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14 ARIZONA SUPERIOR COURT
15 SANTA CRUZ COUNTY

16 Arizona Democratic Party,
17 Plaintiff,
18 v.
19 Suzanne Sainz, in her official capacity
as Santa Cruz County Recorder,
20 Defendant.
21

No.
**APPLICATION FOR ORDER TO
SHOW CAUSE FOR STATUTORY
SPECIAL ACTION**
-AND-
**EMERGENCY REQUEST FOR
HEARING**
(Expedited Consideration Requested)
(Oral Argument Requested)
(Assigned to Hon. _____)

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25 **APPLICATION FOR ORDER TO SHOW CAUSE**

26 Pursuant to A.R.S. § 39-121.02 (permitting statutory special action to enforce the
27 public records law) and Rule 4 of the Rules of Special Action Procedure (permitting an
28 application for order to show cause to receive expedited consideration of a special action),

1 Plaintiff Arizona Democratic Party (“ADP”) submits this Application for an Order to Show
2 Cause why Defendant, Santa Cruz County Recorder Suzanne Sainz (the “Recorder”),
3 should not be ordered to immediately comply with the September 1, 2020 public records
4 request served by the ADP. This Application is supported by ADP’s Complaint, the
5 following Memorandum of Points and Authorities, and the Declaration of Michael Norton
6 and accompanying exhibits.

7 The basis for this Application is as follows.

8 (i) On September 1, 2020, ADP properly served a public records request for voting
9 records relating to early mail-in ballots that the voter needs to cure in order to be counted,
10 such as if the ballot lacked a signature or has a mismatched signature;

11 (ii) The public records request sought, among other things, the following: “As ballots
12 are processed, both before the final disposition and before the cure period comes to
13 completion, control sheets or other logs indicating: 1) name of voter, 2) ballot defect,
14 3) method of contact by recorder/staff, 4) time(s)/date(s) contacted, 5) number of times
15 contacted, for any voter whose ballot has a missing or mismatched signature or other defect,
16 including conditional or regular provisional ballots if voting in person”;

17 (iii) ADP made clear that the Recorder would need to produce documents on a rolling
18 basis starting by October 16, 2020, to ensure that ADP could meaningfully use the data to
19 inform voters of their need to cure their ballots;

20 (iv) The cure period for ballots with missing signatures is completed on November 3,
21 2020, and the cure period for ballots with other deficiencies, such as allegedly mismatched
22 signatures, is completed on November 10, 2020;

23 (v) Defendant is required to provide the documents “promptly,” meaning “quickly,”
24 “at once,” and “without delay,” *see W. Valley View, Inc. v. Maricopa Cty. Sheriff’s Office*,
25 216 Ariz. 225, 230 (Ct. App. 2007), and which is determined by the circumstances of the
26 case; and

27 (vi) Defendant has failed to “promptly” produce the requested documents as
28 Arizona’s Public Records Law requires because she has refused to produce the documents

1 at all, much less without delay. Even worse, this refusal is not harmless: without receiving
2 the list of ballots requiring curing well before Election Day, ADP's entire purpose behind
3 its public records request will be gutted and voters in Santa Cruz County may be prevented
4 from having their votes counted.

5 Rule 4(c) of the Rules of Special Action Procedure permits a party seeking special
6 action relief to file an "application for an order to show cause why the requested relief
7 should not be granted." Where, as here, a party files an application for an order to show
8 cause, Rule 4(c) directs that the court "shall set a speedy return date." Time is particularly
9 of the essence in this case because each day of delay risks that ADP will not be able to assist
10 voters with curing their ballots and, as a result, voters' ballots will not be counted.

11 Accordingly, ADP asks the Court to hold a hearing as soon as practicable and to
12 order Defendant to comply with Plaintiff's public records request by producing the
13 requested records on a rolling basis by October 16, 2020. Defendant respectfully requests a
14 hearing at the Court's earliest convenience, and in any event before October 16, 2020, when
15 ADP needs to begin receiving the requested voter lists to maximize the chances of helping
16 Arizona voters cure their ballots to be counted this election. Plaintiff has filed a proposed
17 order to show cause this application.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Arizona’s Public Records Law is clear, mandatory, and often the public’s only path
4 to obtaining documents that are essential for democracy and a well-functioning government.
5 That is exactly what is at issue here.

6 ADP served a public records request on the Recorder over a month ago, on
7 September 1, 2020, seeking documents identifying early mail ballot voters whose ballots
8 may be deficient due to, for example, a missing or mismatched signature on the affidavit on
9 the mail ballot return envelope. Because these voters often have no idea that their voice in
10 this election will go unheard unless they take action to “cure” their ballots, ADP is seeking
11 public records about those ballots so that it can give voters information on how to cure,
12 ensuring that as many votes as possible are counted in a potentially razor-thin election this
13 November.

14 Under Arizona’s Public Records Law, anyone may request copies of any public
15 record—including voting records—and the Recorder “shall promptly” furnish the copies.
16 A.R.S. § 39-121.01. “Prompt” typically means at once and without delay under the
17 circumstances. Despite ADP’s request for documents on a rolling basis starting by
18 October 16, 2020, the Recorder said she would not provide the documents. Even if the
19 Recorder suddenly has a change of heart, ADP and Santa Cruz voters are already up against
20 the clock. The deadline to cure a missing signature on a ballot is November 3, Election Day,
21 and the deadline to cure allegedly mismatched signatures is November 10. ADP requested
22 the voting records well in advance because it needs them well in advance of Election Day
23 to have any reasonable chance of fulfilling the purpose behind its public records request—
24 to help voters ensure their ballots are counted.

25 The Recorder has the burden to show clear and specific reasons why it should not
26 have to follow the mandatory language in the Public Records Law and produce the records
27 promptly. In other words, the Recorder must establish that refusing production is somehow
28 necessary to protect confidentiality, privacy, or the best interests of the state. In pre-suit

1 negotiations, the Recorder has not raised any of those arguments, because none exist. The
2 Court should order the Recorder to do what she should have agreed to do long ago—
3 promptly produce the documents in a way that fulfills the purpose of Arizona’s Public
4 Records Law to ensure transparency and, in this instance, to protect people’s right to vote.

5 **II. BACKGROUND**

6 On November 3, 2020—only 21 days away—millions of Arizona voters will take to
7 the polls to elect officials to represent them in federal, state, and local governments,
8 including the President of the United States. Although some voters will vote in person,
9 around 80% of voters in Arizona vote by mail, with that number likely even larger this year
10 due to COVID-19. Ariz. Citizens Clean Election Comm’n, *Vote by Mail*,
11 <https://www.azcleelections.gov/how-to-vote/early-voting/vote-by-mail> (last visited on
12 Oct. 8, 2020).

13 **A. Voters in Arizona have the right to vote by mail.**

14 Every registered voter in Arizona can apply for and cast a mail ballot (also known
15 as an absentee ballot) in any election. A.R.S. § 16-542(A). For voters who requested mail
16 ballots for the upcoming election by October 7, election officials in Arizona were required
17 to mail out their ballots between October 7 and October 10. *Id.* § 16-542(C); *id.* § 16-
18 544(F). For mail ballot requests received between October 8 and October 23, election
19 officials are required to mail voters a ballot within two business days of the request. *Id.*
20 § 16-542(D).

21 Each mail ballot includes a return envelope with an affidavit that must be signed by
22 the registered voter or someone legally assisting them. *Id.* § 16-547(A), (C); *id.* § 16-
23 550(A). Once the Recorder receives a completed ballot, election officials at the Recorder’s
24 office assess the ballot to determine whether the affidavit is signed and, if so, whether the
25 signature on the affidavit matches any other signature in the voter’s registration record. *Id.*
26 § 16-550(A). If the Recorder or other officer in charge of elections finds the affidavit is not
27 signed or the voter’s signature on the affidavit does not match any signature in that voter’s
28 registration record, the ballot will not be counted unless the deficiency is cured. *Id.*

1 **B. Arizona voters who cast ballots with missing or mismatched signatures**
2 **have an opportunity to cure these deficiencies, but strict deadlines limit**
3 **voters’ time to do so.**

4 As any election official can attest, voters make mistakes in filling out the affidavits
5 they return with their ballots all the time. In prior years, thousands of Arizona voters have
6 mistakenly failed to sign their affidavits—and this was before the COVID-19 pandemic,
7 which is expected to drive up mail-in voting exponentially. In addition, virtually any voter
8 can have her mail ballot flagged for rejection based on an election official’s conclusion that
9 the signature on the affidavit does not match the voter’s signature on file. Signature
10 matching is notoriously unreliable, and in prior pre-pandemic elections thousands of lawful
11 Arizona voters had their ballots flagged for rejection based on an inexperienced opinion that the
12 signature on the affidavit did not match the signature on file.

13 Recognizing that these errors should not disenfranchise voters without an
14 opportunity to correct them, Arizona law provides opportunities for voters to “cure” their
15 ballots and save them from rejection when ballot affidavits are flagged as having either a
16 missing or a mismatched signature. *See* A.R.S. § 16-550(A); Ariz. Sec’y of State, 2019
17 Elections Procs. Manual (Dec. 2019) [hereinafter “Ariz. Elections Procs. Manual”]; A.R.S.
18 § 16-452(A) (giving the Elections Procedures Manual the force of law).

19 The deadlines for curing each type of error differ. The deadline for the voter to cure
20 a missing signature is 7:00 p.m. *on Election Day*. Ariz. Elections Procs. Manual 69. If the
21 voter fails to cure a missing signature by that deadline, her ballot is rejected and her votes
22 will not count. A voter with a mismatched signature may cure the deficiency by 5:00pm on
23 the fifth business day following the election—this year, Tuesday, November 10. A.R.S.
24 § 16-550(A); Ariz. Elections Procs. Manual 68. In both cases, if the Recorder identifies a
25 missing signature or if a ballot is flagged for rejection due to a mismatched signature, she
26 must make a “reasonable and meaningful attempt” to contact the voter “as soon as
27 practicable” with information about how to cure. Ariz. Elections Procs. Manual 68-69.

28 Nothing in the Arizona Elections Procedures Manual prohibits other people or
groups from informing voters on how to cure their ballots. *See generally id.* And, as

1 discussed below, the Recorder’s office is not able to reach all voters, meaning each year
2 ballots remain uncured and voters are disenfranchised.

3 **C. Numerous ballots may require curing in the general election.**

4 The November general election is likely to see thousands of ballots cast in Santa
5 Cruz County alone. Declaration of Michael Norton (“Norton Decl.”) ¶ 5. According to the
6 Arizona Secretary of State’s Voter Registration and Historical Election Data website,
7 16,769 ballots were cast in the 2016 general election. *See* 2016 Election Information, Ariz.
8 Sec’y of State, <https://apps.azsos.gov/election/2016/Info/ElectionInformation.htm>
9 (“Official Canvass of 2016 General Election Results”) (last visited Oct. 12, 2020)
10 [hereinafter “2016 Election Information”]. If even a small percentage of ballots require
11 curing for a missing or mismatched signature, hundreds of voters will need to be contacted
12 in Santa Cruz County alone. This November’s election may have even more ballots needing
13 curing than in a normal year because the turnout for this Presidential election is expected to
14 be high and because more voters will be voting by mail due to COVID-19. Indeed, over
15 60,000 ballots statewide may require curing for the November 2020 general election, with
16 an estimated 30,000 ultimately rejected for a deficiency without further action by the voter.
17 Norton Decl. ¶ 6.

18 **D. ADP filed a public records request for a regular, rolling list of voters
19 whose ballots have been identified by the Recorder as deficient in order
20 to contact those voters with information about how to cure.**

21 ADP has many members and constituents who vote by mail. Norton Decl. ¶ 3. To
22 ensure all Arizona votes are counted, ADP contacts voters whose mail ballots have been
23 identified by the Recorder as potentially deficient to inform them of the deficiency and to
24 provide them with information about how they can cure their ballots to ensure they are
25 counted. *Id.* When ADP contacts voters, its callers clearly identify themselves as ADP
26 volunteers, ask if the voter has already been made aware of the need to cure a deficiency,
27 and then provide information on steps the voter can take to cure the deficiency. *Id.* ¶ 4.

28 To facilitate this process, ADP works with Arizona counties to obtain regular lists of
voters whose ballots have been flagged as deficient. *Id.* Accordingly, on September 1, 2020,

1 ADP submitted a written records request to the Recorder providing advance notice of its
2 request for, as relevant here, the following information:

3 As ballots are processed, both before the final disposition and
4 before the cure period comes to completion, control sheets or
5 other logs indicating: 1) name of voter, 2) ballot defect,
6 3) method of contact by recorder/staff, 4) time(s)/date(s)
7 contacted, 5) number of times contacted, for any voter whose
8 ballot has a missing or mismatched signature or other defect,
9 including conditional or regular provisional ballots if voting in
10 person.

11 *Id.* ¶¶ 5, 8 & Ex. 1.

12 Although the Recorder was not expected to begin receiving completed early ballots
13 until October 12, 2020, ADP provided the Recorder with its public records request well in
14 advance of that timeline to give the Recorder sufficient notice of its request and ensure that
15 ADP received its requested list of deficient ballots on a regular, rolling basis during the
16 election. *Id.* ¶¶ 6-7. Starting the cure process early not only reduces the burden on the
17 Recorder and ADP, but also reduces the burden on the Arizona voters who may need to
18 cure their ballots on a short timeline. *Id.* ¶ 7.

19 On September 23, 2020, the Recorder informed the Arizona Democratic Party that
20 the Recorder's office would not be producing the requested mail ballot data. *Id.* ¶ 9. ADP
21 informed the Recorder's office that it sought daily lists only starting October 16, 2020, to
22 have time to contact voters before the November 3 deadline to cure missing signatures on
23 ballots and the November 10 deadline to cure allegedly mismatched signatures. *Id.* The
24 Recorder's position did not change. *Id.*

25 **III. ARGUMENT**

26 The question posed by this special action is whether the Recorder can meet her
27 burden to show that she must deny production of critical election-related public records.
28 There is no dispute that the requested voting records are public records. Rather, the dispute
is over whether the Recorder should promptly produce the records without delay to allow
ADP to use the records to assist voters before the election or whether the government can
frustrate that purpose and ignore an express statutory directive by refusing ADP's request.

1 The answer is clear: the Recorder must comply promptly.

2 **A. Arizona’s Public Records Law mandates prompt compliance.**

3 Under the Arizona Public Records Law, “[a]ny person may request to examine or be
4 furnished copies, printouts or photographs of any public record during regular office hours
5 or may request that the custodian mail a copy of any public record not otherwise available
6 on the public body’s website to the requesting person.” A.R.S. § 39-121.01. Once ADP
7 served its request, the Recorder “*shall promptly* furnish such copies, printouts or
8 photographs” of the requested public records. *Id.* § 39-121.01(D)(1) (emphasis added).

9 The Arizona Court of Appeals has interpreted the word “promptly” as used in the
10 Arizona Public Records Law in accordance with its dictionary definition, “mean[ing] ‘quick
11 to act or to do what is required’ or ‘done, spoken, etc. at once or without delay.’” *W. Valley*
12 *View, Inc. v. Maricopa Cty. Sheriff’s Office*, 216 Ariz. 225, 230 (Ct. App. 2007) (citing
13 *Webster’s New World Dictionary* 1137 (2d ed. 1980)). What constitutes “prompt[.]”
14 production of records under the Arizona Public Records Law depends on particular
15 “circumstances.” *Id.*

16 Arizona law presumes that public records should be produced, and the “burden f[alls]
17 squarely upon [the Recorder] to overcome the legal presumption favoring disclosure.” *Cox*
18 *Ariz. Publ’ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993). Specifically, the Recorder must
19 promptly produce the documents unless the government “demonstrate[s] *specific material*
20 harm or risks to privacy, confidentiality, or the best interests of the state.” *ACLU of Ariz. v.*
21 *Ariz. Dep’t of Child Safety*, 240 Ariz. 142, 151 (Ct. App. 2016) (emphasis added); *see also*
22 *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 349 (Ct. App. 2001) (official
23 withholding documents “must prove specifically” why production is improper); Op. Atty.
24 Gen. No. R75-781, p. 141, 1975-76, p. 50, 1976-77 (exception applies only if the
25 information is “clearly” privileged, confidential, or detrimental to the state’s best interests).

26 The presumption of prompt compliance and the presumption of openness make sense
27 because a key purpose of the public records law is “to allow the public access to official
28 records and other government information so that the public may monitor the performance

1 of government officials and their employees” and facilitate “education of its citizenry” as
2 an “important function[] of the state.” *Phoenix Newspapers*, 201 Ariz. at 351 (quotation
3 marks and citations omitted).

4 **B. The Recorder’s refusal to produce violates Arizona’s Public Records**
5 **Law.**

6 The Recorder is required to promptly produce public records upon a valid request.
7 Preliminarily, there is no dispute that the requested voting records here constitute “public
8 records.” *Primary Consultants, L.L.C. v. Maricopa Cty. Recorder*, 210 Ariz. 393, 397-98
9 (Ct. App. 2005) (holding voter-related records are public records and noting that “public
10 records” should be “defined broadly”). Nor is there any dispute that the Recorder received
11 a valid public records request. Norton Decl. ¶¶ 6, 8 & Ex. 1. Despite receiving a valid
12 request for public records on September 1st—six weeks ago—the Recorder refuses to
13 produce responsive documents.

14 This refusal is not harmless. ADP’s purpose for requesting the public records is to
15 assist voters in curing their ballots so they can be counted in the November election. But
16 the Recorder’s refusal leaves ADP unable to assist voters who need information now.
17 Regular, rolling reports starting at least by October 16, 2020 are essential because
18 potentially numerous voters will need to be contacted to cure their ballots or else their votes
19 will not count in what may be very close elections on numerous state and federal races and
20 ballot propositions. Those voters need information promptly because the deadline to cure
21 missing signatures is November 3 (Election Day), and the deadline to cure allegedly
22 mismatched signatures is just one week later, on November 10. *See* Ariz. Elections Procs.
23 Manual 69. Over 26,000 voters are registered in Santa Cruz County. *See* 2016 Election
24 Information. With the sheer number of ballots comes the risk that ballots will not be counted
25 because voters either mistakenly failed to sign their ballots or signed their ballots in a way
26 that the election officials determine to be a mismatch. Again, over 30,000 ballots statewide
27 may require curing for the upcoming general election. Norton Decl. ¶ 6.

28 Courts have held that a custodian’s failure to produce responsive records that might

1 impact an election in sufficient time for those records to have any utility to the requestor
2 amounts to an independent irreparable harm and violates the purpose of public records laws.
3 *See Yousoufian v. Office of Ron Sims*, 168 Wash. 2d 444, 467 n.13 (2010) (finding that
4 delaying production of documents “long past their ability to influence a public vote” defeats
5 the purpose of the state public records act); *see also Wash. Post v. Dep’t of Homeland Sec.*,
6 459 F. Supp. 2d 61, 74-75 (D.D.C. 2006) (“Because the urgency with which the plaintiff
7 makes its [federal Freedom of Information Act] request is predicated on a matter of current
8 national debate, due to the impending election, a likelihood for irreparable harm exists if
9 the plaintiff’s FOIA request does not receive expedited treatment.”); *see also* A.R.S. § 39-
10 121.01(E) (“Access to a public record is deemed denied if a custodian fails to promptly
11 respond to a request for production”). Without adequate time to tell voters they need
12 to cure their ballots, voters will be disenfranchised. That disenfranchisement is
13 unacceptable: “the right to vote is ‘the protected right, implicit in our constitutional system,
14 to participate in state elections on an equal basis with other qualified voters.’” *Ariz. Minority*
15 *Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm’n*, 211 Ariz. 337, 346 (Ct.
16 App. 2005) (quoting *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1, 35 n.78 (1973)).
17 Courts have repeatedly held that the constitutionally protected right to vote includes the
18 right to a reasonable and meaningful opportunity to cure a ballot that has been rejected.¹
19 The Recorder’s refusal to “promptly” comply with the public records request here puts
20 numerous voters’ rights on the chopping block.

21 **C. The Recorder cannot meet the heavy burden to show that she should be**
22 **relieved of her duty to promptly produce the public records.**

23 As explained above, the “burden f[alls] squarely” on the “public official” seeking to

24 _____
25 ¹ *See, e.g., Martin v. Kemp*, 341 F. Supp. 3d 1326 (N.D. Ga. 2018), *stay denied*, No.
26 18-14503 (11th Cir. Nov. 2, 2018); *Saucedo v. Gardner*, No. 17-cv-183-LM, 2018 WL
27 3862704 (D.N.H. Aug. 14, 2018); *La Follette v. Padilla*, No. CPF-17-515931, 2018 WL
28 3953766 (Cal. Sup. Ct. Mar. 5, 2018), *mooted by statute* Cal. Elec. Code § 3019, Cal. Stats.
2018, c. 446 (S.B.759), eff. Sept. 17, 2018.); *Zessar v. Helander*, No. 05 C 1917, 2006 WL
642646, at *7 (N.D. Ill. Mar. 13, 2006), *vacated as moot sub nom Zessar v. Keith*, 536 F.3d
788, 793-95 (7th Cir. 2008) (holding that Illinois’s statutory change allowing cure mooted
case); *Raetzl v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354 (D. Ariz. 1990).

1 “overcome the legal presumption favoring disclosure.” *Cox Ariz.*, 175 Ariz. at 14. This
2 burden requires the Recorder to demonstrate “specific” and “material” risks to one of three
3 things: privacy, confidentiality, or the best interests of the state. *ACLU of Ariz.*, 240 Ariz.
4 at 151. The Recorder cannot overcome the presumption of public disclosure here.

5 As an initial matter, there is no reasonable argument that refusing production is
6 necessary to protect privacy or confidentiality. There are no unique privacy or
7 confidentiality interests in providing lists of publicly available voter information and,
8 indeed, Arizona courts as well as several statutes have affirmed that access to similar
9 information is permitted or even required. *See, e.g., Primary Consultants, L.L.C.*, 210 Ariz.
10 at 397-98 (holding that Recorder improperly denied access to voter information); A.R.S.
11 § 16-168 (requiring disclosure of precinct registers); *id.* § 16-153 (requiring provision of
12 voter registration lists to political parties and candidates). Nor has the Recorder raised any
13 privacy or confidentiality concerns during the parties’ negotiations over the request.

14 The Recorder also cannot meet her burden to establish specific and material harm to
15 the best interests of the state. Although producing the requested documents may require
16 some work by the Recorder’s office staff, that alone is not a reason to avoid prompt
17 disclosure. *Any* public records request necessarily requires some time by the government
18 office’s staff, yet the Arizona legislature nonetheless chose to make the government’s
19 production duty mandatory on a prompt timeline. *See* A.R.S. § 39-121.01 (requiring that
20 the government “shall promptly” produce documents).

21 Moreover, the Recorder should be able to produce the materials without substantial
22 delay. The Recorder’s office already separates incoming early ballots that have no signature
23 and ballots that appear to have a mismatched signature because the Recorder’s office is
24 required by statute to make a reasonable attempt to contact voters whose ballots are
25 deficient and must maintain an “early ballot report” and “audit report” of rejected ballots.
26 *See* A.R.S. § 16-550(A); Ariz. Elections Procs. Manual 68-69. Given the tens of thousands
27 of voters in Santa Cruz County, it would raise significant concern if the Recorder did not
28 maintain a rolling list or record of these ballots prior to the close of the cure period, as it

1 would effectively mean that the Recorder is not tracking the true status of voters' returned
2 mail ballots or its office's attempts to contact these voters and inform them about the need
3 to cure their ballots. Moreover, nearly every other county has agreed to produce similar
4 documents based on the same records that ADP seeks from Santa Cruz County here. If the
5 Recorder does not know whether she can produce responsive documents, that speculative
6 risk should lead the Recorder's office to figure out how to comply, not simply to deny a
7 valid public records request.

8 Finally, the Recorder's office has not claimed, nor could it, that it should be the only
9 entity contacting voters about their need to cure their ballots. The Recorder's duties and
10 ADP's goals work hand in hand. Specifically, the Recorder has a statutory duty to contact
11 voters soon after receiving deficient ballots to help them cure their ballots. ADP, therefore,
12 has tailored its request to include only those records that relate to ballots that were not cured
13 after the Recorder first attempted to contact the voter. Playing this out, if a ballot is deficient,
14 the Recorder's office is required by statute to quickly contact the voter to tell the voter to
15 cure the deficiency. Sometimes that works, but too often it is not enough. That is why
16 thousands of ballots went uncured and therefore uncounted in the 2020 primary statewide.
17 That number is expected to balloon in a high-turnout general election, with many thousands
18 of ballots likely slipping through the cracks statewide. Thus, history shows that many voters
19 may need additional help—help that ADP is prepared and legally allowed to provide if it
20 has the requested public records in time. To facilitate this, ADP takes care to clearly inform
21 voters who is calling, ask if they have already cured, and provide factual information to
22 voters on how to cure. Nothing prohibits this type of communication—indeed, such
23 communication lies at the core of ADP's First Amendment rights to freedom of speech and
24 association. *See Buckley v. Valeo*, 424 U.S. 1, 39 (1976) (recognizing that campaign and
25 political speech is “at the core of our electoral process and of the First Amendment
26 freedoms” (quoting *Williams v. Rhodes*, 393 U.S. 23, 32 (1968))). The only question is
27 whether ADP is going to have the documents it needs to facilitate those communications in
28 an organized way before the election.

1 If the Recorder continues to refuse production, the real risk to Santa Cruz voters is
2 that they will be disenfranchised or confused about the election process. Many voters will
3 walk away from their mailboxes or ballot drop-off locations thinking that their voice will
4 be heard in this election, when in fact, they may not. ADP can help solve this problem and
5 provide voters the information they need to cure their ballots. But ADP can do so only if it
6 has the requested voting records in time.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the Court should order Defendant to show cause why it
9 should not comply with the public records request, set an expedited hearing, and ultimately
10 order Defendant to begin producing the requested public records on or by October 16, 2020,
11 and to continue rolling productions through the end of the cure period on November 10,
12 2020.

13 Plaintiff also requests that the Court order that Defendant pay Plaintiff's reasonable
14 attorney fees and costs associated with bringing this motion. *See* A.R.S. § 39-121.02(B)
15 (“The court may award attorney fees and other legal costs that are reasonably incurred in
16 any action under this article if the person seeking public records has substantially
17 prevailed.”). ADP should not have had to go to the substantial expense to chase down these
18 public records through litigation, which is precisely why Arizona's Public Records Law
19 contemplates reimbursing plaintiffs for their fees and costs.

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1 Dated: October 13, 2020

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2
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