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ATTACHMENT NAME: **BRIEF - Amicus Curiae: Brief of Amicus Curiae League of Women Voters of Arizona in Opposition to Petition for Special Action**

CASE NAME: **GINA SWOBODA et al v HOBBS**

CASE NUMBER: CV-24-0198

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ARIZONA SUPREME COURT

GINA SWOBODA, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. CV-24-0198-SA
	)	
KATIE HOBBS, in her official Capacity as Governor of Arizona,	)	
	)	
Respondent.	)	

BRIEF OF AMICUS CURIAE LEAGUE OF WOMEN VOTERS OF ARIZONA IN OPPOSITION TO PETITION FOR SPECIAL ACTION [1]

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[1] The parties have consented to the filing of amicus briefs.

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Pursuant to Arizona Rule of Civil Appellate Procedure 16(b)(1)(A), the League of Women Voters of Arizona ("LWVAZ") hereby files this amicus curiae brief in opposition to the petition and in support of Respondent Governor Katie Hobbs. This brief is submitted with the written consent of the parties.

STATEMENT OF INTEREST

LWVAZ is a non-partisan, grassroots organization dedicated to empowering everyone to fully participate in our democracy and encouraging informed and active participation in the democratic process. LWVAZ envisions a democracy where every person has the desire, the right, the knowledge, and the confidence to participate. For over 80 years, LWVAZ has dedicated itself to protecting and promoting democratic government through public service, civic participation, and robust voter education and registration. LWVAZ consists of both a statewide organization and five local chapters with 900 members statewide—all of whom are eligible voters.

To advance its core mission, LWVAZ educates voters about upcoming elections including, but not limited to, the voter registration process and the availability of drop box voting in the state, works to encourage individuals to vote, and participates in statewide coalitions with other organizations that share similar goals. Additionally, LWVAZ volunteers help tens of thousands of citizens in Arizona register to vote, check their registration status, update their information, navigate the

system of early in-person and mail-in voting, and find their polling place or nearest ballot drop-off site.

LWVAZ uses many tools to achieve these goals, and when lobbying efforts have proven insufficient and its core mission-driven activities are negatively impacted, it has participated in litigation. It is for these reasons LWVAZ believes that its long history of promoting democracy lends it a unique perspective as an *amicus curiae*.

LWVAZ has a direct interest in this petition challenging Governor Hobbs's authority to issue Executive Order 2023-23 ("EO-23") and Executive Order 2023-25 ("EO-25"). Both Executive Orders—signed nearly ten months ago—are consistent with LWVAZ's mission and work to protect and ensure access to the right to vote for all eligible voters and empower all eligible voters to participate in elections. Stated another way, LWVAZ and its members would be harmed by limiting the availability of voter registration forms and by eliminating a multitude of ballot drop-off sites—especially at this late juncture. The November general election is approximately eight weeks away, and Arizona's voter registration deadline is approximately four weeks away. Eliminating ways voters can register for the November election and reducing the number of ballot drop-off sites at this late stage will likely create significant confusion for Arizona voters and election administrators alike and has the potential to depress turnout and discourage voters from

participating in the electoral process. Thus, LWVAZ and its members would be harmed as a result.

ARGUMENT

This special action petition does not meet the high bar for this Court's original jurisdiction, and taking this case would undermine voters' and officials' settled expectations. Filed approximately thirty days before the October 7 registration deadline and just forty-nine days before the start of early voting for the November general election, this special action petition seeks an eleventh-hour shift in the way Arizona conducts its elections. Despite having signed EO-23 and EO-25 nearly ***ten months ago***, Petitioners only now for the first time contend that Governor Hobbs exceeded her authority when she signed EO-23 and EO-25, rendering both unconstitutional, and request that this Court exercise its original jurisdiction to resolve this belated dispute.

Rule of Procedure for Special Actions 7(b) requires Petitioners to set forth "the circumstances" that "render it proper that the petition should be brought in the particular appellate court to which it is presented." This Court has made clear that the circumstances justifying the exercise of its original jurisdiction must be "exceptional" and that such cases are "rare." *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 486 ¶ 11 (2006) ("Because of these exceptional circumstances, we conclude that this is one of those rare cases that justify the

exercise of our special action jurisdiction."). Petitioners do not meet this standard. There is nothing "rare" or "exceptional" about this case—and especially because Petitioners did not bring their claims in a timely manner. In seeking a special action, Petitioners assert that this Court has original jurisdiction because (i) per Rule of Procedure for Special Actions 3(b) "a special action may address '[w]hether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority'"; (ii) "this case involves pure legal questions of statewide importance that hinge on this Court's interpretation of the Arizona Constitution and statutes that have immediate ramifications for the impending 2024 elections throughout the state"; and (iii) the "Governor is acting *ultra vires* on matters of statewide importance that relate to elections and have the ability to impact the integrity of the upcoming general election[] . . . [that] needs to be decided and her conduct stopped immediately," purportedly necessitating filing directly in this Court. Pet. 3-5.

Petitioners are wrong. None of these bases justify invoking this Court's original jurisdiction on an expedited timeline to remedy the Petitioners' dilatory conduct in bringing these claims. The Court's original jurisdiction is reserved only for rare cases with exceptional circumstances. Such is not the case here and the Court should not exercise its power in this case for several reasons. *First*, many constitutional challenges to election administration involve pure questions of law.

Second, all election administration cases involve the rules and procedures by which voters, candidates, and parties compete for public offices and power; they are necessarily and uniformly "matters of statewide impact." *See* Pet. 5. Consequently, they are vigorously contested and controversial by their nature. *Third*, there is always an election approaching faster than the typical case, but Arizona's legislature and courts have never treated all election administration cases as deserving of expedited treatment. *See, e.g.*, *Quality Educ. & Jobs Supporting I–16–2012 v. Bennett*, 231 Ariz. 206, 207 ¶ 2 (2013) (rejecting plaintiffs' request to expedite case after finding that expedited appeals rule "applies only to election-related cases designed by statute for expedited consideration on appeal" and noting that the case at hand "[did] not fall within that category"). Accordingly, there is nothing unique or exceptional about this challenge to Respondent Governor Hobbs's actions. Petitioners' failure to advance any limiting principle for this Court's original jurisdiction in the election administration context is reason alone to decline to exercise jurisdiction. Indeed, exercising jurisdiction in this case absent any such limitation will have consequences for future election administration disputes—namely, it will serve as an open invitation to bring such future disputes directly to this Court.

To the extent Petitioners attempt to leverage the rapidly approaching November general election to justify filing directly in this Court and induce this Court to exercise its original jurisdiction, Petitioners cannot do so. Petitioners filed

this special action ***ten months*** after Governor Hobbs signed EO-23 and EO-25 on November 1, 2023. Petitioners' dilatory conduct would mean that this Court would have only a month and a half to review the petition, order merits briefs, and issue a preliminary or final order on the merits before the start of early voting. Any exigency alleged by Petitioners is a direct consequence of their own delay, not the result of the circumstances of the case.

Petitioners' failure to diligently proceed contradicts their bald assertions that Governor Hobbs's challenged actions pose "immediate ramifications for the impending 2024 elections throughout the state" and "the ability to impact the integrity of the upcoming general election," requiring "[t]his matter [] to be decided and [Governor Hobbs's] conduct stopped immediately," Pet. 4-5. If that were true, Petitioners should have sued well before the November general election. They did not do so. Nor can the Arizona Republican Party claim that it has just realized these voting rules (allegedly) violate the Arizona Constitution and Arizona statutes and urge the state's highest Court to act immediately before fast-approaching elections. That is not a proper invocation of this Court's original jurisdiction.

Further undermining Petitioners' petition is the fact that there have been five statewide elections since November 1—the November 7, 2023 election, the March 12, 2024 election, the March 19, 2024 presidential preference election, the May 21, 2024 election, and the July 30, 2024 primary election. Yet, inexplicably, Petitioners

only now allege that Governor Hobbs's conduct must be stopped "immediately." Petitioners provide no explanation for their delay.

The purported exigency driving Petitioners' special action was wholly avoidable. This is precisely what the U.S. Supreme Court has cautioned against—changes to registration and voting rules close to an election. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) ("Court orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."); *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 368 (9th Cir. 2016) ("[T]he concern in *Purcell* and *Southwest Voter* was that a federal court injunction would disrupt long standing state procedures."). Some of the Justices have also suggested that a sliding-scale framework should govern the issuance of injunctions or stays close to an election, such that larger, more complex and disruptive changes must be made farther in advance of an election. *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 n.1 (2022) (Kavanaugh, J. and Alito, J., concurring) ("How close to an election is too close may depend in part on the nature of the election law . . . . Changes that require complex or disruptive implementation must be ordered earlier than changes that are easy to implement."). Regardless of the parties' views on the merits of these claims, they must agree that the relief sought here would significantly alter the status quo that has been in place for the last five

statewide elections. Such a case should work its way through the state court system so that these extremely novel arguments can be thoroughly tested.

Ultimately, if this Court agrees to hear this case, there will be long-term consequences for the resolution of election administration disputes and for this Court's docket. It would openly invite litigants challenging election laws and practices to sit on their claims and delay filing until an election is closer, bootstrapping themselves into exigent circumstances. *Cf. Feldman*, 843 F.3d at 369 ("[U]nlike the circumstances in *Purcell* and other cases, plaintiffs did not delay in bringing this action."). Exercising jurisdiction here would further invite repeated attempts to file election lawsuits in this Court. Even though this Court's exercise of original jurisdiction is discretionary, it wastes this Court's time and resources to even consider such petitions and dismiss those that do not meet the necessarily high bar for this Court's original jurisdiction. Forcing litigants, absent truly exceptional circumstances, to proceed in the trial court, confers some stability upon election administration and can serve as a deterrent to frivolous lawsuits.

CONCLUSION

Because Petitioners have failed to demonstrate why their petition bears the exceptional circumstances that would justify this Court taking it now in its original jurisdiction, this action should be dismissed under Rule of Procedure for Special Actions 7(b).

Dated: September 6, 2024

Respectfully submitted,

/s/ Daniel J. Adelman

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