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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Arizona Public Integrity Alliance  
10 Incorporated, et al.,

No. CV-14-01044-PHX-NVW

11 Plaintiffs,

**ORDER**

12 v.

13 Ken Bennett, in his official capacity as  
14 Secretary of State for the State of Arizona,

15 Defendant.

16  
17 Before the Court is Plaintiffs' Motion for Temporary Restraining Order and  
18 Preliminary Injunction (Doc. 4). The Motion was argued on May 29, 2014. The Motion  
19 will be denied because it is bared by laches, as Plaintiffs' delay in seeking injunctive  
20 relief is unreasonable and prejudicial. A preliminary injunction will also be denied  
21 because it is unnecessary to prevent any harm to the Plaintiffs in the 2014 primary  
22 election. This order states the Court's findings of fact and conclusions of law pursuant to  
23 Rule 52(a)(2) of the Federal Rules of Civil Procedure.

24 **I. STATUTORY BACKGROUND AND THE PARTIES**

25 This application for a preliminary injunction is brought by Arizona Public  
26 Integrity Alliance Incorporated and four Maricopa County voters who are members of the  
27 Republican Party. Defendant Arizona Secretary of State Ken Bennett is the state officer  
28 responsible for administering Arizona elections. Party-affiliated candidates seeking to be

1 placed on the primary election ballot for statewide office are required to file nomination  
2 petitions with the Secretary of State. *See* A.R.S. §§ 16-311, 16-314. Plaintiffs seek to  
3 enjoin enforcement of part of the statute that sets the minimum number of signatures on  
4 the nominating petitions. A.R.S. § 16-322(A)(1). Plaintiffs do not challenge the  
5 requirement that the petitions be signed by at least one-half of one percent of the total  
6 voter registration of the candidate's party in the state. *Id.* A Republican candidate for  
7 this election needs 5,660 signatures.

8 Plaintiffs do challenge the requirement of signatures of at least one-half of one  
9 percentage of the voter registration of the party of the candidate in at least three of the  
10 fifteen counties in the state. *Id.* The number of signatures for the county-distribution  
11 requirement is included within the total state-wide signature requirement. Due to  
12 variations in county population, the absolute number of signatures to qualify a county  
13 varies from county to county, though the percentage is the same for every county. *Id.*

14 Plaintiffs contend this minimum county-distribution requirement violates the  
15 Equal Protection Clause of the Fourteenth Amendment. They say it dilutes signatures  
16 from more populous counties and enhances the value of signatures from less populous  
17 counties. For example, for Greenlee County, which has only 1,115 registered Republican  
18 voters, six signatures suffice toward the three-county requirement. Plaintiffs object that  
19 each one of the six Republican signatures from Greenlee County satisfies 1/6 of one-  
20 third, or 5.6%, of the total county-based signature requirement. In contrast, 3,553  
21 signatures are needed for Maricopa County, which has 710,487 registered Republicans.  
22 Plaintiffs object that for Maricopa County, each of the 3,553 signatures satisfies 1/3,553  
23 of one-third, or less than .01%, of the total county-distribution signature requirement.  
24 Again, these are Plaintiffs' computations and arguments.

25 The individual plaintiffs are residents of Maricopa County. They all signed  
26 primary nomination petitions this election season, and some of their candidates used  
27 Maricopa County as one of the three qualifying counties in their nomination petition.  
28 The individual plaintiffs claim that, as residents of Arizona's most populous county, the

1 county-distribution signature requirement has diminished the relative value of their  
2 signatures as compared to the signatures of residents of less inhabited counties. They  
3 seek to enjoin application of that requirement for candidates in the 2014 primary election.

4 **II. A PRELIMINARY INJUNCTION IS BARRED BY PLAINTIFFS’**  
5 **UNREASONABLE AND PREJUDICIAL DELAY**

6 Nomination petitions for the primary election ballot had to be filed between April  
7 28 and May 28, 2014. Challenges to the sufficiency of nomination petitions were due by  
8 June 11, 2014, and early primary voting begins on July 28, 2014. Plaintiffs began  
9 looking seriously at the constitutionality of the county-distribution requirement in  
10 December 2013. They gave notice to the State on May 2, 2014, that they intended to  
11 seek an injunction, but they did not do so until May 15, 2014. The Court set accelerated  
12 briefing and a hearing for May 29, 2014.

13 Laches—unreasonable and prejudicial delay—requires denial of injunctive relief,  
14 including preliminary relief. “In the context of election matters, the laches doctrine seeks  
15 to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices  
16 the opposing party or the administration of justice.” *Lubin v. Thomas*, 213 Ariz. 496, 497  
17 ¶ 10, 144 P.3d 510, 511 (2006) (holding that the laches doctrine applies to actions  
18 challenging candidate nomination petitions); *Beltran v. Razo*, 163 Ariz. 505, 507, 788  
19 P.2d 1256, 1258 (App. 1990); *Sotomayor v. Burns*, 199 Ariz. 81, 83 ¶ 6, 13 P.3d 1198,  
20 1200 (Ariz. 2000). Such delay “strains the quality of decision making and is ultimately  
21 unfair to all involved.” *Mathieu v. Mahoney*, 174 Ariz. 456, 460, 851 P.2d 81, 85 (1993).

22 No relief can be granted that would delay the printing of the ballots. *Lubin*, 213  
23 Ariz. at 497 ¶ 10, 144 P.3d at 512. A plaintiff’s delay can “prejudice the administration  
24 of justice by compelling the court to steamroll through delicate legal issues in order to  
25 meet the ballot printing deadlines.” *Id.* The defendant is also entitled to reasonable time  
26 to consider and develop his case. *McCarthy W. Constructors, Inc. v. Phoenix Resort*  
27 *Corp.*, 169 Ariz. 520, 525, 821 P.2d 181, 187 (App. 1991). That includes “the  
28 opportunity to develop and present their own evidence, hire an expert, or prepare their  
cross-examination.” *Mathieu*, 174 Ariz. at 459-60, 851 P.2d at 84-85.

1 Plaintiffs' delay until two weeks before the Secretary begins signature validation  
2 is unreasonable. The statute they challenge is not new. Earlier iterations of the county-  
3 distribution signature requirement have existed since statehood. *See* Ariz. Sess. Laws  
4 1912, 1st. S.S., Ch. 84, § 6. The present version has been in effect since 1980. *See* Ariz.  
5 Sess. Laws 1979, Ch. 209, §§ 2 to 5. Plaintiffs say they delayed their filing because it  
6 took a long time to obtain Plaintiffs' certified voting records. As they conceded at oral  
7 argument, they could have attested in sworn affidavits that they are qualified electors.  
8 The time it took to obtain certified voting records does not justify a delay.

9 Plaintiffs also say they had no cause to discover the county-distribution signature  
10 requirement before they signed this year's petitions. But Plaintiffs' counsel  
11 acknowledged they began looking seriously at the constitutionality of the statute in  
12 December 2013. Had Plaintiffs filed suit promptly, a motion for preliminary injunction  
13 could have been briefed and decided without unreasonable burden on the Defendant, the  
14 Court, and the election process.

15 Defendant contends Plaintiffs' unwarranted delay prevented him from defending  
16 against the injunction. He does not respond on the merits for inability to marshal facts  
17 and authorities in the short time left. That is plainly true. Plaintiffs' response that  
18 Defendant did not need time to prepare a response because Plaintiffs' case is obviously  
19 meritorious is not a valid response to laches. A defendant and the court are entitled to a  
20 meaningful response precisely to determine the strength of the case. Plaintiffs'  
21 unreasonable delay in filing this Motion unduly prejudiced the State's ability to defend  
22 on the merits.

### 23 **III. A PRELIMINARY INJUNCTION WOULD NOT PREVENT ANY HARM** 24 **IN THE 2014 ELECTIONS**

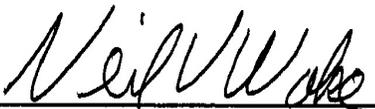
25 An injunction may be granted only when the movant shows that "he is likely to  
26 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
27 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
28 the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see*  
*also Beardslee v. Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005). A preliminary

1 injunction is “an extraordinary and drastic remedy, one that should not be granted unless  
2 the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*,  
3 520 U.S. 968, 972 (1997) (emphasis in original) (per curiam) (citation omitted).

4 When Plaintiffs filed this action and when it was heard on May 29, 2014, it was  
5 extremely unlikely that a preliminary injunction would have prevented any injury to the  
6 Plaintiffs in the 2014 elections. The nomination petition filing period ended on May 28,  
7 2014, and the Secretary had qualified all the primary candidates whose nominating  
8 petitions they signed. In doing so, the Secretary certified that they all satisfied the  
9 county-distribution signature requirement.<sup>1</sup> The time for private parties to bring litigation  
10 to challenge the sufficiency of the signatures was June 11, 2014. That date passed and no  
11 candidate supported by Plaintiffs has been challenged. Those candidates’ presence on the  
12 primary election ballot is certain. Plaintiffs have not shown any harm to be avoided by  
13 preliminary injunctive relief.

14 IT IS THEREFORE ORDERED that Plaintiffs’ Motion for Temporary  
15 Restraining Order and Preliminary Injunction (Doc. 4) is denied.

16 Dated this 23rd day of June, 2014.

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20 Neil V. Wake  
21 United States District Judge  
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25 <sup>1</sup> Collectively, the individual plaintiffs signed nominating petitions for the  
26 following Republican candidates: (1) Scott Smith, running for Governor, qualified by  
27 satisfying the county-based signature requirement in Greenlee, Maricopa, and Santa  
28 Cruise County; (2) Justice Pierce, running for Secretary of State, qualified by satisfying  
the county-based signature requirement in Graham, Maricopa, and Yuma County; (3)  
Mark Brnovich, running for Attorney General, qualified by satisfying the county-based  
signature requirement in Coconino, Pinal, and Yavapai County; and (4) Wil Cardon,  
running for Secretary of State, qualified by satisfying the county-based signature  
requirement in Coconino, Maricopa, and Pinal County.