

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760

08/28/2024

HONORABLE JENNIFER RYAN-TOUHILL

CLERK OF THE COURT
A. Meza
Deputy

ARIZONA FREE ENTERPRISE CLUB, et al.

DANIEL W TILLEMAN

v.

ADRIAN FONTES, et al.

KARA MARIE KARLSON

NATHAN T ARROWSMITH
DAVID ANDREW GAONA
ROY HERRERA
TIMOTHY A LASOTA
ALEXIS E DANNEMAN
JOHN S BULLOCK
JUDGE RYAN-TOUHILL

RULING

Before the Court is Defendants' August 14, 2024, *Motion for Stay Pending Appeal*, Plaintiffs' August 23, 2024, *Response to Motion to Stay Pending Appeal*, and Defendants' [] *Reply in Support of Motion for Stay Pending Appeal*.¹ Defendants request an expedited ruling. The Court grants that request and now rules.

The Court focuses upon pages 13 through 18, the portion of the Ruling entitled "Speech Restrictions." First, the Court agrees with Defendants that the Court erred in granting declaratory relief. The Court's recollection of a prior minute entry was in error: on June 12, 2024, the Court ordered a consolidated evidentiary hearing for the request for preliminary injunction and the pending motions to dismiss. The Court did not consolidate Plaintiffs' request for declaratory relief

¹ The *Reply* is not yet on docket. Counsel emailed a copy to this Division; the *Reply* will appear eventually; however, the Court is mindful of deadlines and, consequently, bases its Ruling on the emailed version.

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(permanent) with the proceedings; it is conceivable that the Court, when reviewing pleadings filed in the case, improperly considered a request in the Amended Complaint when addressing “Speech Restrictions” and, consequently, entered an impermissible order. Therefore,

IT IS ORDERED granting Defendants’ request for a stay of the Court’s Order on page 18 of the August Ruling, “**IT IS ORDERED** declaring chapter 9, section (III)(D)² of the 2023 EPM unenforceable.”

Regarding the remainder of the Ruling, while the Court appreciates Defendants’ queries regarding how to comply with the Court’s “overbroad injunction,” and position that the EPM section in dispute “is meant to be instructions and guidance for election officials[,]” the Court disagrees. *Reply*, p. 1 ¶ 4. The Court’s Ruling found that Arizona’s laws already protect voters (*see, e.g.*, A.R.S. § 16-1013, Title 13, generally), and the Ruling does contain factual findings relevant to the injunction (*e.g.*, “the EPM not only changes the *mens rea* of these crimes but also inserts a subjective impression[.]”)(*see also, e.g.*, “. . . the Secretary did not reference the correct statute but, instead, included the term when citing A.R.S. § 16-1013.”).

The Court understands Defendants’ position that the disputed section is intended to be “guidance” for election officials. *Reply*, p. 1 ¶ 4. That was the purpose of the evidentiary hearing—to tell the Court why Plaintiffs’ position was wrong and the EPM is non-binding assistance to help others enforce voting regulations. The Court simply disagreed with Defendants’ position and found the disputed section was *not* guidance but, instead, an overreach by the Secretary of State that restricted free speech. To reiterate, while Defendants claim confusion exists over the Court’s Ruling because Defendants believe they have issued advisory assistance to poll workers, the Court finds this without merit and reminds Defendants all citizens must follow the law. In other words, if poll workers observe “an armed mob in the parking lot at a polling place,” one would hope those poll workers would call the police. *Reply*, p. 3, ¶ 3. An “armed mob” *could* violate Arizona election laws if the “armed mob” was within 75 feet of a voting center or if the actions intimidated voters consistent with A.R.S. § 16-1013(A)(1). An “armed mob” *could* violate Arizona criminal laws if the “armed mob” harasses another consistent with A.R.S. § 13-2921(A).

It is not this Court’s duty to parcel through the EPM to analyze every phrase that does or does not comply with hypotheticals propounded by Defendants. The Court is instead tasked with the duty of analyzing the law and facts provided; that is what this Court did. Moreover, the Court is not persuaded that Plaintiffs’ “argument about the Free Speech Clause rings hollow.” *Reply*, p. 4 ¶ 3. The Court reiterates its prior finding: “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”

² *See Form of Order* filed Aug. 9, 2024, narrowing the Ruling to section III(D).
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Finally, the Court concurs with Plaintiffs' position that the injunction is properly tailored, the *Purcell* principle is inapplicable, and Defendants have failed to show how they will be harmed by the injunction. *Response*, generally. To clarify, the Court adopts the arguments presented by Plaintiffs in their *Response* and finds a stay for the remainder of the Court's Ruling unwarranted. Therefore,

IT IS ORDERED denying Defendants' request for a stay *but for* the Court's stay of the declaratory relief.