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21 *Attorneys for Plaintiffs*

22 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
23 **IN AND FOR THE COUNTY OF MOHAVE**

24 ARIZONA REPUBLICAN PARTY, a
25 recognized political party; and KELLI
26 WARD, a resident of Mohave County,
27 Chairwoman of the Arizona Republican
28 Party, and a registered Arizona voter and
taxpayer,

Plaintiffs,
v.

KATIE HOBBS, in her official capacity
as Arizona Secretary of State; LARRY
NOBLE, in his official capacity as

No.

VERIFIED COMPLAINT

[Expedited Election Case]

[Show Cause Hearing Requested]

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1 RECORDER for COUNTY OF
2 APACHE; DAVID W. STEVENS, in his
3 official capacity as RECORDER for
4 COUNTY OF COCHISE; PATTY
5 HANSEN, in her official capacity as
6 RECORDER for COUNTY OF
7 COCONINO; SADIE JO BINGHAM, in
8 her official capacity as RECORDER for
9 COUNTY OF GILA; WENDY JOHN, in
10 her official capacity as RECORDER for
11 COUNTY OF GRAHAM; SHARIE
12 MILHEIRO, in her official capacity as
13 RECORDER for COUNTY OF
14 GREENLEE; RICHARD GARCIA, in his
15 official capacity as RECORDER for
16 COUNTY OF LA PAZ; REY
17 VALENZUELA, in his official capacity
18 as MARICOPA COUNTY DIRECTOR
19 OF ELECTION SERVICES AND
20 EARLY VOTING; KRISTI BLAIR, in
21 her official capacity as RECORDER for
22 COUNTY OF MOHAVE COUNTY;
23 MICHAEL SAMPLE, in his official
24 capacity as RECORDER for COUNTY
25 OF NAVAHO; CONSTANCE
26 HARGROVE, in her official capacity as
27 ELECTIONS DIRECTOR for the
28 COUNTY OF PIMA; VIRGINIA ROSS,
in her official capacity as RECORDER for
COUNTY OF PINAL; Suzanne "SUZIE"
SAINZ, in her official capacity as
RECORDER for COUNTY OF SANTA
CRUZ; LESLIE M. HOFFMAN, in her
official capacity as RECORDER for
COUNTY OF YAVAPAI; SARAH
HOWARD in her official capacity as
VOTER SERVICES COORDINATOR,
for the COUNTY OF YUMA; and the
STATE OF ARIZONA.

Defendants.

1 This Complaint is not designed to benefit or harm the electoral prospects
2 of any political party. Rather, it seeks to enforce specific requirements of the
3 Arizona Constitution that maximize the fairness of the electoral process by
4 safeguarding it against undue influence and other improprieties. Specifically,
5 Plaintiffs Arizona Republican Party (“AZGOP”) and its Chairwoman, Kelli Ward
6 (“Ward”) allege and state as follows:

7 Introduction

8 1. The abuses the Gilded Age and Arizona’s territorial days taught the
9 framers of our state’s constitution to be distrustful of the power of corporate
10 interests and political machines. They envisioned a system of elections that, by its
11 very design, protected voters and the democratic process from the possibility of
12 undue influence by bad actors.

13 2. These concerns were magnified by a revolutionary, and controversial,
14 new power the Arizona Constitution granted to the voters of our state—the ability
15 for the common citizen to stand in place of the legislature and propose and vote
16 on laws directly.

17 3. Recognizing that legislation alone was insufficient to safeguard Arizona
18 against the possibility of voter coercion, to preserve our privacy, and to prevent
19 other improprieties, our framers enshrined into our state’s constitution a common-
20 sense reform that was developed, and broadly adopted, during the era of machine
21 politics—the Australian Ballot System. *See* John D. Leshy, *The Arizona State*
22 *Constitution* 235 (2d ed. 1913) (noting that Ariz. Const. art. 7, § 1 “adopts what
23 was known as the ‘Australian’ or secret ballot”). *See also* John D. Leshy, *The*
24 *Making of the Arizona Constitution* 20 Ariz. St. L. J. 1, 68 (1988).¹ This reform
25 has four essential components: (a) ballots printed and distributed at public
26

27 ¹ Available at

28 https://repository.uchastings.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1374&context=faculty_scholarship.

1 expense; (b) ballots containing the names of all the candidates duly nominated by
2 law (a “blanket ballot”); (c) ballots distributed “only by election officers *at the*
3 *polling place*”; and (d) detailed provisions for “physical arrangements *to ensure*
4 *secrecy in casting the vote*.” John C. Fortier & Norman J. Ornstein, *The Absentee*
5 *Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J. L.
6 Reform 483, 488 (2003) (emphasis added).

7 4. To lessen the opportunity for legislative misuse of voting changes that
8 would advance special interests, aid incumbents, or provide partisan advantage,
9 the framers required constitutional amendment to eliminate these protections.

10 5. It is at general elections where initiatives and referenda are decided.
11 Thus, Arizona’s constitution takes the unusual step of prescribing a form of
12 “official ballot” to be used at general elections that meets the four requirements
13 of the Australian Ballot System. For example, the Secretary of State is to ensure
14 that ballots are printed at public expense. Ariz. Const. art. 4, pt. 1, § 1, cl. 10
15 (“he...shall cause to be printed on the official ballot at the next regular general
16 election”). He is to further ensure that ballots are distributed only by election
17 officers at the polling place. *Id.* (“official ballot” to be distributed “**at** the next
18 regular general election...in such manner that the electors may express **at the**
19 **polls** their approval or disapproval”).

20 6. No wizardry of construction was needed at the time of statehood to know
21 what article 4 required. *See Allen v. State*, 14 Ariz. 458, 460–62 (1913) (“That the
22 votes of the electors were cast at the ‘polls’ in the manner provided by [article 4,
23 section 1] is unquestioned.... [T]he electors...went to the polls and voted.”).

24 7. Further, this arrangement would have guaranteed secrecy in voting as
25 the framers understood it. To them, a secret voting system was one where an
26 elections official was charged with ensuring that voters filled out their ballots
27 alone and in-private, and thus had not been pressured or coerced into voting a
28 certain way.

1 8. To underscore the point, the Arizona Constitution also provides that,
2 though the legislature may authorize other methods of voting besides ballots (e.g.,
3 voting machines), it may not approve the use of methods that compromise the four
4 essential elements of the Australian Ballot System. Ariz. Const. art. 7, § 1.

5 9. In 1891, Arizona approved a draft constitution, which Congress failed
6 to ratify. Article 10, section 4 of Arizona's 1891 constitution provided that "[t]he
7 mode and manner of holding elections and making returns thereof shall be as they
8 now are, or may hereafter be prescribed by law." To this provision, Arizona's
9 1912 constitution adds the key qualifier "**Provided, that secrecy in voting shall**
10 **be preserved.**" Ariz. Const. art. 7, § 1 (emphasis added).

11 10. In 1891, the Arizona legislature had also passed a law expressly
12 defining secrecy in voting to mean the four principles of the Australian ballot
13 system. Leshy, *Making, supra* (citing 1891 Ariz. Terr. Sess. Laws no. 64, §§ 26,
14 32 at 71, 73). The essential protections of this law were incorporated into the 1912
15 constitution through the addition of the words "Provided, that secrecy in voting
16 shall be preserved," which did not appear in the 1891 constitution. Leshy, *supra* at
17 235 (Article 2, section 1 "adopts what was known as the 'Australian' or secret
18 ballot...that had been approved by the territorial legislature...20 years before
19 statehood."); Leshy, *Making, supra* (specifying that it was the 1891 law that the
20 constitutional convention "made the first section of the article on suffrage."). By
21 adding these words to the 1912 constitution, the framers were clarifying that future
22 legislatures were not free to legislate away the four essential provisions of the
23 Australian Ballot system. *See Ariz. State Legis. v. Ariz. Indep. Redistricting*
24 *Comm'n*, 576 U.S. 787, 823 (2015) ("Core aspects of the electoral process
25 regulated by state constitutions include voting by 'ballot' or 'secret ballot' [T]he
26 States' legislatures had no hand in making these laws and may not alter or amend
27 them.").

28 11. It was not long, however, before WWI caused these constitutional

1 requirements of secrecy in voting to crash headlong into another portion of
2 Arizona’s constitution—the requirement that “no power, civil or military, shall at
3 any time interfere to prevent the free exercise of the right of suffrage.” Ariz. Const.
4 art. 7, § 21 (the “Free and Equal Clause”).

5 12. Because the Arizona Constitution requires in-person voting, it
6 generally prohibits the state from obliging members of the armed forces to
7 perform “military duty on the day of an election.” Ariz. Const. art. 7, § 5. Clearly,
8 however, it was impossible for soldiers serving abroad to travel back to Arizona
9 to vote in the presence of an elections official. Thus, if the Free and Equal Clause
10 was not to be violated, some form of absentee voting was required.

11 13. Recognizing the potential conflict with the “Free and Equal Clause,”
12 the Arizona legislature passed “AN ACT To Enable Qualified Electors in the
13 Military or Naval Establishments...to Exercise the Right of Suffrage While
14 Absent from the State” (the “1918 Law”). 1918 Ariz. Sess. Laws ch. 11 (1st Spec.
15 Sess.). In doing so, it went to great lengths to harmonize the constitutional
16 requirements of the Australian Ballot System with those of the Free and Equal
17 Clause. Ballots were still to be printed and distributed at public expense. *Id.* § 3 at
18 31. To hew as closely as possible to the constitutional requirement that ballots
19 were to be distributed by elections officials at the polling place, a soldier was
20 required to obtain an officer’s signature on an affidavit confirming his identity
21 before casting his ballot. *Id.* And so clear was it to the 1918 legislature that the
22 Arizona Constitution’s secrecy in voting provisions required soldiers to vote in
23 private that a soldier was required, under penalty of law, to take leave of his
24 attesting officer, and his comrades in the trenches, to cast his ballot in private. *Id.*
25 § 6 (“He shall not mark his ballot in the presence of anyone unless he is physically
26 unable to mark his ballot.”).

27 14. Through 1990, Arizona voters were expected to vote in person, at the
28 polls, on election day, unless physical disability, age, religious beliefs, or travel

1 plans prevented them from doing so.

2 15. Even for voters entitled to vote absentee, the Arizona Legislature tried
3 to preserve the essential elements of the Australian Ballot System. Until 1991,
4 A.R.S § 16-541 provided that:

5 a. Absentee ballots were still to be supplied to the voter, in-person,
6 by the “county recorder or other officer in charge of elections”
7 who was required to witness the voter’s signature on the affidavit
8 requesting the absentee ballot and verifying his identity.

9 b. The voter was then to “Display ballot unmarked before the officer
10 in his presence,” vote the ballot in “such a manner that [the
11 official] cannot see your vote,” and seal the ballot in the envelope.

12 See AN ACT Amending Sections 16-541, 16-544, 16-547, 16-548, 16-552 and
13 16-594, Arizona Revised Statutes; Relating to Absentee Voting, 1991 Ariz. Sess.
14 Laws ch. 51 (1st Spec. Sess.).

15 16. Thus, the pre-1991 system still required ballots to be distributed to
16 voters, at public expense, in person, by election officers.

17 17. In 1991, the Arizona Legislature passed a law that broke with the
18 constitutionally mandated Australian Ballot System. This law provided that any
19 voter could vote early and that ballots could be requested and delivered to voters
20 by mail (i.e., the law provided for “early” or “no-excuse mail-in voting”). *Id.*
21 Requirements have subsequently been loosened even further.

22 18. Finally, in 2020, the last element of the constitutionally mandated
23 Australian ballot system—the printing and distribution of ballots at public
24 expense—was compromised when counties throughout Arizona received millions
25 of dollars in private grant money that they used to administer early voting. Lindsey
26 A. Perry, *Special Audit, Report 22-301* (Mar. 2022).² In signing a 2021 law
27 banning the practice, Governor Ducey indicated that private funding of Arizona’s
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² Available at https://www.azauditor.gov/sites/default/files/22-301_Report.pdf.

1 elections compromised integrity and voter confidence in elections, saying, “With
2 public confidence in our elections in peril, it’s clear our elections must be pristine
3 and above reproach—and the sole purview of government.” Jonathan J. Cooper
4 & Bob Christie, *Arizona Governor Signs Bill Banning Private Election Grants*
5 (Apr. 9, 2021).³

6 19. Arizona’s wholesale abandonment of the other elements of the
7 constitutionally mandated Australian Ballot System jeopardizes public confidence
8 in our elections.

9 20. Restoring the common-sense protections that the framers of Arizona’s
10 constitution bestowed on our elections should not, absent impropriety, be a partisan
11 issue. Voters who vote by mail have nearly identical demographic characteristics⁴
12 and political preferences to in-person voters. And turnout would be similar whether
13 or not in-person voting was available.⁵

14
15 ³ Available at <https://apnews.com/article/legislature-arizona-phoenix-legislation-elections-7f0b8661f5d7b673a3927bf7b4995586>.

16 ⁴ See, e.g., USAPP, *New Evidence Shows that Letting People Vote Early Benefits*
17 *Republicans While Election-day Registration Helps Democrats*, USAPP Blog,
18 <https://blogs.lse.ac.uk/usappblog/2018/10/04/new-evidence-shows-that-letting-people-vote-early-benefits-republicans-while-election-day-registration-helps-democrats/> (finding that early voters share similar demographic characteristics with in-person voters but are slightly more likely to have characteristics corelated with Republican voting preferences); Priscilla Southwell, *Final Report, Survey of Vote-by-mail Senate Election* at 14, University of Oregon (Apr. 3, 1996),
19 <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/1268/VBM%20Full%20Report.pdf?sequence=5> (finding that expanding early voting would “modify the electorate with regard to certain demographic characteristics, such as age and race” slightly, if at all).

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25 ⁵ See, e.g., USAPP, *supra* (early voters likely to vote regardless and approximately
26 six points more likely than in-person voters to vote Republican); U.S. Government
27 Accountability Office, *Issues Related to Registering Voters and Administering*
28 *Elections*, GAO.gov (June 2016), <https://www.gao.gov/assets/gao-16-630.pdf> at
103 (“We reviewed 18 studies from 12 publications that had varied findings.
Reported effects from these studies [for no-excuse early voting] ranged from a 3.2
percentage point increase to a 4.0 percentage point decrease, with many studies (10

1 21. Yet, although there have been various Arizona cases over the years that
2 have dealt with the issue of early voting, unlike those of many of our sister states,
3 our courts have never squarely reached the distinct question of whether our current
4 system of no-excuse mail-in voting is permitted under the specific terms of the
5 Arizona Constitution. *Leshy, supra* 137.

6 22. It is time for this issue to be addressed and to restore the constitutional
7 safeguards put in place by the framers of Arizona’s constitution. Arizona’s post-
8 1991 system of no-excuse mail-in voting is unconstitutional. It must be struck
9 down.

10 **Procedural History**

11 23. Plaintiffs incorporate by reference all other portions of this Complaint
12 as if fully set forth herein.

13 24. Earlier this year, Plaintiff AZGOP petitioned the Arizona Supreme
14 Court to assert original jurisdiction over a special action against the Arizona
15 Secretary of State (the “Secretary”) and the State of Arizona raising the claims
16 that (a) the use of Arizona’s unconstitutional no-excuse early voting system was
17 contrary to the Arizona Constitution and, alternatively, that (b) the use of ballot
18 drop-boxes was contrary to the Arizona Constitution and Arizona Revised
19 Statutes, and (c) the Secretary’s failure to include her signature verification
20 guidelines in the Election Procedures Manual was contrary to the Arizona Revised
21 Statutes.

22 25. The Arizona Attorney General filed a response to Plaintiff’s petition
23 stating that “the Application raises important questions about the constitutionality
24 of the early-voting system in Arizona” but claiming that relief could not be granted
25 on the procedural grounds that the Arizona Supreme Court did not have original
26 jurisdiction over the State.

27 26. The Arizona Supreme Court agreed that it could not hear an application
28 _____
of 18) reporting mixed evidence or no statistically significant effects.”).

1 seeking to have the Court exercise original (as opposed to appellate) jurisdiction
2 over the State and, on that ground alone, directed the AZGOP to refile its
3 constitutional claim in Superior Court. The Arizona Supreme Court also stated
4 that a factual record was necessary before it could consider the claims the AZGOP
5 had asserted in the alternative regarding the drop-boxes and signature verification
6 guidelines and likewise directed the parties to refile those claims in Superior
7 Court.

8 27. Subsequently, the Arizona Attorney General, the Yavapai County
9 Republican Committee (the AZGOP's Yavapai County subsidiary), and one of
10 the Yavapai County Republican Committee's officers filed an action in Superior
11 Court seeking relief as to the drop-box and signature verification claims that the
12 AZGOP had raised in its Supreme Court petition.⁶

13 **Parties, Jurisdiction, Venue, and Standing**

14 28. Plaintiffs incorporate by reference all other portions of this Complaint
15 as if fully set forth herein.

16 29. Plaintiff ARIZONA REPUBLICAN PARTY is a recognized political
17 party in the State of Arizona.

18 30. Plaintiff KELLI WARD is the Chairwoman of the Arizona Republican
19 Party as well as an Arizona citizen and taxpayer. She resides in Mohave County,
20 where she is registered to vote.

21 31. Defendant KATIE HOBBS, sued here in her official capacity, is the
22 Secretary of State of Arizona. The Arizona Constitution directly obligates her to
23 ensure that the constitutional constraints alleged to have been violated are
24 followed. In addition, she has direct authority over the activities of inferior
25 elections officials by statute. A.R.S. § 16-452.

26
27 ⁶ See https://www.azag.gov/sites/default/files/docs/press-releases/2022/complaints/Brnovich_v_Hobbs_Complaint_for_Special_Action_Relief_Final.pdf.
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1 32. This suit challenges the constitutionality of certain statutes of
2 Defendant STATE OF ARIZONA.

3 33. Defendants LARRY NOBLE, DAVID W. STEVENS, PATTY
4 HANSEN, SADIE JO BINGHAM, WENDY JOHN, SHARIE MILHEIRO,
5 RICHARD GARCIA, REY VALENZUELA, KRISTI BLAIR, MICHAEL
6 SAMPLE, CONSTANCE HARGROVE, VIRGINIA ROSS, SUZANNE
7 “SUZIE” SAINZ, LESLIE M. HOFFMAN, and SARAH HOWARD, sued here
8 in their official capacities, are the elections officials for each county who oversee
9 early voting. No wrongdoing is claimed on their part, and they are named merely
10 so that injunctive relief may issue against them.

11 34. Plaintiffs are content to allow any of the Defendants to this action to
12 participate as nominal parties upon their appearance and agreement to abide by
13 the outcome of the litigation and will not seek an award of fees or costs against
14 any Defendants who participate in this fashion.

15 35. This Court has jurisdiction over this action under A.R.S. §§ 12-122;
16 12-123; 12-2021; the Arizona Uniform Declaratory Judgments Act, the Arizona
17 Constitution, and other applicable law.

18 36. Venue is proper under A.R.S. §§ 12-401.7 (“When there are several
19 defendants residing in different counties, action may be brought in the county in
20 which any of the defendants reside.”); 12-401.15 (“Actions against counties shall
21 be brought in the county sued unless several counties are defendants, when it may
22 be brought in any one of the counties.”); 12-401.16 (“Actions against public
23 officers shall be brought in the county in which the officer, or one of several
24 officers, holds office”); and other applicable law.

25 37. Plaintiff Ward is an Arizona citizen, registered voter, and Arizona
26 taxpayer.

27 38. Plaintiff Ward has standing as an Arizona citizen and registered voter.
28 *Arizona Public Integrity Alliance v. Fontes* held that “Arizona citizens and voters”

1 have “sufficient beneficial interest to establish standing” in suits challenging
2 violation of Arizona election law. 250 Ariz. 58, 62 ¶ 12 (2020). In addition, she
3 has standing as a taxpayer since Arizona’s no-excuse mail-in voting system
4 requires the unlawful use of taxpayer funds.

5 39. Plaintiff AZGOP has direct interests in the outcome of this litigation
6 because state election laws establish its right and duty to monitor the early voting
7 process against improprieties. *See, e.g.*, ARS §§ 16-621(A) & 16-552(C) & (H).
8 Striking down as unconstitutional some or all of Arizona’s no-excuses early
9 voting statutes, and enjoining the Secretary’s unlawful acts, would alleviate some
10 or all of the burden of performing these duties.

11 40. In addition, Plaintiff AZGOP’s party primaries are currently conducted
12 by Defendants under the auspices of Arizona’s unconstitutional early voting
13 system.

14 41. Plaintiff AZGOP also has standing to assert the claims of its members
15 in a representational capacity. *Armory Park Neighborhood Ass’n v. Episcopal*
16 *Cmty. Servs.*, 148 Ariz. 1, 5–6 (1985).

17 42. In Arizona, the test is [1] whether, given all the circumstances in the
18 case, the association has a legitimate interest in an actual controversy involving
19 its members and [2] whether judicial economy and administration will be
20 promoted by allowing representational appearance.” *Id.*

21 43. Regarding the first *Armory* factor, the AZGOP has a legitimate interest
22 in an actual controversy involving its members, which include voters and
23 candidates. The constitutionality of mail-in voting goes squarely to the election
24 procedures under which the AZGOP’s candidates compete and implicates the
25 AZGOP’s ability to ensure its members vote and are elected in a manner protected
26 against undue influence.⁷

27 44. Further, ensuring that Republican voters and candidates are elected
28

⁷ *See* AZGOP, *Bylaws* at 1, available at <https://azgop.com/about/bylaws>.

1 pursuant to the laws and constitution of this state is germane to the AZGOP’s
2 resolution to protect the “electoral process” by, *inter alia*, ensuring that all
3 Arizona voters are required to prove their identities and qualifications⁸ (e.g., by
4 presenting identification, which voters cannot do at drop-box locations or via
5 mail-in voting and which, under current election laws, they can do *only* “at the
6 polls”).

7 45. Regarding the second *Armory* factor, judicial economy and
8 administration will be promoted by allowing representational appearance because
9 the AZGOP is comprised of 1.5 million registered voters,⁹ and it is not feasible to
10 address their concerns through individual lawsuits. Thus, Plaintiff AZGOP—like
11 Plaintiff Ward —has standing to bring this case.

12 **The Origins of the “Australian Ballot”**

13 46. Plaintiffs incorporate by reference all other portions of this Complaint
14 as if fully set forth herein.

15 47. Historically, voting in the U.S. was by voice or party ballots supplied
16 by political parties. These practices were rife with opportunities for domination
17 by others of the voters’ free and unfettered decision-making—abuses that would
18 inspire the reforms known as the “Australian Ballot” adopted by the framers of
19 the Arizona Constitution.

20 48. Voice voting was vulnerable to targeted rewards for correct voting and
21 credible threats of retaliation for “incorrect” voting because there was no secrecy
22 or privacy to shield the voters’ free choice from the prying eyes of others—
23 “influencers” we call them today.

24
25
26
27 ⁸ See AZGOP, *Proposal 9* (passed), available at <https://azgop.com/call/resolutions>.

28 ⁹ Ariz. Sec’y of State, *Voter Registration Statistics – January 2022*,
<https://azsos.gov/elections/voter-registration-historical-election-data>.

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49. Party tickets had the same vulnerabilities as voice voting to rewards and retaliations corrupting the voters' individual, free choices. They were supplied by political parties and had contrasting colors so that it was simply a matter of observation to know which ballot the voter slipped in the box, as shown below in the images from the elections of 1860 and 1864 involving Abraham Lincoln. There was no secrecy and thus ample opportunity for a voter's choices to be influenced by promises of rewards or fears of retaliation for voting deemed "incorrect" by others—employers, guilds, or trade associations.



Party tickets for the Republican/National Union party and candidate Abraham Lincoln in the elections of 1860 and 1864.(Library of Congress)

50. Pressure for reform focused on adoption of the secret ballot and was widespread throughout the democratic world.

51. In 1842 in England, the "Chartist" reform movement presented Parliament with the so-called "Peoples' Charter," a petition for reforms signed by an estimated 3.3 million working men and women (about a third of the adult population) that demanded (among other things) the right to vote in secret by a private ballot. Another 30 years would pass before the entrenched interests in Parliament would enact the Ballot Act of 1872 implementing that reform. J. Johnson, *Should Secret Voting Be Mandatory?*, Ch. 2 (2020).

1 52. The United States also endured the same voting corruptions as its
2 former mother country.

3 53. Historians have vividly described the corruption that infested voting in
4 the U.S. prior to the adoption of the Australian Ballot reforms:

5
6 For many men...the act of voting was a social transaction
7 in which they handed in a party ticket in return for a glass
8 of whiskey, a pair of boots, or a small amount of
9 money...Other men came to the polls with friends and
10 relatives...these friends and relatives pressured, cajoled,
11 and otherwise persuaded these men to vote a particular
12 ticket...In other cases, fathers and brothers threatened
13 'trouble in the family' if their sons and siblings voted
14 wrong. In addition, men belonging to ethnic and religious
15 communities monitored their fellow countrymen and
16 coreligionists with social ostracism serving as the penalty
17 for transgressing party lines. Some employers, particularly
18 landlords and farmers, watched how their employees voted,
19 exploiting the asymmetries in their economic
20 relationship...The American polling place was thus a kind
21 of sorcerer's workshop in which the minions of opposing
22 parties turned money into whiskey and whiskey into votes.
23 This alchemy transformed the great political economic
24 interests of the nation, commanded by those with money,
25 into the prevailing currency of the democratic masses.
26 Whiskey, it seems, bought as many, and perhaps far more,
27 votes than the planks in party platforms.

21 R. Bensel, *The American Ballot Box: Law, Identity, and the Polling Place in the*
22 *Mid-Nineteenth Century*, 17 *Stud. in Am. Pol. Dev.* 1, 24 (Dec. 11, 2003).¹⁰ *See also,*
23 *J. Johnson, supra.*

24 54. In the mid-1850s, Australia adopted a mechanism to protect voters

26 _____
27 ¹⁰ Available at <https://www.cambridge.org/core/journals/studies-in-american-political-development/article/abs/american-ballot-box-law-identity-and-the-polling-place-in-the-midnineteenth-century/2B09AD4E4C280D6D30CAB409D0F45F43>.

1 from domination by others in voting. The key centerpiece to protect voters from
2 rewards or retaliation in exercising their right to vote was the secret ballot supplied
3 by the public fisc and voted in private at polling places.

4 55. In *Burson v. Freeman*, 504 U.S. 191, 206 (1992),¹¹ the Supreme Court
5 described voter privacy through secrecy as the means adopted historically to
6 prevent voter fraud and coercion:

7 [A]n examination of the history of election regulation in
8 this country reveals a persistent battle against two evils:
9 voter intimidation and election fraud. After an unsuccessful
10 experiment with an unofficial ballot system, all 50 States,
11 together with numerous other Western democracies, settled
12 on the same solution: a **secret ballot secured in part by a**
13 **restricted zone around the voting compartments.** We
14 find that this widespread and time tested consensus
15 demonstrates that some restricted zone is necessary in order
16 to serve the States' compelling interests in preventing voter
17 intimidation and election fraud.

18 (emphasis added).

19 56. Voting in this country has long been subject to coercion from powerful
20 interests—corruption that voter secrecy and private polling places were adopted
21 in later years to prevent. Reportedly, in 1864, when Republican Senator Edwin D.
22 Morgan of New York informed President Lincoln's Secretary of War, Edwin
23 Stanton, that a number of quartermaster clerks had endorsed Gen. George B.
24 McClellan for president, Stanton fired twenty of them. When one of the clerks
25 protested, Stanton replied, "When a young man receives his pay from an
26 administration and spends his evenings denouncing it in offensive terms, he
27 cannot be surprised if the administration prefers a friend on the job." See Jonathan

28 ¹¹ In upholding a Tennessee statute requiring a 100-foot electioneering-free zone
around polling places, the court held that securing the right to vote freely for
candidates is a compelling interest of the state.

1 W. White, *How Lincoln Won the Soldier Vote*, N.Y. Times (Nov. 7, 2014).¹²

2 57. Things came to a head in the fall-out from the controversial presidential
3 election of 1888, between Benjamin Harrison (R-Ind.), who lost the popular vote
4 but prevailed in the College, and Grover Cleveland (D-N.Y.).

5 58. During the runup to the voting, a certain Harrison operative, former
6 U.S. Marshall William W. Dudley, then Treasurer of the Republican National
7 Committee, started a massive vote-buying campaign focused on Indiana, a key
8 state.

9 59. Dudley issued a circular on Republican National Committee letterhead,
10 instructing local leaders in Indiana, “Divide the floaters [persons known to sell
11 their votes] into blocks of five, and put a trusted man with necessary funds in
12 charge,” to “make him responsible that none get away and all vote our ticket.”
13 Trevor Parry-Giles, *1888-Voter Tickets-Ryan Castle*, Presidential Campaign
14 Rhetoric (Apr. 22, 2011).¹³

15 60. Leaks to the press followed galore. The hue and cry that followed
16 resulted in widespread adoption of the Australian reforms. *See Timmons v. Twin*
17 *Cities Area New Party*, 520 U.S. 351 (1997) (“[A]fter the 1888 presidential
18 election, which was widely regarded as having been plagued by fraud, many
19 States moved to the ‘Australian ballot system.’ Under that system, an official
20 ballot, containing the names of all the candidates legally nominated by all the
21 parties, was printed at public expense and distributed by public officials at polling
22 places.”).

23 61. By 1896 almost all the states in the U.S. had adopted the Australian
24 ballot. *See Doe v. Reed*, 561 U.S. 186 (2010) (Scalia, J. concurring) (“It was
25 precisely **discontent over the non-secret nature of ballot voting**, and the abuses

26 ¹² Available at [http://opinionator.blogs.nytimes.com/2014/11/07/how-lincoln-won-](http://opinionator.blogs.nytimes.com/2014/11/07/how-lincoln-won-the-soldier-vote/)
27 [the-soldier-vote/](http://opinionator.blogs.nytimes.com/2014/11/07/how-lincoln-won-the-soldier-vote/).

28 ¹³ Available at [https://campaignrhetoric.wordpress.com/2011/04/22/1888-voter-](https://campaignrhetoric.wordpress.com/2011/04/22/1888-voter-tickets-ryan-castle/)
[tickets-ryan-castle/](https://campaignrhetoric.wordpress.com/2011/04/22/1888-voter-tickets-ryan-castle/).

1 that produced, which led to the States’ adoption of the Australian secret ballot.
2 New York and Massachusetts began that movement in 1888, and almost 90
3 percent of the States had followed suit by 1896”) (emphasis added).

4 62. Arizona, too, was caught up in the progressive political movement that
5 swept the country in the early 1900s when Arizona’s constitution was drafted and
6 adopted.

7 63. Popular sovereignty through the electoral process has been described
8 as the “most constant thread running through the Arizona Constitution” with its
9 “emphasis on democracy—popular control through the electoral process.” Leshy,
10 *Making, supra* 59.

11 64. In the early 1900s, the commitment to democracy has been described
12 as “semantic magic” in the sense that, “One argued for or against anything on the
13 grounds that it did or did not represent the truly democratic way.” *Id.* Accordingly,
14 the Arizona Constitutional Convention adopted the “best known” of the
15 progressive innovations: initiative, referendum, and recall, all intended to
16 strengthen popular sovereignty by the electoral process. *Id.*

17 65. As described below, Arizona would adopt the Australian Ballot System
18 with the intent to guarantee voters would be free from outside influences in
19 exercising electoral decision-making. *See Hunt v. Campbell*, 19 Ariz. 254, 283
20 (1917) (“Australian ballot system is designed to . . . secur[e] to the voter the
21 prerogative of **freely and privately** selecting the candidates of his own
22 choice....”); *id.* at 282–83 (clarifying that the right to cast a ballot secretly was
23 also an obligation); Fortier & Ornstein, *supra* 512 (Australian ballot came about
24 in part because of a concern that, if constitutional safeguards were not put in place
25 requiring voters to cast their ballot in secret, employers or “party machines” might
26 require voters to show them their ballots to ensure they voted according to their
27 own wishes).

28

1 **The Framers of the Arizona Constitution, Distrustful of Corporate Power and**
2 **Political Machines, Constitutionally Mandate Voting by Australian Ballot.**

3 66. Plaintiffs incorporate by reference all other portions of this Complaint
4 as if fully set forth herein.

5 67. The framers of Arizona's progressive-era constitution were deeply
6 concerned with limiting the political influence and power of corporations and
7 political machines over the democratic process. *See Ariz. Corp. Comm'n v. Ariz.*
8 *ex rel. Woods*, 171 Ariz. 286, 290–92 (1992). *See also* Ariz. Const. art. 15
9 (establishing the Arizona Corporation Commission); Leshy, *supra* 356 (Arizona
10 Constitution reflects a “pronounced, progressive-era concern with regulating
11 corporations, a concern enhanced by the perceived dominance of large railroad
12 and mining companies during the territorial era.”).

13 68. One convention delegate “reflected the prevailing attitude” when he
14 announced that he was “not opposed to anything that will restrict... corporations
15 all we possibly can.” Leshy, *Making, supra* 89. Another delegate, Michael
16 Cunniff, opined that “in almost every state...corporations have altogether too
17 much influence in the state’s direction and control” and noted that Arizona had a
18 poor national reputation stemming from what he saw as its overly light
19 governance of corporations. *Id.* at 89–90. To make the point clear, the framers of
20 the Arizona constitution included a provision “broadly proscribing corporate
21 influence on ‘any election or official action.’” *Id.* at 91 (citing Ariz. Const. art. 14,
22 § 18). They also enshrined direct primary elections into the Arizona Constitution
23 to limit the influence of political machines. *Id.* at 62.

24 69. Accordingly, the Framers adopted safeguards in the Arizona
25 Constitution requiring voters to cast their ballot in secret so that employers or
26 “party machines” might not require or induce voters to show them their ballots to
27 ensure fidelity to corporate interests or the party line.

28 70. The Arizona Constitution is the carefully thought-out product of the

1 national movement at the turn of the century—resulting in antitrust measures like
2 the Sherman Act—that also sought to prevent large concentrations of wealth in
3 big corporations and big trusts from exercising their disproportionate economic
4 power to corrupt voting by dictating electoral choices to their thousands of
5 employees.

6 71. The solution embraced by Arizona, and a number of states and nations
7 the world over like Australia, was to adopt constitutional requirements to
8 guarantee voters’ electoral choices of candidates would be unfettered by external
9 influences like their employers’ power to coerce outcomes.

10 72. The Australian system of voting contained four essential provisions:
11 (a) ballots printed and distributed at public expense; (b) ballots containing the
12 names of all the candidates duly nominated by law (a “blanket ballot”); (c) ballots
13 distributed “only by election officers *at the polling place*”; and (d) detailed
14 provisions for “physical arrangements **to ensure secrecy in casting the vote.**”
15 Fortier & Ornstein, *supra* 488 (emphasis added).

16 73. As early as 1887, the territorial legislature had made an early attempt
17 to limit “undue influence” on voters by making it illegal to furnish alcohol or any
18 “entertainment whenever an election was in progress. Leshy, *Making, supra* 65.
19 Two decades later, the Arizona legislature had passed a law that required a literacy
20 test for all voters. *Id.* at 20. Emphasizing that vote-buying was of significant
21 concern in Arizona’s final days as a territory, Senator Frazer noted that the
22 legislature of Arizona “doubtless” passed this law because of the fear that,
23 otherwise, illiterate railroad workers “who are subject to the influences of money
24 and other improper influences in elections...could be influenced by corrupt men
25 to vote in the elections of Arizona.” 45 Cong. Rec. 8232 (1910).

26 74. In 1891, the Arizona voters ratified a draft constitution. Congress,
27 however, rejected the document.

28 75. Also 1891, with the passage of 1891 Ariz. Terr. Sess. Laws no. 64 (the

1 “1891 Law”), the territorial legislature adopted the Australian Ballot for the first
2 time. Leshy, *Making, supra* 68 (citing 1891 Ariz. Terr. Sess. Laws no. 64, §§ 26,
3 32 at 71, 73). *See also Timmons*, 520 U.S. 351 (widespread adoption of the
4 Australian Ballot System began after the 1888 presidential election).

5 76. The 1891 law, just like the Arizona Constitution would later do,
6 prescribed a form official ballot. Official ballots were to be prepared and
7 distributed at public expense and obtainable by voters only at polling places only
8 from election officers. 1891 Ariz. Terr. Sess. Laws no. 64, §§ 1, 15, 21, 25, 36.

9 77. Article 7, section 1 (“secrecy in voting”) was meant to reflect that the
10 essential provisions of the 1891 Law (i.e., the use of the Australian Ballot System)
11 were constitutionally required. *See Leshy, supra* 235 (Article 7, section 1 “adopts
12 what was known as the ‘Australian’ or secret ballot...that had been approved by
13 the territorial legislature...20 years before statehood.”); Leshy, *Making, supra* 68
14 (specifying that it was the 1891 law that the constitutional convention “made the
15 first section of the article on suffrage.”)

16 78. The 1891 law was entitled “AN ACT: To Promote Purity of Elections,
17 **Secure Secrecy of the Ballot** and to Provide for the Printing and Distribution of
18 Ballots at Public Expense.” 1891 Ariz. Terr. Sess. Laws no. 64.

19 79. What the 1891 law meant by ballot secrecy was this. Elections officials
20 were to set up polling stations and private voting booths. *Id.* § 24. They were to
21 erect guard rails around the voting booths which prevented any person from
22 approaching within six feet of the booths or ballots. *Id.* Unvoted ballots were at
23 all times to be within the clear view of the public. *Id.* § 25. Upon receiving their
24 ballots, voters were to “forthwith and without leaving the polling place or going
25 outside of said guard rail, retire alone to one of the booths or compartments not
26 occupied by any other person” and vote. *Id.* § 26. Before leaving the voting booth,
27 the voter was required to “fold his ballot lengthwise and crosswise, but in such a
28 way that the contents of the ballot shall be concealed and the stub can be removed

1 without exposing any of the contents of the ballot, and shall keep the same as
2 folded until he has delivered the same to the election officers.”

3 80. Elections officials were to ensure that spoiled ballots and ballots not
4 distributed to voters were “secured in sealed packages and returned to the Board
5 of Supervisors, town, city or village Recorders or Clerks from whom originally
6 received.” *Id.* § 27.

7 81. Voters were not, on pain of criminal penalty, to show their ballots to
8 any other person. *Id.* §§ 32, 36. And no person was to attempt to influence any
9 voter’s selection in any way within the polls themselves, on pain of criminal
10 penalty. *Id.* § 32.

11 82. No person, except an “inspector of election” was to receive from a
12 voter a ballot prepared for voting. *Id.* § 36. Similarly, no voter was to “receive an
13 official ballot from any person other than one of the ballot clerks having charge
14 of the ballots,” and no person “other than such ballot clerk” was to “deliver an
15 official ballot to such voter.” *Id.* § 74.

16 83. And on one point, the 1891 law was exceedingly clear: “**No person**
17 **shall take or remove any ballot from the polling place before the close of the**
18 **polls.”** *Id.* § 27.

19 84. Arizona held another constitutional convention in 1910. The
20 constitution that came out of that convention was ratified in 1912.

21 85. Article 10, section 4 of Arizona’s 1891 constitution provided that “The
22 mode and manner of holding elections and making returns thereof shall be as they
23 now are, or may hereafter be prescribed by law.” To this provision, Arizona’s
24 1912 constitution adds the key qualifier “**Provided, that secrecy in voting shall**
25 **be preserved.**” Ariz. Const. art. 7, § 1 (emphasis added).

26 86. In other words, the secrecy provisions of the 1891 Law, “AN ACT: To
27 ...Secure Secrecy of the Ballot,” which enshrined the four requirements of the
28 Australian ballot system into law, were not to be substantively deviated from by

1 future legislatures.

2 87. Arizona's first state legislature, which met the year that our state
3 constitution was ratified, demonstrated that concerns about voters being unduly
4 influenced outside of the polls were still prevalent in 1912. *See, e.g.*, 1912 Ariz.
5 Sess. Laws ch. 84, § 33 (Spec. Sess.) (prohibiting the offering to voters of "any
6 money, intoxicating liquor, or other thing of value, either to influence his vote or
7 to be used, or under the pretense of being used, to procure the vote of any person
8 or persons, or to be used at any polls, or other place prior to or on the day of a
9 primary election."). *See also id.* at § 15 (prohibiting elections officers from
10 attempting to electioneer or influence the votes of disabled voters whom they
11 assisted in marking their ballots).

12 88. Accordingly, the Arizona Constitution requires that voting take place
13 at the polls—not at the voter's kitchen table at home before mailing.

14 89. The Arizona Constitution requires expressly that ballots are to be
15 provided "*at the next regular general election*"¹⁴ in "such manner that the electors
16 may express *at the polls* their approval or disapproval of [a] measure." Ariz.
17 Const. art. 4, §1(10) (emphasis added).

18 90. The Arizona Constitution repeats its requirement that voting is to take
19 place "at the polls" in three other places in article 4, section 1. *See id.* at (1), (3),
20 & (15).

21 91. Additional constitutional provisions, discussed more fully below,
22 further support the proposition that in-person voting at the polls on a fixed date is
23 the only constitutionally permissible manner of voting.

24 92. The Arizona Supreme Court found this to be obvious in 1913, the year
25 after the constitution was ratified: "We thus find that the people, who are the
26 source of all power, in a proper manner, by their votes, *at a proper place, at the*

27
28 ¹⁴ Therefore, as discussed more fully below, this provision applies to all general
election ballots.

1 *polls*, and *at a proper time, a general election*, have registered the public will....”
2 *Allen*, 14 Ariz. at 460 (emphasis added).

3 93. And in 1917, the Arizona Supreme Court clarified that the Australian
4 Ballot meant that voters not only had the right but also the obligation to mark
5 ballots secretly—voters could not be assisted by anyone without compromising
6 the secrecy of their ballots, and thus the Australian Ballot System itself, even if
7 voters asked for such help. *Hunt*, 19 Ariz. at 282–83.

8 94. Remarkably, even after 131 years, Arizona’s statutory provisions
9 regarding the conduct of voting at the polls, on election day, are still every bit as
10 strict as they were in 1891 – in some ways even stricter. For example, it remains
11 a crime for voters to remove their own ballot from the polls and is now a crime
12 for them even to photograph it, least it be shown to others. A.R.S. §§ 16-515 (A),
13 (G); 16-1018 (1), (3), (9). Whereas in 1891 it was merely a crime to try to
14 influence a voter within the polling place itself, it is now a crime to attempt to do
15 so even within 75 feet of the polling place. A.R.S. § 16-515 (A), (F), (I).

16 95. Yet these restrictions are now vestigial in light of Arizona’s
17 implementation, and repeated expansion, of no-excuses mail-in voting. It is
18 simply absurd to prohibit electioneering within seventy-five feet of a polling place
19 while allowing it at the door of an early voter’s home. To prevent a voter from
20 removing their own ballot from the polls while permitting an early voter to fill out
21 their ballot at a political rally. To throw a voter in jail for photographing their own
22 ballot in a voting booth while expressly permitting early voters to take pictures of
23 their ballot and post them on the internet. A.R.S. § 16-1018(4). Though strictly
24 enforced by election officials and the threat of incarceration in the vicinity of the
25 polls, these prohibitions do little meaningful work to secure the voting process
26 against undue influence when the vast majority of voting takes place elsewhere.

27 96. Although litigants have challenged various mail-in voting statutes on
28 other grounds, the statutory scheme itself has never been directly challenged on

1 state constitutional grounds or directly authorized by constitutional amendment.
2 In this, Arizona is unlike many other states. *See, e.g., Bourland v. Hildreth*, 26
3 Cal. 161 (1864); *Twitchell v. Blodgett*, 13 Mich. 127 (1865); *Chase v. Miller*, 41
4 Pa. 403 (1862); *Clark v. Nash*, 192 Ky. 594 (1921); *In re Contested Election*, 281
5 Pa. 131(1924); *Thompson v. Scheier*, 57 P.2d 293 (N.M. 1936); *Baca v. Ortiz*, 61
6 P.2d 320 (N.M. 1936) (successful constitutional challenges to absentee voting in
7 other states). *See also* Fortier & Ornstein, *supra* at 496–500, 506–08 (explaining
8 that several states amended their constitutions throughout the 1800s (before
9 Arizona became a state in 1912 to expressly authorize mail-in voting, first for
10 soldiers and again during the early 1900s in response to further constitutional
11 challenges to expansions of absentee voting).

12 97. Indeed, just this year, a Pennsylvania appellate court struck down that
13 state’s no-excuses mail-in voting system under the Pennsylvania Constitution,
14 though it, unlike Arizona’s constitution, has been amended several times to
15 authorize limited mail-in voting. *See McLinko v. Commonwealth*, 270 A.3d 1243
16 (Pa. Commw. Ct. 2022) (review pending).

17 98. As further detailed below, the Arizona Constitution plainly provides
18 that no-excuse mail-in voting as currently configured is unlawful and must be
19 struck down.

20 **Arizona’s System of No-Excuse Mail-In Voting is Unconstitutional on its Face.**
21 **Arizona Constitutional Provisions—by their Plain Meaning, History, and**
22 **Initial Principles—Require In-person Voting at the Polls on a Specific Day.**

23 99. Plaintiffs incorporate by reference all other portions of this Complaint
24 as if fully set forth herein.

25 100. States first attempted to utilize absentee voting during the Civil War.
26 Both then and afterwards, in states whose constitutions “explicitly or implicitly”
27 required voting “at a local polling station,” the courts struck down such legislation
28 unless proponents of absentee voting recognized the conflict and appropriately

1 amended their state constitution. Fortier & Ornstein, *supra* at 497–99, 506–08.

2 101. State constitutions “explicitly” required voting in person if, among
3 other things, they expressly provided for a “secret ballot.” *Id.* at 506.

4 102. The Arizona Constitution explicitly requires voting in person because
5 it requires that “official ballots” only be given to voters “at the polls” and
6 expressly provides that “secrecy in voting” must be preserved.

7 103. Several other sections of the Arizona Constitution further explicitly
8 or implicitly recognize that voting is to be done in person.

9 **Ariz. Const. art. 4, § 1**

10 104. Plaintiffs incorporate by reference all other portions of this Complaint
11 as if fully set forth herein.

12 *Article 4, section 1 defines the term “Official Ballot” to mean a ballot that is*
13 *distributed and voted at the polls*

14 105. The text of the Arizona Constitution is clear that voting rights are to
15 be exercised “at the polls”:

16 “Official ballot. When any initiative or referendum...shall
17 be filed...with the secretary of state, he shall cause to be
18 printed on the official ballot *at* the next regular general
19 election the title and number of said measure, together with
20 the words ‘yes’ and ‘no’ *in such manner that the electors*
21 *may express at the polls* their approval or disapproval of
22 the measure.”

23 Ariz. Const. art. 4, § 1(10) (emphasis added).

24 106. The provision that voting is exercised “at the polls” appears in three
25 other places in article 4, section 1. *See id.* at (1) (reserving to people the “power
26 to propose laws and amendments to the Constitution and to enact or reject such
27 laws and amendments *at the polls*...and they also reserve...the power to approve
28 or reject *at the polls* any” legislative act); *id.* at (3) (“Legislature, or five per cent
of the qualified electors, may order the submission to the people *at the polls* of

1 any measure...enacted by the Legislature[.]”); *id.* at (15) (“Nothing in this section
2 shall be construed to deprive or limit the Legislature of the right to order the
3 submission to the people **at the polls** of any measure, item, section, or part of any
4 measure.”) (Emphasis added for all.)

5 107. The applicable rule of construction is the plain meaning rule: “[I]f the
6 Constitutional language is clear, judicial construction is neither required nor
7 proper.” *Perini Land & Dev. Co. v. Pima Cty.*, 170 Ariz. 380, 383 (1992).

8 108. At the time Arizona’s constitution was ratified, it was obvious to the
9 Arizona Supreme Court that the plain meaning of “the polls” did not include
10 people’s homes but rather meant designated polling places with voting booths and
11 the like. *See Allen*, 14 Ariz. at 460–62 (“That the votes of the electors were cast at
12 the ‘polls’ in the manner provided by [article 4, section 1] is unquestioned...the
13 electors...went to the polls and voted.”).

14 109. This meaning was also obvious to Arizona’s first state legislature,
15 which, in enacting the state’s first primary election law, drew a clear distinction
16 between polls and other places. *See* 1912 Ariz. Sess. Laws ch. 84, § 33 at 298
17 (Spec. Sess.) (“to be used at any polls, or other place prior to or on the day of a
18 primary election”). *See also id.* § 11 at 286 (“At least five sample ballots printed
19 on muslin or cloth shall be provided by the officers whose duty it is to print and
20 distribute the official ballots for each precinct, and such officers shall cause the
21 same to be posted in conspicuous places in each precinct before the opening of the
22 polls at such primary election, one of which sample ballots shall be posted within
23 the place where the said primary election is held, and one in some convenient place
24 immediately outside.”).

25 110. That the word “at” had a fixed, locational, meaning was clear to the
26 framers of Arizona’s constitution. For example, the constitution also prescribes
27 that “[t]he capital of the state of Arizona, until changed by the electors voting **at**
28 **an election** provided for by the legislature for that purpose shall be **at the city of**

1 **Phoenix.**” Ariz. Const. art. 20, § 9. *See also* art. 5, § 1 (“The officers of the
2 executive department during their terms of office shall reside **at the seat of**
3 **government.**”).

4 111. The words “at an election” are used several other places in the
5 Arizona Constitution. *See, e.g.*, art. 6, § 23 (“The clerk shall be elected by the
6 qualified electors of his county **at the general election**”); *id.* § 37 (“Judges of the
7 superior court shall be subject to retention or rejection by a vote of the qualified
8 electors of the county from which they were appointed **at the general election.**”).¹⁵

9 112. Even today, the ordinary dictionary meaning of “polls” is “[o]ne of
10 the places where the votes are cast at an election. The place of holding an election
11 within a district, precinct, or other territorial unit.” *Polls*, Ballentine’s Law
12 Dictionary (3rd ed. 2010).

13 113. The plain meaning of “at the polls” in Arizona’s present election law
14 code is a place with voting booths and the like established specifically for electors
15 to fill out and cast their ballots. *See* A.R.S. § 16-411(B) (polling places designated
16 by county boards of supervisors); *id.* at (J) (Secretary shall “provide for a method
17 to reduce voter wait time **at the polls**” in primary and general elections) (emphasis
18 added); A.R.S. § 16-404 (polling places have “sufficient number of voting booths
19

20 ¹⁵ *See also* Op. of Judges, 30 Conn. 591, 597–98 (1862):

21 And then, in pursuance of one of their leading purposes,
22 they directed, in as clear and explicit language as they could
23 command, and specifically, and with repetition as to each
24 of the officers, that they should be successively voted for
25 and chosen ‘at,’ or ‘in,’ that electors’ meeting. There the
26 constitution directs that the votes of the electors shall be
27 offered and received; that is the only place contemplated or
28 in any way alluded to in that instrument where they may be
offered and received; and there only, we are satisfied, they
must be offered and received, or they can have no
constitutional operation in the election for which they are
cast.

1 on which voters may conveniently mark their ballots screened from the observation
2 of others”); A.R.S. § 16-515(A) (prohibiting electioneering “inside the seventy-
3 five foot limit while the polls are open”).

4 114. Mail-in voting does not occur at a specific place designated by county
5 boards or a place with a sufficient number of voting booths, regardless of where
6 mail-in votes are actually tallied, and wait times and electioneering are irrelevant
7 at one’s own home. Because no-excuse mail-in voting is not exercised at the polls,
8 it is unconstitutional under the plain meaning of the language in the Arizona
9 Constitution.

10 115. If the Court does not find that “at the polls” ordinarily and plainly
11 means in-person voting at a specific polling place, it may apply principles of
12 statutory construction.

13 116. In interpreting constitutional and statutory provisions, courts give
14 words their ordinary meaning unless it appears from the context or otherwise that
15 a different meaning is intended; accordingly, courts interpret statutory language in
16 view of the entire text and consider the context in which it was used. *Fann v. State*,
17 493 P.3d 246, 255 ¶ 25 (Ariz. 2021) (quotations and citations omitted).

18 117. Courts “also avoid interpreting a statute in a way that renders portions
19 superfluous.” *Id.* “Each word, phrase, and sentence must be given meaning so that
20 no part will be [void], inert, redundant, or trivial.” *City of Phoenix v. Yates*, 69
21 Ariz. 68, 72 (1949).

22 118. “Constitutions, meant to endure, must be interpreted with an eye to
23 syntax, **history, initial principle, and extension of fundamental purpose.**” *Saban*
24 *Rent-a-Car LLC v. Ariz. Dep’t of Revenue*, 246 Ariz. 89, 95 ¶ 21 (2019) (quotations
25 and citations omitted; emphasis added). *See also Chavez v. Brewer*, 222 Ariz. 309,
26 319 ¶ 32 (App. 2009).

27 119. Moreover, “[s]tatutes that are *in pari materia*—those of the same
28 subject or general purpose—should be read together and harmonized when

1 possible.” *David C. v. Alexis S.*, 240 Ariz. 53, 55 ¶ 9 (2016). *See also* Antonin
2 Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252
3 (2012) (Any word or phrase interpreted by a court “is part of a whole statute, and
4 its meaning is therefore affected by other provisions of the same statute. It is also,
5 however, part of an entire *corpus juris*.... Hence laws dealing with the same
6 subject...should if possible be interpreted harmoniously.”).

7 120. Additional specific provisions of Arizona’s constitution, discussed in
8 the following sections, establish that *in-person* voting at the polls *on a fixed date*
9 in a secret manner is the only constitutional manner of voting in Arizona.

10 *Having Defined an “Official Ballot” as one distributed “at the polls,” the Arizona*
11 *Constitution then goes on to use the term in several subsequent articles*

12 121. Though the form of “official ballot” is prescribed in the section of the
13 Arizona Constitution related to initiatives and referenda, to read these provisions
14 as not prescribing the form of official ballot for all general elections results in an
15 absurdity. *See State v. Walker*, 181 Ariz. 475, 480 (App. 1995) (courts decline
16 interpretation that results in an absurdity).

17 122. For instance, although the “at the polls” provisions appear in article 4
18 (addressing the legislative department and reserving certain law-making powers to
19 the people) rather than in article 7 (addressing suffrage and elections), the “at the
20 polls” language is not limited to elections on referenda and initiatives for the
21 simple reason that referenda and initiatives are always decided “at the next regular
22 general election.” Ariz. Const. art. 4, § 1(10); *see also See Dewey v. Jones*, 159
23 Ariz. 409, 410 (App. 1989) (“It is clear that this constitutional provision [Ariz.
24 Const. art. 4, pt. 1, § 1(10)] precludes voting on statewide initiative and referendum
25 petitions other than at general elections.”). Moreover, these referenda provisions
26 were adopted contemporaneously with the provisions in article 7. *See The Records*
27 *of the Arizona Constitutional Convention of 1910*, 1402–05 & 1416–17 (John S.
28

1 Goff ed., 1990) (documenting constitution as originally adopted in 1910), and thus,
2 the framers intended all voting to occur at the polls.

3 123. Having defined the term “official ballot” in article 4 as meaning a
4 ballot distributed “at the polls,” the Arizona Constitution then goes on to use the
5 term in several other places.

6 124. Article 7, for example, provides that such “official ballots” are to be
7 used for “any election or primary.” Ariz. Const. art. 7, § 14.

8 125. By way of further example, article 7 also provides that this form of
9 “official ballot” is to be used for advisory votes¹⁶ on U.S. Senators. Ariz. Const.
10 art. 7 § 9 (“[T]he Legislature shall provide for placing the names of candidates for
11 United States Senator **on the official ballot at the general election** next preceding
12 the election of a United States Senator.”).

13 126. Article 6 provides that this form of “official ballot” is to be used for
14 the recall of judges. *See* Ariz. Const. art. 6, § 38 (“The name of any justice or judge
15 whose declaration is filed as provided in this section shall be placed on the
16 appropriate **official ballot at the next regular general election.**”).

17 127. This form of official ballot was also to be used for recall elections.
18 Ariz. Const. art. 8, § 3 (“**On** the ballots **at** said election shall be printed the reasons
19 as set forth in the petition for demanding his recall.”); *id.* § 4. (“name shall be
20 placed as a candidate on the **official ballot** without nomination”); *id.* § 6 (“The
21 general election laws shall apply to recall elections in so far as applicable.”).

22 128. It is also worth noting that other foundational provisions relating to
23 elections are not found in article 7. *See e.g.*, art. 2, § 21 (“Free and Equal” clause).

24 **Ariz. Const. art. 7, § 1**

25 129. Plaintiffs incorporate by reference all other portions of this Complaint
26 as if fully set forth herein.

27 130. Article 7, section 1 of Arizona’s constitution requires secrecy in
28

¹⁶ At the time, states did not yet directly elect their senators.

1 voting and does not allow for mail-in voting. It provides: “All elections by the
2 people shall be by ballot, or by such other method as may be prescribed by law;
3 **Provided, that secrecy in voting shall be preserved.**” Ariz. Const. art. 7, § 1
4 (emphasis added).

5 131. The phrase “such other method as may be prescribed by law” is not a
6 broad and general grant of authority allowing the legislature to deviate from the
7 Australian Ballot System. Rather, the framers included the phrase “such other
8 method” to allow the legislature to authorize voting machines in lieu of paper
9 ballots. *See McLaughlin v. Bennett*, 225 Ariz. 351, 355 (2010); *In re Contested*
10 *Election*, 281 Pa. 131, 137–38 (1924) (stating that Pennsylvania’s constitutional
11 provision, substantially identical to article 7, section 1, was included “to enable the
12 substitution of voting machines, if found practicable”); *People ex rel. Deister v.*
13 *Wintermute*, 86 N.E. 818, 819 (N.Y. 1909) (stating that New York’s constitutional
14 provision, substantially identical to article 7, section 1, was included “to enable the
15 substitution of voting machines, if found practicable”); *The Records of the Arizona*
16 *Constitutional Convention of 1910*, at 559-60 (John S. Goff ed., 1990)
17 (documenting that Arizona’s framers similarly fashioned article 7, section 1 to
18 preserve the state’s ability to adopt voting machines).

19 132. As set forth above, the phrase “[p]rovided, that secrecy in voting shall
20 be preserved” was a material addition to prior drafts of the Arizona Constitution
21 intended to limit the ability of the legislature to deviate from the essential
22 provisions of the 1891 Law, which mandated the use of the Australian Ballot. It is
23 an express constraint on the legislature’s ability to make laws regarding voting.

24 133. The framers thus included the phrase “[p]rovided, that secrecy in
25 voting shall be preserved” to clarify that voting machines, if used, must adhere to
26 the four principles of the Australian Ballot System (i.e., if machines were used in
27 the future, they were to be paid for by the taxpayer, were to allow voters to vote
28 for any duly nominated candidate, and voting would still need to be done in private

1 and at the polls).

2 134. Indeed, a Pennsylvania appellate court recently struck down
3 Pennsylvania’s “no-excuse mail-in voting” system, which “created the opportunity
4 for all Pennsylvania electors to vote by mail without having to demonstrate a valid
5 reason for absence from their polling place on Election Day, i.e., a reason provided
6 in the Pennsylvania Constitution.” *McLinko v. Commonwealth*, 2022 Pa. Commw.
7 Lexis 12, at *4 (Pa. Commw. Ct. 2022) (review pending). Of note as well is that
8 Pennsylvania has already expressly amended its constitution several times to allow
9 some forms of early voting.

10 135. The *McLinko* Court explained that the constitution’s secrecy
11 provision, adopted in 1901, derives from the Australian Ballot reforms, noting that
12 the “1901 amendment guaranteed the secrecy of the ballot, **both in its casting and**
13 **in counting**. “[T]he cornerstone of honest elections is secrecy in voting. A citizen
14 in secret is a free man; otherwise, he is subject to pressure and, perhaps, control.”
15 *Id.* at *21 (quoting *In re Second Legislative District Election*, 4 Pa. D. & C. 2d 93,
16 95 (1956)) (emphasis added).

17 136. But one need not look to historical sources or cases in other
18 jurisdictions to recognize that secrecy in voting requires voting in private, at the
19 polls. *See, e.g.*, A.R.S. § 16-580(B) (“On receiving a ballot the voter shall promptly
20 and without leaving the voting area retire alone, except as provided in subsection
21 G of this section, to one of the voting booths that is not occupied, prepare the ballot
22 in secret and vote.”). The legislature has gone so far as to criminalize the taking of
23 photographs of one’s own ballot if it is cast at the polls. A.R.S. § 16-515(G).

24 137. And military voters who make use of the UOCAVA (The Uniformed
25 and Overseas Citizens Absentee Voting Act) system of voting are required to sign
26 a “secrecy waiver” before returning their ballot by secure web portal or fax.¹⁷

27
28 ¹⁷ Federal Voting Assistance Program, *Arizona, Important Information*,
<https://www.fvap.gov/guide/chapter2/arizona> (last visited May 10, 2022).

1 Voting by mail is no more secret.

2 138. Arizona has never amended its constitution to enable the legislature
3 to create methods of voting other than by paper ballots or voting machines at the
4 polls on election day.

5 **Ariz. Const. art. 7, § 2**

6 139. Plaintiffs incorporate by reference all other portions of this Complaint
7 as if fully set forth herein.

8 140. Article 7, section 2 provides: “No person shall be entitled to vote *at*
9 *any general election*...unless such person...shall have resided in the state for the
10 period of time preceding such election...provided that qualifications for voters *at*
11 *a general election* for the purpose of electing presidential electors shall be as
12 prescribed by law.” Ariz. Const. art. 7 § 2 (emphasis added).

13 141. The meaning of the words “at any general election” or “at a general
14 election” is plain. The first two definitions of the word “at” are (1) a preposition
15 “used to show an exact position or particular place”; (2) a preposition “used to
16 show an exact or particular time.”¹⁸

17 142. To interpret the words “at a general election” to encompass mail-in
18 voting is illogical. Nevertheless, Arizona’s legislature has continued to expand the
19 time for both voting and counting early ballots, allowing electors to fill out their
20 ballots at any place they choose and at any time from “twenty-seven days before
21 the election” to election day. *See* A.R.S. § 16-542(A) (On-site “early voting
22 locations...shall be open and available for use beginning the same day that a
23 county begins to send out the early ballots.”); *id.* at (C) (“[E]arly ballot distribution
24 shall not begin more than twenty-seven days before the election.”); A.R.S.
25 § 16-548(A) (Early voter may deposit ballot at “any polling place in the county”
26 on election day.). Tallying of ballots may begin immediately. A.R.S. § 16-550(B).
27 On the other hand, under some circumstances, Arizona’s early voting statutes do
28

¹⁸ *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/at>.

1 not *require* election officials to even open early voting envelopes, let alone begin
2 tabulating ballots, until five business days after election day. A.R.S. 16-550(A).
3 There is nothing “exact” or “particular” about this timing.

4 **Ariz. Const. art. 7, § 4**

5 143. Plaintiffs incorporate by reference all other portions of this Complaint
6 as if fully set forth herein.

7 144. Article 7, section 4 provides: “Electors shall in all cases, except
8 treason, felony, or breach of the peace, be privileged from arrest during their
9 **attendance** at any election, and in going **thereto** and returning **therefrom**.” Ariz.
10 Const. art. 7, § 4 (emphasis added).

11 145. “Attendance” is defined as “[p]hysical presence plus freedom to
12 perform the duties of an attendant.” *Attendance*, Ballentine’s Law Dictionary (3rd
13 ed. 2010). The plain meaning of “thereto” is “to the thing just mentioned.”¹⁹ The
14 plain meaning of “therefrom” is “from that or from there; from a thing or place that
15 has been previously mentioned.”²⁰ Accordingly, the words “attendance at,”
16 “thereto,” and “therefrom” in section 4 can be read thus: “Electors shall...be
17 privileged from arrest during their *physical presence* at any election, and in going
18 *to any election* and returning *from any election*.”

19 146. As with article 7, section 2, it is illogical to interpret the words in
20 section 4 to encompass mail-in voting because Arizona’s early voting statutes
21 allow electors to fill their ballots anywhere and do not require physical presence at
22 any election on a specific day, as discussed above.

23 147. Because mail-in voting does not require physical attendance at the
24 polls on election day, it is impossible for “[e]lectors...*in all cases*...[to] be
25 privileged from arrest during their attendance at any election, and in going thereto
26 and returning therefrom,” Ariz. Const. art. 7, § 4 (emphasis added), rendering this
27

28 ¹⁹ *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/thereto>.

²⁰ *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/therefrom>.

1 provision void, inert, or trivial. Yet “[e]ach word, phrase, and sentence must be
2 given meaning so that no part will be [void], inert, redundant, or trivial.” *Yates*, 69
3 Ariz. at 72.

4 **Ariz. Const. art. 7, § 5**

5 148. Plaintiffs incorporate by reference all other portions of this
6 Complaint as if fully set forth herein.

7 149. Article 7, section 5 provides: “No elector shall be obliged to perform
8 military duty *on the day of* an election, except in time of war or public danger.”
9 Ariz. Const. art. 7, § 5 (emphasis added). The words “on the day of an election”
10 plainly refer to an election that takes place on a particular day.

11 150. Furthermore, if the constitution provided for absentee voting, it
12 would render this provision without purpose. Courts avoid interpreting statutes and
13 constitutional provisions “in a way that renders portions superfluous.” *Fann*, 493
14 P.3d at 255 ¶ 25. “Each word, phrase, and sentence must be given meaning so that
15 no part will be [void], inert, redundant, or trivial.” *Yates*, 69 Ariz. at 72.

16 151. Importantly, Plaintiffs are not challenging Arizona election statutes
17 that implement the Uniformed and Overseas Citizens Absentee Voting Act.
18 However, this provision still serves to illuminate the framers’ original intent in this
19 regard.

20 **Ariz. Const. art. 7, § 11**

21 152. Plaintiffs incorporate by reference all other portions of this Complaint
22 as if fully set forth herein.

23 153. Article 7, section 11 provides: “There shall be a general election of
24 Representatives in Congress, and of State, county, and precinct officers *on the first*
25 *Tuesday after the first Monday in November* of the first even numbered year after
26 the year in which Arizona is admitted to Statehood and biennially thereafter.” Ariz.
27 Const. art. 7, § 11 (emphasis added). As with article 7, section 5, this provision is
28 self-explanatory and plainly mandates that the general election must take place on

1 a specific day. See *Sherman v. City of Tempe*, 202 Ariz. 339, 343–44 ¶¶ 14–20
2 (2002).

3 154. In *Sherman*, this Court held that “the Arizona Constitution and
4 Arizona’s election statutes employ the word ‘election’ to refer to a particular day.”
5 *Id.* at 343 ¶ 19. The Court explained that the constitution “states that ‘there shall
6 be a *general election*...on the first Tuesday after the first Monday in November,”
7 and “A.R.S. section 16-211 provides for a *general election* on the first Tuesday in
8 November.” *Id.* at 343–44 ¶ 19 (citing Ariz. Const. art. 7, § 11 and A.R.S. § 16-
9 211 (1996)). Thus, the Court held, “according to the Constitution and Arizona
10 election statutes, elections occur on one particular date and the term ‘election’
11 refers to that date.” *Id.* at 344 ¶ 19.

12 155. Arizona’s mail-in voting statutes allow electors to cast their ballots
13 up to twenty-seven days before election day, a period of time that has been
14 repeatedly expanded in recent years. Thus, voting, return, and tabulation of early
15 ballots need not occur on election day, that is, “**on the first Tuesday after the first**
16 **Monday in November** of the first even numbered year....” Ariz. Const. art. 7,
17 § 11 (emphasis added). Yet “according to the Constitution and Arizona election
18 statutes, elections occur on one particular date and the term ‘election’ refers to that
19 date.” *Sherman*, 202 Ariz. at 344 ¶ 19. If the constitution allows the definition of
20 election day to be stretched so far, is there a limiting principle? Or may the
21 legislature constitutionally authorize mailing and counting of ballots for the next
22 general election to begin the day after the last election? The simple answer is that
23 early voting, in its present form, violates the Arizona Constitution.

24
25 **The Above Constitutional Provisions Should Be Read Together.**

26 156. Plaintiffs incorporate by reference all other portions of this Complaint
27 as if fully set forth herein.

28 157. Article 7 of the Arizona Constitution establishes the supreme law of

1 the state regarding suffrage and elections. Sections 1, 4, 5, and 11 of article 7—
2 which have remained unchanged since they were first adopted in 1910—make it
3 plain that the framers intended elections to be secure and in person at a specific
4 voting location (at the polls) on a specific day every other year. The provisions in
5 article 4, part 1, section 1 of the constitution, which require that voting be done “at
6 the polls,” further support this plain-meaning construction of the constitution.

7 158. Construing together *in pari materia* all the constitutional provisions
8 of article 4 and article 7, the constitution makes it plain that elections are to be in
9 person at the polls on a specific day. Elections held in this manner, in conformity
10 with the initial principles underlying the Australian ballot system (the system the
11 state adopted in 1912 when it ratified the constitution), protect the integrity of
12 elections by preventing the possibility of coercion and fraud and by providing
13 consistent privacy and security standards. Derek T. Muller, *Ballot Speech*, 58 Ariz.
14 L. Rev. 693, 696–697 (2016).

15 **The Framers’ Concerns Are Relevant in the Modern Era.**

16 159. Plaintiffs incorporate by reference all other portions of this Complaint
17 as if fully set forth herein.

18 160. Arizona’s system of early voting is unconstitutional as a matter of
19 law. Whether it is adequate to preserve “secrecy in voting” as we now understand
20 the term is immaterial. The relevant policy considerations have already been
21 weighed by the framers of the Arizona constitution and decided. Nonetheless,
22 Plaintiffs give these recent examples to illustrate that the problems the framers
23 were attempting to avoid with their strict safeguards on voting are made more
24 likely by the abandonment of those safeguards.

25 161. Mail-in voting raises all the old problems with voters’ free decision-
26 making that the Australian Ballot adopted into Arizona’s constitution sought to
27 stop—voters being unduly influenced by others.
28

1 162. In, 2005, a bipartisan Commission on Federal Election Reform
2 chaired by former President Jimmy Carter and former Secretary of State James
3 Baker found that “[a]bsentee balloting is vulnerable to abuse in several ways:
4 Blank ballots mailed to the wrong address or to large residential buildings might
5 get intercepted. Citizens who vote at home, at nursing homes, at the workplace, or
6 in church are more susceptible to pressure, overt and subtle, or to intimidation.”
7 Report of the Comm’n on Fed. Election Reform; *see also* Jessica A. Fay, *Note:*
8 *Elderly Electors Go Postal: Ensuring Absentee Ballot Integrity for Older Voters*,
9 13 Elder L.J. 453, 462 (2005) (“Many elderly persons, especially those who reside
10 in community living centers, use absentee ballots, ‘which—unless supervised by
11 election officials—are the type of voting most susceptible to fraud.”). In 2021, the
12 U.S. Supreme Court expressed its agreement with these findings by the
13 Commission. *See Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2347
14 (2021).

15 163. Further, “[i]t has been widely documented that the process of
16 absentee voting presents an increased risk of fraudulent interference when
17 compared with in-person voting conducted at polling stations. ‘Campaign workers
18 tend to target people who are elderly [or] infirm’ for coercive treatment, creating a
19 ‘psychology of almost fear and intimidation,’ tainting the sanctity of the balloting
20 process.” Fay, *supra* 462–463 (citing sources).

21 164. Though ensuring that Arizona voters were not prevented from casting
22 a ballot due to external circumstances totally beyond their control and selective
23 enforcement of voting laws might have arguably been of at least some interest to
24 the framers, security and secrecy were their overriding concerns. *See Chavez*, 222
25 Ariz. at 319 ¶ 32 (construing the Free and Equal Clause), *Yazzie v. Hobbs*, No. CV-
26 20-08222-PCT-GMS, 2020 U.S. Dist. LEXIS 184334, at *13–15 (D. Ariz. Sep.
27 25, 2020) (same).

28 165. While the state has an interest, at least in some circumstances, in

1 facilitating high voter turnout, the Arizona Constitution strikes a decided balance
2 in favor of in-person voting, which must take precedence except perhaps in
3 circumstances where such a requirement results in a wholly unique burden, over
4 and above mere inconvenience, being imposed on one class of voters. *State ex rel.*
5 *Brnovich v. City of Tucson*, 251 Ariz. 45, 52 (2021), *Yazzie*, 2020 U.S. Dist. LEXIS
6 184334 at *4.

7 166. Prior to 1991, absentee voting was potentially a permissible balancing
8 of our state constitution's requirement that the Australian Ballot System be utilized
9 with other legal prerequisites. In the pre-1991 system, the default remained in-
10 person voting with accommodations for classes of voters that may have had special
11 difficulty casting a ballot on election day, and the protections of the Australian
12 Ballot System were preserved to the maximum extent possible even for absentee
13 voters.

14 167. Subsequent to 1991, mail-in voting is no longer the exception but the
15 rule. Mail-in voting has now expanded in Arizona to the point where some
16 2,471,577 mail-in ballots were returned for signature verification and counting in
17 the 2020 federal/state election, and approximately 89% of ballots cast were early
18 ballots.²¹

19 168. Elections conducted almost exclusively by mail are hard to square
20 with a constitutional requirement of in-person voting on election day; a change of
21 this magnitude requires a constitutional amendment.

22 169. Professors James Johnson and Susan Orr, authors of the book *Should*
23 *Secret Voting be Mandatory*, have noted that there is "not a lot of research about
24 bribery and coercion in mail-in elections in the U.S." Susan Orr, *Voting by Mail is*

25
26 ²¹ Data Orbital, *General Election Early Vote*
27 *Tracker*, <https://www.dataorbital.com/2020-general-election-early-vote-tracker>
28 (last visited May 11, 2022); Citizens Clean Elections Commission, *Vote by Mail*,
<https://www.azcleanelections.gov/how-to-vote/early-voting/vote-by-mail> (last
visited May 11, 2022).

1 *Convenient but Not Always Secret*, The Conversation (Aug. 24, 2020).²² However,
2 it is obvious that “[v]ote buying schemes are far more difficult to detect when
3 citizens vote by mail.” *Building Confidence in U. S. Elections* 46 (Sept. 2005).
4 Thus, it is difficult to conclude that pressure, intimidation, and coercion are rarely
5 reported because they actually *are* rare.

6 170. However, those studies that have been conducted have had disturbing
7 findings.

8 171. For example, a 1996 survey presented to the State of Oregon’s Vote-
9 by-Mail Citizen Commission found:

- 10 a. 25.6% of respondents indicated that another person was in the
11 same room when they voted. Of those respondents who answered
12 that another person was present, 4.1% answered that the other
13 people present were friends or roommates and 6.8% answered
14 that the other people present were neither family, friends, nor
15 roommates. Southwell, *supra* 6 (Table II).
- 16 b. 1.4% reported that they felt pressure to vote a certain way
17 because of the presence of other people. *Id.* A review of this
18 survey data indicated that this number was likely under-reported.
19 Frederic C. Schaffer, *Not-So-Individual Voting: Patriarchal*
20 *Control and Familial Hedging in Political Elections around the*
21 *World*, 35 J. of Women, Pol. & Pol’y 349, 352 (2014).
- 22 c. 3.2% of respondents indicated that another person marked their
23 ballot for them. Of these respondents 14.3% replied that this
24 other person was neither a spouse nor child or grandchild.
25 Southwell, *supra* 6 (Table II).
- 26 d. 3.7% of respondents indicated that they did not mark their ballot

27
28 ²² Available at <https://theconversation.com/voting-by-mail-is-convenient-but-not-always-secret-144716>.

1 at home. Of these 60.6% indicated that they marked their ballot
2 at work, 15.2% at a friend's house, 12.1% at a ballot drop-off
3 site, and 13.1% at an "other" location. *Id.*

4 e. 11.5% of respondents who voted early reported that their ballot
5 was mailed or dropped off by someone else. *Id.*

6 172. A 2006 investigation by the UK's Metropolitan Police Authority
7 found that:

8 Some practices that are seen as acceptable outside the UK
9 have been adopted in respect of UK elections—for
10 example, the head of an extended family instructing family
11 members to vote for a particular party or candidate. Postal
12 voting increases this risk, as the safeguard of a truly secret
13 ballot is removed (Metropolitan Police Authority 2006).

14 Schaffer, *supra* 353 (further noting that "[f]or this reason, politicians from both
15 the Labour Party and the Socialist Workers Party have campaigned vigorously
16 against postal balloting").

17 173. In 1996, in a race for county commissioner in Dodge County, Georgia
18 "two competing candidates ... bid against each other for absentee ballots inside the
19 county courthouse...The candidates' staffs marked the absentee ballots." Richard
20 L. Hasan, *Vote Buying*, 88 Calif. L. Rev. 1323, 1328 (Oct. 2000) (citing *United*
21 *States v. McCranie*, 169 F.3d 723, 726 (11th Cir. 1999)).

22 174. In 2004, a candidate in Chicago paid supporters to stand near polling
23 places and encourage voters—especially those who were poor, infirm, or spoke
24 little English—to vote absentee. The supporters asked the voters to contact them
25 when they received their ballots; the supporters then "assisted" the voter in filling
26 out the ballot. *See Pabey v. Pastrick*, 816 N.E.2d 1138, 1151 (Ind. 2004). The U.S.
27 Supreme Court remarked that this case demonstrated that "not only is the risk of
28 voter fraud real but that it could affect the outcome of a close election." *Crawford*
v. Marion Cty. Election Bd., 553 U.S. 181, 195–96 (2008).

175. In 2021, the U.S. Supreme Court noted that "Fraud is a real risk

1 that accompanies mail-in voting.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. at
2 2348. The court further noted that “prevention of fraud is not the only legitimate
3 interest served by restrictions on ballot collection. Third-party ballot collection can
4 lead to pressure and intimidation. Further, a State may take action to prevent
5 election fraud without waiting for it to occur within its own borders.” *Id.* at 2329.

6 176. While Arizona has statutes on the books that seek to head off these
7 evils, they cannot replace the secrecy of in-person voting, which makes them
8 difficult to commit in the first place. For example, shortly after it adopted no-
9 excuse mail-in voting, Arizona began experiencing anew the problems arising
10 from lack of secrecy in voting. In 1994, the Arizona Supreme Court decided *Miller*
11 *v. Picacho Elementary Sch. Dist. No. 33*. In that case, the Court found that, though
12 it was unlawful, “[d]istrict employees with a pecuniary interest in [an] override’s
13 passage delivered ballots to electors whom they knew....[S]chool employees urged
14 them to vote and even encouraged them to vote for the override.” 179 Ariz. 178,
15 180 (1994).

16 177. And just recently, in 2020, Maricopa County Recorder Adrian Fontes
17 had to be enjoined from providing early voters with illegal instructions that would
18 have unwittingly left it to election officials to subjectively determine voter “intent”
19 without first providing voters the opportunity to cure the ballots they would be
20 afforded at the polls. *See Fontes*, 250 Ariz. 58.

21 178. Also in 2020, a temporary restraining order was entered against
22 Fontes preventing him from carrying out another plan to mail ballots for Arizona’s
23 presidential preference election to voters who had not requested ballots. *See TRO*
24 *(Without Notice)*, 2, *State v. Fontes*, CV2020-003477 (Super. Ct., Maricopa
25 County, Ariz.)²⁵ (finding that “sending out unauthorized ballots...could result in
26 voters attempting to vote ballots that are not lawfully authorized.”).

27
28 ²⁵ Available at <https://electionlawblog.org/wp-content/uploads/AZ-Fontes-20200313-TRO.pdf>.

1 179. Adrian Fontes is a Democrat, but shamefully, even some Republicans
2 are not immune to the temptation that a system of no-excuses mail-in voting offers
3 bad actors to violate voters' privacy and trust for political advantage. Just this
4 month, Harrisburg, Pennsylvania's largest newspaper, the *Patriot-News*, reported:

5 Republican mail ballots for the May 17 primary were being
6 diverted to a P.O. Box registered to the Republican
7 Registration Coalition. The committee's chairman — Billy
8 Lanzilotti, a onetime Republican ward leader in Philadelphia
9 and former campaign staffer for U.S. Rep. Brian Fitzpatrick,
10 R., Bucks — said he'd helped the voters fill out their ballot
11 applications, inserting his P.O. box on the form where voters
12 would typically write their home addresses.

13 Though Lanzilotti maintained he was doing this as a "service
14 to the voters" and intended to hand deliver the ballots once
15 they arrived, many of the affected voters said they did not
16 remember applying to vote by mail and had no idea why their
17 ballots were going to Lanzilotti instead of directly to them.
18 One said Lanzilotti had delivered his ballot back to the city
19 once it had been filled out — which would violate state law.²⁶

20 180. Further, Arizona requires a "culling process" by which mail-in ballots
21 in envelopes whose voter signatures do not pass initial review are culled out for a
22 curative process that process that involves contacting the voter.

23 181. Upon information and belief, election workers who are tasked with
24 contacting such voters to cure their ballots have access to voters' party registration
25 and other information correlated to electoral preferences such as address, before
26 they contact the voter.

27 182. Arizonans often receive early ballots for other voters in the mail.
28 Indeed, this has become so common in recent years that, in 2021, the legislature
had to mandate that a box be added to the outside of early ballot envelopes for
recipients to mark if they had received the wrong persons' ballot. Jeremy Duda,

²⁶ Available at <https://www.pennlive.com/news/2022/05/gop-staffers-fired-after-possible-ballot-harvesting-operation-found-in-pa.html>

1 *Early Ballot Envelopes Look a Little Different for Current AZ Elections*, AZ Mirror
2 (Oct. 15, 2021).²⁷

3 183. The fact that early ballot envelopes include a voter's name and
4 address also creates problems beyond the obvious. While this may not seem like
5 much information, political advertising is a sophisticated business. Anyone with
6 money to spend may purchase access to highly detailed voter databases. By cross-
7 referencing these databases with a voter's name and address, political consultants
8 can figure out much more than whether a given voter is likely to be a Republican
9 or Democrat. That is child's play. The good ones can tell you that voter is 3% more
10 likely to vote for a given presidential candidate because they are a blue-collar
11 worker. Indeed, they can access almost 30 "basic demographic variables" about
12 that voter and say exactly which messaging is most likely to change their opinion
13 on any given issue.²⁸ Not a problem for voters who vote in person on election day
14 – their ballot is never attached to any identifying information. But for voters who
15 vote early, all this information and more might as well be stapled to their ballot as
16 it sits in their mailbox and passes through hand after hand, none of which belong
17 to election officials, on the way to the counting center. That hardly comports with
18 a layperson's notion of secrecy in voting, much less what the framers had in mind.

19 184. Also available for purchase from the counties themselves is real-time
20 data on who has **returned** their early ballot.²⁹

21 185. Remarking to a neighbor in the parking lot of a polling place that they
22 really ought to vote for "candidate X" is criminalized to safeguard the elections

23
24 ²⁷ Available at <https://www.azmirror.com/blog/early-ballot-envelopes-look-a-little-different-for-current-az-elections/>.

25 ²⁸ Esri, *Was geography a factor in the 2016 election?*,
26 <https://desktop.arcgis.com/en/analytics/case-studies/election-analysis-intro.htm>
(last visited May 14, 2022).

27 ²⁹ See e.g., Maricopa County Recorder, *Public Record Request for Voter*
28 *Information*, <https://recorder.maricopa.gov/pdf/voterpublicdatarecordrequest.pdf>
(last visited May 14, 2022).

1 system against undue influence. A.R.S. § 16-515(I). Yet anyone may purchase
2 early ballot return data, use it to identify a voter with an early ballot sitting in their
3 mailbox, show up at their door with a message tailored to that particular voter, and
4 stand there until they fill out their ballot and drop it in the mailbox. Exactly the sort
5 thing the framers intended to prevent - exacerbated by modern technology.

6 186. If all this may be done within the framework of statutory law, it hardly
7 needs be said that endless opportunities for mischief are open to persons and
8 organizations willing to operate outside those bounds.

9 187. Due to the volume of ballots involved in mail-in voting, the public's
10 perception of the integrity of election results depends upon its perception of the
11 integrity of mail-in voting.

12 188. Surveying the electorate since 2020 indicates that approximately 47%
13 of Republican voters, 10% of Democrat voters, and 25% of Independents do not
14 have confidence in the integrity of the 2020 results.

15 189. Indeed, the secrecy of early voting has been questioned not just by
16 Republicans but by Democrats as well. In 2016, for example, Democratic
17 supporters of Bernie Sanders working for the Audit USA project conducted an
18 investigation which found that it was possible to ascertain who a voter had likely
19 voted for from the information visible from the outside of early ballot envelopes
20 and then sort the envelopes accordingly. J.T. Waldron, *In California, Ballots from*
21 *Likely Clinton Voters Were Counted First While Unaudited Sanders-heavy*
22 *Batches Came in Later*, Audit USA.³⁰ They alleged that this had been used by
23 Clinton allies to sift out Sanders ballots and deprive some of his supporters of their
24 voting rights. *Id.*

25 190. Mail-in voting is not the exclusive or the necessary way to count such
26

27 ³⁰ Available at [https://www.auditelectionsusa.org/2016/07/05/in-california-ballots-](https://www.auditelectionsusa.org/2016/07/05/in-california-ballots-from-likely-clinton-voters-were-counted-first-while-unaudited-sanders-heavy-batches-came-in-later/)
28 [from-likely-clinton-voters-were-counted-first-while-unaudited-sanders-heavy-](https://www.auditelectionsusa.org/2016/07/05/in-california-ballots-from-likely-clinton-voters-were-counted-first-while-unaudited-sanders-heavy-batches-came-in-later/)
[batches-came-in-later/](https://www.auditelectionsusa.org/2016/07/05/in-california-ballots-from-likely-clinton-voters-were-counted-first-while-unaudited-sanders-heavy-batches-came-in-later/).

1 a number of votes. In the 2022 election for the president of France, 32,077,401
2 ballots were reportedly voted and counted using paper ballots in paper envelopes
3 with no absentee or early voting with the results reported within hours. Associated
4 Press, *Explainer: How France's Old-school Voting System Works* (Apr. 24,
5 2022).³¹ And, of course, Arizona itself has a history of successfully running
6 elections without no-excuses mail-in voting.

7 Conclusion

8 191. Plaintiffs incorporate by reference all other portions of this Complaint
9 as if fully set forth herein.

10 192. The Arizona Constitution was groundbreaking in many ways,
11 including how easy the framers made it to amend. The people may propose
12 amendments of their own initiative and pass them by simple majority. If the
13 Arizona Constitution's constraints no longer suit Arizonans, we may easily
14 dispense with them, just as citizens of some of our sister states have done.

15 193. Thus, this Complaint is not about what is the best form of voting as a
16 matter of policy. Reasonable people can, and do, disagree about how our elections
17 should be conducted. Those debates can be had in the context of public debate
18 over a constitutional amendment. Then the people can decide for themselves
19 whether to revisit the balance that our framers drew between security and
20 convenience. Such a process can only increase public confidence in our elections
21 because any new provisions that are put in place regarding the form and manner
22 of voting will have the buy-in and support of the people of Arizona.

23 194. Until then, the balance struck by our framers must be respected—and
24 the constitution they bequeathed to us enforced.

25 195. Secretary Hobbs has failed to comply with her constitutional duty to
26

27 ³¹ Available at [https://abcnews.go.com/Business/wireStory/explainer-frances-](https://abcnews.go.com/Business/wireStory/explainer-frances-school-voting-system-works-84274943)
28 [school-voting-system-works-84274943](https://abcnews.go.com/Business/wireStory/explainer-frances-school-voting-system-works-84274943).

1 ensure that voting takes place in conformity with the requirements of Arizona’s
2 constitutionally mandated Australian Ballot System. Although they have more
3 limited policymaking authority in this regard, Arizona’s county election officials
4 have likewise failed to comply with this duty.

5 196. The State of Arizona has violated the Arizona Constitution by
6 enacting laws not in conformity with the requirements of Arizona’s
7 constitutionally mandated Australian Ballot System.

8 197. While it may be “regretted that so convenient, useful and popular
9 legislation should be found in conflict with our basic law,” as the Kentucky
10 Supreme Court remarked when striking down that state’s mail-in voting system
11 as unconstitutional under Kentucky’s constitution, “[t]he only remedy is an
12 amendment to the Constitution, which the people can have, if they wish.” *Clark*
13 *v. Nash*, 192 Ky. 594, 597–98 (1921) (interpreting in-person provision³² of state
14 constitution). Kentuckians later ratified a constitutional amendment to allow for
15 mail-in voting, and Arizonans may do the same. That, however, is a choice for the
16 people, and not the legislature, to make.

17
18 WHEREFORE Plaintiffs petition this Court:

- 19 A. For a declaration that Arizona’s post 1990 system of no-excuse mail-
20 in voting is contrary to the Arizona Constitution.
- 21 B. For preliminary injunctive relief enjoining Defendants from carrying
22 out or enforcing the unconstitutional provisions of Arizona’s no-excuse
23 mail-in voting system in the 2022 general election.
- 24 C. For permanent injunctive relief enjoining Defendants from carrying
25 out or enforcing the unconstitutional provisions of Arizona’s no-excuse
26

27 ³² “All elections by the people shall be by secret official ballot, furnished by public
28 authority to the voters at the polls, and marked by each voter in private at the polls
and then and there deposited.” Ky. Const. § 147.

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mail-in voting system in all future elections.

- D. Alternatively, for declaratory and preliminary and permanent injunctive relief enjoining Defendants from carrying out or enforcing the unconstitutional provisions of Arizona’s no-excuse mail-in voting system in all future (a) general elections and/or (b) elections on initiatives and referenda and/or (c) elections for all officials other than presidential electors and/or members of congress (d) and/or enjoining Defendants from enforcing such other applications of Arizona’s voting system as this Court may declare to be unconstitutional.³³
- E. For their attorney fees and costs of suit pursuant to A.R.S. §§ 12-2030, 12-348, the private attorney general doctrine, *see Ariz. Ctr. for Law in Pub. Interest v. Hassell*, 172 Ariz. 356, 371 (App. 1991), and other applicable law.
- F. For such other relief as this court finds to be just and proper.

RESPECTFULLY SUBMITTED this 17th day of May 2022.

By /s/Veronica Lucero

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³³ If the court grants one or more of these forms of alternative relief, the court may need to order the use of a separate ballot for voters who wish to vote by mail for these races only.

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Attorneys for Plaintiffs

I CERTIFY that a copy of the forgoing has been served upon the other parties to this action in conformity with the applicable rules of procedure.

By /s/Yuka Bacchus
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VERIFICATION

I certify under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Name: kelli ward

Signature: 

Date: 5/17/2022

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