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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Aaron Cross, et al.,
10 Plaintiffs,

11 v.

12 Chris Nanos, et al.,
13 Defendants.
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No. CV-24-00506-TUC-RCC

ORDER

15 The Court has considered Plaintiffs' Motion for a Preliminary Injunction (Doc. 2),
16 Defendants' Response (Doc. 8), Plaintiffs' Reply (Doc. 9), and the parties' oral argument.
17 The Court will deny the preliminary injunction but order the Pima County Sheriff's
18 Department ("PCSD" or "Department") to clarify its policy on what off-duty employees
19 are prohibited from wearing while engaging in political activities.

20 "A preliminary injunction is 'an extraordinary and drastic remedy, one that should
21 not be granted unless the movant, by a clear showing, carries the burden of persuasion.'"
22 *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520
23 U.S. 968, 972 (1997) (per curiam)); *see also Winter v. Natural Res. Def. Council, Inc.*, 555
24 U.S. 7, 24 (2008) (citation omitted) ("[a] preliminary injunction is an extraordinary remedy
25 never awarded as of right"). A plaintiff seeking a preliminary injunction must show that
26 (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm without
27 an injunction, (3) the balance of equities tips in his favor, and (4) an injunction is in the
28 public interest. *Winter*, 555 U.S. at 20. "But if a plaintiff can only show that there are

1 'serious questions going to the merits'—a lesser showing than likelihood of success on the
 2 merits—then a preliminary injunction may still issue if the 'balance of hardships tips
 3 sharply in the plaintiff's favor,' and the other two *Winter* factors are satisfied." *Shell*
 4 *Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance*
 5 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)). The movant "has
 6 the burden of proof on each element of the test." *See Env'tl. Council of Sacramento v. Slater*,
 7 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000).

8 Plaintiffs have failed to meet the preliminary injunction standard. The Court finds
 9 while there are serious questions going to the merits of Plaintiffs' case, the balance of
 10 equities does not weigh sharply in Plaintiffs' favor, Plaintiffs have not shown irreparable
 11 harm, and an injunction is not in the public interest.

12 However, the Court acknowledges the seriousness of this issue, and agrees that the
 13 PCSD directive is unclear and ambiguous. The Court also understands the Department's
 14 concern that Plaintiffs should not engage in political activities looking like on-duty
 15 deputies (i.e. handcuffs, tactical belt, boots, Department colors, and Department issued
 16 clothing).

17 The Court is concerned that these colors and clothing items are not clearly defined,
 18 and that the ambiguity could have a chilling effect on others who wish to exercise their
 19 right to protest while off duty. The Court can conclude from looking at the photographs
 20 from Saturday, October 12, 2024, and Monday, October 14, 2024, that Plaintiff Cross was
 21 certainly attempting to look like an on-duty deputy. It appears to the Court, the use of a
 22 firearm, handcuffs, tactical gear, and boots was done with this intention, and the Hatch Act
 23 precludes such conduct. *See* 5 U.S.C. § 1502(a) (Under the Hatch Act, "[a] State or local
 24 officer or employee may not . . . use his official authority **or influence** for the purpose of
 25 interfering with or affecting the result of an election or a nomination for office.") (emphasis
 26 added)); *see also U.S. Office of Special Counsel Letter*, Ex. C, Doc. 8-7 at 2 ("[S]tate and
 27 local employees violate the Hatch Act when they . . . **trade on the influence of their**
 28 **positions**"). And yet, the Court is equally concerned about PCSD's ambiguous

1 description of what attire violates the Hatch Act.

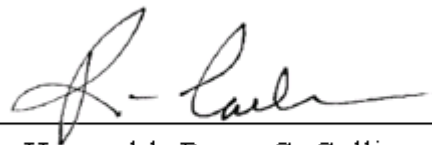
2 **The Court notes there is nothing wrong with the sign that was being held.**
3 Plaintiffs have a right to protest and express their displeasure with the current regime. But
4 this must be done in a manner in which the public cannot conclude or perceive that there
5 are deputies on duty participating in such protest. The Court is perplexed at where to draw
6 the line.

7 And so, the Court will require Defendants to submit a more definite description of
8 what clothing an off-duty employee is prohibited from wearing, including colors, clothing
9 types, and any other indices it believes create the appearance of official authority in
10 violation of the Hatch Act.

11 IT IS ORDERED that Plaintiffs' Motion for Preliminary Injunction is DENIED.
12 (Doc. 2.)

13 IT IS FURTHER ORDERED within twenty-four (24) hours of the docketing of this
14 Order, Defendants shall submit a document specifying limitations on the clothing, color,
15 or accoutrements that PCSD off-duty deputies are prohibited from wearing while engaging
16 in political activities.

17 Dated this 28th day of October, 2024.

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22 Honorable Raner C. Collins
23 Senior United States District Judge
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