceding the date of the election.” A.R.S. § 16-120. Twenty-nine days before the November 8 Election is October 10, 2016, which is registration deadline the Secretary had set. Because that date fell on Columbus Day, it was impossible for Arizonans to register using certain NVRA-mandated methods. For example, MVD and post offices were closed on Columbus Day. Post offices were also closed on October 9, 2016 because it was a Sunday. MVD offices were also closed on October 8 and October 9 because it was the weekend. Therefore, Arizonans were required to register to vote via mail, by the latest, Saturday, October 8, 2016, and at the MVD by Friday, October 7. These “shadow deadlines” were 31 and 32 days before the November 8 Election, respectively, and both violate the NVRA. *See* 52 U.S.C. § 20507(a)(1).

35. Put differently, given that 29 days before the November 8 Election falls on Columbus Day, the first available day to require a voters to register through the NVRA methods that is “not later” than 29 days before the election is Tuesday, October 11, 2016. Accordingly, Arizona’s insistence that voters who registered by October 11, 2016 may not vote in the November 8 Election is inconsistent with, and a violation of, the NVRA.

COUNT II

(Undue Burden on the Right to Vote in Violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment)

36. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

37. Under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, a court considering a challenge to a state election law must carefully balance the character and magnitude of the injury to First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against the justifications put forward by the state for the burdens imposed by the rule. *See Burdick v. Takushi*, 504 U.S.

1 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

2 38. The court “must weigh ‘the character and magnitude of the asserted injury
3 to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to
4 vindicate’ against ‘the precise interests put forward by the State as justifications for the
5 burden imposed by its rule,’ taking into consideration ‘the extent to which those interests
6 make it necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting
7 *Anderson*, 460 U.S. at 789).

8 39. Unless Plaintiffs are granted the relief requested, the right to vote of many
9 Arizonans, including Plaintiff’s members and constituents, will be severely burdened in
10 the November 8 Election.

11 40. Many registration options were closed to registrants on October 10, 2016.
12 Again, historically, over 40% of voter registration applications in Arizona are submitted
13 either through the U.S. Mail or in-person at MVD offices. None of those options were
14 available on Columbus Day, since MVD and post offices were closed. That Arizona
15 allowed individuals to register online on October 10, 2016 does not sufficiently mitigate
16 this burden.

17 41. The State has not provided any colorable justification for its refusal to
18 extend the voter registration deadline to comply with state and federal law.

19 **COUNT III**

20 **(Violation of Arizona Statutory Law Applicable to Voting Registration)**

21 42. Plaintiffs reallege and incorporate by reference all prior paragraphs of this
22 Complaint and the paragraphs in the counts below as though fully set forth herein.

23 43. As a general matter, voter registrations in Arizona state elections must be
24 “received by the county recorder. . . prior to midnight of the twenty-ninth day preceding
25 the date of the election,” which was October 10, 2016 for this cycle. A.R.S. § 16-120.

26 44. But because October 10 was a state holiday, Columbus Day, Arizona law
27 required that voting registration could be performed this cycle “on the next ensuing
28 business day,” October 11, 2016. A.R.S. § 1-303.

1 a voter registration application at any time on October 11, 2016;

2 F. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees
3 pursuant to, *inter alia*, 42 U.S.C. §1988 and other applicable laws; and

4 G. Granting such other and further relief as the Court deems just and proper.

5
6 Dated: October 19, 2016

PERKINS COIE LLP

7 By: /s/ Sambo Dul

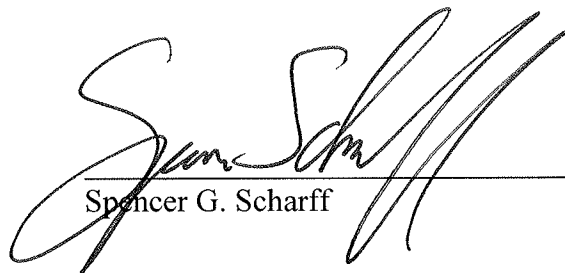
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VERIFICATION

Spencer G. Scharff, declares that he is the Voter Protection Director for the Arizona Democratic Party, and that he is authorized to make this verification for and on behalf of the Arizona Democratic Party; that he has read the foregoing Verified Complaint for Injunctive and Declaratory Relief, and knows the contents thereof; and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and, as to those matters, he believes them to be true.

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct.

Dated this 19th day of October, 2016.



Spencer G. Scharff

CERTIFICATE OF SERVICE

☒ I hereby certify that on October 19, 2016, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing.

s/ Indy Fitzgerald