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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Voto Latino Foundation, Priorities USA,
Shelby Aguallo,

Plaintiffs,

v.

Katie Hobbs, in her official capacity as
Arizona Secretary of State,

Defendant.

No. 2:19-cv-05685-DWL

NOTICE OF SETTLEMENT

Plaintiffs Voto Latino Foundation, Priorities USA, and Shelby Aguallo (“Plaintiffs”) and Defendant the Arizona Secretary of State (“Secretary”), pursuant to this Court’s June 5, 2020 Order, Doc. 55, file the instant notice to inform the Court that they have completed settlement negotiations and finalized a settlement agreement in this matter. See Exhibit A (June 18, 2020 Settlement Agreement).

Dated: June 18, 2020

s/ <u>Amanda Callais</u> Alexis E. Danneman (# 030478) Sarah R. Gonski (# 032567) PERKINS COIE LLP 2901 North Central Avenue, Suite 2000 Phoenix, Arizona 85012-2788 Marc E. Elias* John Devaney* Amanda R. Callais* K’Shaani O. Smith* Zachary J. Newkirk* Christina A. Ford* PERKINS COIE LLP 700 Thirteenth Street NW, Suite 600 Washington, D.C. 20005-3960 <i>*Admitted pro hac vice Counsel for Plaintiffs</i>	s/ <u>Kara Karlson</u> Kara Karlson (#029407) Linley Wilson (#027040) Kara M. Karlson (#029407) Dustin Romney (#034728) 2005 North Central Avenue Phoenix, AZ 85004-1592 Mary R. O’Grady (#011434) Emma J. Cone-Roddy (#034285) OSBORN MALEDON, P.A. 2929 North Central Avenue, Suite 2100 Phoenix, AZ 85012-2793 <i>Counsel for Defendant Arizona Secretary of State Katie Hobbs</i>
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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ Michelle DePass

Exhibit A

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No. 2:19-cv-05685-DWL

SETTLEMENT AGREEMENT

1
2 This Settlement Agreement is entered into as of June 18, 2020 (the "Effective Date")
3 by and between Plaintiffs Voto Latino Foundation, Priorities USA, and Shelby Aguallo,
4 and Defendant Katie Hobbs, in her official capacity as the Secretary of State of Arizona
5 (the "Secretary"). All Plaintiffs and Defendant shall hereafter be referred to as the "Parties."
6 The Parties hereby agree to settle the case based upon the following terms.

7 **RECITALS**

8 WHEREAS, on November 26, 2019, Plaintiffs initiated this action against the
9 Secretary. Plaintiffs later filed amended complaints. The Second Amended Complaint
10 alleged that the Arizona law requiring that mail-in ballots be received by 7:00 p.m. on
11 Election Day to be counted, A.R.S. § 16-548(A) (the "Election Day Receipt Deadline"),
12 violates the First and Fourteenth Amendments of the U.S. Constitution. The Second
13 Amended Complaint alleged that the Election Day Receipt Deadline disproportionately
14 affected Arizona's Hispanic and Latino, Native American, and rural voters, and had
15 disenfranchised more than 17,000 Arizona voters since 2008.

16 WHEREAS, the Secretary denies that Arizona's Election Day Receipt Deadline
17 violates the First and Fourteenth Amendments and states that she and other Arizona
18 elections officials have regularly engaged in voter education efforts as to the Election Day
19 Receipt Deadline. As part of this Settlement Agreement and consistent with plans to
20 address the projected increase in vote by mail for the 2020 election, the Secretary will
21 increase voter education efforts relating to the Election Receipt Deadline, conduct
22 additional voter education campaigns for all voters, including Latino and Native American
23 populations, and facilitate additional opportunities for these voters to return their early
24 ballots.

25 WHEREAS, the Parties have negotiated in good faith and enter into this Settlement
26 Agreement as an appropriate resolution of the claims in the Complaint. Accordingly, the
27 Parties stipulate and agree as follows:
28

BACKGROUND

1
2 1. Voto Latino Foundation is a nonprofit organization that engages, educates,
3 and empowers Latino communities across the United States. It works to ensure that Latinos
4 are enfranchised and included in the democratic process. Voto Latino believes that the
5 Election Day Receipt Deadline harms it by burdening and disenfranchising the voters Voto
6 Latino seeks to support, among other harms.

7 2. Priorities USA is a 501(c)(4) non-profit organization that engages in voter-
8 centric progressive advocacy. Its mission is to build a sustainable infrastructure to engage
9 Americans in the progressive movement by running a permanent digital campaign to
10 persuade and mobilize citizens around issues and elections that affect their lives. Priorities
11 USA works to help educate, mobilize, and turn out voters across the country, including in
12 Arizona. Priorities USA believes that the Election Day Receipt Deadline harms it because
13 it burdens and disenfranchises the voters Priorities supports through its work and
14 contributions in Arizona, among other harms.

15 3. Shelby Aguillo is a U.S. citizen and registered Arizona voter whose ballot
16 was not counted in the 2018 General Election because of application of the Election Day
17 Receipt Deadline.

18 4. Katie Hobbs is the Arizona Secretary of State, sued in her official capacity
19 only. She is the Chief Elections Officer for Arizona, responsible for overseeing the voting
20 process in Arizona. A.R.S. § 16-142(A)(1). For example, the Secretary drafts the Arizona
21 Election Procedures Manual (“Manual”), which establishes election procedures and
22 administration across Arizona’s fifteen counties. A.R.S. § 16-452. The Manual is approved
23 by the Governor and the Arizona Attorney General and carries the force of law. A.R.S. §
24 16-452(B). Arizona law also requires the Secretary, after consulting with county officials,
25 to draft the Manual to “achieve and maintain the maximum degree of correctness,
26 impartiality, uniformity and efficiency on the procedures for early voting and voting, and
27 of producing, distributing, collecting, counting, tabulating and storing ballots.” A.R.S. §
28 16-452(A).

5. This action was brought by Voto Latino, Priorities USA, and Shelby Aguillo to vindicate First and Fourteenth Amendment rights related to voting.

6. The Secretary denies that the Election Day Receipt Deadline violates the First or Fourteenth Amendments to the federal Constitution. By agreeing to this Settlement Agreement, the Secretary seeks to serve Arizona's citizens by (1) complying with Arizona law; (2) increasing public awareness campaigns of the Election Day Receipt Deadline to encourage Arizona's voters to return their mail ballots by the Deadline; and (3) facilitating additional opportunities for Latino, Native American, and other voters to return their early ballots. Additionally, the Secretary deems this Settlement Agreement to be in the public interest to reduce litigation costs to the public and to focus the Secretary's resources and efforts toward ensuring that Arizona's election procedures run smoothly amidst the COVID-19 pandemic. The terms of the Settlement Agreement are also in line with the types of preparedness efforts the Secretary has previously engaged in and plans to implement to ensure free, fair, and safe elections.

DEFINITIONS

1. “Election Day Receipt Deadline” means the 7:00 p.m. deadline on Election Day for ballots to arrive at the County Recorder’s Office in order to be counted as identified in A.R.S. § 16-548(A).

2. “County Recorder” means the County Recorder of each of Arizona’s 15 counties, and includes all county election officials working in or in conjunction with their offices.

3. “Procedures Manual” means the State of Arizona Elections Procedures Manual, which provides the rules related to voting and the conduct of elections. A.R.S. § 16-452. The Secretary is required to develop the Procedures Manual in conjunction with the 15 County Recorders. *Id.* Once approved by the Arizona Attorney General and the Governor of Arizona, the Procedures Manual has the force of law. A.R.S. § 16-452(B), (C).

1 4. “Secretary” means the Arizona Secretary of State and her office, as well as
2 successors in office.

3 SETTLEMENT AGREEMENT TERMS

4 1. **Voter outreach and education.** While the Secretary already engages in
5 voter outreach efforts about the Election Day Receipt Deadline, upon the Effective Date of
6 this Agreement the Secretary shall increase those efforts. This additional outreach and
7 education shall be conducted in English and in the languages covered under Section 203 of
8 the Voting Rights Act (i.e. Spanish, Navajo, and Apache). This outreach and education
9 shall occur across multiple platforms and mediums, including, but not limited to, the
10 Secretary of State’s website, the Secretary of State’s social media pages, and on future
11 mailings from the Secretary to Arizona voters. The Secretary shall also engage in
12 reasonable efforts to encourage each of Arizona’s County Recorders to increase their voter
13 education efforts and outreach about the Election Day Receipt Deadline.

14 2. **The Secretary of State’s website.** Within 60 days after the Effective Date
15 of this Settlement Agreement, the Secretary shall add to the official Secretary of State’s
16 website—located at <https://azsos.gov/>—a page specifically dedicated to the vote by mail
17 process that will include prominently featured information about the Election Day Receipt
18 Deadline and general information about ballot drop-off options, including links to county
19 websites listing drop box locations and other mail-ballot drop-off options.

20 3. **Allocation of federal funding.** The Secretary agrees to allocate a portion of
21 funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, subject
22 to legislative appropriation, or other available funding source for counties to expand early
23 voting opportunities in Hispanic and Latino, Native American, and rural communities in
24 Arizona. This will include funding for (1) mobile early voting units, which can serve as
25 both early voting locations and drop-off points for mail ballots, (2) temporary staff hires
26 who will be appropriately trained to staff early voting locations and mobile early voting
27 units in rural communities with limited mail access, and who have language capabilities to
28 match the communities in which they will be working, (3) an increased number of ballot

1 drop-boxes for mail ballots in rural, Hispanic and Latino, and tribal communities, and (4)
2 an increased number of non-mobile early voting locations. To the extent that any funds
3 have been distributed to counties as direct subgrants, the Secretary agrees to provide
4 informal guidance to each county listing priorities for the funding. Such informal guidance
5 will include a recommendation that each county consider the optimal number of drop-boxes,
6 mobile early voting units, and early voting locations needed based on the county's
7 geography, population, and best practices. Plaintiffs intend to propose optimal guidance on
8 these issues in consultation with Plaintiffs' experts, and the Secretary agrees to consider in
9 good faith Plaintiffs' proposal in issuing this informal guidance to each county.

10 4. **Elections Procedures Manual.** The Secretary agrees to add a provision to
11 the next revision of the Elections Procedures Manual directing counties to consult the
12 informal guidance provided by the Secretary with respect to the allocation of drop-boxes,
13 mobile early voting units, or other ballot drop-off locations outside of the county elections'
14 office and polling locations or vote centers.

15 5. **Feasibility study on the implementation of a postmark deadline.** Within
16 90 days after the Secretary's official canvass of the November 3, 2020 General Election,
17 the Secretary's Office shall review available data regarding ballots that were received after
18 Election Day in Arizona's past three general election cycles and shall consult with local
19 elections officials to discuss (1) the number of voters whose ballots were not counted
20 because of the deadline over the past three general election cycles; (2) the policy
21 implications associated with implementing a postmark deadline in lieu of Arizona's
22 Election Day Receipt Deadline; and (3) the feasibility of implementing a postmark deadline.
23 In conducting this study, the Secretary's Office shall also consider, *inter alia*: (1) the cost
24 of intelligent mail bar code readers; (2) any administrative burdens placed on election
25 officials and logistical challenges in connection with a postmark deadline; (3) the various
26 ways that other states have successfully implemented postmark deadlines; and (4) whether
27 such factors support seeking a legislative change to Arizona's Election Day Receipt
28 Deadline.

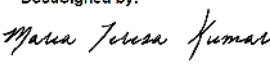
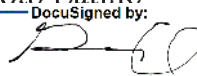
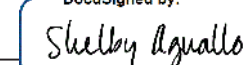
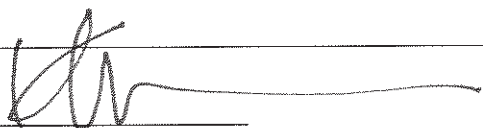
6. **Dismissal of Claim.** Upon the Effective Date of this Settlement Agreement, the Plaintiffs' claims will be dismissed with prejudice.

7. **Standing to enforce Settlement Agreement.** The only parties with standing or authority to seek enforcement of this Settlement Agreement are the parties to this agreement. No person or entity that is not a party to this Settlement Agreement may seek to enforce this Settlement Agreement as a third-party beneficiary.

8. **Integration clause.** The terms of this Settlement Agreement embody the Parties' complete and entire agreement with respect to the subject matter hereof.

9. **Attorneys' fees and costs.** The Parties shall bear their own attorney fees and costs related to the above-captioned matter, and no party shall be considered a prevailing party for the purpose of any law, statute, or regulation providing for the award or recovery of attorney fees and/or costs.

Dated: June 18, 2020

DocuSigned by:  2695EFC6A73642E... Maria Teresa Kumar, a resident Voto Latino DocuSigned by:  B044AAC97987492... Guy Cecil, Chairman Priorities USA DocuSigned by:  B43DBA001F6544D... Shelby Aguillo	s/  Katie Hobbs Arizona Secretary of State
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