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13
14 SUPERIOR COURT OF ARIZONA

15 MARICOPA COUNTY

16 RASEAN CLAYTON,

17 Plaintiff,

18 v.

19 KANYE WEST; DONALD ANGLIN;
KRISTIN ANGLIN; KELLI
20 WHITEHEAD; BRITTANI QUALE;
WILLIAM QUALE; RACHEL
21 WALLACE-SASSARINI; PATRICK
WALLACE-SASSARINI; KEITH
22 GILBERT; MARILYN TUCK; MICHELE
VRABEL; MARK RENBERG; KATIE
23 HOBBS, in her official capacity as the
Secretary of State of Arizona, EDISON J.
24 WAUNĒKA, in his official capacity as the
Apache County Recorder; APACHE
25 COUNTY BOARD OF SUPERVISORS, in
their official capacity; DAVID W.

No. CV2020-010553

**BRIEF IN OPPOSITION TO
PLAINTIFF'S APPLICATION FOR
TEMPORARY AND PERMANENT
INJUNCTION**

Assigned to the Hon. Scott McCoy

1 STEVENS, in his official capacity as
2 Cochise County Recorder; COCHISE
3 COUNTY BOARD OF SUPERVISORS, in
4 their official capacity; PATTY HANSEN,
5 in her official capacity as the Coconino
6 County Recorder; COCONINO COUNTY
7 BOARD OF SUPERVISORS, in their
8 official capacity; SADIE JO BINGHAM, in
9 her official capacity as Gila County
10 Recorder; GILA COUNTY BOARD OF
11 SUPERVISORS, in their official capacity;
12 WENDY JOHN, in her official capacity as
13 Graham County Recorder; GRAHAM
14 COUNTY BOARD OF SUPERVISORS, in
15 their official capacity; SHARIE MIHEIRO,
16 in her official capacity as Greenlee County
17 Recorder; GREENLEE COUNTY BOARD
18 OF SUPERVISORS, in their official
19 capacity; RICHARD GARCIA, in his
20 capacity as the La Paz County Recorder; LA
21 PAZ COUNTY BOARD OF
22 SUPERVISORS, in their official capacity;
23 ADRIAN FONTES, in his official capacity
24 as the Maricopa County Recorder;
25 MARICOPA COUNTY BOARD OF
26 SUPERVISORS, in their official capacity;
KRISTI BLAIR, in her official capacity as
the Mohave County Recorder; MOHAVE
COUNTY BOARD OF SUPERVISORS, in
their official capacity; MICHAEL
SAMPLE, in his official capacity as Navajo
County Recorder; NAVAJO COUNTY
BOARD OF SUPERVISORS, in their
official capacity; F. ANN RODRIGUEZ, in
her official capacity as the Pima County
Recorder; PIMA COUNTY BOARD OF
SUPERVISORS, in their official capacity;
VIRGINIA ROSS, in her official capacity
as the Pinal County Recorder; PINAL
COUNTY BOARD OF SUPERVISORS, in
their official capacity; SUZANNE SAINZ,
in her official capacity as the Santa Cruz
County Recorder; SANTA CRUZ
COUNTY BOARD OF SUPERVISORS, in
their official capacity; LESLIE M.
HOFFMAN, in her official capacity as the
Yavapai County Recorder; YAVAPAI
COUNTY BOARD OF SUPERVISORS, in
their official capacity; ROBYN
STALLWORTH POUQUETTE, in her
official capacity as the Yuma County

1 Recorder; and YUMA COUNTY BOARD
2 OF SUPERVISORS, in their official
capacity,

3 Defendants.
4

5 Plaintiffs, through an erroneous and hypertechnical reading of the Arizona election
6 statutes are attempting to prevent the electors for independent candidates for President and
7 Vice President from appearing on the November 2020 general election ballot. The federal
8 courts have repeatedly rejected efforts, largely by the incumbent major political parties, to
9 read the Arizona election statutes in a manner that hinder or prohibit third party candidates
10 from being able to compete in Arizona. *See generally Campbell v. Hull*, 73 F. Supp. 2d
11 1081 (D. Ariz. 1999); *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008). In addition to filing
12 their suit on a timeline that severely restricts the Defendant Candidate and Electors from
13 preparing and presenting a full defense, Plaintiff reads the operative statutes to deprive
14 voters of a choice for president largely because the candidate and his electors were recently
15 or are registered as members of one of those incumbent parties. These arguments are
16 inconsistent with a reasonable reading of the statutory provisions, with the policies
17 underlying the statutes and with the requirements of the federal constitution as repeatedly
18 applied to Arizona by the federal courts.

19 **I. KANYE WEST IS ELIGIBLE UNDER A.R.S. § 16-341(A)**

20 Contrary to Plaintiff's allegations, Kanye West is fully eligible to be nominated for
21 President of the United States. Mr. West is not a member of any Arizona recognized party
22 and his presidential campaign committee's FEC filing lists a party not recognized in
23 Arizona. Finally, on its face, it is clear that A.R.S. § 16-341(A) was not meant to be used
24 to bar potential nominees for President.
25
26

1 **A. *Mr. West is Not a Registered Member of the Arizona Republican Party***

2 While the Arizona Republican Party may be a “recognized party” for the purposes
3 of A.R.S. § 16-341(A)¹, that fact would have no bearing on Mr. West’s eligibility because
4 he is not a member of the Arizona Republican Party. Mr. West is a registered voter
5 associated with the *Wyoming* Republican Party², a party which is not a registered party in
6 Arizona. Accordingly, Mr. West is not, nor ever has been, “a registered member of a
7 political party that is recognized pursuant to [Title 16 of the Arizona Revised Statutes]”.
8 A.R.S. § 16-341(A). Therefore, Mr. West is eligible to be “nominated . . . other than by
9 primary election.” *Id.*

10 This construction of A.R.S. § 16-341(A) is much more consistent with the purpose
11 of the statute than the construction advanced by Plaintiff. The Arizona Legislature’s
12 purpose in limiting the scope of Section 341 to only those who are not registered members
13 of recognized political parties is to prevent Arizona candidates who had the opportunity to
14 appear on the ballot as representatives of their own parties—i.e., the Arizona Democratic
15 Party, the Arizona Libertarian Party, or the Arizona Republican Party—but did not seek
16 that nomination of their party from circumventing the parties’ nominating process. Arizona
17 has no such interest in preventing a registered member of a political party in another state
18 from seeking ballot access in Arizona as an independent Presidential candidate. Nothing in
19 the legislative history of the statute supports Plaintiff’s argument that it applies to someone
20 who is not a member of an Arizona Political Party.

21

22 ¹ Actually, Title 16 provides no clear definition of what it means for a party to be
23 “recognized pursuant to this title.” A.R.S. § 16-341(A). The Arizona Republican Party is
24 a political organization “entitled to representation as a political party on the official ballot.”
A.R.S. § 16-804.

25 ² Wyoming requires voters to affiliate with a political party in order to participate in partisan
26 primary elections. *See* Wyo. Stat. Ann. § 22-5-212. Therefore, what Plaintiff suggests is
necessary for Mr. West to appear on the ballot in Arizona would disenfranchise him in his
home state of Wyoming. Voter disenfranchisement in the name of ballot access is not what
the Arizona Legislature intended in drafting this section.

1 On the contrary, Mr. West’s registration with a political organization for the
2 purposes of his participation in the state and local elections of Wyoming is irrelevant to his
3 pursuit of the office of the Presidency for which Arizona will select electors. Indeed, as set
4 forth more fully below, Mr. West selected a different party identification for his Presidential
5 campaign; “The Birthday Party.”

6 ***B. The Arizona Republican Party is Not a “Recognized Party”***

7 Furthermore, A.R.S. § 16-341(A) only bars registered members of parties
8 “recognized pursuant to this Title.” That term is different than the more general term
9 “political party that is qualified to be represented” that is used in A.R.S. § 16-341(D). In
10 contrast to the major parties, who secure ballot access by virtue of their candidates level of
11 support in the previous election, other entities can submit signatures to become
12 “recognized.” As the Arizona Republican Party did not go through that process, the
13 restrictions of A.R.S. § 16-341(A) would not apply even if Mr. West were a registered
14 member of that party.

15 ***C. Mr. West’s Presidential Campaign is Registered as on Behalf of the***
16 ***Birthday Party, Not the Republican Party.***

17 This Court may take judicial notice of the fact that Kanye 2020, the Principal
18 Campaign Committee of Mr. West registered with the Federal Election Commission, lists
19 Mr. West’s party as “BDY” (an abbreviation for “the Birthday Party”). **See Exhibit A.** In
20 other words, Mr. West is not seeking the White House as a Republican, but on behalf of a
21 political movement distinct from any registered party. To apply the statute as Plaintiff
22 urges, this Court would have to view Mr. West’s prior registration taken in the context of
23 Wyoming politics as controlling rather than his more recent action taken in the context of
24 National Presidential politics. Instead, the more recent and more relevant action should
25 control; Mr. West is not seeking the Presidency on behalf of any registered party and the
26 statute does not apply to bar his right to appear on the Arizona ballot.

1 ***D. Strictly Applying A.R.S. § 16-341(A) to Presidential Candidates Would***
2 ***Absurdly Bar All Out-of-State Presidential Candidates.***

3 More broadly, the Court cannot apply the requirements of A.R.S. § 16-341(A) to
4 independent Presidential nominees. An examination of the entire text of A.R.S. § 16-
5 341(A) demonstrates why this Court cannot accept Plaintiff’s proposed construction:

6 Any **qualified elector** who is not a registered member of a political party that
7 is recognized pursuant to this title may be nominated as a candidate for public
8 office otherwise than by primary election or by party committee pursuant to
9 this section.

9 A.R.S. § 16-341(A) (emphasis added). A “qualified elector” is defined as “[a] person
10 qualified to register to vote pursuant to § 16-101 and who is properly registered to vote.”
11 A.R.S. § 16-121. In turn, a person qualified to register to vote a must be a “resident of the
12 state” of Arizona. A.R.S. § 16-101. Thus, on a straightforward reading, Mr. West—not a
13 resident of Arizona and, therefore, not a qualified elector in this state—would not be subject
14 to the statute, nor would anyone else except residents of Arizona. Read in this manner, the
15 qualified elector requirement of Section 16-341(A) would prevent anyone who is not a
16 resident of Arizona from running as an independent candidate for President in Arizona.

17 Subsection A must be read in a way that avoids this absurd result, and, therefore,
18 subsection A must apply only to offices for which the candidate will be “residents of the
19 state” of Arizona, i.e., those other than the Presidency and Vice Presidency. Otherwise,
20 2008 independent Presidential candidate Ralph Nader and his running-mate, Matt
21 Gonzalez, neither of whom were Arizona qualified electors, would have been excluded
22 from the ballot despite submitting the requisite number of signatures.

23 Indeed, construing the Arizona statute to have extra-territorial effect and preventing
24 a person registered in another state from appearing as an independent candidate on the
25 Arizona ballot would run afoul of the sort of constitutional concerns that led the Ninth
26 Circuit to invalidate other aspects of Arizona’s presidential nomination system. *Nader v.*

1 *Brewer*, 531 F.3d 1028, 1036 (9th Cir. 2008) (invalidating a residency requirement which
2 created a “severe burden on Nader and his out-of-state supporters’ speech, voting and
3 associational rights”).

4
5 **II. KANYE WEST’S DESIGNATED ELECTORS ARE ELIGIBLE UNDER
A.R.S. § 16-341(A)**

6 In order to serve as Presidential Electors for Mr. West’s ticket, the Arizona residents
7 need to comply with some but not all of the requirements of A.R.S. § 16-341 (chiefly, they
8 must be qualified electors). However, there is nothing in this Section that requires that they
9 have not been associated with any other party at any time in the past. Each of Mr. West’s
10 designated electors have reregistered as independents and each has agreed to serve as
11 Presidential Electors for Mr. West rather than the candidate of any recognized party.

12 **A. *Nominees for Presidential Electors are Not “Candidates for Office” for***
13 ***All Purposes Under A.R.S. § 16-341***

14 Due to the Constitutional system of the Electoral College, there is no direct vote for
15 the offices of President and Vice President (hereinafter, the “Candidates”). Accordingly,
16 A.R.S. § 16-341 recognizes both the Candidates and their associated slates of Presidential
17 Electors at different times and for different purposes. However, Plaintiff invites this Court
18 to elide the distinction and say that both the Candidates and the Presidential Electors must
19 each meet all the requirements of A.R.S. § 16-341. Applying the statute to persons who
20 are designated as electors for a presidential candidate creates just as many problems as
21 applying it to out of state residents who run for President.

22 Contrary to Plaintiff’s claim that “Presidential Electors are candidates for public
23 office” (citing only A.R.S. § 16-341(G)), and assertion that the requirements of A.R.S. §
24 16-341(A) apply to them as well, (Complaint at ¶¶ 30-31), A.R.S. § 16-341 recognizes that
25 Candidates and Presidential Electors are not separate candidates for office but are instead a
26 single entity for these purposes. Simply put, Presidential Electors are not separate

1 “candidates for public office” in the meaning of the statute. Thus, each Presidential Elector
2 does not circulate his or her own nomination petition as a candidate for office would, but
3 each pair of Candidates groups lists their designated slate of Presidential Electors on a single
4 nomination petition. *See* A.R.S. § 16-341(G). If Mr. West is an eligible Presidential
5 nominee and he complies with A.R.S. § 16-341(J) by filing “the names of the presidential
6 electors who will represent that candidate and a statement that is signed by . . . the
7 designated presidential electors and that indicates their consent to be designated,” the
8 Presidential Electors are incorporated into Mr. West’s political identity and are not separate
9 candidates for office who must themselves comply with every requirement of A.R.S. § 16-
10 341.

11 ***B. Nominees for Presidential Electors Need Not File Statements of Interest***
12 ***Under A.R.S. § 16-341(I).***

13 For this reason, Presidential Electors are exempt from the requirement to file a
14 Statement of Interest under A.R.S. § 16-341(I)(3). Subsection I, part 3 expressly excludes
15 Candidates from the requirement to file a Statement of Intent prior to collecting valid
16 signatures. However, because signatures are collected on behalf of the Electors who will
17 appear on the ballot and not the Candidates on their own behalf, the only way to allow
18 subsection I, part 3 to have any force at all is if it applies to both Candidates and their
19 Presidential Electors on whose behalf the signatures are collected. Just as the nominees and
20 nominated slate of electors for the recognized parties are not required to file statements of
21 intent, neither the Candidates nor their designated Presidential Electors are required to do
22 so in this context.

23 Supporting this interpretation is the Secretary of State’s handbook, which has the
24 “force and effect of law.” *Gonzalez v. Arizona*, 677 F.3d 383, 397 (9th Cir. 2012) (citing
25 A.R.S. § 16-452). This handbook provides the following exhaustive list:
26

1 A candidate seeking “independent” nomination must file the following
2 documents:

- 3 1. A letter designating the name of the candidate’s vice-presidential
4 running mate and the names of eleven presidential electors who will
5 represent the candidate, along with their signed consent to be
6 designated as the vice-presidential candidate or presidential electors;
- 7 2. Nomination paper for the presidential candidate;
- 8 3. Nomination paper for the vice-presidential candidate;
- 9 4. Nomination papers for each of the eleven presidential electors; and,
- 10 5. Nomination petition with a sufficient number of valid signatures for the
11 presidential electors collectively (not separate petitions for each
12 elector).

13 *See* Ariz. Sec’y of State, *Running for U.S. President in Arizona – Candidate Guide* (Sept.
14 13, 2019) available at [azsos.gov/sites/default/files/Running%20for%20](https://azsos.gov/sites/default/files/Running%20for%20President%20Handbook.pdf)
15 [President%20Handbook.pdf](https://azsos.gov/sites/default/files/Running%20for%20President%20Handbook.pdf). There is no listing of any requirement to file Statements of
16 Intent, and the Court should not adopt that rule here.

17 ***C. The Previous Partisan Registration of Mr. West’s Electors is Not Relevant***
18 ***to Their Current Role As Presidential Electors.***

19 Arizona law sets forth very minimal requirements to serve as a Presidential Elector.
20 For parties “accorded a column on the general election ballot,” the “chairman of the state
21 committee . . . shall appoint candidates for the office of presidential elector.” A.R.S. § 16-
22 344(A). Crucially, there is no party registration requirement that must be satisfied by these
23 appointees. It is taken as a given that the slate of electors appointed by the party chairman
24 will represent the candidate well. Similarly, there are no party registration requirement in
25 A.R.S. § 16-341(J). Eligible Presidential nominees comply with A.R.S. § 16-341(J) simply
26 by filing “the names of the presidential electors who will represent that candidate and a
statement that is signed by . . . the designated presidential electors and that indicates their
consent to be designated.” No other requirement exists.

However, to the extent that A.R.S. § 16-341(A) requires qualified electors nominated
for the office of Presidential Elector to not be a registered member of a recognized political
party, each of Mr. West’s Presidential Electors has registered as independents. **See Exhibits**

1 **B-K**³. Further evidencing their realignment is the fact that each of them have given their
2 signed consent to be designated as presidential electors for Mr. West. These revised
3 registrations were in effect when the nominating petitions were filed for Mr. West and his
4 electors.

5
6 **III. IT WOULD BE UNCONSTITUTIONAL TO BAR KANYE WEST AND HIS ELECTORS UNDER A.R.S. § 16-341(A)**

7 The canon of constitutional avoidance demands that this court should avoid
8 interpreting Arizona statues in a manner that would cause them to run afoul of protections
9 enshrined in the Federal Constitution.

10 A. ***A.R.S. § 16-341(A) Cannot Be Construed to Add Additional***
11 ***Unconstitutional Qualifications to Federal Office.***

12 It is firmly established that state law cannot add additional qualifications for holding
13 federal office beyond those set forth in the United States Constitution. *See generally U.S.*
14 *Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) (striking down a state constitutional
15 provision which barred persons who had served certain number of terms in Congress from
16 having their names placed on the ballot). Just last year, a federal district court struck down
17 a California regulation requiring Presidential candidates to disclose federal tax returns:

18 According to the Ninth Circuit, regulations passing constitutional muster
19 under the Elections Clause regulated election procedures only and “did not
20 even arguably impose any substantive qualification rendering a class of
21 potential candidates ineligible for a ballot position.” *Schaefer v. Townsend*,
22 215 F.3d 1031, 1038 (9th Cir. 2000) (citing *Term Limits*, 514 U.S. at 835).
23 While control over the procedural aspect of an election or requiring a
24 candidate to show a minimum level of support before running (and potentially
25 crowding the ballot) may be permissible, *Schaefer* found that the residency
26 requirement before it was not. Instead, it plainly handicapped those
candidates who did not comply and had the effect of deterring them from
running. *Id.*

³ Due to the time crunch, not all of these exhibits were available at filing time. They will be filed under separate cover tomorrow.

1 *Griffin v. Padilla*, 408 F.Supp.3d 1169, 1177–79 (E.D.Cal., 2019). This principle has also
2 be expressly recognized by Arizona Courts: “A state legislature is without power to add
3 ‘qualification’ requirements to a federal office.” *State ex rel. Pickrell v. Senner*, 92 Ariz.
4 243, 246 (1962); *see also Adams v. Comm’n on Appellate Court Appointments*, 227 Ariz.
5 128, 135, ¶ 31 (2011) (“the state has no power to disqualify candidates from serving in
6 federal office”).

7 Thus, when the constitutionality of the previous version of A.R.S. § 16-341 was
8 challenged by the Green Party, the District of Arizona held that various provisions of the
9 statute combined

10 ...to severely burden their right to vote for the candidate of their choice, in
11 violation of their rights to equal protection and due process under the
12 Fourteenth Amendment and their right to free speech/freedom to associate
under the First Amendment

13 *Campbell v. Hull*, 73 F. Supp. 2d 1081, 1084 (D. Ariz. 1999). In making this decision, the
14 Arizona District Court collected no less than eight cases supporting the proposition that
15 numerous courts have concluded that the Constitution does not permit states to require
16 voters to change their party affiliation in order to sign petitions to nominate independents
17 or minor party candidates. *Id.* at 1091-92 (citing, *inter alia*, *Libertarian Party of Nebraska*
18 *v. Beermann*, 598 F.Supp. 57, 63 (D.Neb.1984) (noting that “many voters have no desire to
19 change basic political affiliations, but neither do they vote a straight political ticket in
20 general elections”). Especially, “[i]n election campaigns . . . national in scope, the
21 candidates and the issues simply do not remain static over time” and “important third-party
22 candidacies in American history” have been launched during *the summer before the*
23 *election. Id.* at 1087.

24 Indeed, any “burden that falls unequally on new or small political parties or on
25 independent candidates impinges, by its very nature, on associational choices protected by
26

1 the First Amendment.” *Anderson v. Celebrezze*, 460 U.S. 780, 793 (1983). The Anderson
2 court continued:

3 By limiting the opportunities of independent-minded voters to associate in the
4 electoral arena to enhance their political effectiveness as a group, such
5 restrictions threaten to reduce diversity and competition in the marketplace of
6 ideas. Historically political figures outside the two major parties have been
7 fertile sources of new ideas and new programs; many of their challenges to
8 the status quo have in time made their way into the political mainstream. . . .
9 In short, the primary values protected by the First Amendment—“a profound
10 national commitment to the principle that debate on public issues should be
11 uninhibited, robust, and wide-open,”—are served when election campaigns
12 are not monopolized by the existing political parties.

13 Furthermore, in the context of a Presidential election, state-imposed
14 restrictions implicate a uniquely important national interest.

15 *Id.* at 794-95 (internal citations omitted). Indeed, “several important third-party candidacies
16 in American history were launched after the two major parties staked out their positions and
17 selected their nominees at national conventions during the summer.” *Id.*; *see also Williams*
18 *v. Rhodes*, 393 U.S. 23, 33 (1968) (“Since the principal policies of the major parties change
19 to some extent from year to year, and since the identity of the likely major party nominees
20 may not be known until shortly before the election, this disaffected ‘group’ will rarely if
21 ever be a cohesive or identifiable group until a few months before the election.”)

22 ***B. A.R.S. § 16-341(A) Does Not Prevent Individuals from Changing Their***
23 ***Mind and Supporting an Independent Candidate.***

24 In a fact pattern that echoes that found impermissible in *Campbell v. Hull*, Plaintiff
25 requests that this Court interpret A.R.S. § 16-341 in such a way as to prevent the Defendant
26 Electors from choosing to cast their lot with an independent Presidential candidate. In
effect, Plaintiff argues that if the Electors were previously registered as Republicans when
they agree to be West Electors, they cannot, unlike voters under *Campbell*, change their
registration and serve as Electors for a third party. Were this Court to so hold, there would
be grave Fourteenth and First Amendment concerns implicated. Specifically, the freedom
of association rights of these electors would be trampled; they would be forbidden to

1 support their preferred candidate today because they supported someone else yesterday.
2 Any state interests of “party stability” are not sufficiently compelling to justify this sort of
3 burden on free association. *See Eu v. San Francisco County Democratic Cent. Comm.*, 489
4 U.S. 214, 227 (1989).

5 However, this Court may avoid this outcome by construing the statute to not bar
6 former Republicans or Democrats from changing their mind and supporting an independent
7 candidate as designated electors so long as they are not registered with a recognized party
8 on the date the nominating petitions are filed. This is the simple solution and avoids thorny
9 constitutional questions.

10 **IV. IT WOULD VIOLATE DUE PROCESS TO RULE AGAINST**
11 **DEFENDANTS**

12 The manner in which Plaintiff has chosen to file this litigation also impinges on the
13 due process rights of the Defendants. While Plaintiff filed this suit within the statutory
14 deadline (and even as they argue prematurely but properly), Mr. West and Defendant
15 Electors have been severely limited in their ability to defend this action based on the late
16 date that Plaintiffs filed this suit and the looming deadline for the printing of ballots.

17 **A. *There is Insufficient Time for This Matter to Be Fairly Considered By the***
18 ***Courts.***

19 There is simply insufficient time for this matter to proceed to a conclusion in a
20 manner consistent with due process. “[T]he short time period allotted for actions
21 challenging nomination petitions may no [be permitted to] deprive a defendant of his or her
22 opportunity to present [a] case in opposition to that of the plaintiff.” *Mandraes v.*
23 *Hungerford*, 127 Ariz. 585, 587-88 (1981). Plaintiff is “compelling the court to ‘steamroll
24 through delicate legal issues in order to meet’ the ballot printing deadlines.” *Mathieu v.*
25 *Mahoney*, 174 Ariz. 456, 459 (1993).

1 Election contests, including nomination petition challenges, “are purely statutory
2 and dependent on statutory provisions for their conduct.” *Van Arsdell v. Shumway*, 165
3 Ariz. 289, 291 (1990). Thus, if the time available is insufficient, no matter whose fault it
4 is, the challenge may not proceed.

5 ***B. Plaintiff Failed to Name Several Indispensable Parties.***

6 Pursuant to A.R.S. § 16-351(C), the “board of supervisors and the recorder of each
7 county . . . responsible for preparing the ballots that contained the challenged candidate’s
8 name” are “indispensable parties to the action and shall be named and serves as defendants.”
9 However, here, Plaintiff has named, *e.g.*, the “Maricopa County Board of Supervisors,” who
10 are not a jural entity. *See, e.g., Smillie v. Maricopa County Sheriff’s Dep’t*, CV 11-1320-
11 PHX-NVW, 2011 WL 13175977, at *2 (D. Ariz. Dec. 28, 2011) (“Defendants Maricopa
12 County Sheriff’s Department and Maricopa County Board of Supervisors are dismissed as
13 non-jural entities and without leave to amend.”). Accordingly, Plaintiff must amend its
14 complaint and name the actual members of the county boards of supervisors and county
15 treasurers.

16 ***C. Plaintiff’s Action is Barred By Laches***

17 Plaintiff could have brought this action earlier, but instead waited until the last
18 minute with ballot printing deadlines looming. Plaintiff knew at least since August 20, 2020
19 that nomination petitions in support of Mr. West’s candidacy were circulating, but waited
20 for a week-and-a-half to file.

21 **V. NO PRELIMINARY INJUNCTION SHOULD ISSUE**

22 Plaintiff asks this Court to enjoin Mr. West and Defendant Electors from appearing
23 on the ballot. The prior sections of this brief establish that Plaintiff does not have a strong
24 likelihood of success on the merits and the other factors also weigh against granting
25 injunctive relief.
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A. *The Balance of Hardships and Public Policy Both Weigh Heavily in Defendant’s Favor*

The injunctive relief requested would be dramatically damaging to Mr. West. Once the ballots are printed, Mr. West will either be on the ballot or he won’t. Even if Mr. West ultimately prevails in his case as third party candidate Ralph Nader did following both the 1996 and 2004 cycles, the damage of being barred from the ballot will be done. The hardship suggested by Plaintiff is a purely voluntary one: that “Voters risk throwing away a vote.” (Application at 13). The balance of hardships clearly weighs in Defendants’ favor.

Similarly, public policy considerations also lean towards allowing Mr. West access to the ballot. Public policy should not look kindly on incumbent major political parties eliminating their potential competitors. In a democratic and republican system, public policy favors giving voters more choice, not less.

VI. CONCLUSION

The Court should deny Plaintiff’s Application for Temporary and Permanent Injunctive Relief.

DATED this 2nd day of September, 2020.

FENNEMORE CRAIG, P.C.

By: /s/ Timothy J. Berg
Timothy J. Berg
Keith Miller
Tim La Sota
Attorneys for Defendants
Kanye West, et al.

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7 The Honorable M. Scott McCoy
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20 /s/ Jill Wilson

21
22
23
24
25
26

EXHIBIT A

FEC FORM 1**STATEMENT OF ORGANIZATION****FILING FEC-1422253**

1. Kanye 2020

3202 Big Horn Ave
Cody, WY 82414
Email: info@kanye2020.org

2. Date: 07/15/2020

3. FEC Committee ID #: C00751701 **This committee is a Principal Campaign Committee.** Candidate: Kanye West
Party: BDY
Office Sought: President
State is in District:

Affiliated Committees/Organizations

NONE

, _____

Custodian of Records:

Andre Bodiford
3202 Big Horn Ave
Cody, WY 82414
Phone # (307) 296-7019

Treasurer:

Andre Bodiford
3202 Big Horn Ave
Cody, Wyoming 82414
Phone # (307) 296-7019

Designated Agent(s):**Banks or Depositories**

First Bank of Wyoming
1426 Sheridan Ave
Cody, Wyoming 82414

Signed: Andre Bodiford
Date Signed: 07/15/2020

(End FEC FORM 1)

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