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13 IN THE UNITED STATES DISTRICT COURT

14 FOR THE DISTRICT OF ARIZONA

15 Tyler Bowyer, Michael John Burke, Nancy  
16 Cottle, Jake Hoffman, Anthony Kern,  
17 Christopher M. King, James R. Lamon, Sam  
Moorhead, Robert Montgomery, Loraine  
18 Pellegrino, Greg Safsten, Salvatore Luke  
Scarmardo, Kelli Ward and Michael Ward;

19 Plaintiffs;

20 v.

21 Doug Ducey, in his official capacity as  
Governor of the State of Arizona, and Katie  
22 Hobbs, in her capacity as Secretary of State  
of the State of Arizona;

23 Defendants;

24 Maricopa County Board of Supervisors;  
25 and Adrian Fontes, in his official capacity  
as Maricopa County Recorder;

26 Intervenor.  
27

**Case No.:** 2:20-cv-02321-DJH

**PLAINTIFFS' MOTION TO  
STRIKE PROPOSED-  
INTERVENOR ARIZONA  
DEMOCRATIC PARTY'S MOTION  
TO DISMISS CASE AND  
RESPONSE TO PLAINTIFFS'  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

28 <sup>1</sup> District of Arizona admission scheduled for 12/9/2020.

1 Pursuant to Federal Rule of Civil Procedure 12(f), Plaintiffs move to strike  
2 Proposed-Intervenor Arizona Democratic Party’s (“ADP”) Response to Plaintiffs’ Motion  
3 for a Temporary Restraining Order and Preliminary Injunction and Motion to Dismiss  
4 (“Motion to Dismiss”).

5 **INTRODUCTION**

6 Plaintiffs move to strike ADP’s Motion to Dismiss for three reasons, (1) the Court  
7 has yet to rule on ADP’s Motion to Intervene, (2) the expectation of the Court as expressed  
8 at the initial hearing on Thursday, December 3, 2020, was that any Intervenor would keep  
9 their pleadings to around five pages, and (3) Plaintiffs meet the requirements of Rule 12(f)  
10 as discussed below.

11 As mentioned above, ADP’s Motion to Intervene has yet to be ruled on and ADP is  
12 not currently a party to this action. The Court, on December 4, 2020, granted Maricopa  
13 County Board of Supervisors and Maricopa County Recorder Adrian Fontes’ Motion to  
14 Intervene and stated “Maricopa County may respond to the TRO and/or file a Motion to  
15 Dismiss with the same deadlines set by the Court for the other Defendants to respond (Doc.  
16 28).” Order, ECF No. 32. In the same order, the Court stated it “is aware that a Motion to  
17 Intervene has been filed by the Arizona Democratic Party (Doc. 26), but does not rule on  
18 that Motion herein.” *Id.* As of this moment, the Court has yet to rule on ADP’s Motion to  
19 Intervene.

20 In addition, the Court made it clear during the hearing on Thursday, December 3,  
21 2020, that it expected both proposed Intervenor to keep their pleadings to around five  
22 pages. Despite the Court’s expectation that proposed intervenors keep their pleadings to  
23 around five pages, ADP brazenly ignored this direction and filed a nineteen-page motion  
24 on December 4, 2020. Making this blatant disregard of the Court’s expression even more  
25 egregious, the Local Rules of Civil Procedure for the District Court of Arizona makes it  
26 clear that “[u]nless otherwise permitted by the Court, a motion including its supporting  
27 memorandum . . . may not exceed seventeen (17) pages, exclusive of attachments and any  
28

1 required statements of facts.” LRCiv 7.2(e)(1). ADP’s Motion to Dismiss should be struck  
2 pursuant to Federal Rule of Civil Procedure 12(f).

### 3 **ARGUMENT**

4 A Rule 12(f) movant must demonstrate that the allegedly offending material is either  
5 redundant, immaterial, impertinent, scandalous, or constitutes an insufficient defense. *XY*  
6 *Skin Care & Cosmetics, LLC v. Hugo Boss United States, Inc.*, No. CV-08-1467-PHX-  
7 ROS, 2009 U.S. Dist. LEXIS 69866, 2009 WL 2382998, at \*1 (D. Ariz. Aug. 4, 2009).  
8 Courts often require a showing of prejudice by the moving party as well. *SEC v. Sands*,  
9 902 F. Supp. 1149, 1166 (C.D. Cal. 1995).

10 As will be discussed below, ADP’s Motion to Dismiss is immaterial as the Court  
11 has yet to grant them the right to intervene, is impertinent as ADP disregarded the Court’s  
12 instructions, and because ADP’s Motion to Dismiss is redundant when compared to  
13 Defendant Secretary of State Katie Hobbs’ Combined Motion to Dismiss and Opposition  
14 to Motion for TRO/Preliminary Injunction, Defendant Governor Ducey’s Combined: (a)  
15 Motion to Dismiss and (b) Response to Plaintiffs’ Motion for TRO and Preliminary  
16 Injunction, and Maricopa County Intervenors’ Motion to Dismiss and Response in  
17 Opposition to Plaintiffs’ Motion for Temporary Restraining Order and Preliminary  
18 Injunction.

#### 19 **1. ADP’s Motion to Dismiss is Immaterial as the Court has yet to Grant ADP’s** 20 **Motion to Intervene.**

21 As discussed earlier, the Court has yet to rule on ADP’s Motion to Intervene. As a  
22 non-party, ADP’s Motion to Dismiss is immaterial. ADP has yet to become a party in this  
23 matter and the filing of its Motion to Dismiss goes against the Court Order from December  
24 4, 2020, ECF No. 32. In that Court order, the Court explicitly granted Maricopa County  
25 the right to intervene and stated it “may respond to the TRO and/or file a Motion to Dismiss  
26 with the same deadlines set by the Court for the other Defendants to respond (Doc. 28).”  
27 Order, ECF No. 32. The Court also explicitly stated that it “is aware that a Motion to  
28 Intervene has been filed by the Arizona Democratic Party (Doc. 26), but does not rule on

1 that Motion herein.” *Id.* What is notably absent in the Court’s mention of ADP’s Motion  
2 to Intervene is any permission to respond to Plaintiffs’ TRO and/or file a Motion to  
3 Dismiss, which was explicitly granted to Maricopa County in the same order. *Id.*

4 As the Court has yet to rule on ADP’s Motion to Intervene, and did not explicitly  
5 give permission to ADP to respond to Plaintiffs’ TRO and/or file a Motion to Dismiss as it  
6 did to Maricopa County, ADP’s Motion to Dismiss should be struck for being immaterial  
7 to the case.

8 **2. ADP’s Motion to Dismiss is Impertinent as it clearly ignores the Court’s**  
9 **instructions from the December 3, 2020 hearing.**

10 At the December 3, 2020 hearing in this matter, the Court expressed its expectation  
11 that any Intervenors would be limited to around five pages for their Motion to Dismiss if  
12 they were given permission to intervene. Not only has ADP yet to receive the Court’s  
13 permission to intervene, but ADP also completely disregarded the Court’s instruction to  
14 limit pleadings for intervenors to around five pages. ADP apparently thinks it is above the  
15 Court’s instruction as it not only filed without first being granted the right to intervene,  
16 they also filed a pleading that adds up to nineteen pages, a whole fourteen pages more than  
17 what the Court instructed intervenors.

18 Due to ADP’s blatant disregard for the Court’s instruction, the Court should find  
19 that ADP’s Motion to Dismiss is impertinent and grant Plaintiffs’ Motion to Strike.

20 **3. ADP’s Motion to Dismiss is Redundant as it mirrors the Motion’s filed by both**  
21 **Defendants and Intervenor Maricopa County.**

22 In addition, ADP’s motion would be redundant as its Motion to Dismiss does not  
23 bring any new issues that have not already been address by Defendant Secretary of State  
24 Katie Hobbs’ Combined Motion to Dismiss and Opposition to Motion for  
25 TRO/Preliminary Injunction, Defendant Governor Ducey’s Combined: (a) Motion to  
26 Dismiss and (b) Response to Plaintiffs’ Motion for TRO and Preliminary Injunction, and  
27 Maricopa County Intervenors’ Motion to Dismiss and Response in Opposition to Plaintiffs’  
28 Motion for Temporary Restraining Order and Preliminary Injunction.

1 ADP starts off its Motion to Dismiss by addressing that Plaintiffs lack standing,  
2 exactly what is argued by Governor Ducey and Secretary of State Hobbs. ADP then  
3 addresses laches, which was argued by Secretary of State Hobbs. Next, ADP addresses  
4 how the Eleventh Amendment bars Plaintiffs' claims, which again was argued by both  
5 Governor Ducey and Secretary of State Hobbs. After this, ADP moves to federalism and  
6 comity which was also mentioned by Secretary of State Hobbs. ADP goes on to claim that  
7 Plaintiffs fail to state a claim on which relief can be granted, which is touched on by every  
8 other party that filed a Motion to Dismiss. Finally, ADP states that Plaintiffs are not entitled  
9 to a temporary or preliminary injunction which is covered by every other party that filed a  
10 Motion to Dismiss as well.

11 As outlined above, ADP's Motion to Dismiss brings nothing new to the table and  
12 should be struck for being redundant.

13 **4. There would be significant prejudice to Plaintiffs if ADP's Motion to Dismiss**  
14 **is not struck.**

15 Finally, if Plaintiffs' Motion to Strike is not granted, Plaintiffs will be subjected to  
16 significant prejudice. Plaintiffs already have the burden of responding to a twenty-four-  
17 page brief from Defendant Secretary Hobbs, a nine-page brief from Defendant Ducey, and  
18 an eight-page brief from Maricopa County Intervenors. If the Motion to Strike is not  
19 granted, Plaintiffs would have the burden of responding to an additional nineteen pages on  
20 top of the forty-one pages it already has to respond to.

21 **CONCLUSION**

22 The Court should grant Plaintiffs' Motion to Strike ADP's Motion to Dismiss for  
23 three reasons, (1) the Court has yet to rule on ADP's Motion to Intervene, (2) the  
24 expectation of the Court as expressed at the initial hearing on Thursday, December 3, 2020,  
25 was that both proposed Intervenors would keep their pleadings to around five pages, and  
26 (3) Plaintiffs meet the requirements of Rule 12(f) as discussed above. For these reasons the  
27 pleading should be struck.

28 Respectfully submitted this 5th day of December, 2020

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\*Application for admission pro hac vice  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 5th, 2020, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: /s/ Chris Viskovic