

No. 20-16890

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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DARLENE YAZZIE; CAROLINE BEGAY; LESLIE BEGAY; IRENE ROY;  
DONNA WILLIAMS; and ALFRED MCROYE,

Plaintiffs-Appellants,

KATIE HOBBS, in her official capacity as Arizona Secretary of State,

Defendant-Appellee.

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Appeal from the United States District Court  
District of Arizona  
CV-20-08222-PCT-GMS

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**APPELLEE ARIZONA SECRETARY OF STATE KATIE HOBBS'  
OPPOSITION TO APPELLANTS' MOTION FOR EXPEDITED REVIEW**

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Defendant-Appellee Arizona Secretary of State Katie Hobbs (the Secretary) respectfully opposes Plaintiffs-Appellants' motion to expedite consideration of this appeal.<sup>1</sup>

Appellants argue that this Court must issue a decision by October 7, 2020. But their explanations for why such urgent treatment is required are unpersuasive. Appellants' primary argument is that because counties begin mailing early ballots on October 7, this Court must decide by that date so that the early ballot instructions will inform voters of the correct return deadline. *See* Dkt. 2-2 at 1, 2-1 at 2–3. Without a decision by October 7, Appellants claim they “will not know the deadline for mailing back their ballot.” Dkt. 2-1 at 2–3. What Appellants fail to acknowledge, however, is that the deadline for printing early ballots and early ballot instructions has long since passed—and those already-printed ballot instructions inform voters that they must return their ballots no later than 7:00 pm on Election Day. *See* D.Ct. Dkt. 48-1 Ex. D ¶ 13 (declaration of State Elections Director Sambo Dul). In fact, counties have already mailed early ballots to overseas and military voters, as required by federal law. *Id.* Put simply, even if this Court were to grant Appellants' request to expedite and decide in Appellants' favor by October 7, it would *still* be

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<sup>1</sup> Appellants style their motion as seeking “expedited” review, *see* Dkt. 2-1 at 1, but cite Circuit Rule 27-3, which governs “emergency” motions. Dkt. 2-1 at 1; *see also* Dkt. 2-2. Regardless of the nature of their motion, the relief Appellants seek is unwarranted.

too late to reprint early ballots or early ballot instructions this close to the early voting period. *See id.*

Similarly, Appellants claim urgency by pointing to two voter-education publications that uniformly communicate the current Election Day ballot-receipt deadline to Arizona voters. Dkt. 2-1 at 2–3. Although Appellants’ reasoning is not exactly clear, the implication is that these publications will need to be amended in the event this Court reverses the district court’s denial of a preliminary injunction, and that such amendments can only happen if this Court does so by October 7. But expediting this appeal will not and cannot affect the substance of these guides, because they have already been printed and disseminated to voters. *See D.Ct. Dkt. 48-1 Ex. D ¶¶ 3–6.*

Appellants’ suggestion that a failure to expedite the appeal will result in confusion about the deadline to return mail-in ballots is not plausible. There is only one ballot-return deadline currently in force in Arizona, and it is applicable to all Arizona voters. And even if this Court issues a decision by October 7 granting Appellants the relief they seek, it will still be too late to reprint early ballots or the voter-information guides referenced by Appellants to include a different ballot-return deadline. Moreover, there are no sound justifications for granting Appellants relief from the district court’s decision below. It follows, therefore, that there is no pressing need to expedite consideration of the appeal.

Lastly, any claimed “emergency” in this appeal (and in this case more broadly) is entirely of Appellants’ own making. As the Secretary argued below, Appellants’ eleventh-hour request to alter Arizona’s ballot-return deadline flouts the principles outlined in *Purcell v. Gonzalez*, 549 U. S. 1 (2006) (per curiam), and in any event, is barred by the doctrine of laches. D.Ct. Dkt. 48 at 11-13. Appellants then compounded these issues by waiting nearly 72 hours after the district court ruled against them to file a notice of appeal, and yet another 24 hours before they filed their motion to expedite. In time-sensitive litigation of this nature, four days may as well be four weeks.

For all these reasons, the Secretary requests that this Court deny Appellants’ motion to expedite consideration of this appeal.

Respectfully submitted this 1st day of October, 2020.

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **APPELLEE ARIZONA SECRETARY OF STATE KATIE HOBBS' OPPOSITION TO APPELLANTS' MOTION FOR EXPEDITED REVIEW** on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Respectfully submitted this 1st day of October, 2020.

**COPPERSMITH BROCKELMAN PLC**

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