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** Application for Pro Hac Vice Forthcoming*

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ARIZONA SUPERIOR COURT

MOHAVE COUNTY

ARIZONA REPUBLICAN PARTY; KELLI WARD, Plaintiffs, v. KATIE HOBBS, in her capacity as the Secretary of State of Arizona, et al., Defendants.	No. S8015CV2022-00594 **SECRETARY OF STATE'S RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION** **– AND –** **MOTION TO DISMISS COMPLAINT** (Assigned to the Hon. Lee F. Jantzen) (OSC Hearing set for June 3 at 1:30 pm)

Introduction

After over a century of successful absentee voting and over three decades of no-excuse early voting in Arizona, Plaintiffs Arizona Republican Party ("ARP") and its Chair Kelli Ward now challenge the legality of Arizona's entire early voting system. Their claims are part of a broader ongoing effort to sow doubt about our electoral process to justify infringing voting rights. Even though Plaintiffs' claims are legally baseless, they threaten our democracy. Arizona Secretary of State Katie Hobbs ("Secretary") urges the Court to promptly deny Plaintiffs' Motion for Preliminary Injunction and dismiss the Complaint for any of several reasons.

First, Plaintiffs lack standing because their claims amount to generalized grievances, not cognizable injuries personal to Plaintiffs.

Second, their request to upend early voting this election year are way too late and seek relief that would prejudice all Arizonans. Plaintiffs' claims were already too late when they filed them in the supreme court, yet they waited another six weeks after the court declined jurisdiction to refile the same case in this Court. Plaintiffs' claims seeking relief this election year and their request for a preliminary injunction are barred under the laches and *Purcell* doctrines.

Third, Plaintiffs' constitutional challenge to early voting[1] fails as a matter of law. Plaintiffs cobble together cherry-picked words and phrases from various parts of the Constitution and urge the Court to infer that the framers intended to prohibit absentee voting. They ask the Court to invalidate and enjoin Arizona's entire "post 1990 system of no-excuse mail-in voting" (without even identifying the statutes they seek to invalidate), including "in the 2022 general election." [Compl. Requests for Relief; *see also* Mot. at 17] The Court should reject Plaintiffs' half-hearted facial challenge to Arizona's longstanding vote-by-mail system.

For one thing, Article VII, Section 1 of the Arizona Constitution does not require in-person voting. That provision provides that "[a]ll elections by the people shall be by ballot, or

[1] In general, the term "early voting" is broadly defined to include early in-person and mail-in voting. When using "early voting" in this brief, the Secretary intends the same broad meaning.

by such other method as may be prescribed by law; [p]rovided, that secrecy in voting shall be preserved." (Emphasis added). It ensures the right to a secret ballot, but leaves the precise methods of voting to the legislature. The Legislature has done that by adopting early voting laws that preserve secrecy in voting.

Plaintiffs next rely on Article IV, Part 1, Section 1 of the Arizona Constitution. But that provision has nothing to do with the manner of voting at an election, and it doesn't limit the Legislature's authority under Article VII, Section I. Article IV reserves to the people the right of initiative and referendum. Plaintiffs' attempt to use a constitutional provision granting a fundamental right to implicitly restrict another fundamental right is unconvincing.

Plaintiffs' reliance on Article VII, Sections 2, 4, 5, and 11 also fail—those provisions do not govern the manner of voting. Section 2 describes voter qualifications, Sections 4 and 5 protect voters from arrest or military duty while voting on Election Day, and Section 11 prescribes the date for general elections. None of these provisions mandate casting a vote in-person on Election Day.

Arizona's early voting system is secure, efficient, and complies with the Arizona Constitution. Plaintiffs' claims to the contrary lack merit.

Finally, the Court should dismiss the Complaint and deny Plaintiffs' Motion because their claims fail on the merits, but it can deny the Motion for another reason: Plaintiffs establish no other injunction factors. Plaintiffs will suffer no injury (let alone an irreparable one) without an injunction, and the balance of hardships and public interest favor upholding Arizona's longstanding early voting system.

Factual Background

I. Historical Voting Practices and the Australian Ballot System.

The American colonies historically elected government officials using "the *viva voce* method or by the showing of hands, as was the custom in most parts of Europe." *Burson v. Freeman*, 504 U.S. 191, 200 (1992). This method of voting was thus "an open, public decision,

witnessed by all and improperly influenced by some." *Id.* Because of the potential for bribery and other abuses, a paper ballot system eventually replaced this *viva voce* system. *Id.*

Though paper ballots were an improvement, "the evils associated with the earlier *viva voce* system" still cropped up. *Id.* Political parties made ballots "with flamboyant colors, distinctive designs, and emblems so that they could be recognized at a distance," and bad actors still engaged in bribery and intimidation. *Id.* at 200-01.

Other countries experienced similar problems and tried to find solutions. *Id.* at 202. "Some Australian provinces adopted a series of reforms intended to secure the secrecy of an elector's vote. The most famous feature of the Australian system was its provision for an official ballot, encompassing all candidates of all parties on the same ticket," along with other "measure[s] adopted to preserve the secrecy of the ballot." *Id.* Many states began adopting the "Australian system" in the late 19th century. *Id.* at 203-04.

II. Arizona's Early Election Procedures and Adoption of the Constitution.

The Territory of Arizona adopted many features of the Australian system twenty-one years before statehood, including detailed procedures for ballot preparation, voting in a private voting booth, and preserving the secrecy of votes. Laws 1891, Territory of Ariz., 16th Leg. Assemb., No. 64 §§ 15-32, attached as **Exhibit 1**.

Two decades later, the Arizona Constitution's framers expressly preserved the right to a secret ballot, but left it to the Legislature to prescribe the precise "method" of voting in elections. Ariz. Const. art. VII § 1. During the Constitutional Convention, two delegates proposed striking Article VII, Section 1, but other delegates briefly noted that the provision was like a recent amendment to the California Constitution, that "several states" had recently used voting machines, and including this constitutional provision would preserve other voting methods such as "use of the voting machine." John S. Goff, *The Records of the Arizona Constitutional Convention of 1910* at 559-60, attached as **Exhibit 2**.

Among other provisions governing "Suffrage and Elections," Article VII also dictates voting qualifications (§ 2), preserves the right of privilege from arrest while lawfully voting (§ 4), excuses certain military personnel from duty on Election Day (§ 5), and sets a biennial general election date (§ 11). Article II, Section 21 of the Constitution also protects the franchise through the Free and Equal Elections Clause: "[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

III. Arizona's Long History of Mail-In Voting.

Shortly after statehood, the Legislature established absentee voting for a select group of registered voters: active military personnel. It passed the Soldiers Voting Bill in 1918, which authorized all active military personnel to vote through registered mail in war or peace time. 1918 Ariz. Sess. Laws ch. 11 (1st Spec. Sess.), attached as **Exhibit 3**. In the House, the bill "raised no special opposition in debate and when it came to a final vote, [and] it passed by a vote of 33 to 0, with two excused." J. Morris Richards, *History of the Arizona State Legislature 1912-1967*, vol. 5, pt. 2, 3rd Leg., 1st Spec. Sess. (Ariz. Leg. Coun. 1990) at 29, attached as **Exhibit 4**. It passed 16 to 0 in the Senate, with three absent or excused. *Id.* at 30.

Four senators (Fred T. Colter, Alfred Kinney, C. M. Roberts, and Mulford Winsor) were also delegates of the Constitutional Convention eight years earlier. *Compare* [Ex. 2 at 2], *with* J. of the Sen., 3rd Leg., 1st Spec. Sess. (Ariz. 1918) at 7, attached as **Exhibit 5**. All four voted for the bill. [Ex. 5 at 242-51]. The bill was also signed into law by Governor George W. P. Hunt, who served as the president of the Constitutional Convention. [Ex. 2 at 4]. When convening the Legislature for this special session, Governor Hunt's first stated purpose was "[t]o extend the franchise to electors of the State of Arizona in the military and naval establishments of the United States, wherever they may be stationed." [Ex. 5 at 4].

After the passage of the 19th Amendment to the U.S. Constitution, the Legislature expanded mail-in voting to any eligible voter who was absent from their county on Election Day. 1921 Ariz. Sess. Laws ch. 117 (Reg. Sess.), attached as **Exhibit 6**. Senator James Scott, who

also served as a delegate of the Convention, voted for the bill. *Compare* [Ex. 2 at 2], *with* J. of the Sen., 5th Leg., Reg. Sess. (Ariz. 1921), attached as **Exhibit 7**.

Over time, the Legislature adopted more amendments to extend mail-in voting to even more electors. In 1925, the State authorized eligible voters with a physical disability to vote by absentee ballot if they proved their disability with a doctor's note. Absentee ballots became known as the "Absent or Disabled Voter's ballot." 1925 Ariz. Sess. Laws ch. 75 (Reg. Sess.), attached as **Exhibit 8**. Senators Colter, Kinney, and Winsor (all delegates of the Constitutional Convention who also voted for the 1918 vote-by-mail law) voted for this bill. J. of the Sen., 7th Leg., Reg. Sess. (Ariz. 1925) at 541-42, attached as **Exhibit 9**. Governor Hunt also signed that bill. *Id.*; J. of the H., 7th Leg., Reg. Sess. (Ariz. 1925), attached as **Exhibit 10**.

After World War II, the Legislature expanded absentee voting to anyone who could not vote on Election Day "on account of the tenets of his religion." 1953 Ariz. Sess. Laws ch. 76 (1st Spec. Sess.), attached as **Exhibit 11**. The Legislature made other changes to absentee voter qualifications between 1955 and 1970. *See* 1955 Ariz. Sess. Laws ch. 59 (1st Reg. Sess.) (removing doctor's note requirement for voters with disabilities), attached as **Exhibit 12**; 1959 Ariz. Sess. Laws ch. 107 (1st Reg. Sess.) (adding merchant marines to military personnel who could vote by mail), attached as **Exhibit 13**; 1968 Ariz. Sess. Laws ch. 17 (2nd Reg. Sess.) (authorizing voters with "visual defects" to vote absentee), attached as **Exhibit 14**; 1970 Ariz. Sess. Laws ch. 151 (2nd Reg. Sess.) (extending absentee voting to voters 65 years and older, and to voters who live 15 or more miles from a polling place), attached as **Exhibit 15**.

And in 1991, the State amended the absentee voting laws to allow any qualified elector to vote by absentee ballot. SB 1320, 40th Leg., 1st Reg. Sess. (Ariz. 1991) (A.R.S. § 16-541).[2] The Legislature has also enacted many detailed procedures ensuring the secrecy of early ballots and preventing fraud and coercion. *E.g.*, A.R.S. § 16-545(B)(2) (early ballot envelopes must

[2] The Legislature changed the term "absentee voting" to "early voting" in 1997. SB 1003, 43rd Leg. 2nd Spec. Sess. (Ariz. 1997).

conceal the ballot and be tamper-evident when sealed); A.R.S. § 16-548(A) (requiring voters to conceal their votes and fold their voted early ballot so it cannot be seen); A.R.S. § 16-552(F) (requiring election officials to remove voted ballot from envelope without unfolding or reviewing it); A.R.S. § 16-1007 (making it a crime for election officials to violate secrecy of ballot); A.R.S. § 16-1005 (criminalizing various conduct relating to early ballots).

For over 100 years, our State preserved Arizonans' fundamental right to vote by offering some form of early voting. And early voting is extremely popular in Arizona, regardless of party affiliation: nearly 80 percent of voters voted early in 2020. Indeed, most of Plaintiff ARP's voters vote early, including Plaintiff Ward, who voted early as recently as 2020.

Argument

A party seeking a preliminary injunction has the burden of showing: (1) a strong likelihood of success on the merits; (2) the possibility of irreparable harm; (3) that the balance of hardships tips in their favor; and (4) that public policy favors the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Arizona courts consider these factors on a sliding scale, and will grant an injunction only if a plaintiff proves "probable success on the merits and the possibility of irreparable injury," or "the presence of serious questions and 'the balance of hardships tip sharply' in his favor." *Id.* When deciding a Rule 12(b)(6) motion to dismiss, courts dismiss claims that fail "as a matter of law." *Levine v. Haralson, Miller, Pitt, Feldman & McAnally, P.L.C.*, 244 Ariz. 234, 237 ¶ 7 (App. 2018).

Plaintiffs' claims fail at the outset because (1) they lack standing, and (2) their claims for relief in this election year are untimely under the laches and *Purcell* doctrines. But even if the Court gets to the merits, Plaintiffs fail to state a claim that Arizona's early voting system is facially unconstitutional. Because Plaintiffs' claims fail as a matter of law, the Court should deny their Motion and dismiss the Complaint with prejudice.

I. Plaintiffs Lack Standing.

The Court should dismiss the Complaint because Plaintiffs lack standing. Neither Ward

nor ARP claim that their, or in the case of ARP, their members', right to cast a ballot or have their ballot counted is harmed. Instead, they allege only non-cognizable, generalized grievances.

"[A]s a matter of sound judicial policy," Arizona courts "require[] persons seeking redress in the courts first to establish standing[.]" *Bennett v. Napolitano*, 206 Ariz. 520, 524 ¶ 16 (2003). Though Arizona courts "are not constitutionally constrained to decline jurisdiction based on lack of standing," they will not consider a claim that fails to allege a "particularized injury," absent "exceptional circumstances." *Id.* at 527 ¶ 31. No exceptional circumstances exist here.

Plaintiff Ward claims [¶ 38][3] she has standing to challenge any election law just because she is "an Arizona citizen and registered voter," citing *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 ¶ 12 (2020). That case doesn't help Ward. There, the supreme court let the plaintiffs' claims proceed because courts apply "a more relaxed standard for standing in mandamus actions" brought under A.R.S. § 12-2021, which doesn't apply here. *Id.* ¶ 11. Ward also claims [¶ 38] she has standing "as a taxpayer since Arizona's no-excuse mail-in voting system requires the unlawful use of taxpayer funds." But to have standing under a "taxpayer" standing theory, "a taxpayer must be able to demonstrate a direct expenditure of funds that were generated through taxation, an increased levy of tax, or a pecuniary loss attributable to the challenged transaction[.]" *Dail v. City of Phoenix*, 128 Ariz. 199, 202 (App. 1980); *see also Bennett*, 206 Ariz. at 527 ¶ 30 (taxpayers did not have standing when they didn't challenge an illegal expenditure of taxpayer funds). Plaintiffs challenge Arizona's early voting laws, not a specific use of taxpayer funds. Ward's "citizen" and "taxpayer" theories would "eviscerate standing doctrine's actual injury requirement." *See Ariz. Sch. Boards Ass'n, Inc. v. State*, 252 Ariz. 219, __ ¶ 18 (Ariz. 2022) (quotation omitted).

For its part, ARP claims [¶ 39] it has standing based on its "right and duty to monitor the early voting process against improprieties" and its general interest [¶ 44] in "protect[ing] the

[3] Cites to paragraph numbers refer to the Complaint, and cites to page numbers refer to the Motion.

'electoral process.'" This is precisely the type of "generalized harm that is shared alike by all" and cannot establish standing. Sears v. Hull, 192 Ariz. 65, 69 ¶ 16 (1998); *see also* Raines v. Byrd, 521 U.S. 811, 819 (1997) (a plaintiff must show he has "a 'personal stake' in the alleged dispute, and that the alleged injury suffered is particularized as to him."). And ARP's concerns about potential "improprieties" and its interest in preserving the "electoral process" amount to "pure issue-advocacy," not a cognizable injury. Ariz. Sch. Boards Ass'n, 252 Ariz. ¶ 18.

II. Plaintiffs' Requests To Upend Early Voting Mid-Election Year Are Improper.

Even if Plaintiffs had standing (they don't), they brought their claims far too late to get relief this election year. Arizona has allowed early voting for more than a century, and it has allowed "no-excuse" early voting for over three decades. Yet Plaintiffs waited until the middle of the 2022 election year – and less than a month before early voting starts in the primary election – to challenge Arizona's entire early voting system.[4] Plaintiffs waited until the eleventh hour and now ask the Court [at 17] for a preliminary injunction before the "2022 general election." The Court should not overlook that Plaintiffs' claimed "emergency" is entirely of their own making.

First, the *Purcell* doctrine bars Plaintiffs' claims for relief in 2022. Courts generally should not alter election rules on the eve of an election. *E.g.*, Purcell v. Gonzalez, 549 U.S. 1, 5 (2006). This is because "[c]ourt orders affecting elections can themselves result in voter confusion and consequent incentive to remain away from the polls," a risk that only increases "[a]s an election draws closer." *Id.* at 4-5. That risk is even greater here, where Plaintiffs seek to overturn enduring election procedures that Arizonans have overwhelmingly relied on for decades. Many counties have already administered local elections this year, *see* Citizens Clean Election Comm'n, *Past Arizona Elections* (2022), and all counties have planned for and are preparing to administer the August primary and November general election. *See, e.g.*, Maricopa

[4] Early ballots for UOCAVA voters will go out on June 18, and early voting for other voters begins on July 6. *See* Citizens Clean Election Comm'n, Upcoming Arizona Elections.

Cnty. Elections Dep't, 2022 Elections Plan; Pima Cnty. Bd. of Supervisors, Agenda (May 3, 2022).[5] Arizona's largest county, for example, selected its vote center locations using detailed "forecast models to estimate turnout" on election day. Maricopa Cnty. Elections Dep't, 2022 Elections Plan at 12-15. If the county were enjoined from using early voting in 2022 elections, it would be forced to try to accommodate over a million more in-person voters on election day that it didn't budget or plan for. *Id.* Changing the rules this late in the game about how Arizonans can exercise their right to vote would be disastrous. Even if it were possible for election officials to redo Arizona's entire election system in a matter of weeks in an election year, it would cause mass voter confusion; the precise harm *Purcell* aims to prevent.

Second, laches precludes Plaintiffs' requested relief. The laches doctrine prevents "dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice." *Lubin v. Thomas*, 213 Ariz. 496, 497 ¶ 10 (2006).

Plaintiffs' delay is no doubt unreasonable. When deciding whether delay is unreasonable, courts consider "the justification for the delay, the extent of the plaintiff's advance knowledge of the basis for the challenge, and whether the plaintiff exercised diligence[.]" *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 923 (D. Ariz. 2016) (citation omitted). Plaintiffs have known about their claims for decades. Worse yet, they sat on their hands and did nothing for six weeks after the supreme court dismissed their first attempt to bring this challenge. Plaintiffs' mid-election year request to invalidate early voting before the general election is inexcusable.

Plaintiffs' untimeliness prejudices the Secretary, Arizona's dedicated election officials, and above all else, Arizona voters who have come to rely on early voting. Their long delay and request for emergency relief also prejudices the Court by placing it "in a position of having to

[5] The Court can take judicial notice of these public records, the accuracy of which "cannot reasonably be questioned," Ariz. R. Evid. 201(b)(2); *Pedersen v. Bennett*, 230 Ariz. 556, 559 ¶ 15 (2012), and consider them "without converting the Rule 12(b)(6) motion into a motion for summary judgment." *Strat. Dev. & Const., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 64 (App. 2010).

steamroll through" important legal issues, "leaving little time for reflection and wise decision making." *Sotomayor v. Burns*, 199 Ariz. 81, 83 ¶ 9 (2000).

In sum, the timing of Plaintiffs' claims and requests to upend early voting mid-cycle is yet another reason why the Court should deny relief.

III. Arizona's Early Voting System is Constitutional.

Even if Plaintiffs had standing (they don't) and their claims were timely (they're not), the Court should reject their claims on the merits.

Plaintiffs claim that Arizona's entire early voting system is facially unconstitutional.[6] Arizona courts apply a "strong presumption in favor of a statute's constitutionality," and "the challenging party bears the burden" of overcoming that presumption. *State v. Arevalo*, 249 Ariz. 370, 373 ¶ 9 (2020). If "there is a reasonable, even though debatable, basis for enactment of the statute, the act will be upheld unless it is clearly unconstitutional." *Id.* (quotation omitted). And "[a] party raising a facial challenge to a statute must establish that no set of circumstances exists under which the [statute] would be valid." *Id.* ¶ 10 (quotation omitted).

This heavy burden should apply with even greater force here, where Plaintiffs are asking the Court to invalidate longstanding legislation that ensures Arizonans can effectively exercise their fundamental right to vote. Far from violating the implied constitutional prohibition Plaintiffs invent here, Arizona's early voting statutes reinforce the core guarantee in the Arizona Constitution that "[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Ariz. Const. art. II § 21. Arizona's early voting system furthers this constitutional goal by ensuring equal access to the

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[6] Despite raising only a facial challenge in the Complaint, Plaintiffs make a passing claim in their Motion [at 2, 17] that "Arizona's no-excuse mail-in voting system is unconstitutional both facially and as applied." Yet they never explain how early voting is unconstitutional as applied to them. *Korwin v. Cotton*, 234 Ariz. 549, 559 ¶ 32 (App. 2014) ("An 'as-applied' challenge assumes the standard is otherwise constitutionally valid and enforceable, but argues it has been applied in an unconstitutional manner to a particular party.").

franchise for all voters, including those who live far from their polling places, lack access to reliable transportation, or face other barriers to voting in-person on Election Day.

Plaintiffs fall far short of meeting their burden. None of the constitutional provisions they point to require in-person voting, Arizona's early voting statutes preserve secrecy in voting, and Plaintiffs' strained interpretations cannot be squared with the Free and Equal Elections Clause.

A. Article VII, Section 1 does not require in-person voting.

When interpreting the Constitution, this Court's "primary purpose is to effectuate the intent of those who framed the provision." *Cain v. Horne*, 220 Ariz. 77, 80 ¶ 10 (2009) (quotation omitted). To do so, the Court "first examine[s] the plain language of the provision," and does not "depart from the language unless the framers' intent is unclear." *Id.* (citation omitted).

Article VII, Section 1 of the Arizona Constitution – the only constitutional provision governing the method of voting – states in full: "All elections by the people shall be by ballot, or by such other method as may be prescribed by law; [p]rovided, that secrecy in voting shall be preserved." This language is clear. It ensures the right to a secret ballot but leaves the precise methods of voting to the Legislature.

Plaintiffs disregard the plain language of Section 1, immediately jump to the history of the Australian ballot system, and ask the Court to infer from the "secrecy in voting" clause that the framers implicitly intended to mandate in-person voting. These arguments fail.

1. Section 1 authorizes the legislature to prescribe voting methods.

The framers contemplated that voting methods may change over time. So long as voters have the right to secrecy, voting may take place by any "method as may be prescribed by law." Ariz. Const. art. VII § 1. This "clear, broad language" delegating lawmaking authority to the Legislature must be interpreted as written. *See Phelps v. Firebird Raceway, Inc.*, 210 Ariz. 403, 412 ¶ 39 (2005); *State ex rel. La Prade v. Cox*, 43 Ariz. 174, 177-78 (1934) (because constitutional language "lay[s] down broad general principles," it should "be construed liberally," not as "the expression of minute details of law").

Plaintiffs claim [¶ 131] that "the framers included the phrase 'such other method' to allow the Legislature to authorize voting machines in lieu of paper ballots." But that's not what the Constitution says. Plaintiffs rely on a reference to voting machines at the Constitutional Convention. [*Id.*; Mot. at 6] Yet the discussion on Article VII, Section 1 at the Convention was "sparse," leaving much "speculation" about the framers' intent. *See* *Kotterman v. Killian*, 193 Ariz. 273, 288-89 ¶ 54 (1999) (noting skepticism about "'divining' the intent of language drafted almost 90 years ago and about which so little has been recorded or preserved"). That certain framers noted that the "other method as may be prescribed by law" clause would authorize voting machines doesn't mean they intended to ban every other method.[7] If the framers meant to limit "such other method" solely to "voting machines," they would have said so.

If the Court has any residual doubts about the framers' intent, it need only look to absentee voting laws the Legislature passed shortly after statehood. [Ex. 3, 6, 8]. If the framers implicitly meant to require only in-person voting using a ballot or voting machine, then several Convention delegates who also served in the early legislature wouldn't have passed – and Governor Hunt wouldn't have signed – multiple mail-in voting statutes. The Court can presume these legislators and Governor Hunt understood the framers' intent. *E.g.*, *Clark v. Boyce*, 20 Ariz. 544, 554-55 (1919) (giving "great weight" to construction in laws passed by the early Legislature, where "[m]any of the members of the constitutional convention were members of the first and other sessions of the Legislature," and "[t]he president of the constitutional convention was the Governor of the state during the[se] sessions") (citing *Laird v. Sims*, 16 Ariz. 521, 528 (1915)).

The constitutional language is clear: it allows the precise "method" of voting to be "prescribed by law," which the Legislature has done. And as detailed below, Arizona's early

[7] Though the supreme court has noted in passing that the framers "fashioned Article 7, Section 1 to preserve the state's ability to adopt voting machines," *McLaughlin v. Bennett*, 225 Ariz. 351, 355 ¶ 16 (2010), the court did not suggest that voting machines are the sole other option; indeed, the Court expressly recognized the legislature's power to adopt "other voting methods it might otherwise choose to prescribe by law, provided secrecy is preserved." *Id.* (cleaned up) (emphasis added).

voting laws are designed to ensure "secrecy in voting."

2. Arizona's early voting laws preserve "secrecy in voting."

The plain language of Section 1 requires only that the methods of voting prescribed by law maintain "secrecy in voting." Plaintiffs read this clause [at 6] to mean that any method of voting "must adhere to" the Australian ballot system, which Plaintiffs claim [at 3-6] has four requirements: (1) ballots must "be printed and distributed at public expense"; (2) ballots must "contain the names of all duly nominated candidates"; (3) ballots must be distributed to voters "only by election officers at the polling place"; and (4) the system must contain "detailed provisions to ensure secrecy in casting the vote." The Court should reject Plaintiffs' request to read this expansive list of requirements into three words in the Constitution.

First, the right of "secrecy in voting" does not impose an unstated in-person voting requirement. Plaintiffs infer far too much from those words. To be sure, the history and evolution of voting practices and the adoption of the Australian ballot system (as detailed above) is helpful background on why many states, including Arizona, preserve the right of secrecy in voting. But Plaintiffs grossly misconstrue this historical context behind Arizona's "secrecy" clause as somehow mandating that all voting procedures must include every component of the original "Australian ballot system." [*E.g.*, Compl. ¶¶ 18, 19, 77, 93] This argument ignores the unambiguous text of the Constitution, the best evidence of the framers' intent. *E.g.*, *State v. Mixton*, 250 Ariz. 282, 289 ¶ 28 (2021).

Courts around the country have repeatedly held that early voting laws do not violate state constitutional provisions assuring "secrecy" in voting. The California Supreme Court, for example, has held that "the secrecy provision" in its constitution "was never intended to preclude reasonable measures to facilitate and increase exercise of the right to vote such as absentee and mail ballot voting." *Peterson v. City of San Diego*, 666 P.2d 975, 978 (Cal. 1983). The court refused to assume that the secrecy clause "was designed to serve a purpose other than its obvious one of protecting the voter's right to act in secret," particularly when accepting the challengers'

argument "would impair rather than facilitate exercise of the fundamental right." *Id.*

The court was interpreting Article II, section 7 of the California Constitution, which states: "Voting shall be secret." But the court also found that its construction of this provision was "supported by the history of the constitutional provisions governing voting," including a prior version of the secrecy provision identical to Article VII, Section 1 of the Arizona Constitution. *Id.* The court explained that a "provision for absentee voting and the secrecy provision were both in the Constitution" for many years, "with neither stated as an exception or limitation on the other." *Id.* When the constitution was amended in 1972 to "simplify the language" of article II, the absentee voting provision was removed "not in order to prevent mail voting but because provision for absentee balloting should be regulated by the Legislature, reflecting the belief that there was nothing inconsistent with absentee balloting and the retained secrecy provision." *Id.* at 976, 978 (emphasis added).

Many courts have held the same. *See e.g.*, *Downs v. Pharis*, 122 So. 2d 862, 865 (La. Ct. App. 1960) (mail-in voting law did not violate constitutional provision that guaranteed voters the right to "prepare their ballots in [s]ecrecy at the polls"); *Jones v. Samora*, 318 P.3d 462, 470 (Colo. 2014) (election officials' violation of a statutory procedure for processing absentee ballots did not violate "secrecy" provision in Colorado constitution, where the officials inadvertently failed to remove ballot number tabs but there was no evidence that any voters were identified through ballot numbers); *Sawyer v. Chapman*, 729 P.2d 1220, 1224 (Kan. 1986) (even if there's potential for fraud or loss of "secrecy" with mail-in voting, the legislature lawfully weighed that risk against "the compelling state interest in increased participation in the election process"). Indeed, other states with constitutional provisions much like Article VII, Section 1 have been using mail-in voting even longer than Arizona has. *E.g.*, Wash. Const. art. VI § 6 ("All elections shall be by ballot. The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot."); Wash. Rev. Code Ann. § 29A.40.010 ("Ballots by mail"); Mont. Const. art. IV § 1 ("All elections by the people shall be

by secret ballot."); Mont. Code Ann. § 13-19-301 ("Voting mail ballots").

Plaintiffs hang their hats on cases from other jurisdictions that don't help them. They cite [at 7] *McLinko v. Dep't of State*, 2022 WL 257659 (Pa. Commw. Ct. Jan. 28, 2022), but fail to mention that the Pennsylvania Supreme Court stayed that ruling pending review. 03/01/22 *McLinko v. Dep't of State*, Order Granting Stay (Pa. Mar. 1, 2022), attached as **Exhibit 16**. That fundamental defect aside (and more to the point), Plaintiffs overlook the many material differences between that case and this one. There, the Pennsylvania Commonwealth Court held that mail-in voting violated Pennsylvania's constitutional provision requiring voters to "offer to vote" in the election district "where" the voter is eligible, because the court was bound by longstanding Pennsylvania Supreme Court precedent. *Id.* at *25.

The constitutional text was the crux of the claim. Yet Plaintiffs ignore that the court's holding hinged on the "offer to vote" clause in the Pennsylvania Constitution (Pa. Const. art. VII § 1) that nothing like Arizona's constitutional language. And while Pennsylvania's separate "secrecy in voting" provision (Pa. Const. art. VII § 4) does mirror Arizona's, the court did not hold, as Plaintiffs suggest [at 7], that the "secrecy" clause mandates in-person voting. The court merely rejected the state's arguments that the clause allowing other voting methods "as may be prescribed by law" meant the legislature could adopt mail-in voting, because that would violate another section of the constitution that the court interpreted to require in-person attendance. *McLinko*, 2022 WL 257659, at *14-16. The same isn't true here. No other provision in Arizona's constitution prohibits mail-in voting, and Plaintiffs point to no case holding that a constitutional requirement of "secrecy" equates to a wholesale ban on mail-in voting.

Plaintiffs also rely [¶ 197] on a Kentucky Supreme Court decision holding that mail-in voting violated this constitutional provision: "All elections by the people shall be by secret official ballot, furnished by public authority to the voters at the polls, and marked by each voter in private at the polls, and then and there deposited." *Clark v. Nash*, 192 Ky. 594 (1921) (emphasis added). The Arizona Constitution has none of this language after the secrecy clause

requiring ballots to be "furnished," "marked," and "there deposited" at the polls. If anything, this case illustrates language the framers of our Constitution could have included if they wanted to mandate in-person voting.

Even more baffling is Plaintiffs' continued reliance [¶¶ 3, 65, 96, 100] on a 19-year-old article by John C. Fortier and Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J. L. Reform 483 (2003). Dr. Ornstein filed an amicus brief in Plaintiffs' initial case in the supreme court explaining that Plaintiffs grossly mischaracterize his article. *See* Amicus Br. of N. Ornstein, attached as **Exhibit 17**. He explained that the Arizona Constitution "has *none* of the type of language courts have found to be inconsistent with statutes permitting absentee voting," and that "in the almost 20 years that have elapsed since [his] article was published, absentee or mail-in voting has been used extensively throughout the United States, and there is no evidence pointing to any widespread problems."

All told, Plaintiffs' authorities tell us nothing about what the Arizona Constitution means.

Second, Arizona's early voting laws include detailed procedures that ensure "secrecy in voting." Early ballots are "identical" to other ballots except that the word "early" is printed on them. A.R.S. § 16-545(A). County recorders send these ballots to early voters along with a self-addressed return envelope with a ballot affidavit.[8] Ballot return envelopes must be "of a type that does not reveal the voter's selections or political party affiliation and that is tamper evident when properly sealed." A.R.S. § 16-545(B)(2). The voter then follows these procedures:

> The early voter shall make and sign the affidavit and shall then mark his ballot in such a manner that his vote cannot be seen. The early voter shall fold the ballot, if a paper ballot, so as to conceal the vote and deposit the voted ballot in the envelope provided for that purpose, which shall be securely sealed and, together with the affidavit, delivered or mailed to the county recorder or other officer in charge of elections. . . .

A.R.S. § 16-548(A) (emphasis added).

[8] Early voters also receive instructions that include the following statement: "WARNING--It is a felony to offer or receive any compensation for a ballot." A.R.S. § 16-547(D).

After verifying the signature on the ballot affidavit and confirming that the ballot will be counted, election officials "open the envelope containing the ballot in such a manner that the affidavit thereon is not destroyed, take out the ballot without unfolding it or permitting it to be opened or examined and show by the records of the election that the elector has voted." A.R.S. § 16-552(F) (emphasis added). The voted early ballot and the empty affidavit envelope are then placed in separate stacks for further processing and tabulation. Elections Procedures Manual Ch. 2 § VI(B)(3). In fact, it is a crime for election officials to "attempt[] to find out for whom the elector has voted," open or examine a voter's "folded ballot" when it is delivered, mark "a folded ballot with the intent to ascertain for whom any elector has voted," or disclose how an elector voted "[w]ithout consent of the elector." A.R.S. § 16-1007.

Beyond that, Arizona law criminalizes fraud or other abuses related to early ballots, including "knowingly mark[ing] a voted or unvoted ballot or ballot envelope with the intent to fix an election"; "offer[ing] or provid[ing] any consideration to acquire a voted or unvoted early ballot"; "receiv[ing] or agree[ing] to receive any consideration in exchange for a voted or unvoted ballot"; possessing someone's "voted or unvoted ballot with intent to sell"; "knowingly solicit[ing] the collection of voted or unvoted ballots by misrepresenting [one's self] as an election official [or] serv[ing] as a ballot drop off site, other than those established and staffed by election officials"; and "knowingly collect[ing] voted or unvoted ballots" and not turning those ballots in. A.R.S. §§ 16-1005(A)-(F). And the Legislature went a step further in 2016, criminalizing even non-fraudulent third-party ballot collection. A.R.S. § 16-1005(H).

These laws all preserve "secrecy in voting" when voting an early ballot. Plaintiffs note [at 7] that Arizona statutes "require[] secrecy for in-person voting." Yet they don't acknowledge any of the statutory safeguards that preserve the secrecy of mail-in ballots in Arizona, let alone prove "that no set of circumstances exists under which" early ballots can be secret. *Arevalo*, 249 Ariz. at 373 ¶ 10.

Plaintiffs rely on [¶ 176] *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994) for the proposition that no statutes can "replace the secrecy of in-person voting." But *Miller* doesn't say anything like that. To the contrary, that case held that statutory "procedural safeguards" in an absentee voting statute "advance[] [the] constitutional goal" of secrecy in voting by "prevent[ing] undue influence, fraud, ballot tampering, and voter intimidation." *Id.* (emphasis added); *see also Feldman v. Arizona Sec'y of State's Off.*, 843 F.3d 366, 372 (9th Cir. 2016) ("[R]egulations on the distribution of absentee and early ballots advance Arizona's constitutional interest in secret voting"); *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1183 (9th Cir. 1988) (Hawaii's absentee ballot laws, which "go into great detail in their elaboration of procedures to prevent tampering with the ballots," adequately protected "secrecy" of ballots).

Third, even if mail-in voting has potential for less secrecy than in-person voting, that is not a basis to read an implied ban on early voting into the Constitution. Plaintiffs suggest [at 16-17] that voters are at greater risk of coercion or vote-buying (a felony) if they vote early. Not only is this rank speculation, but it also ignores the many safeguards built into Arizona's early voting system. And interpreting the "secrecy" provision in the constitution to restrict access to voting would undermine a fundamental right; one that "constitutes the essence of American democracy." *Miller v. Bd. of Sup'rs of Pinal Cty.*, 175 Ariz. 296, 301 (1993); *see also Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."). Such an interpretation would violate the Free and Equal Elections Clause, and this Court must read constitutional provisions "in harmony with other portions of the Arizona Constitution." *Ruiz v. Hull*, 191 Ariz. 441, 448 ¶ 24 (1998).

What's more, the "secrecy in voting" provision confers a right to secrecy that a voter may waive. Courts consistently hold that the assurance of "secrecy" in voting is a right personal to the voter. *See State v. Tucker*, 143 So. 754, 756 (Fla. 1932) (Florida constitution guarantees that

an "elector cannot be compelled to violate the right of secrecy of his ballot," but this is "a personal privilege which may be waived"); *Jenkins v. State Bd. of Elections of N.C.*, 104 S.E. 346, 347-48 (N.C. 1920) (the "privilege of voting a secret ballot [is] entirely a personal one . . . for the protection of the voter and for the preservation of his independence, in the exercise of this most important franchise," but "he has the right to waive his privilege and testify to the contents of his ballot").[9] Just as any Arizona voter may choose to vote in-person or by mail, any Arizona voter – whether they vote in-person or by mail – always has the choice to waive the secrecy of their vote.

B. Article IV, Part 1, Section 1 governs the people's legislative powers, not voting.

Plaintiffs next point to the phrase "at the polls" in various parts of Article IV, pt. 1 § 1. They string together [at 10-11] several canons of statutory construction, concluding: "Thus, the framers intended all voting to occur at the polls." This argument is baseless.

Article IV, pt. 1, § 1 reserves to the people the right of initiative and referendum. It authorizes the people to pass laws "at the polls, independently of the legislature," and authorizes the legislature to send laws to the people to decide "at the polls." That is, it grants legislative power to the people to exercise directly at an election, instead of through their representatives. Article IV has nothing to do with how people may cast their ballots at an election. That's what Article VII ("Suffrage and Elections"), Section 1 ("Method of voting; secrecy") is for.

Plaintiffs ask the Court to interpret a constitutional provision granting a fundamental right – one this Court "liberally" construes, *Pedersen*, 230 Ariz. at 558 ¶ 7 – as somehow impliedly restricting the methods of exercising a different fundamental right. Their argument finds no basis

[9] The Arizona Supreme Court has likewise interpreted Article VII, Section 1 in a way that suggests it confers a right personal to the voter. *Huggins v. Superior Ct. In & For Cty. of Navajo*, 163 Ariz. 348, 351 (1990) (noting that compelling a voter's testimony about their vote in an election contest "strikes a responsive chord in Arizona, where our constitution explicitly assures secrecy in voting," and thus exploring "alternative solutions that permit [the Court] to avoid compulsion so offensive to democratic sensibilities and assumptions").

in the text or structure of the Constitution, and they cite no authority supporting this novel interpretation.

At best, Plaintiffs cite *Allen v. State*, 14 Ariz. 458, 459 (1913), claiming [¶¶ 91-92] the supreme court "found [it] obvious" that "in-person voting at the polls on a fixed date is the only constitutionally permissible manner of voting." Not even close. In *Allen*, a defendant was convicted of violating a statute that had been the subject of a referendum petition. *Id.* The defendant appealed his conviction, claiming the statute was invalid because it was not submitted to the people "at a proper or legal election." *Id.* at 461. The court affirmed the conviction, finding that the people properly approved the measure at the polls in "the next regular general election" as required under Article IV. *Id.* at 464. Nothing in that case even remotely suggests that Article IV restricts the "manner of voting" in an election.

The Court should reject Plaintiffs' request to use Article IV to limit the Legislature's power to dictate voting methods under Article VII, Section 1.

C. Article VII, Section 2 governs voter eligibility, not the manner of voting.

Next, Plaintiffs argue that Article VII, Section 2 somehow prohibits early voting because it describes who is qualified to vote "at any general election." According to Plaintiffs [¶¶ 141-42], the Constitution's use of the preposition "at" requires voting at "an exact position or particular place" at a "particular time." Nonsense.

As its title informs, Article VII, Section 2 addresses only the "[q]ualifications of voters" eligible to vote in Arizona. Plaintiffs rely on Subsection A, which states:

> No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of eighteen years or over, and shall have resided in the state for the period of time preceding such election as prescribed by law, provided that qualifications for voters at a general election for the purpose of electing presidential electors shall be as prescribed by law.

Ariz. Const. art. VII § 2(A). The plain language of this provision describes who is qualified to

vote in an election; it says nothing about how a person may cast their vote.

D. Article VII, Sections 4, 5, and 11 do not dictate the manner of voting.

Finally, Plaintiffs point [at 11-13] to three more sections in Article VII, which they say require voters' "attendance" at the polls on election day, and allowing early voting would render these provisions "meaningless." Not so.

Section 4 grants voters a privilege from arrest (except for certain crimes) "during their attendance at any election, and in going thereto and returning therefrom." Section 5 excuses voters from "perform[ing] military duty on the day of an election, except in time of war or public danger." Nothing in these provisions requires in-person attendance at an election; they merely protect voters who are exercising their right to vote. Construing a constitutional provision protecting the franchise as somehow implicitly limiting voters' ability to exercise a fundamental right – as Plaintiffs urge here – would undermine the Free and Equal Elections Clause. *See Ruiz*, 191 Ariz. at 448 ¶ 24 (this Court reads constitutional provisions "in harmony with other portions of the Arizona Constitution").

As for Section 11, that provision states that a "general election" must be held for certain races on "the first Tuesday after the first Monday in November" of every even-numbered year. This tracks federal law, which already established the same "election day" for certain federal races before Arizona became a state. 28th Cong., Stat. II, ch. I (Jan. 23, 1845); *see also* 2 U.S.C. § 7 (representatives); 2 U.S.C. § 1 (senators); 3 U.S.C. § 1 (presidential electors).

Arizona's early voting statutes do not change election day. In fact, those statutes expressly contemplate that the "election" takes place on "election day." *See, e.g.*, A.R.S. § 16-548(A) (early ballots must be returned "no later than 7:00 p.m. on election day"); A.R.S. § 16-551(C) (early voting tallies cannot be "released or divulged before all precincts have reported or one hour after the closing of the polls on election day, whichever occurs first").

Several federal courts have rejected arguments that states' early voting laws violate the federal election day statute. In *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th

Cir. 2000), for example, the Fifth Circuit explained that the "plain language" of the federal election day statute "does not require all voting to occur on federal election day. All the statute requires is that the election be held that day." The court held that Texas's early voting statutes thus complied with the statute, because "the election of federal representatives in Texas is not decided or 'consummated' before federal election day." *Id.* (citing *Foster v. Love*, 522 U.S. 67, 71 (1997)); *see also* *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1176 (9th Cir. 2001) ("Oregon is in compliance with the federal election day statute. Although voting takes place, perhaps most voting, prior to election day, the election is not 'consummated' before election day because voting still takes place on that day."); *Millsaps v. Thompson*, 259 F.3d 535, 546 (6th Cir. 2001) (same in Tennessee).

These federal cases align with Arizona Supreme Court precedent. *See* *Sherman v. City of Tempe*, 202 Ariz. 339, 343 ¶ 18 (2002) ("[A]lthough votes may be cast prior to election day, measures are not conclusively voted upon until the actual day of election") (emphasis added). In short, "[a]llowing some voters to cast votes before election day does not contravene" Article VII, Section 11 because "the final selection is not made before" the general election day. *See* *Bomer*, 199 F.3d at 776.

In the end, Plaintiffs identify no constitutional provision that mandates in-person voting on election day. Article VII, Section I gives the State broad authority to adopt election laws prescribing the "method" of voting, as long as it ensures "secrecy in voting." Arizona's early voting statutes do exactly that.

IV. Plaintiffs' Requested Relief is Improper.

Plaintiffs argue (incorrectly) that the Arizona Constitution implicitly mandates in-person voting on election day. Yet they ask the Court to invalidate and enjoin only post-1991 "no-excuse" early voting statutes. There are two problems with this absurd request.

For one thing, Plaintiffs don't (because they can't) explain why the Constitution somehow prohibits only "no-excuse" early voting. They argue [¶¶ 31] that historical absentee voting laws

tried "[t]o hew as closely as possible to the constitutional requirement[s]" by requiring an elector to sign "an affidavit confirming his identity before casting his ballot" and prohibiting an elector from "mark[ing] his ballot in the presence of anyone unless he is physically unable to mark his ballot." This provides no greater protection than the current no-excuse early voting laws. An early voter still must "mark his ballot in such a manner that his vote cannot be seen," A.R.S. § 16-548(A), and sign a ballot affidavit declaring under penalty of perjury:

> I am a registered voter in _____ county Arizona, I have not voted and will not vote in this election in any other county or state, I understand that knowingly voting more than once in any election is a class 5 felony and I voted the enclosed ballot and signed this affidavit personally unless noted below [in an affidavit by a person who assisted the voter "because the voter was physically unable to mark the ballot solely due to illness, injury or physical limitation"]

A.R.S. § 16-547(A). Having an "excuse" or "reason" to vote early has no bearing on secrecy.

Second, and more to the point, this Court "cannot judicially legislate" by reinstating certain pre-1991 statutes that Plaintiffs like better. *State ex rel. Lassen v. Harpham*, 2 Ariz. App. 478, 487 (1966). That's now how constitutional challenges work. *E.g.*, *Cohen v. State*, 121 Ariz. 6, 9 (1978) ("[A] court should avoid legislating a particular result by judicial construction."); *Bowslaugh v. Bowslaugh*, 126 Ariz. 517, 519 (1979) (changing the law "by judicial fiat" would be "an infringement upon the province of the legislature.").

V. Plaintiffs Fail to Establish Any Other Injunction Factors.

Because Plaintiffs' claims fail on the merits for all the reasons above, no injunction is warranted. But even more, Plaintiffs fail to show an irreparable injury or that the balance of hardships and public interest favor them.

Plaintiffs first try [at 2, 13] to sidestep their burden of proof. They rely on *Ariz. Pub. Integrity All.* to argue that they aren't required to establish any of the other injunction factors. But again, that case doesn't apply here because it involved a mandamus action under A.R.S. § 12-2021. And while the plaintiff in that case showed that the Maricopa County Recorder failed to comply with a binding provision of the Elections Procedures Manual, here Plaintiffs have not

shown that the Secretary is acting "unlawfully" and exceeding her "constitutional and statutory authority." *Ariz. Pub. Integrity All.*, 250 Ariz. at 64 ¶ 26.

A. Plaintiffs will suffer no injury if the Court denies their injunction.

Plaintiffs vaguely contend [at 13] that Plaintiff Ward "will be deprived of the right to cast her vote in an election conducted under constitutional principles that safeguard against the possibility of undue influence," and that "ARP's members and candidates will be deprived of the right to participate in an election conducted under constitutional principles." That is not sufficient. They offer no facts to explain how Ward will be deprived of the right to vote without "undue influence," or how early voting will injure any of ARP's unnamed "members and candidates." Nor can Plaintiffs manufacture an injury by claiming [at 13] they will spend resources "to monitor early voting against improprieties." *Cf.* *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010) (organization "cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all.").

The case Plaintiffs rely on [at 14] supports the Secretary, not Plaintiffs. *League of Women Voters of Arizona v. Reagan*, 2018 WL 4467891, at *8 (D. Ariz. Sept. 18, 2018). There, plaintiffs challenging an election law failed to show irreparable harm because they didn't show that any voters would be disenfranchised. *Id.* The court thus found that the Secretary – not the plaintiffs – "would suffer irreparable harm if the Court granted [the p]laintiffs' proposed form of relief," because a state "suffers a form of irreparable injury" when it is "enjoined by a court from effectuating statutes enacted by representatives of its people[.]" *Id.* (citing *Maryland v. King*, 133 S.Ct. 1, 3 (2012)). So too here.

B. The balance of hardships and public interest favor upholding Arizona's early voting system.

Enjoining early voting for the 2022 elections would impose extreme hardship on Arizona's election administrators. Revealing their ignorance about how election administration works, Plaintiffs make the bald claim [at 14] that "Defendants will not be impermissibly

burdened if the injunction is granted." They posit [at 14-15] that "there is sufficient time" to redo Arizona's entire election system before the 2022 general election because election officials "used the pre-1991 system for decades." Plaintiffs are wrong. Holding a statewide election requires months of planning. [Decl. of K. Lorick ¶ 2, attached as **Exhibit 18**]. Election officials are deep in their preparations for the August and November elections, including budgeting, staffing, educating voters, and finalizing polling locations. [*Id.* ¶¶ 2-3]; *see also, e.g.*, Maricopa Cnty. Elections Dep't, 2022 Elections Plan. Upending Arizona's early voting system mere weeks before early voting starts would be highly disruptive if not impossible, and would potentially disenfranchise millions of Arizonans. [Lorick Decl. ¶¶ 4-5].

Worse yet, enjoining early voting would also harm the public interest. The vast majority of Arizona voters rely on early voting [*id.* ¶ 4], and the Court should avoid changing longstanding rules at the last minute and causing mass voter confusion. *Purcell*, 549 U.S. at 4-5; *Democratic Nat'l Comm. v. Wis. State Leg.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring) (*Purcell* is an "important principle of judicial restraint" to prevent confusion and "protect[] the State's interest in running an orderly, efficient election."). [*See* Section II above] Plaintiffs offer nothing but unsupported speculation [at 16, 17] that "corruption flourishes" in early voting and that "[u]ndue influence over voter choices is a real problem today" (citing a 2005 report not discussing Arizona). In reality, voting by mail in Arizona is safe, secure, efficient, and widely used, including by many of ARP's voters.[10]

Conclusion

Plaintiffs' attacks on early voting are unfounded, and the Court should dismiss their claims.

[10] If Plaintiffs truly believe early voting is fraught with "corruption" and "undue influence," perhaps Plaintiff Ward should not have voted early in past years, including as recently as 2020.

RESPECTFULLY SUBMITTED this 1st day of June, 2022.

COPPERSMITH BROCKELMAN PLC

By: /s/ Roopali H. Desai
Roopali H. Desai
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STATES UNITED DEMOCRACY CENTER
Sambo (Bo) Dul
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**Application for Pro Hac Vice Forthcoming*

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EXHIBIT 1

SESSION LAWS

OF THE

SIXTEENTH

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF ARIZONA.

SESSION BEGUN ON THE NINETEENTH DAY
OF JANUARY, A. D. 1891.

of elections in each election district or precinct in their respective county, town, city or village, five copies of a printed list containing the name, residence and party, or other designation of each candidate nominated as hereinafter provided, to be voted for by the voters of the respective election districts or precincts, and such presiding officer shall forthwith cause to be posted one of said lists at the place where the ballots are to be cast and election held, and at least in four other public and conspicuous places in such election district or precinct.

SEC. 15. It shall be the duty of the several County Boards of Supervisors, town, city and village Recorders or Clerks of this Territory to prepare and provide, as hereinafter prescribed, ballots printed on white paper, containing the names of all persons certificates of whose nomination for public office has been filed with them as provided in this Act. The ballots to be printed by the several County Boards of Supervisors, shall be printed and ready for inspection by the candidates and their agents, at least ten days before a general election. The ballots to be provided by the several city, village or town Recorders or Clerks shall be printed and ready for inspection at least five days before election. That except as herein otherwise directed the Board of Elections in counting, canvassing, certifying and returning the votes cast at any election, shall proceed as now required by law, provided further that at each polling place one challenger for each respective political party shall be allowed to be present and act, but such challengers shall not be permitted to enter any of the booths.

SEC. 16. At least five sample ballots, for each polling place, printed on tinted paper, but in all other respects the same as official ballots, shall be provided by the several Boards of Supervisors, Recorders or Clerks named in the foregoing Section, and shall be delivered to the election officers together with the cards of instruction hereafter mentioned.

SEC. 17. Ballots hereinafter used except as hereinafter provided for the election of public officers in this Territory, printed as hereinbefore provided, shall contain, under each appropriate head, the names of all the persons to be voted for at each election, with their places of residence, with the name of the party or other political organization to which each candidate belongs. Each ballot shall be endorsed by the words "Official Ballot," and be followed by the name of the district or precinct in which they are to be used, the date of election, and each ticket shall bear on its back a *fac simile* of the signature of the chairman of

the Board of Supervisors, with his official title to be so printed across the line of perforation as hereinafter presented so that part thereof shall remain on the tickets and part on the stub as hereinafter provided for. There shall be left underneath each group of candidates for different offices a blank space in which the voter may insert the name of any person for whom he may desire to vote. Whenever the approval any question is to be submitted to the people, such question shall be printed upon the ballot after the list of candidates. The ballot shall be so printed as to give each voter a clear opportunity to designate by a cross mark (X) in a sufficient margin at the right of the name of each candidate, his choice of candidates and his answer to the question submitted; and on each such ballot may be printed such words as will aid the voter to do this, as "Vote for One," "Vote for Three," "Yes," "No," and the like.

SEC. 18. Each ballot shall have a perforated line running across the top so as to leave the space above said line not less than two nor more than three inches in width, and upon the portion above the line which shall be known as the "stub," nothing shall be printed except that each stub for each election district shall be numbered consecutively by printed or written numbers thereon and may have directions to the voter together with blanks and directions for the ballot clerk's name and the voter's number, and that all ballots when printed as hereinbefore provided shall be fastened together in blocks containing one hundred ballots each, and in such manner that each ballot may be removed and detached separately.

SAMPLE TICKET.

89- Stub No ..... (To be torn off by the Inspector.)

(Ballot Clerk's name)..... (Voter's No.)....

.....

OFFICIAL BALLOT.

.....Precinct, County of Maricopa.

FIRST COUNCIL DISTRICT.

ELECTION NOVEMBER 4, 1890.

(To vote for a person make an X or a cross mark in the right hand column. No erasure is needed of names not voted for.)

TERRITORIAL.

DELEGATE TO CONGRESS, (Vote for one.)	VOTING MARK.
M. A. Smith, of Cochise, Democrat.....	.....
Geo. W. Cheyney, of Cochise, Republican.....	.....
.....	.....

FOR COUNCILMAN.

C. Meyer Zulick, of Maricopa, Democrat.....	.....
R. C. Powers, of Maricopa, Republican.....	.....
J. H. Behan, of Yuma, Democrat.....	.....
Abe Frank, of Yuma, Republican.....	.....
Foster S. Dennis, of Mohave, Democrat.....	.....
W. H. Hardy, of Mohave, Republican.....	.....
.....	.....
.....	.....
.....	.....

COUNTY.

FOR HOUSE OF REPRESENTATIVES, (Vote for two.)	
T. E. Farish, of Vulture, Democrat.....	.....
L. H. Chalmers, of Phoenix, Democrat.....	.....
E. S. Gill, of Phoenix, Republican.....	.....
J. B. Mullen, of Tempe, Republican.....	.....
.....	.....
.....	.....

FOR SHERIFF, (Vote for one.)	
Sam F. Webb, of Phoenix, Democrat.....	.....
John B. Montgomery, of Phoenix, Republican...	.....
.....	.....

Etc. Etc. Etc. Etc.

90- SEC. 19. There shall be printed for and furnished to each polling place at which an election is to be held, two

hundred ballots for every fifty voters or fraction thereof whose names appear upon the Great Register for the current year as of such precinct and for the purpose of determining the number of ballots so to be printed and furnished, the County Recorder shall, without compensation, between the fifteenth and the twentieth days preceeding the day of election file with the clerk of the Board of Supervisors a statement of the number of voters registered in each separate precinct certified to as a correct statement from the entries on the Great Register. In case more ballots are required, the presiding officer shall proceed as provided in Section 30 of this Act for furnishing further ballots.

SEC. 20. The several Boards of Supervisors and Recorders or Clerks whose duty it is to print and furnish the ballots provided for by this Act, shall prepare instructions for the guidance of voters at such election in regard to obtaining ballots, the manner of marking them and the method of obtaining assistance in marking such ballots, and as to obtaining new ballots in place of those accidentally spoiled, and they shall respectively cause the same, together with Sections thirty-two, thirty-three, thirty-four and thirty-five of this Act, to be printed in large, clear type, on separate cards, to be called cards of instructions. They shall also furnish to the presiding officer of elections in each election district or precinct, at least five of such cards, at the time and in the same manner as the printed ballots are furnished. Such presiding officer before the opening of the polls on election day, shall post one of said cards of instructions and one sample ballot in plain view in the room where the ballots are cast and at least four of said cards and four sample ballots in and about the polling places.

SEC. 21. The several Boards of Supervisors, Recorders and Clerks aforesaid shall deliver or cause to be delivered, by mail or other reliable method, to the presiding officer aforesaid one package containing two hundred official ballots for every fifty voters or fraction thereof whose names appear on the Great Register of the current year as residents of the district, precinct, county, town, city or village for which they are printed. Such official ballots shall be delivered to such presiding officer at least forty-eight hours before the hour for opening the polls on election day unless prevented by some unavoidable delay or accident to be established by affidavit of election officers or bearers of ballots. Said official ballots shall be sent in sealed packages with marks on the outside of such package clearly designating the polling place for which they are intended and the number of ballots enclosed.

Such presiding officer shall on delivery to them of such package, return receipts therefor to the Boards of Supervisors, Recorders or Clerks from whom received.

SEC. 22. On the opening of the polls at each polling place, the presiding officer shall produce the sealed package of official ballots and publicly open it and deliver one book or block of ballots therein contained to the ballot clerks hereinafter provided for. The other blocks or books of ballots, if any, shall be retained by the presiding officer until they are called for by the ballot clerks and needed for the purpose of voting.

SEC. 23. At least ten days before any election to be held in this Territory, the officers whose duty it is by law to designate the polling places shall determine the number and situation of the polling places in each district, precinct, town, city or village, and shall appoint not less than two or more than four persons to act and be known as ballot clerks for each polling place within their jurisdiction. An equal number of such clerks to be appointed from the two opposing political parties casting the highest number of votes at the last preceding election. The clerks so appointed shall have charge of the ballots at such election and furnish them to voters as hereinafter provided.

SEC. 24. The officers whose duty it is to designate the polling places shall cause the same to be suitably provided with a sufficient number of voting booths or compartments furnished with convenient shelves on which voters may conveniently mark their ballots, and in the marking thereof be screened from the observation of others, and such booths shall be supplied with proper conveniences, including pens, pen-holders, ink, blotting paper, pencils, as will enable the voter to prepare his ballot for voting. A guard rail shall be so constructed and placed that only such persons as are inside of said rail can approach within six feet of the ballot boxes of such voting booths or compartments. The arrangements shall be such that neither the ballot boxes nor the voting booths or compartments shall be hidden from view of those just outside of the guard rail. Each booth or compartment shall be at least three feet square and contain a shelf at least one foot wide extending across one side of such booth or compartment at a convenient height for writing. No person other than the election officers and voters admitted as hereinafter provided shall be permitted within said guard rail except by authority of the election officers for the purpose of keeping order and enforcing the law. The officers charged with providing booths or compartments shall also furnish for each polling place the required ballot boxes with locks which shall be large enough to properly receive and hold the ballots cast for candidates for office in conformity with the provisions of this Act.

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SEC. 25. The ballot clerks shall at all times be under the supervision of the presiding officer aforesaid, shall keep the ballots within the polling place and in plain view of the public and deliver them only to qualified voters. Every qualified voter before receiving his ballot shall announce his name and place of residence in a clear, audible tone of voice to the ballot clerk, or present his name and residence in writing, and if such name is found upon the Great Register by the ballot clerk having charge thereof, he shall repeat the name and the voter shall be allowed to enter the space enclosed by the guard rail; his name shall be noted by the poll clerks, and each voter's name shall be numbered consecutively by the poll clerks, with the number upon the stub of the ballot delivered to him and in the order of the respective applications for ballots to the ballot clerks; the ballot clerk shall also write his name upon said stub and the voting number of such voter as it appears upon the Great Register, and the ballot clerk shall give him one, and only one ballot, and his name shall be immediately checked on the Great Register.

SEC. 26. On receiving his ballot the voter shall forthwith and without leaving the polling place or going outside of said guard rail, retire alone to one of the booths or compartments not occupied by any other person, and prepare his ballot by marking in the appropriate margin or place a cross (X) opposite the name of the candidate of his choice for each office to be filled, or by filling in the name of the candidate of his choice in the blank space provided therefor and marking a cross opposite thereto; and in case of a question submitted to the vote of the people by marking in the appropriate margin or space a cross (X) against the answer which he desires to give. Before leaving the booth or compartment, the voter shall fold his ballot lengthwise and crosswise, but in such a way that the contents of the ballot shall be concealed and the stub can be removed without exposing any of the contents of the ballot, and shall keep the same as folded until he has delivered the same to the election officers as in this Section provided; then he shall forthwith proceed outside the guard rail by the exit thereof and shall not again enter such enclosed space during such poll unless he is an election officer. No voter shall be allowed to occupy a voting booth or compartment for more than five minutes, when other voters are waiting to occupy the same. No inspector shall receive any ballot from any voter unless the stub remains attached to the ballot.

SEC. 27. No person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoil a ballot he may successively obtain others, one at a time, not exceeding five in all, upon returning each spoiled one. The ballots thus returned shall be immediately cancelled, and

together with those not distributed to the voters, shall be reserved and shall be secured in sealed packages and returned to the Board of Supervisors, town, city or village Recorders or Clerks from whom originally received.

SEC. 28. Any elector who declares that by reason of physical disability or inability to read the English language, he is unable to mark his ballot, may declare his choice of candidates to the poll clerks who shall accompany such elector to some unoccupied booth, and in the presence of the elector and in the presence of each other shall prepare the ballots for voting in the manner hereinbefore provided and upon request shall read over to such elector the names of the candidates as marked. Any one making a false declaration under the provisions of this Section shall, upon conviction, be fined in any sum not exceeding five dollars and be disfranchised for a period of five years, and any poll clerk or poll clerks who shall deceive any elector in selecting or marking any ballot or mark the same in any way than as requested by said elector, shall be guilty of a felony and on conviction, shall be imprisoned in the penitentiary for not less than two years nor more than five years and be disfranchised for any determinate period not less than five years.

SEC. 29. If the voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office. No ballot without the official endorsement shall, except as herein otherwise provided, be allowed to be deposited in the ballot box, and none but ballots provided in accordance with the provisions of this Act shall be counted. Ballots not counted shall be marked defective on the back thereof, and be preserved and returned to the Board of Supervisors, or Recorder, or Clerk from whom received as hereinbefore provided.

SEC. 30 In case the ballots to be furnished for any voting place, in accordance with the provisions of this Act, shall fail for any reason to be delivered, or in case after delivery they shall be destroyed or stolen, it shall be the duty of the presiding officer aforesaid to cause other ballots to be prepared substantially in the form of the ballots so wanting and to be furnished; and upon delivery of such ballots at the polling place by him, accompanied by his statements under oath, which the city, town or village Recorder or Clerk shall record, that the same had been so prepared and furnished by him, and that the original ballots have so failed to be received, or have been so destroyed or stolen, the ballot Clerk shall cause the ballots so substituted to be used in lieu of the ballots wanting as above.

SEC. 31. None of the provisions of this Act shall apply to any school election in this Territory.

SEC. 32. A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any other person with intention of letting it be known how he is about to vote, or who shall make a false statement as to his inability to mark his ballot, or any person who shall interfere with any voter inside of said inclosed space, or who shall endeavor to induce any voter to vote for any particular candidate within the building in which the voting is proceeding, shall be punished by a fine of fifty dollars, or fifty days in the county jail, and it shall be the duty of the election officers to see that the offender is duly brought before the proper court for the recovery of such penalty.

SEC. 33. Any person who shall, prior to an election, wilfully deface or destroy any list of candidates posted in accordance with the provisions of this Act, or who, during an election shall willfully deface, tear down, remove or destroy any card of instructions posted for the instruction of voters, or who shall during election, wilfully remove or destroy any of the supplies or conveniences furnished to enable a voter to prepare his ballot, or shall wilfully hinder the voting of others, shall be punished by a fine of fifty dollars or fifty days in the county jail.

SEC. 34. Any person who shall falsely mark or wilfully deface or destroy any certificate of nomination, or nomination paper, or any part thereof, or any letter of withdrawal; or file any certificate of nomination, or nomination paper, or letter of withdrawal, knowing the same or any part thereof to be falsely made; or suppress any certificate of nomination, or nomination paper, or any part thereof, which has been filed; or forge or falsely make the official endorsement of any ballot, or wilfully destroy or deface any ballot, or wilfully delay the delivery of any ballots, shall be punished by a fine of one hundred dollars or one hundred days in the county jail.

SEC. 35 Any public officer upon whom a duty is imposed by this Act, who willfully neglects to perform such duty, or who shall willfully perform it in such way as to hinder the objects of this Act, shall be punished by a fine of two hundred dollars, or two hundred days in the county jail.

SEC. 36. No person shall do any electioneering on election day within any polling place, or in any public street or room, in a public manner, within one hundred and fifty feet of any polling place. No person shall remove any official ballot from any polling place before the closing of the polls. No person shall show his ballot, after it is prepared for voting, to any person in such a way as to reveal the contents, nor shall any person solicit the voter to show the same; nor shall any person (except an inspector of election) receive from a voter a ballot prepared for voting.

EXHIBIT 2

THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910

Edited By: **John S. Goff**

PHOENIX, ARIZONA
THE SUPREME COURT OF ARIZONA

Phoenix, October 10, 1910, 12:00 noon.

In accordance with an Act of Congress entitled "An Act to Enable the People of New Mexico to form a Constitution and State Government and to be admitted into the Union on an equal footing with the Original States, and to Enable the People of Arizona to form a Constitution and State Government and be admitted into the Union on an Equal Footing with the Original States," at the hour of twelve o'clock on this 10th day of October, 1910, same being the hour and day fixed by said Enabling Act, the members-elect of the Constitutional Convention of Arizona assembled in the House of Representatives in the Capitol Building of said Territory for the purpose of forming a constitution for the Territory of Arizona, and were called to order by Hon. A. C. Baker, member-elect of Maricopa County.

On motion of Hon. E. E. Ellinwood, member-elect of Cochise County, [Minutes, page 5, indicate Goldwater of Yavapai], Mr. Baker was unanimously elected temporary president.

On motion of Hon. Geo. W. P. Hunt, member-elect of Gila County, Mr. A. W. Cole, resident of Douglas, Arizona, was unanimously elected temporary secretary.

Roll of delegates-elect was called by temporary secretary, all answering present with the exception of six who later reported present.

Prayer offered by Reverend Seaborn Crutchfield, resident of Tempe. [Words missing but Arizona Republican, (Phoenix), October 11, 1910, reported it included: "As King Solomon prayed for guidance to wisely rule a great people, so we ask Thee to direct us in the adoption of a wise and just constitution." Also included was the Lord's Prayer. The portion which the Arizona Gazette, October 10, 1910, reported was: "Thank God for the circumstances surrounding us today. We pray for guidance that our hearts, hands and tongues may glorify Thy name. We thank Thee for this grand body of sedate men. We trust they are patriots and believe they will frame such a constitution as will bless the teeming thousands that will flow into the state in coming years. We pray for divine guidance for the man who will have the gavel in his hands during this convention."]

On motion of Hon. W. T. Webb, member-elect of Graham County, the following committee on credentials was appointed by the temporary president: Albert M. Jones of Yavapai County, Fred T. Colter of Apache County, Fred L. Ingraham of Yuma County, Bracey Curtis of Santa Cruz County, Henry Lovin of Mohave County, Wm. Morgan of Navajo County, E. A. Tovrea of Cochise County, Elmer W. Coker of Pinal County, C. C. Hutchinson of Coconino County, John P. Orme of Maricopa County, Alfred Kinney of Gila County, and W. T. Webb of Graham County

On motion of Hon. John P. Orme, member-elect of Maricopa County, the temporary president appointed the following committee of five to await upon Chief Justice Edward Kent and request that

he administer the oath of office to the members of the Constitutional Convention: Morris Goldwater of Yavapai County, Alfred Franklin of Maricopa County, E. E. Ellinwood of Cochise County and S. L. Kingan of Pima County.

On motion of Mr. Webb the secretary was empowered to employ a temporary stenographer. [M. Alice Berry was the individual thus employed.]

On motion of Mr. Webb [Minutes, page 7, seconded by Mr. Cunniff], a recess of ten minutes was taken to allow the committee on credentials and an oath of office to report.

Convention called to order by the temporary president.

The committee on credentials reported as follows:

"Phoenix, Arizona, October 10, 1910, To the Chairman:

We your committee on credentials, have the honor to report the following named delegates entitled to seats in this convention, to-wit: Apache County, Fred T. Colter; Coconino County, C. C. Hutchinson, Edward M. Doe; Cochise County, E. E. Ellinwood, Thomas Feeney, John Bolan, A. F. Parsons, R. B. Sims, P. F. Connelly, E. A. Tovrea, D. L. Cunningham, C. M. Roberts, S. B. Bradner; Gila County, Geo. W. P. Hunt, J. J. Keegan, Alfred Kinney, Jacob Weinberger, John Langdon; Graham County, Lamar Cobb, Mit Simms, A. M. Tuthill, A. R. Lynch, W. T. Webb; Maricopa County, A. C. Baker, B. B. Moeur, Orrin Standage, F. A. Jones, Sidney P. Osborn, Alfred Franklin, John P. Orme, Lysander Cassidy, James E. Crutchfield; Mohave County, Henry Lovin; Navajo County, William Morgan, James Scott; Pinal County, E. W. Coker, Thomas N. Wills; Pima County, Samuel L. Kingan, William F. Cooper, Carlos C. Jacome, George Pusch, James C. White; Santa Cruz County, Bracey Curtis; Yavapai County, Ed. W. Wells, M. G. Cunniff, Albert M. Jones, H. R. Wood, M. Goldwater, A. A. Moore; Yuma County, Mulford Winsor, Fred L. Ingraham, E. L. Short.

Respectfully submitted, Albert M. Jones, Chairman; William F. Cooper, Secretary."

Mr. Cassidy: Since we have no recognized form of the oath of office to administer to the members of this Convention I desire to present a form which the secretary may read.

Temporary President: The secretary will please read the form suggested by Mr. Cassidy.

Secretary: (reading) I hereby solemnly swear to support the Constitution of the United States and faithfully to perform the duties of delegate to the Constitutional Convention of Arizona.

Temporary President: You have heard the form of oath, gentlemen, what is your pleasure?

Mr. Webb: I believe that it is hardly necessary to adopt any form as I believe that Judge Kent will probably come with a form of oath in his inside pocket.

Mr. Cassidy: Since it is doubtful as to the judge coming prepared with a form, and there being no form available for the purpose of this Convention, I move that the form read by the

secretary be adopted.

[Minutes, page 8, motion seconded by Cunniff of Yavapai]

The motion prevailed.

Mr. Ellinwood: I move that slips of paper with the names of the various counties thereon be placed in a hat and that the secretary draw the slips therefrom and the selection of seats be decided according to the order in which the names are drawn.

Mr. Goldwater: I second that motion.

[Minutes, page 8, "Moved by Mulford Winsor, delegate-elect of Yuma, that selection of seats be decided by placing slips in box and boy or girl draw same, and as they are drawn choice of seats awarded to counties as called. Amended by E.E. Ellinwood, delegate-elect of Cochise, and accepted by Winsor that slips with names of various counties thereon be placed in hat and that secretary draw same, and that selection of seats be according to names of counties as drawn. Seconded by Morris Goldwater, delegate-elect of Yavapai, and carried."]

The motion prevailed.

Mr. Winsor: It will be so arranged that the Republican members may be seated by themselves, if they so desire, in order that they may be free from association with the unwashed democratic majority.

Mr. Orme: I suggest that they be given a choice in the selecting of the seats.

Temporary President: The committee on oath has announced that it is now ready to report to the convention.

Mr. Ellinwood: I have the honor to present to you Hon. Edward Kent, who has kindly consented to administer the oath of office to the members of this convention.

Chief Justice: Will the members of the constitutional convention please rise? You, each and all of you, do solemnly swear that you will support the Constitution of the United States and faithfully to perform the duties of delegate to the Constitutional Convention of Arizona.

The Delegates: We do.

Chief Justice: I congratulate you upon this occasion, for the opportunity you now have to do a great and grand work, that will be a credit to you and to your children after you, and to this nation. I hope that you will be guided by wisdom in your acts and in your works and that peace may abide with you in your convention and that all your acts may be prudent.

Mr. Cunniff: I move that we proceed to the election of the president of the convention.

Mr. Colter: I second that motion.

The motion prevailed.

Mr. Cunningham: I desire to place in nomination for president of this convention a man who is very capable and worthy, and who is the choice of a great number of the members of this convention. I nominate George W. P. Hunt of Gila County for president.

Mr. Goldwater: I second this nomination. [Minutes, page 8,

say Cunniff of Yavapai]

Temporary President: Gentlemen, what is your further pleasure?

Mr. Doe: I desire to nominate for president of this convention, Hon. Judge Edmund W. Wells of Yavapai county.

Mr. Kingan: I second the nomination of Judge Wells.

Temporary President: Gentlemen, what is your further pleasure?

Mr. Cunniff: I move that the nominations close.

Mr. Coker: I second the motion.

Temporary President: Gentlemen, you have the nominations of Mr. Hunt of Gila County and Judge Wells of Yavapai County for president.

Mr. Cunniff: I move the secretary call the roll, and that each member express his choice as his name is called.

Mr. Webb: Mr. Chairman, I second that motion.

The motion prevailed.

The roll call showed forty-one votes for Mr. Hunt and eleven for Judge Wells.

Temporary President: Gentlemen, Mr. Hunt has received forty-one votes and Mr. Wells has eleven. The chair announces that Mr. Geo. W. P. Hunt has been elected president of the Constitutional Convention. Will the gentleman from Cochise, Mr. Cunningham and the gentleman from Yavapai, Mr. Goldwater, escort the elected president to the chair. [Minutes, page 8, indicate Wells of Yavapai not Goldwater]

Mr. Cunningham: We have the honor to present Mr. Hunt of Gila county as the elected president of the convention.

Temporary President: Members of this convention, I respectfully present to you Mr. Geo. W. P. Hunt, who is your duly elected president.

Mr. Hunt: To the members of this convention I sincerely return my heartfelt thanks for the selection of myself as president of this convention, the elevation to which office I have not been seeking. Gentlemen, what we do must be done for the good of the people of Arizona, and it must be done wisely. By the authority in me vested as the presiding officer, the permanent organization is perfected hereby for the framing of a constitution and a form of government for Arizona under the Act of Congress approved June 20, 1910. What is the further pleasure of the convention?

Mr. Parsons: Mr. President, the Enabling Act provides for the election of a permanent secretary. Representing the united delegation from Cochise County, and between 300 and 400 employees of the smelters and railroad shops at Douglas who would receive with gladness the news of the elevation of Mr. A. W. Cole to the office of permanent secretary, I now present the name of A. W. Cole as secretary of this convention.

Mr. Keegan: I rise to second that nomination.

Mr. Winsor: I move that nominations be closed.

remainder, commencing at section 2.

Mr. Cunniff: I will second that motion.

Mr. Cobb: I accept that amendment, Mr. Chairman, and move that section 1 be made a special order for tomorrow morning.

Mr. Chairman: It has been moved to take up the consideration of Substitute Proposition Number 6 with the exception of section 1, beginning at section 2, and that section 1 be made a special order for tomorrow. Those in favor of this motion will answer "aye;" those opposed "nay." The "ayes" have it and it is so ordered.

Mr. Webb: I move an amendment to the original proposition that it be placed at the head of the calendar for tomorrow morning.

Mr. Wills: I second that motion.

Mr. Chairman: Gentlemen, it has been moved by Mr. Cassidy, and amended by Mr. Webb that consideration of section 1 of Substitute Proposition Number 6 be made special order for tomorrow morning and placed at the head of the calendar. Call the roll.

Roll call showed 29 "ayes" and 13 "nays."

Mr. Chairman: The motion is carried. The chair will rule that Proposition Number 21 shall be taken up first and all those relating thereto will be taken up at the same time. Gentlemen, what is your pleasure in regard to the reports on this proposition?

Mr. Cassidy: I move consideration of the majority report, section by section.

Mr. Chairman: If there are no objections it will be so considered.

Mr. Osborn: Mr. Chairman, I move that the minority report be substituted for the majority report. There is more language in the majority report than in the minority report, which covers the grounds sufficiently.

Mr. Bradner: I second that motion.

The motion failed to pass.

Mr. Winsor: I rise to a point of information. I would like to have the chairman of the committee who drafted this measure, explain it.

Mr. Webb: Mr. Chairman, I move you that section [Minutes, page 257, section 1] be stricken out.

Mr. Osborn: I second that motion.

Mr. Jones (Yavapai): It seemed advisable to retain this section, respecting the use of the voting machine and I approve of retaining that section if we adopt that report.

Mr. Cunniff: Mr. Chairman, I do not see why that should be done or why such a motion should prevail.

Mr. Cobb: In California, just recently, there was passed an amendment to the constitution and the amendment was exactly the same.

Mr. Webb: I think the legislature can attend to this matter and I can see nothing at all to be accomplished by retaining this section. It does not appeal to me as being very reasonable.

Mr. Cobb: I think it is very reasonable. Very recently several states have adopted voting machines and we may want to adopt

one some time.

Mr. Parsons: I offer an amendment that section 1 be adopted.

Mr. Cobb: I second that motion.

Mr. Chairman: It has been moved by the gentleman from Graham, Mr. Webb and seconded by Mr. Osborn of Maricopa, that section 1 be stricken out and the motion has been amended by Mr. Parsons and seconded by Mr. Cobb that the section be adopted. Those in favor of the motion will say "aye;" opposed "nay." The motion is carried. What is your pleasure, gentlemen, with regard to this section?

Mr. Cunniff: Mr. Chairman, I move that section 2 of the majority report be stricken out and section 2 of the minority report be substituted therefore.

Mr. Webb: I second the motion.

Mr. Orme: I wish to amend that motion by moving that section 2 be adopted.

Mr. Crutchfield: I second that motion.

Mr. Cunniff: I would like to point out that it is customary in constitutions, or that is in state constitutions from Massachusetts to Oklahoma, and I think it is positively necessary that they contain such a measure as the minority report contains, and I think that Arizona can safely follow this example.

Mr. Jones (Yavapai): I would just like to state that the majority report has an error. This was a part of that report, but it was left out by the printer.

Mr. Chairman: The question is now upon the motion of Mr. Cunniff, seconded by Mr. Webb, to strike out section 2 of the majority report and inserting [sic, insert] section 2 of the minority report, and this motion was amended by Mr. Orme, seconded by Mr. Crutchfield, that the section be adopted.

Mr. Webb: Since this explanation I think that the gentleman from Maricopa will be willing to withdraw his motion.

Mr. Chairman: Does the gentleman wish to withdraw?

Mr. Orme: I withdraw.

Mr. Chairman: The question is on the motion of the gentleman from Yavapai, Mr. Cunniff, seconded by Mr. Webb, that section 2 of the minority report be inserted in lieu of section 2 of the majority report, and that section 2 of the majority report be stricken out.

Mr. Winsor: I object to the proposition as it is something I have not been able to decide upon.

Mr. Osborn: I would like to have explained what difference there is between section 2 of the majority report and that matter of qualified electors adopted today.

Mr. Cunniff: I am heartily in favor of adopting this section into the constitution and I will just say that the section which I have moved to have inserted in the majority report in lieu of section 2 of that report gives more to work upon, and is the very best measure to adopt. I hope that my motion prevails.

Mr. Ellinwood: I am heartily in favor of this section also. It seems to me that since we have already adopted the initiative and referendum, by which the voters are to pass on laws or a good many

No. 21.

A Proposition Relative to Primary Elections.

Introduced by Mr. A. C. Baker, of Maricopa County.

It is hereby proposed:

Section 1. The General Assembly, at its first session, shall enact a primary election law, under which all nominations for elective public officers, including members of Congress, shall be made by organized political parties, and thereafter no candidates of any political party having and maintaining a party organization shall be voted for at any general election without having first been chosen as a candidate at such primary; but the nomination of municipal officers may be otherwise made when authorized by law.

Sec. 2. The General Assembly, at its first session, shall make provision for the nomination of candidates for elective public offices by the petition of electors, where such candidates are not chosen by organized political parties.

Sec. 3. The General Assembly, at its first session, shall enact a law whereby at the general election last preceding a vacancy in the office of United States Senator, the electors of the state at large may express their choice for the office of Senator to fill such vacancy; and it may be provided by law that those whose names are printed upon the ballot as candidates for such office, shall first be nominated by their respective parties at the last preceding primary, or shall be nominated by petition as other candidates for public office are nominated.

PHOENIX, ARIZONA, NOV. 18TH, 1910.

MR. PRESIDENT:

Your Minority Committee on Suffrage and Election begs leave to report it has examined Substitute Proposition No. 21 and respectfully recommends that in lieu of Section 2 thereof, the following section be inserted:

Section 2. Every male person, of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all offices that are now or hereafter may be, elective by the people, and upon all questions which may be submitted to the vote of the people. First, he must be a citizen of the United States. Second, he shall have resided in this state one year, immediately preceding the election at which he offers to vote, and in the town, county or precinct, such time as may be prescribed by law. Third. He shall be able to read the Constitution of this state in English and write his name: Provided, that the provision of this Section shall not apply to any person prevented by physical disability from complying with this requisition.

ALBERT M. JONES,

Chairman.

WE CONCUR:

LAMAR COBB

SIDNEY P. OSBORN

PHOENIX, ARIZONA, NOV. 18TH, 1910.

MR. PRESIDENT:

Your committee on Suffrage and Election begs leave to report it has examined Proposition No. 21 and respectfully recommends that within proposition be substituted in lieu thereof and that Substitute proposition No. 21

be adopted.

We concur except as to Section 2 and 15 which we respectfully recommend be stricken out.

ALBERT M. JONES,

I concur, except as to sections 2, 7 and 15.

LAMAR COBB

I concur, except as to section 2.

SIDNEY P. OSBORN

ALBERT M. JONES

Chairman.

WE CONCUR:

B. B. MOEUR

JOHN P. ORME

FRED L. INGRAHAM

JAMES SCOTT

HENRY LOVIN

JOHN LANGDON

ALFRED KINNEY

Section 1. All elections by the people shall be by ballot, or by such other method as may be prescribed by law; Provided, that secrecy in voting is preserved.

Section 2. Every male person, of the age of twenty-one years, or over possessing the following qualifications, shall be entitled to vote at all general elections, and for all offices that now are, or hereafter may be, elective by the people, and upon all questions which may be submitted to the vote of the people, except the questions provided for in

Section 15 of this article which may be submitted to the vote of qualified taxpayers.

Section 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the service of the United States, nor while a student at any institution of learning, nor while kept at any alms house or other asylum at public expense, nor while confined at any public jail or prison.

Section 4. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at election, and in going to and returning therefrom.

Section 5. No elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

Section 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed at any military or naval place within this state.

Section 7. No person shall be elected or appointed to any office, civil or military, in this State, who is not a citizen of the United States,

and who shall not have resided in this state at least one year next preceding his election or appointment, and if a police or other peace officer who shall not be a qualified elector of the county, or political division of the state where he is elected or appointed, or of this state, if he be not a qualified elector of the state.

Section 8. No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election, unless restored to civil rights.

Section 9. In all elections held by the people, under this Constitution, the person, or persons, receiving the highest number of legal votes shall be declared elected; Provided that if two or more persons shall have an equal highest number of votes for any one state office the two houses of the Legislature, at its next regular session, shall elect forthwith, by joint ballot, one of such persons, for said office.

Section 10. Qualifications for voters at school elections shall be as is now, or may hereafter be provided by law.

Section 11. The Legislature shall provide for the placing of the names of the candidates for United States Senator, on the official ballot, at the general election next preceding the election of United States Senator so that the people at the election of the members of the Legislature that are to elect the United States Senator to represent the State of Arizona, may, by their votes, advise the Legislature whom they want to represent them, in the United States Senate.

Section 12. The Legislature shall enact a direct primary election

law which shall provide for the nomination of candidates for all elective state, county and city offices, including candidates for United States Senator and Representative to Congress.

Section 13. There shall be a general election of state, county, and precinct officers on the first Tuesday after the first Monday in November, of the first even number year, after the year in which Arizona is admitted to Statehood, and bi-annually thereafter.

Section 14. There shall be enacted registration and other laws to secure the purity of elections and guard against abuses of the elective franchise.

Section 15. Questions directly concerning bond issues or ~~taxes may~~ be submitted to the vote of tax payers of the State, or any political subdivision thereof and upon such questions women who are tax payers and possessed of the qualifications for the right of suffrage required of men by this constitution shall equally with men have the right to vote.

5

PHOENIX, ARIZONA, NOV. 1, 1910.

MR PRESIDENT:

Your committee on style, revision and compilation begs leave to report it has examined Proposition No. 21 and respectfully recommends that, in view of the fact that it cannot determine whether the intention of the Proposition is to provide for direct primary nominations of candidates to United States Senatorships or a direct advisory vote of the electors for United States Senators, the proposition be re-referred to the committee on suffrage and elections with instructions that said committee report as to the meaning of the proposition.

M. G. CUNNIFF,

Chairman.

PHOENIX, ARIZONA, OCT. 29, 1910.

MR. PRESIDENT:

Your committee on Suffrage and Election, begs leave to report it has examined Proposition No. 21 and respectfully recommends that it be amended to read as follows:

The General Assembly at its first session shall enact a Direct Primary Election Law which shall also provide for an advisory vote for United States Senator.

ALBERT M. JONES

6 Chairman.

EXHIBIT 3

ACTS

RESOLUTIONS AND MEMORIALS

of the

FIRST SPECIAL SESSION
THIRD LEGISLATURE

of the

STATE OF ARIZONA

SESSION BEGAN MAY 21, 1918
SESSION ADJOURNED JUNE 19, 1918
PHOENIX, ARIZONA

R. A. WATKINS PRINTING CO.
PHOENIX, ARIZONA

Maintain Night Schools and Providing an Appropriation Therefor.

Be it Enacted by the Legislature of the State of Arizona:

Section 1. In any common school district within the State of Arizona where there are fifteen or more persons over sixteen years of age, who either do not read and write the English language, or who do not speak the English language, and who desire to attend a night school, the Board of Trustees of such district are hereby authorized and empowered to establish a night school, for the teaching of the English language, American ideals and an understanding of American institutions.

Section 2. For defraying the expenses of such night schools until June 30th, 1919, there is hereby appropriated out of the General Fund of the State not otherwise appropriated, the sum of Twenty-Five Thousand ($25,000.00) Dollars. The State Auditor is hereby authorized to draw warrant on the General Fund of the State for Twenty-Five Thousand ($25,000.00) Dollars, payable to the State Superintendent of Public Instruction, and the State Treasurer is hereby authorized to pay said warrants.

The State Superintendent of Public Instruction shall apportion the said sum of Twenty-Five Thousand ($25,000.00) Dollars to cover the various counties of the State, according to the daily average attendance of such night schools, which attendance shall be ascertained each month from reports of school trustees to the County School Superintendents, who shall, in turn, transmit the same to the Superintendent of Public Instruction.

Approved June 20, 1918.

CHAPTER 11.

(Substitute House Bill No. 3.)

AN ACT

To Enable Qualified Electors in the Military or Naval

Establishments of the State of Arizona or of the United States in Any Capacity to Exercise the Right of Suffrage While Absent From the State in Such Military Establishments; to Provide Penalties; to Repeal all Acts in Conflict With the Provisions of This Act; and to Declare an Emergency.

Be it Enacted by the Legislature of the State of Arizona:

Section 1. Notwithstanding any more general law respecting the time or manner of voting for candidates for office at any general or primary election, or the time or manner of voting on any question submitted to a popular vote, at a general election, or at any primary or general election where registration of votes is required by law, all qualified electors, in war time or after peace, in the actual military or naval establishments of this State, or of the United States in any capacity as defined by Congress, and by reason thereof absent from the State on any election day, shall be entitled to exercise the right of suffrage and to vote at such elections in the manner and form provided for in this Act and by the general and primary election laws now in effect in this State.

Section 2. The County Recorders of their respective counties shall immediately prepare a military register on which shall be entered the names of voters of his county, who are now absent or may hereafter be absent from their respective election precincts in time of war serving in the army, navy or other part of the military establishment of this State or the United States. The said register of voters shall be arranged in alphabetical order. Such register shall contain the name of the voter, as it appears on the records of the Army or Navy Department, his post office address, the county, precinct or city in which said voter has a legal residence; if he resides in a city, his street or residence number, or such other description as will identify the place of his residence. Said register shall contain the name or number or other designation of the Division, Regiment, Company, Troop, Vessel or other command in which the absent voter is serving at the time of such entry, so far as the Recorder can ascertain the same. If there are military reasons why any of this information should not be

placed on the register, a record of the same shall be kept in the Recorder's office. The Recorder shall obtain from the proper military or naval authorities of the nation, or from any other source that is available and expedient, the information required to carry out the provisions of this Act. In the future the Recorder shall keep a complete military register in accordance with the provisions of this section, which shall be a public record, not only of those who are now in the army or navy of the United States, but also of those who may, in future, enter the military service of the State or of the United States in any capacity. The Recorder shall file with the Clerk of the Board of Supervisors at least fifty (50) days before a statewide general or primary election, a copy of the military register as shown by the records of said office as revised and corrected to the date of its filing. Every public officer and every citizen shall furnish to the Recorder such information as he may possess relating to absent voters who are in the military establishments of the State or of the United States. Any person who shall refuse to furnish said information or shall willfully furnish false information with reference to such absent voter shall be deemed guilty of a felony and shall, on conviction thereof, be punished by imprisonment in the State Penitentiary not less than one nor more than three years.

Section 3. The said Board of Supervisors shall provide all necessary ballots, records, forms, blanks, envelopes, stationery, postage, blank forms, as may be necessary for the proper administration of the provisions of this Act. The said Clerk shall transmit to the proper places and to the proper persons all necessary papers, ballots, and instructions in strict compliance with the provisions of this Act, and the laws of primary and general elections, and shall administer the provisions in such a way as to carry out this Act according to its true intent and purpose; the Clerk shall prepare and print at least one official envelope for each absent voter for each primary or general election. Said envelope shall be

made out of substantial paper of a blue color. Hereafter, in this Act, said envelope shall be referred to as the "blue envelope." Upon one side of the said envelope shall be printed substantially the following:

OFFICIAL WAR BALLOT FOR PRIMARY OR GENERAL ELECTION.

Date ....., 19.....

Name of voter .....

Residence .....

County of .....

City or Town of .....

Precinct or Ward of .....

Present location.....

.....

(Clerk, Board of Supervisors.)

Upon the other side of the said blue envelope shall be printed substantially the following:

INSTRUCTIONS TO VOTERS: Before signing the affidavit read these instructions carefully:

(1) Insert in the blank space the name of the precinct in which the voter resided at the time of his enlistment. If the voter resides inside a city, insert the name of the city in the proper space and give the street number of his residence, or such description as will identify his place of residence.

(2) Insert in the proper space the Division, Regiment, Company, Troop, Vessel or other command to which the voter is attached at the time of signing this affidavit.

(3) The venue of this affidavit may be omitted if there are military reasons why it should be. The acknowledgement of this affidavit must be signed by a commissioned officer of the Army or of the Navy of the United States, who is acquainted with the voter. The officer signing the same shall add the rank of his com-

mission; whether Lieutenant, Captain, etc., and the subdivision to which he belongs.

OATH OF ABSENT ELECTOR

(VENUE)

I do solemnly swear, or affirm, that I am a citizen of the United States; that I am of age of at least 21 years; that I am a resident of the State of Arizona; that my post office is ....., Arizona; that I have been for more than one year last preceding this election a resident of said State; that immediately prior to my enlistment I resided for more than thirty (30) days in the county of ..... in ..... Precinct or City of .....; that I am in the military or naval service of the United States or of the State of Arizona; that I have inclosed in this envelope my ballot and that the same has been marked by me.

.....

I hereby certify that on this day ..... of ....., 19....., the affiant subscribed and swore to the foregoing affidavit in my presence and hearing; that I am personally acquainted with the affiant and know that he is the identical person who signed the foregoing affidavit.

.....
(Officer.)

.....
(Rank.)

Section 4. The said Clerk, at least forty (40) days prior to any statewide primary or general election, shall fill in the proper spaces, in the blanks provided for on the outside of the blue envelope, the information that appears on the general register with reference to the name, residence, county, city, precinct, and home post office address of the absent voter, who at the time is in the naval or military service of the United States in some capacity and also the information with reference to the present address of said absent voter.

The information filled in these blank spaces shall be substantially what appears on the records in the Clerk's

office unless there is some military reason for not giving it in detail, but sufficient information shall be given to identify the residence of the voter in this State and his approximate location in the army or navy of the United States. After filling out these blanks on the blue envelope the same shall be signed by the Clerk of the Board of Supervisors, and the official seal of the Board shall be impressed on said envelope.

Section 5. The Clerk of the Board of Supervisors shall mail, by registered mail, taking receipt therefor, to every qualified voter whose name appears on the military register in the Clerk's office at least forty (40) days prior to any statewide primary or general election, one official ballot for each of the various political parties at any primary that polled 10 per cent or more, of the total vote cast at the previous general election and two official ballots for any general election. If the Army or Navy Department make any rules or regulations relating to the right of franchise and to the delivery of mail to persons in the military or naval service of the United States, the said Clerk shall comply with the regulations and be directed by the rulings of said Army or Navy Department. The Clerk shall also encolse with said ballots the blue envelope heretofore referred to, and a second envelope, addressed to "the Clerk, Board of Supervisors, ..., Arizona"; also a letter of instructions in substantially the following form:

TO THE ABSENT VOTERS OF THE STATE OF ARIZONA IN THE MILITARY SERVICE OF THE NATION OR STATE:

In accordance with the provisions of the laws of Arizona, I am sending you herewith official primary (or general election, as the case may be), ballots for the following political parties: (Here insert the names of parties whose ballots are inclosed.) I am also enclosing a blue envelope and a second envelope, which is addressed to "the Clerk, Board of Supervisors, ..., Arizona," and this letter of instructions. It is of the utmost importance that you carefully read and understand these instructions and the affidavit on the outside of the blue envelope. In voting at the primary you are to use only one official primary ballot. Destroy the ballots

that are not used. Mark on the ballot of the political party, to which you are affiliated, your preference for office. In voting at a general election you are to use only one official ballot. The extra ballot is sent you to be used by you in case the other is spoiled; destroy the ballot not used by you. Do not return any but the ballot marked. You can write in on these ballots the name of the person for whom you desire to vote and whose name is not printed on the ballot; and you should place a cross in the square to the right of such name so written in. Place the ballot that you have marked in the blue envelope. Subscribe and swear to the affidavit on the outside of said envelope before any commissioned American officer, who is acquainted with you. A FAILURE TO RETURN THE BLUE ENVELOPE WILL PREVENT YOUR VOTE FROM BEING COUNTED. You are at liberty to make inquiry as to the proper may to cast your ballot, but in casting it you should do so privately. No one has any right to see or know how you vote. After enclosing your ballot in the blue envelope, seal said envelope up securely, enclose it in the other envelope which is addressed to the Clerk, Board of Supervisors, ..., Arizona. Seal up said envelope and place the necessary postage thereon. Do not make any identification marks of any kind on the outside of the envelope addressed to the said Clerk. As your vote must be canvassed on the day of election at ....., Arizona, the ..... day of ....., 19....., it is important that you return your ballot immediately.

.....
(Clerk, Board of Supervisors.)

Section 6. The method of voting at a primary or general election under the provisions of this Act shall be the same as that provided for by the general laws of this State. The instructions given to voters with reference to general election, except as modified by this Act, shall govern and control. The voter may write on the ballot the name of any person for whom he desires to vote, making a cross (X) on the square to the right thereof. The general method for marking the ballot, both on candidates and constitutional amendments, laws initiated and laws referred, shall be the same as that provided by the general election laws of this State. A voter shall

have the right to make inquiry of any source he may deem proper for information as to the proper method of casting his ballot. No one has any right to see or know how the voter cast his ballot. He shall not mark his ballot in the presence of anyone unless he is physically unable to mark his ballot. In that instance, he may require assistance. After he marks his official ballot he shall insert it in the blue envelope. Thereafter he shall swear and subscribe to the affidavit on the back of the blue envelope, before an American Commissioned Officer who is acquainted with him. He shall then securely seal the blue envelope, insert in it the envelope addressed to the said Clerk, seal up the outside envelope addressed to the Clerk and place sufficient postage thereon. There shall be no identification marks placed on the outside of the envelope so addressed. The ballot not used shall be destroyed. The said Clerk shall ascertain what postage is necessary to carry said envelope and shall insert the amout in the instructions sent to the voter. All votes cast at a primary or general election held under the provisions of this Act by absent voters, who at the time of the election are in the military service of the United States or of the State of Arizona, must be returned to and received by the said Clerk on election day, before the closing of the polls. The Board of Supervisors shall count and canvass all votes received by it up to the hour of closing of the polls on election day from absent voters, and shall not canvass or count any ballots which are received by said Board after said polls are closed on election day.

Section 7. The Board of Supervisors and Clerk shall sit on primary or general election day as an Election Board for the purpose of depositing the ballots cast under the provisions of this Act; in depositing the votes on the day of election cast under the provisions of this Act the Board of Supervisors shall open, in the presence of each other, the envelope addressed to the Clerk of said Board and shall thereafter examine the name and affidavit of the voter that appears on the blue envelope. If the voter has signed the affidavit in compliance with the provisions of this Act and it appears to the Board that he is entitled to cast his ballot, said Board, in the presence of each other, shall open the blue envelope and examine the ballot, being careful not to open said ballot or disclose the secrecy of the vote, therein inclosed for

the purpose of ascertaining whether or not said ballot is one sent out by said Clerk. If the ballot inclosed is one that has been sent out by the Clerk, the Board shall deposit the same in a suitable sealed ballot box. It is not necessary that all the ballots be placed in the same ballot box, but the Board shall proceed so as to protect the absolute secrecy of the ballot. In canvassing the votes cast under the provisions of this Act, the law relating to the duties and powers of judges, and clerks of election and election boards generally, shall, in so far as applicable, apply to the said Clerk and Board of Supervisors sitting as an election board on said election day. In case there is a conflict, the provisions of this Act shall govern. All envelopes addressed to the Clerk of the Board of Supervisors containing ballots cast at any primary or general election shall be, from the time of delivery until the votes are cast and canvassed, under the absolute and exclusive control of the said Clerk and Board. Said Board shall make whatever provision is necessary to properly care for said ballots and to prevent the loss of any of said ballots or any tampering therewith.

Section 8. No informality in the manner of carrying out the provisions of this Act shall invalidate the election held under the same or rejection of the returns thereof, and this Act shall be liberally construed for the purposes herein expressed. All elections held under the provisions of this Act shall be subject to contest and inquiry in the same manner as elections held within this State.

Section 9. All the provisions of the penal laws relating to crimes against the elective franchise shall be deemed to apply to all elections held under the provisions of this Act. Any person who shall violate any such provisions shall be subject to the penalties prescribed by the laws of this State. The duties imposed upon officers under the provisions of this Act are mandatory and any officer who shall fail or neglect to perform the duties imposed upon him by the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Five Hundred Dollars ($500). Where no other penalty is imposed, any person violating any of the provisions of this Act shall be fined not to exceed One Hundred Dollars ($100) or

be imprisoned in the County Jail not to exceed three (3) months.

Section 10. All Acts or parts of Acts in conflict with the provisions of this Act are hereby repealed.

Section 11. WHEREAS, in order to preserve the public health, peace and safety, an emergency is hereby declared to exist and the provisions of this Act are hereby exempt from the referendum provision of the State Constitution.

Approved June 20, 1918.

CHAPTER 12.

(Senate Bill No. 11.)

AN ACT

Entitled: "An Act to Extend Protection to the Civil Rights of Members of the Military and Naval Establishments of the United States Engaged in the Present War," With an Emergency Clause.

Be it Enacted by the Legislature of the State of Arizona:

ARTICLE I.

General Provisions.

Section 1. That for the purpose of enabling the United States the more successfully to prosecute and carry on the war in which it is at present engaged, and for the purpose of enabling the State of Arizona to lend full and vigorous aid to the Federal Government in the prosecution of said war, protection is hereby extended to persons in the military service of the United States, in order to prevent prejudice or injury to their civil rights during their term of service, and to enable them to devote their entire energy to the military needs of the Na-

EXHIBIT 4

History of the Arizona State Legislature

Volume 5

Part 2

The Third State Legislature

First Special Session

By

J. Morris Richards

For

Arizona Legislative Council

V

Military Franchise

Four bills were introduced, in the First Special Session, to make it possible for persons serving in the military forces to cast their votes.

The first of these was Senate Bill No. 1, introduced by Senator Colter of Apache County. This bill met all the demands of the times, providing "the means and prescribing the ways in which . . . electors may vote for candidates for Federal, State, and County Offices at Primary and General Elections" while serving in the military forces.

The measure was studied by the Judiciary Committee which recommended that a new bill be written in more precise language. This was done and the Substitute Senate Bill No. 1 was passed on June 15 by a vote of 17 to 0, with two excused.

In the House the measure was not assigned to a standing committee, but went directly to the Committee of the Whole, where it was recommended for indefinite postponement after being on the calendar and debated two different times.

House Bill No. 3 was introduced by Mr. Vaughn of Maricopa County, and was sent to the Committee on Suffrage and Elections and to the Appropriations Committee. The latter reported it for debate and the Committee of the Whole referred it to the Judiciary Committee with instructions to bring out a substitute bill.

This substitute measure raised no special opposition in debate and when it came to a final vote, on June 12, it passed by a vote of 33 to 0, with two excused.

The bill differed but little from Senate Bill No. 1, being an act to enable "qualified electors in the Military and Naval establishments of the State of Arizona, or of the United States in any capacity to exercise the right of suffrage while absent from the State . . . ."

In the Senate the rules were suspended and the bill was referred immediately to a special committee "to be considered in connection with Senate Bill No. 1 and Substitute Senate Bill No. 1."

The special committee recommended that the three bills be considered together when it reported to the Committee of the Whole. The latter recommended that Substitute House Bill No. 3 be placed at the foot of the calendar to await whatever action might be taken by the House on Substitute Senate Bill No. 1.

Four days later, in the Committee of the Whole, Senator Winsor moved that everything after the enacting clause in Substitute House Bill No. 3 be stricken, and that all of the provisions of Substitute Senate Bill No. 1 be inserted. The title was then amended to agree, and the Senate passed the measure, its own but under a House number, by a vote of 17 to 0. The Senate received word that the House had postponed indefinitely Substitute Senate Bill No. 1.

The House refused to concur with this drastic Senate treatment of its bill, and so informed the upper house, which resulted in conferences to resolve their differences. The Senate named three conferees and the House named five. The

Senate then added two more and, after the matter had been discussed thoroughly, the Senate conferees joined in a conference committee report which recommended that the Senate recede from its amendment whereby it had substituted its own bill for that of the House. The Senate recalled the bill from the House, amended it to its original form, that of Substitute House Bill No. 3, and passed it by a vote of 16 to 0, with three absent or excused. This bill then went to the Governor, who signed it, and the need for a law to permit servicemen to vote while away in the military service was satisfied.

The other two bills on the subject were House Bill No. 11 and House Bill No. 19. The first was introduced by Mr. Vaughn of Maricopa County "Amending the Primary Election Law." This measure, while dealing with the election law, did not provide any changes to apply to the voting of qualified electors in the military service, but the House passed it, nevertheless, by a vote of 24 to 8.

In the Senate the bill was studied by the Judiciary Committee, which reported that the measure "does not come within the purview of the Governor's call" and that it should be indefinitely postponed. The Senate followed the committee recommendation and the bill died.

House Bill No. 19 was introduced by Mr. Walton of Maricopa County, and, after being reported out of the Suffrage and Elections Committee, it was placed on the calendar of the Committee of the Whole. It remained there as the need for it was satisfied with the passage of Substitute House Bill No. 3.

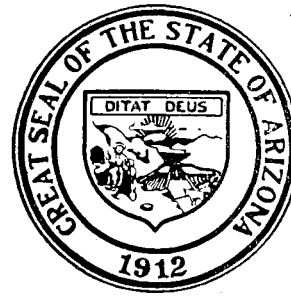
EXHIBIT 5

Third Legislature, First Special Session, State of Arizona

JOURNAL

OF THE

Senate



1918

SENATE JOURNAL

THIRD LEGISLATURE

FIRST SPECIAL SESSION

MAY 21, 1918

SENATE CHAMBER, STATE CAPITOL

May 21, 1918.

Obedient to the proclamation of the Governor made April 18, 1918, the Senate of the State of Arizona convened in special session in the Senate chamber of the State Capitol at ten o'clock A. M., President Claridge presiding.

The following prayer was offered by the Reverend Bertrand R. Cocks, Chaplain:

"O Lord, Our Heavenly Father, in whose keeping are the destinies of nations, we ask thy guidance and blessing in the deliberations of this assembly. Lift us above every mercenary and selfish motive in this hour of crisis. Fill us with a deeper sense of patriotism—a patriotism which links deeds with words. Make us sensible of our responsibilities and give us a wider and clearer vision to meet the problems before us. Help us to put aside all petty and private ambitions—direct all our thought and endeavors toward the greater good of our country. May we be actuated by those lofty principles that shall exalt and strengthen us in righteousness that Thy great name may be glorifield. Amen."

Roll call showed the following:

Present: Senators J. W. Buchanan, Hugh E. Campbell, W. D. Claypool, Fred T. Colter, Jno. C. Devine, F. O. Goodell, Ernest Hall, Alfred Kinney, W. P. Mahoney, F. O. Mattox, C. M. Roberts, C. H. Rutherford, Fred Sutter, W. D. Whipple, H. B. Wilkinson, Mulford Winsor, and Mr. President—17.

Absent: Senators Ray Ferguson and N. H. Getchell—2.

Senator Rutherford announced that his colleague, Senator Gatchell, is ill in Chicago, and unable to attend. The following communication was read by the Secretary and ordered filed:

"Post Graduate Medical School
and Hospital of Chicago, Chicago, Ill.

Arizona State Senate,
Phoenix, Arizona.

May 17, 1918.

I hereby certify that N. H. Getchell was taken ill on April 15th and has been under my care since. He is still ill and absolutely unable to travel or undertake any form of work, mental or physical.

H. SCOTT, M. B. C. M."

On motion of Senator Claypool, duly seconded, and carried, Senator Getchell was excused.

The proclamation of the Governor was read in full as follows, and ordered inserted in the journal:

A PROCLAMATION

"In order that the State of Arizona may render assistance in the fullest extent possible to the National Government in the present crisis, and in order that nothing that can be done may be left undone in standing back of our men on the firing line, I, George W. P. Hunt, Governor of the State of Arizona, by virtue of the power and authority in me vested by the Constitution, do hereby convene the State Legislature in special session at Phoenix, the Capital of Arizona, at ten o'clock on the morning of Tuesday, May 21, A. D. 1918, for the purpose of giving consideration to legislation upon the subjects enumerated below:

1. To extend the franchise to electors of the State of Arizona in the military and naval establishments of the United States, wherever they may be stationed.

2. To extend protection to the civil rights of Arizonans in the military and naval establishments of the United States during the period of the present war; to protect the civil rights of the families and dependents of Arizonans engaged in the present war, and to otherwise provide for these families and dependents so they may not suffer want or privation by reason of the participation of any member of their household in the present struggle for liberty.

3. To provide that officers and enlisted men of the National Guard of Arizona who were drafted into the service of the United States shall be allowed credit under the laws of this State for such service as continuous service in the National Guard of Arizona, during the time such officers and men continue in service in the National Guard of the United States.

4. To legalize the Arizona Council of Defense; to clothe it with authority to meet emergencies in the present crisis and to provide the necessary funds for its maintenance.

5. To permit the investment of the funds of the State in Liberty Loan Bonds of the United States Government, and to further permit the investment of the funds of the State Savings Banks, insurance companies and trustees of trust funds in Farm Loan Bonds, issued under the Federal Farm Loan Act.

6. To encourage and to put a premium on the Americanization of all aliens within the State.

7. To provide such dairy legislation as is necessary to preserve and increase that industry to meet the necessities of the war.

There are a few other matters not strictly of a war nature but of such general and timely appeal that I am convinced the Legislature would not wish them overlooked:

1. The ratification of the Prohibition Amendment to the Federal Constitution.

2. The ratification of the Woman's Suffrage Amendment to the Federal Constitution, if that amendment is submitted by the Congress of the United States before adjournment of the Legislature.

3. To reimburse Hon. Thos. E. Campbell for his services as de facto Governor of the State of Arizona during the period January 27, 1917, to December 22, 1917.

4. To exempt from inheritance tax and from the lien of any inheritance tax which may have been created or attached since the first day of Noverber, A. D. 1916, all observatories and appurtenances which are now, or which may hereafter be, established and maintained for astronomical research solely at private expense and without profit, together with any and all property and funds which may be provided for the maintenance of such observatories. Such a measure is clearly within the provisions of our Constitution, and would enable the State to pay a fitting tribute to the memory of its greatest scientist, the late Doctor Percival Lowell.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the great Seal of the State of Arizona to be affixed.

(SEAL)

Done at Phoenix, the Capital, this 18th day of April, A. D. 1918.

(Signed) GEO. W. P. HUNT,
Governor of Arizona.

Attest:

SIDNEY P. OSBORN,
Secretary of State."

The president announced that the First Special Session of the Third Arizona State Legislature was now in session.

Upon motion of Senator Winsor, duly seconded, and carried, the President appointed Senators Campbell, Sutter and Mahoney as a committee to wait upon the Governor and inform him that the organization of the Senate is completed and ready to proceed with business, and also appointed Senators Colter, Winsor and Rutherford as a committee to wait upon the House of Representatives and inform the House that the Senate is organized and ready to proceed with business.

Without objection, at 10:35 the Senate took a recess, subject to the call of the gavel.

At 10:45 Senate resumed session.

A Committee from the House, consisting of Mrs. Pauline O'Neill and Representatives Cook and Cureton notified the Senate that the House had completed its organization and was ready to proceed with business.

Senator Winsor of the committee appointed to inform the House, reported orally that they had notified the House that the Senate was organized and ready to proceed with business.

Senator Sutter of the committee appointed to inform the Governor, reported orally that they had notified the Governor that the Senate was organized and ready to proceed with business, and that the Governor had informed the committee that he would meet the Legislature in joint session at two o'clock P. M.

The Secretary was instructed to call the roll of the attaches and make a list of those reporting present and deliver the same to the Chairman of the Committee on Printing and Clerks, which was accordingly done.

On motion of Senator Campbell, duly seconded, and carried, the Senate stood at recess until 1:30 P. M.

The Senate convened at 1:30 P. M., pursuant to adjournment. Roll call showed the following:

Present: Senators Buchanan, Campbell, Claypool, Colter, Devine, Goodell, Hall, Kinney, Mahoney, Mattox, Roberts, Rutherford, Sutter, Whipple, Wilkinson, Winsor and Mr. President—17.

Absent: Senator Ferguson—1.

Excused: Senator Getchell—1.

On motion of Senator Winsor, duly seconded, and carried, the Senate adjourned to attend the Joint Session of the Senate and House, convened to receive the Message of the Governor.

JOINT SESSION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.

May 21, 1918.

The Senate and House of Representatives met in Joint Session at 2 o'clock P. M., in the House chamber, President Claridge presiding.

Roll call of the Senate showed the following:

Present: Senators Buchanan, Campbell, Claypool, Colter, Devine, Goodell, Hall, Kinney, Mahoney, Mattox, Roberts, Rutherford, Sutter, Whipple, Wilkinson, Winsor, and Mr. President—17.

Absent: Senator Ferguson—1.

Excused: Senator Getchell—1.

Roll call of the House of Representatives showed the following:

Present: Representatives Brewer, Buehman, Coffee, Cook, Cureton, Davis, Eddy, Edwards, Flake, Foster, Francis, Goodwin, Green, Houser, Hughes, Jacks, Lines, Mahoney, Mallory, Mrs. Marsh, McCormick, McGrath, O'Neil, Mrs. O'Neill, Perkins, Peterson, Richardson, Sullivan, Vaughn, Walton, Wiltbank, Mr. Speaker—32.

Absent: Representatives Baxter and Faires—2.

Excused: Representative Mrs. McKay—1.

Without objections President Claridge named the committees heretofore appointed by the Senate and House a joint committee to notify the Governor that the Legislature had convened in joint session and was ready to receive him.

The Governor was introduced by President Claridge, and read his message to the Legislature as follows:

The Senate convened at 2 o'clock P. M., President Claridge in the Chair.

Roll call showed the following:

Present: Buchanan, Campbell, Claypool, Colter, Devine, Ferguson, Goodell, Kinney, Mahoney, Mattox, Roberts, Sutter, Whipple, Wilkinson, Winsor, Mr. President—16.

Absent: Rutherford—1.

Excused: Getchell, Hall —2.

The following message from the House on Senate Bill No. 2 was received and read:

"HOUSE OF REPRESENTATIVES.

June 19, 1918.

Mr. President:

I am instructed by the House to inform the Senate that the House, on re-consideration of its previous vote, has passed Senate Bill No. 2, by the following vote:

Twenty-four ayes, six nays, two absent, three excused.

The bill as passed has been amended by the House in the following manner:

Amend Section 16, be ginning at the word 'all', in line 7, strike out 'all' in line 7 and the balance of said line 7. Strike out line 8 and line 9 up to and including the word 'delivery' in said line 9.

HUGH CALLAHAN,
Chief Clerk of the House."

Moved by Senator Wilkinson, duly seconded, that the Senate concur in the amendments as made by the House. Carried by the following vote:

Ayes: Buchanan, Campbell, Claypool, Colter, Devine, Ferguson, Goodell, Kinney, Mahoney, Mattox, Roberts, Sutter, Whipple, Wilkinson, Winsor, Mr. President—16.

Absent: Rutherford—1.

Excused: Getchell, Hall —2.

Senate Bill No. 2 referred to Committee on Enrolling and Engrossing.

The following report from the Conference Committee on Substitute House Bill No. 3 was received and read:

"June 19, 1918.

Mr. President:

Your Conference Committee, appointed to consider Substitute House Bill No. 3, entitled 'An Act to enable qualified electors in the military and naval establishment of the State

of Arizona or of the United States in any capacity, to exercise the right of suffrage while absent from the State or such military establishment; to provide penalties; to repeal all Acts in conflict with the provisions of this Act; and to declare an emergency,' begs leave to report that it has conferred with a like committee representing the House and respectfully recommends that the Senate recede from its amendments to said bill, and that the Senate request the return of said bill in order that the record may be perfected in accordance herewith.

MULFORD WINSOR,
HUGH E. CAMPBELL,
ALFRED KINNEY,
H. B. WILKINSON,
FRED T. COLTER,
Senate Committee."

Moved by Senator Winsor, duly seconded, that the report of the committee be adopted. Carried.

Moved by Senator Winsor, duly seconded, that the House be requested to return Substitute House Bill No. 3 to the Senate. Carried.

Senator Goodell, Chairman of the Enrolling and Engrossing Committee, reported orally as follows:

"Mr President:

Your Committee on Enrolling and Engrossing has inserted the amendments in Senate Bill No. 2, in accordance with the instructions of the Senate."

Moved by Senator Goodell, duly seconded, that the report of the committee be adopted. Carried.

The following report from the Committee on Style, Revision and Compilation was received and read:

"June 19, 1918.

Mr. President:

Your Committee on Style, Revision and Compilation having had under consideration Senate Bill No. 20, begs leave to report that it has amended the same as instructed by the Senate.

D. H. CLARIDGE,
Chairman."

Moved by Senator Winsor, duly seconded, that the report of the committee be adopted. Carried.

Moved by Senator Claypool, duly seconded, that the rules be suspended and that Senate Bill No. 20 be placed on the order of third reading. Carried.

It is not necessary that all the ballots be placed in the same ballot box, but the Board shall proceed so as to protect the absolute secrecy of the ballot. In canvassing the votes cast under the provisions of this Act, the law relating to the duties and powers of judges, and clerks of election, and election boards generally, shall, in so far as applicable, apply to the said Clerk and Board of Supervisors sitting as an election board on said election day. In case there is a conflict, the provisions of this Act shall govern. All envelopes addressed to the Clerk of the Board of Supervisors containing ballots cast at any primary or general election shall be, from the time of delivery until the votes are cast and canvassed, under the absolute and exclusive control of the said Clerk and Board. Said Board shall make whatever provision is necessary to properly care for said ballots and to prevent the loss of any of said ballots or any tampering therewith.

Sec. 8. No informality in the manner of carrying out the provisions of this Act shall invalidate the election held under the same or authorize the rejection of the returns thereof, and this Act shall be liberally construed for the purposes herein expressed. All elections held under the provisions of this Act shall be subject to contest and inquiry in the same manner as elections held within this State.

Sec. 9. All the provisions of the penal laws relating to crimes against the elective franchise shall be deemed to apply to all elections held under the provisions of this Act. Any person who shall violate any such provisions shall be subject to the penalties prescribed by the laws of the State. The duties imposed upon officers under the provisions of this Act are mandatory and any officer who shall fail or neglect to perform the duties imposed upon him by the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Five Hundred Dollars. Where no other penalty is imposed, any person violating any of the provisions of this Act shall be fined not to exceed One Hundred Dollars or be imprisoned in the county jail not to exceed three months.

Sec. 10. All Acts or parts of Acts in conflict with the provisions of this Act are hereby repealed.

Sec. 11. Whereas, in order to preserve the public health, peace and safety, an emergency is hereby declared to exist and the provisions of this Act are hereby exempt from the referendum provision of the State Constitution.

Carried:

Moved by Senator Winsor, duly seconded, that Substitute House Bill No. 3 be placed on the order of third reading. Carried.

Substitute House Bill No. 3 was placed on the order of third reading, read the third time and passed the Senate by the following vote:

Ayes: Buchanan, Campbell, Claypool, Colter, Devine, Ferguson,

Goodell, Kinney, Mahoney, Mattox, Roberts, Sutter, Whipple, Wilkinson, Winsor, Mr. President—16.

Absent: Rutherford—1.

Excused: Getchell, Hall —2.

The President announced that Substitute House Bill No. 3 had been signed in open session and ordered transmitted to the House.

The following message from the House on Senate Bill No. 20 was received and read:

"HOUSE OF REPRESENTATIVES.

June 19, 1918.

Mr. President:

I am directed by the House to inform the Senate that it has passed Senate Bill No. 20, entitled 'An Act to protect the civil rights of Arizonans engaged in the present war by aiding the enforcement of the selective service laws and regulations of the United States.' by the following vote:

Thirty ayes, no nays, two absent, three excused.

HUGH CALLAHAN,
Chief Clerk of the House."

Moved by Senator Winsor, duly seconded, that the Chair appoint a committee of three to wait upon the Governor to see if he has any further business before the Senate. Carried.

The Chair appointed Senators Mattox, Whipple and Devine.

Moved by Senator Winsor, duly seconded, that the Chair appoint a committee of three to inform the House that the Senate is ready to adjourn sine die. Carried.

The Chair appointed Senators Winsor, Sutter and Roberts.

Senator Mattox, Chairman of the committee appointed to wait upon the Governor reported that the committee had informed the Governor that the Senate had completed its business and was ready to adjourn sine die and that the Governor informed the committee that he had no further business to lay before the Senate.

Senator Winsor, Chairman of the committee appointed to inform the House that the Senate had completed its business and was ready to adjourn sine die, reported that the committee had so informed the House.

A committee from the House consisting of Mrs. O'Neill, Mrs. McKay and Mrs. Marsh, reported that the House had completed its business and was ready to adjourn sine die.

EXHIBIT 6

ACTS, RESOLUTIONS AND MEMORIALS

OF THE

Regular Session

OF THE

Fifth Legislature

OF THE

STATE OF ARIZONA

Amendments to the Constitution, Referendum and Initiative Measures

Showing votes cast for and against at the general election held November 2, 1920.

Session Began January 10, 1921

Session Adjourned March 10, 1921

CHAPTER 117.

(House Bill No. 74.)

AN ACT

Providing a Method by Which Registered Electors Absent From Their Election Precincts on Election Day May Vote, and Prescribing a Penalty for Violations Thereof.

Be it Enacted by the Legislature of the State of Arizona:

Section 1. ELECTOR ABSENT FROM COUNTY MAY VOTE. Any qualified elector of this State having complied with the laws in regard to registration, who is absent from the county of which he is an elector on the day of holding any general election, may vote at any such election as hereinafter provided.

Section 2. APPLICATION ON EXPECTED ABSENCE. At any time within thirty days next preceding such election, any voter expecting to be absent on the day of such election from the county in which his voting precinct is situated, may make application in person to the Justice of the Peace of the precinct in which said applicant is registered, or to the County Recorder of such county for an official absent voter ballot to be used as hereinafter provided.

Section 3. FORM--COLOR--DESIGNATION. For all general elections there shall be prepared and printed a sufficient number of official ballots to be known as absent voters' ballots, which ballots shall be prepared and printed in the same form and shall be of the same size and texture and shall contain the same matter as the regular official ballots, except that they shall be printed upon tinted paper of a different tint from that of the sample and regular ballots.

Section 4. BLANK--FORM. Application for such ballot shall be made upon a blank to be furnished by the County Recorder of the county of which the applicant is an elector, and shall be in substantially the following form:

I, ..., a duly qualified elector, residing at .....county, State of Arizona, and to my best knowledge and belief entitled to vote at the next election, expecting to be absent from the said county on the day for holding such election hereby make application for an official absent voter ballot to be voted by me at such election.

Date.....

(Signed).....

This application was delivered by me to....., the above applicant, this.....day of.....

(Signed).....
Justice of the Peace, or
County Recorder.

Section 5. DELIVERY OF APPLICATION. The County Recorder shall furnish each Justice of the Peace within the County, a sufficient number of the said application blanks.

Section 6. ABSENT VOTER BALLOT--AFFIDAVIT. Upon receipt of such application properly filled out and duly signed, or as soon thereafter as the official absent voter ballot for the precinct in which the applicant resides has been printed, the said County Recorder shall send to such absent voter by mail, postage prepaid, one such official absent voter ballot and shall enclose with such ballot an envelope, which envelope shall bear upon the front thereof the name, official title and postoffice address of such County Recorder, and upon the other side a printed affidavit in substantially the following form:

County of.....
} ss.
State of.....

I, ..., solemnly swear that I am a resident elector of the.....voting precinct of the county of....., State of Arizona, and entitled to vote in such precinct at the next election; that I expect to be absent from said county of my residence on the day of holding such election and that I will have no opportunity to vote in person on that day.

.....
(Name of Voter.)

Subscribed and sworn to before me this.....day of ....., 19....., and I hereby certify that this affiant exhibited the enclosed ballots to me unmarked, that he then, in my presence and in the presence of no other person, and in such manner that I could not see his vote, marked such ballot, and enclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

.....
(Notary Public, Justice of the Peace, or other officer authorized to administer oaths.)

Section 7. SUBSCRIBING VOTER--FOLDING AND MAILING BALLOT. Such absent voter shall make and sub-

scribe the said affidavit before an officer authorized by law to administer oath, and such absent voter shall thereupon, in the presence of such officer and no other person, mark such ballot (but in such manner that such officer cannot see the vote), and such ballot shall thereupon in the presence of such officer, be folded by such voter so as to conceal the vote, and be in the presence of such officer deposited by voter in said envelope, and such envelope securely sealed. Said envelope shall be mailed by such absent voter, postage prepaid.

Section 8. DUTIES OF COUNTY RECORDER. Upon receipt of such envelope containing ballot the County Recorder shall forthwith enclose the same, unopened, together with the written application of such absent voter, in a larger envelope, which shall be securely sealed and endorsed with the name or number of the proper voting precinct, the name and official title of such recorder, and the words "This envelope contains an absent voter ballot and must be opened only on election day at the polls while the same are opened," and such recorder shall thereafter safely keep the same in his office until same is delivered by him as provided in the next Section.

Section 9. SUPERSCRIPTION OF ENVELOPE--TRANSMITTING. In case such envelope is received by such recorder prior to the delivery of the official ballots to the judges of election of the voting precinct in which such absent voter resides, such ballot, envelope and application sealed in such envelope shall be enclosed with said official ballots and delivered therewith to the judges of such voting precinct. In case the official ballots for such voting precinct shall have been delivered to such judges of election at the time of the receipt by the judges of such absent voter ballot, such recorder shall immediately enclose such application and such ballot with the envelope containing such ballot, unopened, in a larger envelope which shall be securely sealed by him and endorsed on the front with the name, official title, name of the voting precinct and postoffice address of the judges of election of the voting precinct in which such absent voter resides, and the words, "This envelope contains an absent voter ballot and must be opened only on election day at the polls while the same are open," and forthwith mail the same, postage prepaid, to such judges of election.

Section 10. PROCEDURE BY JUDGES OF ELECTION. At any time between the opening and closing of the polls on such election day, the judges of election of such voting district shall first open the outer envelope only, and compare the signature of such voter to such application with the signature to

such affidavit. In case the judges find the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such voting precinct and has not voted at such election, they shall open the absent voter envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting it to be opened or examined, and having endorsed his initials on the stub in the same manner that other ballots are endorsed, deposit the same in the proper ballot box, showing by the records of such election such elector to have voted. In case such affidavit is found to be insufficient, or that the signatures do not correspond, or that such applicant is not then a duly qualified elector of such voting precinct, such vote shall not be allowed, but without opening the absent voter envelope, the judges of election shall mark across the face thereof, "Rejected as Defective," or "Rejected as not an elector," as the case may be. The absent voter envelope, when such absent vote is voted, and the absent voter envelope with its contents, unopened, when such absent vote is rejected, shall be deposited in the ballot box containing the general or party ballots, as the case may be, retained or preserved in the manner as now by law provided for the retention and preservation of official ballots voted at such election.

Section 11. PROVISIONS OF ACT EXTENDED. The provisions of this Act shall be construed so as to permit any qualified elector of this State who is present in his county after the official absent voter ballots of such county have been printed, and who has reason to believe that he will be absent from such county on election day as before provided in Section 2, to vote before he leaves his county, in like manner as an absent voter, and any qualified elector who has marked his ballot as hereinbefore provided, who shall unexpectedly return to his voting precinct before or on election day, shall be permitted to vote in person, provided his ballot has not already been deposited in the ballot box.

Section 12. ABSENT VOTER BALLOTS TO BE DULY PREPARED. It shall be the duty of the Clerk of the Board of Supervisors of each of the several counties, or any other officer, by law required, to prepare any general election ballot, to prepare and have printed and delivered to the County Recorder, at least fifteen days prior to the holding of such election, a sufficient number of absent voter ballots provided for, in Section 5, for the use of all voters likely to be absent from such county on the day of such election.

Section 13. FALSE SWEARING--NEGLECT OF DUTIES BY OFFICERS--PENALTIES. If any person shall wilfully swear falsely to the affidavit in Section 6, provided for, he shall upon conviction thereof be deemed guilty of perjury and shall be punished as in such cases by law provided. If the County Recorder or any election officer shall refuse or neglect to perform any of the duties prescribed in this Act, or shall violate any of the provisions thereof, or if any officer taking the affidavit provided for in Section 6, shall make any false statements in his certificate thereto attached, he shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding $100 or by imprisonment in the county jail for thirty days, or by both such fine and imprisonment.

Approved March 17th, 1921.

CHAPTER 118.

(House Bill No. 14.)

AN ACT

To Authorize and Regulate the Practice of Chiropractic, to Provide for the Licensing and Examination of Chiropractors, to Create a State Board of Examination and Registration, to Provide for the Appointment of Same, to Establish Rules and Regulations Governing Said Board, to Provide a Curriculum, and Establish a Fee for Examination, to Provide for the Disposal of the Fund Arising From Said Fee, to Regulate the Holding of Meetings of Said Board and Issuance of License to Practice Chiropractic, to Provide a Penalty for Practicing Chiropractic Without a License as Provided by this Act, and to Repeal All Acts in Conflict Herewith.

Be it Enacted by the Legislature of the State of Arizona:

Section 1. That there is hereby created and established a board to be known by the name and style of the State Board of Chiropractic Examiners, and said board shall be composed of three (3) resident course graduated practicing Chiropractors of integrity and ability, who shall be residents of the State of Arizona and who shall have practiced Chiropractic in the State for a period of at least three (3) years. No two members of said board shall be graduates of the same school or college of Chiropractic.

EXHIBIT 7

SENATE JOURNAL

FIFTH LEGISLATURE

STATE OF ARIZONA

JANUARY TENTH

Pursuant to the provisions of Chapter IV, Title 1, Revised Statutes of Arizona, 1913, Civil Code, the senate of the Fifth State Legislature of the state of Arizona convened at 12:00 o'clock, noon, Hon. F. A. Woodward, senator from Gila county, presiding.

It was moved by Senator Goodell and seconded, that State Librarian Con P. Cronin be invited to act as secretary of the senate pro tem. Unanimously carried, and Librarian Cronin assumed the duties of secretary pro tem.

Roll call showed the following senators-elect present:

Burton, Claypool, Cull, Curtin, Eddy, Elliott, Goodell, Hedrick, Larson, Lines, MacMillan, Morgan, Saunders, Schleimer, Scott, Sims, Stoddard, Wilkinson and Woodward.

Prayer by the chaplain Rev. Bertrand R. Cocks.

Moved by Senator Goodell and seconded, that a committee of three be appointed by the chair on credentials. Carried.

The president pro tem appointed Messrs. Goodell, Stoddard and Elliott as the committee on credentials.

At 12:12 o'clock p. m. the chair announced a recess subject to the call of the gavel.

At 12.23 o'clock p. m. the chair called the senate to order.

The following report was received from the committee on credentials:

SENATE CHAMBER

January 10th, 1921.

We, the committee on credentials beg leave to report that the following named persons were duly elected as state senators, and are entitled to seats in this body:

Apache County.....W. A. Saunders
Coconino County.....Chas. E. Larson
Cochise County.....W. P. Sims
Cochise County.....John P. Cull
Gila County.....W. D. Claypool
Gila County.....F. A. Woodward
Graham County.....J. H. Lines
Greenlee County.....H. A. Elliott
Maricopa County.....H. B. Wilkinson

Ayes: Burton, Goodell, Hedrick, Larson, Morgan, Saunders, Scott, Stoddard, Woodward and Mr. President—10.

Nays: Claypool, Cull, Curtin, Eddy, Lines, MacMillin, Schleimer and Sims—8.

Absent: Elliott—1.

Substitute House Bill No. 19, House Bill No. 14, Senate Bill No. 141, Senate Bill No. 68, House Bill No. 89, Senate Bill No. 112, Senate Bill No. 111, Senate Bills Nos. 88, 95 and 125 were placed on order of Third Reading of Bills.

THIRD READING OF BILLS:

Senator Stoddard moved that the last section of Senate Bill No. 160 providing for an emergency be stricken from the bill. Motion was duly seconded and carried.

On motion of Senator Stoddard, duly seconded, Senate Bill No. 160 was referred to the Enrolling and Engrossing Committee with instructions to rewrite the bill leaving off the emergency clause.

The following amendments to Senate Bill No. 167 were proposed by Senator Eddy.

In the eleventh line of the printed bill after the word "warrant" add the following clause: "and may provide that said warrant shall not be paid without thirty (30) days notice to the holder thereof, unless such notice be waived."

In line 17 of the printed bill after the word "fund" add the following clause: "and, further provided that from and after January 1, 1925, the said rate of interest shall be not to exceed five (5%) per centum per annum."

On motion of Senator Eddy, duly seconded, the above amendments were adopted and Senate Bill No. 167 was referred to the Enrolling and Engrossing Committee with instructions to incorporate the amendments.

House Bill No. 74 was read the third time in full, placed on final passage and passed the Senate by the following vote:

Ayes: Burton, Claypool, Cull, Curtin, Eddy, Goodell, Hedrick, Larson, Lines, Morgan, Saunders, Scott, Stoddard, Woodward and Mr. President—15.

Nays: MacMillin, Schleimer and Sims—3.

Absent: Elliott—1.

Excused: 0.

House Bill No. 74 was signed in open session and ordered transmitted to the House.

House Bill No. 75 was read the third time in full, placed on final passage and passed the Senate by the following vote:

Ayes: Burton, Claypool, Cull, Curtin, Eddy, Hedrick, Larson, Lines, MacMillin, Morgan, Saunders, Schleimer, Scott, Stoddard, Woodward and Mr. President—16.

Nays: Goodell and Sims—2.

Absent: Elliott—1.

Excused: 0.

House Bill No. 75 was signed in open session and ordered transmitted to the House.

House Bill No. 2 was read the third time in full, placed on final passage and passed the Senate by the following vote:

Ayes: Burton, Claypool, Cull, Curtin, Eddy, Goodell, Hedrick, Larson, Lines, MacMillin, Morgan, Saunders, Schleimer, Scott, Stoddard, Woodward, and Mr. President—17.

Nays: Sims—1.

Absent: Elliott—1.

Excused: 0.

EXHIBIT 8

Seventh State Legislature

OF ARIZONA

JOURNAL

OF THE

SENATE

1925

SESSION OPENED—JANUARY TWELFTH
SESSION ADJOURNED—SINE DIE AT
3:25 A. M., MARCH FIFTEENTH
NINETEEN TWENTY-FIVE.

Governor desired to deliver his biennial message to the Senate and House in joint sesion in the House Chamber, at 2 o'clock, p. m.

Mr. Sims moved that when the Senate should recess, it recess to meet with the House in joint session, in the House Chamber, at 2 o'clock, p. m., for the purpose of listening to the reading of the Governor's biennial message to the Legislature. The motion was agreed to.

Mr. Sims moved that the Senate stand at recess, subject to the call of the gavel, following the joint session. The motion was agreed to, and (at 1 o'clock and fifty-five minutes p. m.) the Senate stood at recess.

JOINT SESSION

In accordance with recesses taken by the two Houses, the Senate and House of Representatives assembled in joint session at 2 o'clock p. m., in the House of Representatives Chamber, the President of the Senate in the chair.

The Secretary of the Senate called the roll of the Senate and the following Senators answered to their names:

Colter	Favour	Lyons	St. Charles
Cox	Hardy	Moore	Thornburg
Davis	Kilcrease	Runke	Wylie
Donnelly	Kinney	Sims	The President
Elliott	Lines	Smith	

The Chief Clerk of the House called the roll of the House and the following Representatives answered to their names:

Abell	Edwards	Jones	Orme
Barkell	Elliott	Kent	Patton
Boehmer	Elwin	Kinney	Pickett
Boville	Embach	Ludden	Pomeroy
Bradshaw	Finch	Moon	Provost
Briscoe	Finn	Morgan, A. J.	Rhodes
Brown	Fiock	Morgan, J. M.	Skinner
Brooke	Freeman	Murphy	Smith
Chesnutt	Gleason	McBrayer	Valentine
Crawford	Goodwin	McCormick	Wisener
Crenshaw	Hamblin	McGrath	Mr. Speaker
DuBois	Hannon	Olcott	

The President designated Mr. Colter, the Senator from Apache county, and Mr. Fiock, a Representative from Maricopa county, to escort the Governor to the House Chamber.

His Excellency the Governor of Arizona, Geo. W. P. Hunt, appeared in the House Chamber, escorted by Mr. Colter and Mr. Fiock, and was introduced by the President.

The Governor delivered the following biennial message:

MESSAGE OF THE GOVERNOR

MR. PRESIDENT, MR. SPEAKER, MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE SEVENTH ARIZONA LEGISLATURE:

I am deeply sensible of the responsibility as well as the exceptional honor which has come to me with the office of Governor. This

LIENS ON REAL ESTATE

Mr. Elliott, for the Committee on Judiciary, reported Senate Bill No. 132, by Mr. Colter, relating to liens on real estate, with the unanimous recommendation that the Bill do pass.

Mr. Favour, a Senator from Yavapai county, was designated as manager of the Bill.

The Bill, accompanied by the report of the Committee on Judiciary, was placed on the Calendar of the Committee of the Whole.

BRIDGE ACROSS THE VERDE RIVER

A message from the House of Representatives, by Besse Golze, its Chief Clerk, announced that the House had passed House Bill No. 90, entitled "An Act providing for the building of a bridge across the Verde river in Yavapai county," etc.

By unanimous consent House Bill No. 90 was read the first time by number and title, and was referred to the Committee on Appropriations.

BUILDING AND LOAN ASSOCIATIONS

By unanimous consent House Bill No. 162, relating to building and loan or savings and loan associations, was read the second time by number and title. The President put the question, "Shall the Bill be engrossed and have a third reading?" which was decided in the affirmative, and the Bill was referred to the Committee on Enrolling and Engrossing.

COMMISSIONER OF MOTOR VEHICLES

By unanimous consent Senate Bill No. 131, by Mr. Cox, relating to commissioner of motor vehicles, was read the second time by number and title. The President put the question, "Shall the Bill be engrossed and have a third reading?" which was decided in the affirmative, and the Bill was referred to the Committee on Enrolling and Engrossing.

SALE OF STATE LANDS

By unanimous consent House Bill No. 117, relating to funds derived from the sale of State lands, was read the second time by number and title. The President put the question, "Shall the Bill be engrossed and have a third reading?" which was decided in the affirmative, and the Bill was referred to the Committee on Enrolling and Engrossing.

HOLIDAYS

By unanimous consent House Bill No. 118, relating to holidays, was read the second time by number and title, The President put the question, "Shall the Bill be engrossed and have a third reading?" which was decided in the affirmative, and the Bill was referred to the Committee on Enrolling and Engrossing.

ABSENTEE VOTERS

House Bill No. 87, relating to absentee voters, was read the third time in full. The roll was called on final passage, and resulted: Ayes 18, not voting 1, as follows:

AYES

Colter	Hardy	Moore	St. Charles
Cox	Kilcrease	Runke	Thornburg
Davis	Kinney	Sims	Wylie
Donnelly	Lines	Smith	The President
Favour	Lyons		

NOT VOTING

Elliott

So the Bill was passed.

REGULATION OF POOLROOMS

Senate Bill No. 139, by Mr. Cox, relating to the regulation of poolrooms, was read the third time in full. The roll was called on final passage, and resulted: Ayes 15, not voting 4, as follows:

AYES

Cox	Hardy	Lyons	St. Charles
Davis	Kilcrease	Moore	Thornburg
Donnelly	Kinney	Runke	Wylie
Favour	Lines	Smith	

NOT VOTING

Colter	Elliott	Sims	The President

So the Bill was passed.

SALE OF COTTON PRODUCTS

Senate Bill No. 81, by Mr. Davis, relating to the sale of manufactured articles from cotton duck, etc., was read the third time in full. The roll was called on final passage and resulted: Ayes 14; Noes 1; not voting 4, as follows:

AYES

Cox	Kilcrease	Moore	Thornburg
Davis	Kinney	Runke	Wylie
Donnelly	Lines	Smith	
Hardy	Lyons	St. Charles	

NOES

Favour

NOT VOTING

Colter	Elliott	Sims	The President

So the Bill was passed.

CONVICT MADE GOODS

Senate Bill No. 94, by Mr. Donnelly, relating to convict made goods, was read the third time in full. The roll was called on final passage, and resulted: Ayes 8; Noes 9; not voting 2, as follows:

AYES

Colter	Davis	Moore	Smith
Cox	Donnelly	Runke	St. Charles

NOES

Favour	Kinney	Sims	Wylie
Hardy	Lines	Thornburg	
Kilcrease	Lyons		

NOT VOTING

Elliott

So the Bill failed to pass.

EXHIBIT 9

Seventh State Legislature

OF ARIZONA

JOURNAL

OF THE

SENATE

1925

SESSION OPENED—JANUARY TWELFTH
SESSION ADJOURNED—SINE DIE AT
3:25 A. M., MARCH FIFTEENTH
NINETEEN TWENTY-FIVE.

Governor desired to deliver his biennial message to the Senate and House in joint sesion in the House Chamber, at 2 o'clock, p. m.

Mr. Sims moved that when the Senate should recess, it recess to meet with the House in joint session, in the House Chamber, at 2 o'clock, p. m., for the purpose of listening to the reading of the Governor's biennial message to the Legislature. The motion was agreed to.

Mr. Sims moved that the Senate stand at recess, subject to the call of the gavel, following the joint session. The motion was agreed to, and (at 1 o'clock and fifty-five minutes p. m.) the Senate stood at recess.

JOINT SESSION

In accordance with recesses taken by the two Houses, the Senate and House of Representatives assembled in joint session at 2 o'clock p. m., in the House of Representatives Chamber, the President of the Senate in the chair.

The Secretary of the Senate called the roll of the Senate and the following Senators answered to their names:

Colter	Favour	Lyons	St. Charles
Cox	Hardy	Moore	Thornburg
Davis	Kilcrease	Runke	Wylie
Donnelly	Kinney	Sims	The President
Elliott	Lines	Smith	

The Chief Clerk of the House called the roll of the House and the following Representatives answered to their names:

Abell	Edwards	Jones	Orme
Barkell	Elliott	Kent	Patton
Boehmer	Elwin	Kinney	Pickett
Boville	Embach	Ludden	Pomeroy
Bradshaw	Finch	Moon	Provost
Briscoe	Finn	Morgan, A. J.	Rhodes
Brown	Fiock	Morgan, J. M.	Skinner
Brooke	Freeman	Murphy	Smith
Chesnutt	Gleason	McBrayer	Valentine
Crawford	Goodwin	McCormick	Wisener
Crenshaw	Hamblin	McGrath	Mr. Speaker
DuBois	Hannon	Olcott	

The President designated Mr. Colter, the Senator from Apache county, and Mr. Fiock, a Representative from Maricopa county, to escort the Governor to the House Chamber.

His Excellency the Governor of Arizona, Geo. W. P. Hunt, appeared in the House Chamber, escorted by Mr. Colter and Mr. Fiock, and was introduced by the President.

The Governor delivered the following biennial message:

MESSAGE OF THE GOVERNOR

MR. PRESIDENT, MR. SPEAKER, MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE SEVENTH ARIZONA LEGISLATURE:

I am deeply sensible of the responsibility as well as the exceptional honor which has come to me with the office of Governor. This

LIENS ON REAL ESTATE

Mr. Elliott, for the Committee on Judiciary, reported Senate Bill No. 132, by Mr. Colter, relating to liens on real estate, with the unanimous recommendation that the Bill do pass.

Mr. Favour, a Senator from Yavapai county, was designated as manager of the Bill.

The Bill, accompanied by the report of the Committee on Judiciary, was placed on the Calendar of the Committee of the Whole.

BRIDGE ACROSS THE VERDE RIVER

A message from the House of Representatives, by Besse Golze, its Chief Clerk, announced that the House had passed House Bill No. 90, entitled "An Act providing for the building of a bridge across the Verde river in Yavapai county," etc.

By unanimous consent House Bill No. 90 was read the first time by number and title, and was referred to the Committee on Appropriations.

BUILDING AND LOAN ASSOCIATIONS

By unanimous consent House Bill No. 162, relating to building and loan or savings and loan associations, was read the second time by number and title. The President put the question, "Shall the Bill be engrossed and have a third reading?" which was decided in the affirmative, and the Bill was referred to the Committee on Enrolling and Engrossing.

COMMISSIONER OF MOTOR VEHICLES

By unanimous consent Senate Bill No. 131, by Mr. Cox, relating to commissioner of motor vehicles, was read the second time by number and title. The President put the question, "Shall the Bill be engrossed and have a third reading?" which was decided in the affirmative, and the Bill was referred to the Committee on Enrolling and Engrossing.

SALE OF STATE LANDS

By unanimous consent House Bill No. 117, relating to funds derived from the sale of State lands, was read the second time by number and title. The President put the question, "Shall the Bill be engrossed and have a third reading?" which was decided in the affirmative, and the Bill was referred to the Committee on Enrolling and Engrossing.

HOLIDAYS

By unanimous consent House Bill No. 118, relating to holidays, was read the second time by number and title, The President put the question, "Shall the Bill be engrossed and have a third reading?" which was decided in the affirmative, and the Bill was referred to the Committee on Enrolling and Engrossing.

ABSENTEE VOTERS

House Bill No. 87, relating to absentee voters, was read the third time in full. The roll was called on final passage, and resulted: Ayes 18, not voting 1, as follows:

AYES

Colter	Hardy	Moore	St. Charles
Cox	Kilcrease	Runke	Thornburg
Davis	Kinney	Sims	Wylie
Donnelly	Lines	Smith	The President
Favour	Lyons		

NOT VOTING

Elliott

So the Bill was passed.

REGULATION OF POOLROOMS

Senate Bill No. 139, by Mr. Cox, relating to the regulation of poolrooms, was read the third time in full. The roll was called on final passage, and resulted: Ayes 15, not voting 4, as follows:

AYES

Cox	Hardy	Lyons	St. Charles
Davis	Kilcrease	Moore	Thornburg
Donnelly	Kinney	Runke	Wylie
Favour	Lines	Smith	

NOT VOTING

Colter	Elliott	Sims	The President

So the Bill was passed.

SALE OF COTTON PRODUCTS

Senate Bill No. 81, by Mr. Davis, relating to the sale of manufactured articles from cotton duck, etc., was read the third time in full. The roll was called on final passage and resulted: Ayes 14; Noes 1; not voting 4, as follows:

AYES

Cox	Kilcrease	Moore	Thornburg
Davis	Kinney	Runke	Wylie
Donnelly	Lines	Smith	
Hardy	Lyons	St. Charles	

NOES

Favour

NOT VOTING

Colter	Elliott	Sims	The President

So the Bill was passed.

CONVICT MADE GOODS

Senate Bill No. 94, by Mr. Donnelly, relating to convict made goods, was read the third time in full. The roll was called on final passage, and resulted: Ayes 8; Noes 9; not voting 2, as follows:

AYES

Colter	Davis	Moore	Smith
Cox	Donnelly	Runke	St. Charles

NOES

Favour	Kinney	Sims	Wylie
Hardy	Lines	Thornburg	
Kilcrease	Lyons		

NOT VOTING

Elliott

So the Bill failed to pass.

EXHIBIT 10

JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

SEVENTH STATE LEGISLATURE

OF THE

STATE OF ARIZONA

1925

REGULAR SESSION

SESSION CONVENED—JANUARY TWELFTH

SESSION ADJOURNED—SINE DIE AT 3:18 A. M.

MARCH FIFTEENTH

NINETEEN HUNDRED TWENTY-FIVE

No.	Action of House	Action of Senate	Action of Governor
84	Passed	Passed amended	Signed
85	Passed	Passed amended	Signed
86	Passed	Passed amended	Signed
87	Passed	Passed amended	Signed
88	Indefinitely postponed		
Sub. 88	Passed	Died	
89	Indefinitely postponed		
90	Passed	Died	
91	Passed	Indefinitely postponed	
92	Passed	Died	
93	Indefinitely postponed		
94	Died in Committee		
95	Died on Calendar		
96	Passed	Died	
97	Indefinitely postponed		
98	Died in Committee		
99	Indefinitely postponed		
100	Passed	Died	
101	Passed	Died	
102	Passed	Passed amended	Signed
103	Passed	Passed amended	Signed
104	Passed	Passed	Signed
105	Died on Calendar		
106	Indefinitely postponed		
107	Passed	Passed amended	Signed
108	Passed	Died	
109	Indefinitely postponed		
110	Passed	Died	
111	Passed	Died	
112	Passed	Died	
113	Passed	Died	
114	Passed	Died	
115	Passed	Died	
116	Passed	Passed amended	Signed
117	Passed	Passed amended	Signed
118	Passed	Passed amended	Vetoed
119	Passed	Died	
120	Died in Committee		
121	Passed	Passed amended	Signed
122	Passed	Died	
123	Failed to pass		
124	Passed	Died	
125	Passed	Died	
126	Passed	Died	

EXHIBIT 11

1954 SESSION LAWS

STATE OF ARIZONA

Twenty-first Legislature

SECOND REGULAR SESSION

1953

FIRST SPECIAL SESSION

TWENTY-FIRST LEGISLATURE

Wesley Bolin

Secretary of State

25-206. WRIT TO BE TESTED AND DELIVERED — SERVICE AND EFFECT OF LEVY. The writ of garnishment shall be dated and tested as other writs and may be delivered to the sheriff or constable by the officer who issued it, or to the plaintiff for that purpose. The officer receiving the writ shall immediately serve the same by delivering a copy thereof to the garnishee, and shall make return thereof as of summons. Debts owing to a defendant by a banking corporation or association, savings bank, building and loan association, trust company, or title insurance company, maintaining branch offices, or credits or other effects belonging to a defendant and in the possession of or under the control of such banking corporation or association, savings bank, building and loan association, trust company, or title insurance company, may be levied upon by serving a copy of the writ of garnishment upon the manager or other officer of such banking corporation or association, savings bank, building and loan association, trust company or title insurance company, at any office or branch thereof located in the county where such service is made and no garnishment shall be effective as to any debt owing by such banking corporation or association, savings bank, building and loan association, trust company or title insurance company, if the account evidencing such indebtedness is carried at an office or branch thereof located in a county other than the county in which service is made or as to any credits or other effects in its possession or under its control at any office or branch thereof located in a county other than the county in which service is made.

The procedure provided in this Act for the service of a writ of garnishment upon any banking corporation or association, savings bank, building and loan association, trust company or title insurance company maintaining branch offices, shall be exclusive.

Sec. 2. EMERGENCY. To preserve the public peace, health, and safety it is necessary that this Act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor—March 30, 1954.

Filed in the Office of the Secretary of State—March 30, 1954.

CHAPTER 76

(House Bill No. 63)

AN ACT

RELATING TO ELECTIONS; PERMITTING ABSENTEE VOTERS TO VOTE AT ALL PRIMARY, GENERAL OR

SPECIAL ELECTIONS, AND AMENDING SECTIONS 55-1301 AND 55-1302, ARIZONA CODE OF 1939.

Be it Enacted by the Legislature of the State of Arizona:

Section 1. Section 55-1301, Arizona Code of 1939, is amended to read:

55-1301. ELECTORS ABSENT FROM COUNTY OR PHYSICALLY DISABLED MAY VOTE. A qualified and registered elector who is absent from the county of which he is an elector, or who expects to be absent from such county, at the time of holding any general or primary election, or a special election, called pursuant to section 1, article 21 of the Constitution, or who furnishes the county recorder with a doctor's certificate of physical inability to go to the polls, may vote at such election as hereinafter provided. A person who on account of the tenets of his religion cannot attend the polls on the day of a general, primary, or special election is deemed to be absent from the county and may vote at such election as hereinafter provided.

Sec. 2. Section 55-1302, Arizona Code of 1939, is amended to read:

55-1302. APPLICATION FOR BALLOT. (a) Within thirty days next preceding the Saturday before any primary or general election, or a special election called pursuant to section 1, article 21 of the Constitution, an elector may make request by telephone or mail to any registration officer in the state for an application for a ballot and an official absent or disabled voter's ballot, or, if absent from the state during the thirty days next preceding the election, may upon the application blank provided therefor apply for such ballot by appearing before a notary public or other officer qualified to administer oaths within the state of temporary residence, swearing and subscribing to the application and returning the original and duplicate to the recorder of the county in which the elector is registered. Upon receipt of such application, if in proper form, the recorder shall mail postage prepaid to the elector the ballot applied for, together with the envelope for its return. After making and subscribing the affidavit provided for upon the return envelope, the elector may mark the ballot and return it to the recorder of the county in which he is registered, or the recorder may, when deemed expedient, mail the application with the ballot and determine the sufficiency of the application upon receipt of the ballot and the application.

(b) To and including the last Monday before election the recorder may, in his discretion, direct the voting of an elector

who by reason of sudden illness is prevented from voting at the polls, if the illness was not anticipated in time to make application as provided by law, or direct the voting of a disabled elector when it appears that the request of the elector was received before five o'clock p.m., on the Friday preceding the election.

Approved by the Governor—March 30, 1954.

Filed in the Office of the Secretary of State—March 30, 1954.

CHAPTER 77

(House Bill No. 109)

AN ACT

RELATING TO THE DEPARTMENT OF LAW; REALLOCATING FUNDS APPROPRIATED UNDER CHAPTER 30, LAWS OF 1953, AND DECLARING AN EMERGENCY.

Be it Enacted by the Legislature of the State of Arizona:

Section 1. REALLOCATION OF FUNDS. (a) From the funds heretofore appropriated to the department of law for expenditure by the attorney general under the provisions of chapter 30, Laws of 1953, the sum of two thousand seven hundred eighteen dollars thirty cents is hereby reallocated for the purposes and in the amounts following:

1. For the cost of reporting services rendered in the Walters case, the sum of two hundred eight dollars;

2. For one IBM typewriter purchased in September, 1953, the sum of three hundred eighty-nine dollars fifty cents;

3. For three unpaid telephone bills incurred during the months of April, May and June, 1953, the sum of six hundred twenty dollars eighty cents;

4. For anticipated expenses relating to Indian litigation, including oral arguments in Circuit Court, the sum of one thousand five hundred dollars.

(b) After payment of the claims as provided in subsection (a), the balance remaining of the appropriation made under the provisions of chapter 30, Laws of 1953, shall revert to the general fund.

EXHIBIT 12

1955 SESSION LAWS

STATE OF ARIZONA

Twenty-second Legislature

FIRST REGULAR SESSION

Wesley Bolin

Secretary of State

(E) DELEGATION OF AUTHORITY. The commission may, from time to time in its discretion, delegate such authority to the director of securities as is convenient or necessary to the efficient administration of this Act; excepting that the commission may not delegate authority to adopt, amend or rescind rules and regulations or to enter any final order of denial or revocation of registration of securities, dealers or salesmen.

(F) DEPOSIT OF FEES. Notwithstanding the provisions of section 53-1423 (F) the commission may deposit fees collected under section 53-1407 in a special account subject to withdrawal pending effective registration of securities by qualification. From such account registration fees may be returned to any applicant withdrawing an application in accordance with the provisions of section 53-1407 (B). Upon the effective registration of securities under section 53-1407 (D) all fees collected in connection therewith shall be turned into the state treasury.

Sec. 3. SEVERABILITY. If any provision of this Act, or the application of such provision to any circumstance, is held invalid the remainder of the Act, or the application of the provision to other circumstances, shall not be affected thereby.

Approved by the Governor—March 18, 1955.

Filed in the Office of the Secretary of State—March 19, 1955.

CHAPTER 59

(House Bill No. 184)

AN ACT

RELATING TO ELECTIONS; ELIMINATING REQUIREMENT OF DOCTOR'S CERTIFICATE FOR PERSONS WHO ARE PHYSICALLY UNABLE TO GO TO THE POLLS, AND AMENDING SECTION 55-1301, ARIZONA CODE OF 1939.

Be it Enacted by the Legislature of the State of Arizona:

Section 1. Section 55-1301, Arizona Code of 1939, is amended to read:

55-1301. VOTING OF ABSENT OF PHYSICALLY DISABLED ELECTORS. A qualified and registered elector who is absent from the county of which he is an elector, or who expects to be absent from such county at the time of holding any general or primary election, or a special election called pursuant to section 1, article 21, of the Constitution, or who furnishes the county recorder with the signed application for an absent or disabled voter as provided in section 55-1304, stating that he is physically unable to go to the polls, may vote at such election as hereinafter provided. A person who on account of the tenets of his religion cannot attend the polls on the day of a general, primary, or special election is deemed to be absent from the county and may vote at such election as hereinafter provided.

Approved by the Governor—March 18, 1955.

Filed in the Office of the Secretary of State—March 19, 1955.

CHAPTER 60

(House Bill No. 231)

AN ACT

RELATING TO SCHOOL DISTRICTS, AND PROVIDING THAT THE BOARD OF TRUSTEES MAY PETITION THE BOARD OF SUPERVISORS FOR ADDITIONAL MONEYS TO BE PAID FROM THE INCOME RECEIVED BY THE COUNTY ON ITS RENTALS IN THE DISTRICT.

Be it Enacted by the Legislature of the State of Arizona:

Section 1. SPECIAL GRANT FROM COUNTY RENTALS. If the board of supervisors of a county shall find that a financial hardship is created within a school district of the county by reason of the attendance in the schools of the district by children residing within county-owned income property within the district, it may, upon petition by the board of trustees of the district, order the payment into the general funds of such district of such portion of the income derived or accumulated by reason of the county ownership of such property as will in whole or in part compensate such district for the financial hardship so incurred.

EXHIBIT 13

1959 SESSION LAWS

STATE OF ARIZONA

Twenty-fourth Legislature

First Regular Session

WESLEY BOLIN

Secretary of State

CHAPTER 107

Senate Bill No. 164

AN ACT

RELATING TO ELECTIONS; PRESCRIBING MANNER OF ABSENTEE REGISTRATION AND VOTING FOR PERSONS IN THE ARMED SERVICES OR MERCHANT MARINE OF THE UNITED STATES, AND AMENDING SECTIONS 16-108, 16-1101, 16-1102 AND 16-1105, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Sec. 16-108, Arizona Revised Statutes, is amended to read:

16-108. ELECTOR TEMPORARILY ABSENT FROM STATE; PERSONS IN THE UNITED STATES SERVICE

A. An elector temporarily absent from the state may register by filling out an affidavit of registration which shall be furnished upon application of the elector by the county recorder of the county in which the elector has legal residence. The elector shall execute the affidavit of registration before an officer authorized to administer oaths and shall return the affidavit to the county recorder.

B. Any other provisions of law to the contrary notwithstanding registration for persons in the United States service, as defined in section 16-1101, may be accomplished at any time prior to the five days next preceding a primary or general election.

Sec. 2. Sec. 16-1101, Arizona Revised Statutes, is amended to read:

16-1101. VOTING BY ABSENT OR PHYSICALLY DISABLED ELECTORS; PERSONS IN THE UNITED STATES SERVICE

A. A qualified and registered elector who is absent from the county of which he is an elector, or who expects to be absent from such county, at the time of holding any general or primary election, or at the time of holding a special election called pursuant to section 1, article 21 of the constitution, or who furnishes the county recorder with the signed application for an absent or disabled voter as provided by section 16-1103, stating that he is physically unable to go to

the polls, may vote at such election as provided by this article.

B. A person who on account of the tenets of his religion cannot attend the polls on the day of a general, primary or special election is deemed to be absent from the county and may vote at such election as provided by this article.

C. A qualified person in the United States service who is absent from the county of which he is an elector at the time of holding any general or primary election or at the time of the holding of a special election called pursuant to section 1, article 21 of the constitution of Arizona may register and vote at such election as provided by this article.

D. The term "United States service" shall mean:

1. Members of the armed forces while in the active service.

2. Members of the merchant marine of the United States while in the active service.

Sec. 3. Sec. 16-1102, Arizona Revised Statutes, is amended to read:

16-1102. APPLICATION FOR BALLOT

A. Within the thirty days next preceding the Saturday before any primary or general election, or a special election called pursuant to section 1, article 21 of the constitution, an elector may make a written request to the county recorder of the county in which the elector is registered for an application for a ballot and an official absent or disabled voter's ballot, or, if absent from the state during the thirty days next preceding the election, may upon the application blank provided therefor apply for such ballot by appearing before a notary public or other officer qualified to administer oaths within the state of temporary residence, swearing and subscribing to the application and returning the original and duplicate to the recorder of the county in which the elector is registered.

B. Upon receipt of such application, if in proper form, the recorder shall mail postage prepaid to the elector the ballot applied for, together with the envelope for its return. After making and subscribing the affidavit provided for upon the return envelope, the elector may mark the ballot and return it to the recorder of the county in which he is registered.

C. The recorder may, when deemed expedient, mail the application with the ballot and determine the sufficiency of the application upon receipt of the ballot and the application.

D. To and including the last Monday before election the recorder may, in his discretion, direct the voting of an elector who by reason of sudden illness is prevented from voting at the polls, if the illness was not anticipated in time to make application as provided by law, or direct the voting of a disabled elector when it appears that the request of the elector was received before five o'clock p.m. on the Friday preceding the election.

E. Any elector in the United States service may make a request for an absentee ballot by the submission of a federal post-card application as provided for in the federal voting assistance act of 1955 (public law 296, 84th Congress, 69 Stat. 584). Upon the receipt of such application by a county recorder, the recorder shall determine whether or not the applicant is registered. If the applicant is so registered, the recorder shall forward him an official absent voter's ballot. If the applicant is not registered, the recorder shall forward an affidavit of registration as provided in section 16-108. He shall at the same time forward to the unregistered applicant an official absent voter's ballot.

Sec. 4. Sec. 16-1105, Arizona Revised Statutes, is amended to read:

16-1105. BALLOT AFFIDAVIT; FORM

A. The absent or disabled voter's ballot shall be accompanied by an envelope bearing upon the front thereof the name, official title and post-office address of the recorder and upon the other side a printed affidavit in substantially the following form:

State of Arizona) ss
County of .....)

I, ..., do solemnly swear that I am a resident elector of the ..... voting precinct of the county of ....., state of Arizona, and am entitled to vote in such precinct at the next election. I expect to be absent from the county of my residence on the day of holding such election (or am unable by reason of physical disability to go to the polls) and therefore will have no opportunity to vote in person on that day.

.....
Name of Voter

Subscribed and sworn to before me this ..... day of ....., 19..... I further certify: That the affiant exhibited the enclosed ballot to me unmarked; that—he then in my presence, but in the presence of no other person, and in such manner that I could not see him vote, marked such ballot, enclosed and sealed it in this envelope, and that the affiant was not solicited or advised by me to vote for or against any candidate or measure.

.....
Signature and title of officer

B. The provisions of this section shall not preclude the recorder from exercising his option to mail the application and await its return at any time before receipt of the ballot, as provided in section 16-1102.

C. There shall be printed across the face of each envelope in which a ballot is sent to a federal post-card applicant, or is returned by such applicant to the supervisor, two parallel horizontal red bars, each one-fourth inch wide, extending from one side of the envelope to the other side, with an intervening space of one-fourth inch, the top bar to be one and one-fourth inches from the top of the envelope, and with the words "Official Election Balloting Material—Via Air Mail", or similar language, between the bars. There shall be printed in the upper right corner of each such envelope, in a box, the words "Free of U. S. Postage, Including Air Mail". All printing on the face of each such envelope shall be in red, and there shall be printed in red in the upper left corner of each ballot envelope an appropriate inscription or blanks for return address of sender. Otherwise the envelopes shall be the same as those used in sending ballots to, or receiving them from other absentee voters.

Approved by the Governor—March 20, 1959.

Filed in the Office of the Secretary of State—March 21, 1959.

CHAPTER 108

Senate Bill No. 31

AN ACT

RELATING TO CRIMES; PRESCRIBING PENALTY FOR DRUNK AND DISORDERLY CONDUCT, AND AMEND-

EXHIBIT 14

1968 SESSION LAWS
STATE OF ARIZONA

Twenty-eighth Legislature

SECOND REGULAR SESSION

WESLEY BOLIN

Secretary of State

CHAPTER 17

House Bill 86

AN ACT

RELATING TO ELECTIONS AND ELECTORS; PROVIDING THAT A BLIND PERSON MAY VOTE AS ABSENTEE VOTER; PROVIDING BLIND PERSON MAY BE ASSISTED BY OTHERS AT TIME OF VOTING, AND AMENDING SECTIONS 16-895 AND 16-1101, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Sec. 16-895, Arizona Revised Statutes, is amended to read:

16-895. MANNER OF VOTING; ASSISTANCE FOR BLIND ELECTOR

A. On receiving his ballot the voter shall forthwith and without leaving the polling place or going outside the guard rail, retire alone, except as provided in subsection E, to one of the voting booths not occupied, prepare his ballot and vote in the manner and substantial form as required by the instruction to voters.

B. Before leaving the voting booth the voter shall fold his ballot lengthwise and crosswise, but in such a way that the contents of the ballot shall be concealed and the stub can be removed without exposing the contents of the ballot, and shall keep the ballot folded until he has delivered it to the inspector, or judge acting as such.

C. The election board inspector shall receive the ballot from the voter and in an audible tone of voice announce the name and stub number of the ballot of the person voting, and in the presence of the election board, remove the stub without opening the ballot, deposit the ballot in the ballot box and string the stub upon a string provided therefor.

D. After delivery of the ballot to the election board inspector, the voter shall then proceed outside the guard rail by the exit thereof, and shall not again enter the enclosed space unless he is an election officer.

E. Any registered voter whose visual defect falls within the scope of those defined in section 46-272 may, at his option, be accompanied and assisted by a sighted person of his own

choice or shall be assisted by two election officials, one from each major political party, during any process relating to voting or during the actual process of voting on a paper ballot, machine or electronic voting system.

Sec. 2. Sec. 16-1101, Arizona Revised Statutes, is amended to read:

16-1101. VOTING BY ABSENT OR PHYSICALLY DISABLED ELECTORS; PERSONS IN THE UNITED STATES SERVICE

A. A qualified and registered elector who is absent from the county of which he is an elector, or who expects to be absent from such county, at the time of holding any general or primary election, or at the time of holding a special election called pursuant to section 1, article 21 of the constitution, or who furnishes the county recorder with the signed application for an absent or disabled voter as provided by section 16-1103, stating that he is physically unable to go to the polls, may vote at such election as provided by this article.

B. A person who on account of the tenets of his religion cannot attend the polls on the day of a general, primary or special election, or whose visual defect falls within the scope of those defined in section 46-272, is deemed to be absent from the county and may vote at such election as provided by this article.

C. A qualified person in the United States service who is absent from the county of which he is an elector at the time of holding any general or primary election or at the time of the holding of a special election called pursuant to section 1, article 21 of the constitution of Arizona may register and vote at such election as provided by this article.

D. The term "United States service" shall mean:

1. Members of the armed forces while in the active service.

2. Members of the merchant marine of the United States while in the active service.

Approved by the Governor—March 4, 1968

Filed in the Office of the Secretary of State—March 4, 1968

EXHIBIT 15

1970 SESSION LAWS
STATE OF ARIZONA

Twenty-ninth Legislature

SECOND REGULAR SESSION

WESLEY BOLIN

Secretary of State

2. Permit each voter to vote at any election for any person for any office whether or not nominated as a candidate, to vote for as many persons for an office as he is entitled to vote for, to vote for or against any question upon which he is entitled to vote, and the vote tabulating equipment shall reject choices recorded on his ballot card or paper ballot if the number of choices exceeds the number which he is entitled to vote for the office or on the measure.

3. Prevent the voter from voting for the same person more than once for the same office.

4. Be suitably designed for the purpose used, of durable construction, and may be used safely, efficiently, and accurately in the conduct of elections and counting ballots.

5. Be provided with means for sealing the voting or marking device against any further voting after the close of the polls and the last voter has voted.

6. When properly operated, record correctly and count accurately every vote cast.

Sec. 78. Sec. 16-1035, Arizona Revised Statutes, is amended to read:

16-1035. ABSENTEE VOTES

A. Absentee votes may be cast on paper ballots or ballot cards, except that counties in which electronic machines are used shall have a punch card absentee ballot suitable for data processing machines which may be different from those used in precinct voted ballots. Such ballot shall provide the same information as a marked paper ballot.

B. In the event absent voter ballots are to be tabulated by an electronic or electromechanical tabulating device, the county recorder may also deliver to the applicant a marking device which would make a mark suitable for use with the electronic or electromechanical device or a supply of stickers which would be suitable for use with the electronic or electromechanical tabulating device.

Sec. 79. Sec. 16-1101, Arizona Revised Statutes, is amended to read:

16-1101. VOTING BY ABSENT OR PHYSICALLY DISABLED ELECTORS; PERSONS SIXTY-FIVE YEARS OF AGE; PERSONS IN THE UNITED STATES SERVICE; PERSONS LIVING CERTAIN DISTANCE FROM POLLING PLACE

A. A qualified and registered elector who is absent from the precinct of which he is an elector, or who expects to be absent from such county, at the time of holding any general or primary election, or at the time of holding a special election called pursuant to section 1, article 21 of the constitution, or who furnishes the county recorder with the signed application for an absent or disabled voter as provided by section 16-1103, stating that he is physically unable to go to the polls, or that he is sixty-five years of age or older, may vote at such election as provided by this article.

B. A person who on account of the tenets of his religion cannot attend the polls on the day of a general, primary or special election, or whose visual defect falls within the scope of those defined in section 46-272, may vote at such election as provided by this article.

C. A qualified person in the United States service who is absent from the county of which he is an elector at the time of holding any general or primary election or at the time of the holding of a special election called pursuant to section 1, article 21 of the constitution of Arizona may register and vote at such election as provided by this article.

D. The term "United States service" shall mean:

1. Members of the armed forces while in the active service.

2. Members of the merchant marine of the United States while in the active service.

E. Any registered voter whose place of residence is more than fifteen road miles from the polling place in his precinct may vote at an election as provided by this article.

Sec. 80. Sec. 16-1103, Arizona Revised Statutes, is amended to read:

16-1103. FORM OF APPLICATION

A. Application for an absent or disabled voter's ballot shall be made in duplicate upon blanks furnished by the county recorder of the county in which the election is to held and shall be in substantially the following form:

"APPLICATION FOR ABSENT OR DISABLED VOTER'S BALLOT

State of Arizona)
) ss
County of .....)

I, ..., do solemnly swear that I am the identical person whose name is signed to this application and that such name

and signature is my true name and signature (or, if I did not personally sign, it was because of physical disability, viz: ..... and I requested the attesting officer to sign); that I am an elector of the state of Arizona and the county of .....; that I am registered in ..... precinct in said county and reside at ....., where I resided at the date of my registration; that I have not voted and will not vote in this election in any other state during the calendar year of this application; that I expect to be absent from my precinct on the day of holding the next election. Because of physical disability, or, because I am sixty-five years of age or older, or, because my place of residence is more than fifteen road miles from the polling place in my precinct, by reason of which I will not be able to go to the polls on the day of the holding of the next election, I hereby make application to the county recorder of ..... county, Arizona for an absent or disabled voter's ballot. (Strike out any clause not applicable). I understand that voting more than once in any election is a felony. For the purpose of identification, I declare that I am a man (or woman), more than twenty-one years of age, ... feet ..... inches in height, weigh approximately ..... pounds, and that my post office address is .....

(address to which ballot is to be mailed).

I am confined at ....., Arizona (insert hospital, residence or other place of confinement).

.....

Elector

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Signature of registration officer or other officer empowered to administer oaths.

.....

Title or designation of officer

B. The county recorder shall supply printed instructions to absentee voters, worded substantially as follows:

1. Subscribe to both copies of this application before any county recorder or deputy, justice of the peace, notary public or other officer authorized by law to administer oaths.

2. Display ballot unmarked before the officer in his presence, but in such manner that he cannot see your vote, mark your ballot and seal in the white envelope marked "for absent voter ballot only". Do not enclose application with the ballot.

3. Subscribe to the oath on the back of the white envelope labeled "for absent voter ballot only".

4. Place both copies of this application for ballot, complete with signature and acknowledgement, together with the white envelope containing your ballot, in the enclosed self-addressed envelope, and mail.

5. The ballot and application must be in the recorder's office before six o'clock p.m. election day.

6. Check to see that application is not enclosed in the envelope marked "for absent voter ballot only".

Name (printed)

.....

County recorder

Sec. 81. Sec. 16-1104, Arizona Revised Statutes, is amended to read:

16-1104. ABSENT OR DISABLED VOTER'S BALLOT

A. The absent or disabled voter's ballot shall be one prepared for use in the precinct in which the applicant resides, and if a primary election, of the political party with which the applicant is affiliated as shown by the affidavit of registration. The ballot shall be identical with the regular official ballots, except that it shall have printed or stamped on the stub thereof the words, "Official Absent or Disabled Voter's Ballot."

B. The officer charged by law with the duty of preparing ballots at the election shall prepare the official absent or disabled voter's ballot, and deliver a sufficient number to the recorder not later than the thirty days next preceding the Saturday before any primary or general election.

Sec. 82. Sec. 16-1105, Arizona Revised Statutes, is amended to read:

16-1105. BALLOT AFFIDAVIT; FORM

A. The absent or disabled voter's ballot shall be accompanied by an envelope bearing upon the front thereof the name, official title and post office address of the recorder and upon the other side a printed affidavit in substantially the following form:

State of Arizona)
) ss
County of .....)

I, ..., do solemnly swear that I am a resident elector of the ..... voting precinct of the county of ....., state of Arizona, and am entitled to vote in such precinct at the

next election. I expect to be absent from the precinct of my residence on the day of holding such election (or am unable (by reason of physical disability), (because I am sixty-five years of age or older), (because my place of residence is more than fifteen road miles from the polling place in my precinct) to go to the polls) (strike out any clause not applicable) and therefore will have no opportunity to vote in person on that day.

.....
Name of voter

Subscribed and sworn to before me this ..... day of ....., 19..... I further certify: That the affiant exhibited the enclosed ballot to me unmarked; that ..... he then in my presence, but in the presence of no other person, and in such manner that I could not see him vote, marked such ballot, enclosed and sealed it in this envelope, and that the affiant was not solicited or advised by me to vote for or against any candidate or measure.

.....
Signature and title of officer

B. The provisions of this section shall not preclude the recorder from exercising his option to mail the application and await its return at any time before receipt of the ballot, as provided in section 16-1102.

C. There shall be printed across the face of each envelope in which a ballot is sent to a federal post-card applicant, or is returned by such applicant to the supervisor, two parallel horizontal red bars, each one-fourth inch wide, extending from one side of the envelope to the other side, with an intervening space of one-fourth inch, the top bar to be one and one-fourth inches from the top of the envelope, and with the words "Official Election Balloting Material ..... Via Air Mail", or similar language, between the bars. There shall be printed in the upper right corner of each such envelope, in a box, the words "Free of U. S. Postage, Including Air Mail". All printing on the face of each such envelope shall be in red, and there shall be printed in red in the upper left corner of each ballot envelope an appropriate inscription or blanks for return address of sender. Otherwise the envelopes shall be the same as those used in sending ballots to, or receiving them from other absentee voters.

Sec. 83. Sec. 16-1107, Arizona Revised Statutes, is amended to read:

16-1107. USE OF ABSENTEE BALLOT BY CERTAIN VOTERS

A. An elector who has reason to believe that he will be absent from the precinct on election day, or who is sixty-five years of age or

older, or whose place of residence is more than fifteen road miles from the polling place in his precinct, who is present in the county and precinct at any time after the official absent or disabled voter's ballots are printed and available, may vote in like manner as an absent voter.

B. Any elector who makes application for and receives a current absentee ballot shall not vote at the polls on election day, unless he surrenders the current absentee ballot as provided in section 16-894.

Sec. 84. Sec. 16-1109, Arizona Revised Statutes, is amended to read:

16-1109. ABSENTEE ELECTION BOARD

A. The board of supervisors shall appoint one or more absentee election boards to serve at places to be disignated by the board of supervisors to canvass and tally absentee ballots.

B. In the selection of absentee boards the board of supervisors shall select members of the boards in accordance with the provisions for selecting members of regular election boards as provided in section 16-771. The absentee board may serve from six o'clock a.m. on election day until they have completed the canvass of all absentee ballots. All absentee ballots received by the county recorder before six o'clock a.m. on election day together with the original application shall be delivered to the absentee board at six o' clock a.m. on election day. In no event shall partial or complete tallies of the absentee board be released or divulged before the polls close on election day.

C. The necessary printed blanks for poll lists, tally lists, lists of voters, ballots, oath and returns, together with envelopes in which to enclose the returns, shall be furnished by the board of supervisors to the absentee board for each election precinct at the expense of the county.

Sec. 85. Title 16, chapter 8, article 1, Arizona Revised Statutes, is amended by adding section 16-1111, to read:

16-1111. PROCEDURE FOR VOTING DISABLED ELECTORS; SPECIAL ELECTION BOARDS; EXPENSES

A. Any person who is unable to go to the polls on the day of holding the next election, because of disability, may request the county recorder to send a ballot to him, at his place of confinement within the county, in person by a special election board as provided in this section.

B. The board of supervisers, for the purpose of making it possible for persons as provided in subsection A to vote, shall

appoint such number of special election boards as needed. Each such board shall consist of two members who shall be members of the two political parties which cast the highest number of votes in the state at the last preceding general election. The county chairman of each of such two political parties shall, within thirty days prior to the election day, furnish the board of supervisors with a list of names of qualified electors within his political party, and such additional lists as the board of supervisors may require, from which the board of supervisors shall appoint members to such election boards. The board of supervisors may refuse for cause to reappoint, or may for cause remove a member of this board.

C. Members of a special election board appointed under the provisions of this section shall be reimbursed for travel expenses at the rate of ten cents per mile and shall also receive such compensation as the board of supervisors prescribes, all of which shall be paid by the county.

D. The manner and procedure of voting shall be as provided in section 16-1106, except that the marked ballot in the sealed envelope shall be handed by the elector to the special election board and shall be delivered by the board to the board of supervisors.

Sec. 86. INVESTIGATION BY LEGISLATIVE COUNCIL

The legislative council shall make a complete investigation of all voting systems authorized under chapter 16 of title 16 and shall report their findings to the thirtieth legislature. The report shall include all findings on whether such systems can be rigged and what protections would be needed to protect against such rigging, as well as cost and operations information.

Sec. 87. REPEAL

Sections 16-152, 16-237, 16-238, 16-239, 16-762, 16-797, 16-944, 16-1007, 16-1305 and 16-1306, Arizona Revised Statutes, are repealed.

Sec. 88. EFFECTIVE DATES

A. The provisions of sections 59, 78, 79, 80, 81, 82 and 83 shall become effective from and after September 9, 1970.

B. The provisions of sections 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 47, 48, 55, 58, 70 and 77 shall become effective from and after November 4, 1970.

Approved by the Governor—May 18, 1970

Filed in the Office of the Secretary of State—May 18, 1970

EXHIBIT 16

[J-18A-2022, J-18B-2022, J-18C-2022, J-18D-2022 and J-18E-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

DOUG MCLINKO, Appellee v. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE; AND LEIGH M. CHAPMAN, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, Appellants	:	No. 14 MAP 2022
TIMOTHY R. BONNER, P. MICHAEL JONES, DAVID H. ZIMMERMAN, BARRY J. JOZWIAK, KATHY L. RAPP, DAVID MALONEY, BARBARA GLEIM, ROBERT BROOKS, AARON J. BERNSTINE, TIMOTHY F. TWARDZIK, DAWN W. KEEFER, DAN MOUL, FRANCIS X. RYAN, AND DONALD "BUD" COOK, Appellees v. LEIGH M. CHAPMAN, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, AND COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE, Appellants	:	No. 15 MAP 2022
DOUG MCLINKO	:	No. 17 MAP 2022

v.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE; AND LEIGH M. CHAPMAN, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA CROSS

APPEAL OF: YORK COUNTY REPUBLICAN COMMITTEE, WASHINGTON COUNTY REPUBLICAN COMMITTEE, BUTLER COUNTY REPUBLICAN COMMITTEE

TIMOTHY R. BONNER, P. MICHAEL JONES, DAVID H. ZIMMERMAN, BARRY J. JOZWIAK, KATHY L. RAPP, DAVID MALONEY, BARBARA GLEIM, ROBERT BROOKS, AARON J. BERNSTINE, TIMOTHY F. TWARDZIK, DAWN W. KEEFER, DAN MOUL, FRANCIS X. RYAN, AND DONALD "BUD" COOK

: No. 18 MAP 2022

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, AND COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE CROSS

APPEAL OF: YORK COUNTY REPUBLICAN COMMITTEE, WASHINGTON COUNTY REPUBLICAN COMMITTEE, BUTLER COUNTY REPUBLICAN COMMITTEE

TIMOTHY R. BONNER, P. MICHAEL JONES, DAVID H. ZIMMERMAN, BARRY J. JOZWIAK, KATHY L. RAPP, DAVID MALONEY, BARBARA GLEIM, ROBERT BROOKS, AARON J. BERNSTINE, TIMOTHY F. TWARDZIK, DAWN W. KEEFER, DAN MOUL, FRANCIS X. RYAN, AND DONALD "BUD" COOK, CROSS Appellants v. LEIGH M. CHAPMAN, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, AND COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF STATE, Appellees	:	No. 19 MAP 2022

ORDER

PER CURIAM

AND NOW, this 1st day of March, 2022, the order of the Commonwealth Court dated February 16, 2022 granting the Application to Terminate (Eliminate) Automatic Stay is hereby **VACATED.** The Emergency Application to Reinstate Automatic Supersedeas as Pursuant to Rule 1736 is hereby **GRANTED** and the automatic supersedeas shall remain in effect pending further order of this Court.

EXHIBIT 17

ARIZONA SUPREME COURT

ARIZONA REPUBLICIAN PARTY, a recognized political party; and YVONNE CAHILL, an officer and member of the Arizona Republican Party and Arizona voter and taxpayer, Petitioners, v. KATIE HOBBS, in her official capacity as Arizona Secretary of State; and STATE OF ARIZONA, a body politic, Respondents.	No. CV-22-0048-SA

BRIEF OF AMICUS CURIAE NORMAN ORNSTEIN

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INTEREST AND IDENTITY OF AMICUS

Norman Ornstein is an emeritus scholar at the American Enterprise Institute. He is a contributing editor and writer for The Atlantic. He was a political science professor at Johns Hopkins University and The Catholic University of America. He co-directed the AEI-Brookings Election Reform Project, and was a consultant to the Carter-Baker Commission on election reform.

Ornstein has dedicated much of his fifty-year career to the study and advancement of America's elections and voting systems. He is also Chairman of the Campaign Legal Center, which is a nonpartisan organization dedicated to advancing democracy through law at the national, state, and local levels.

Dr. Ornstein was a co-author of the article, John C. Fortier & Norman Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform,* 36 R. Mich. J. L. Reform 483 (2003) ("Fortier and Ornstein"). Petitioners cited this article repeatedly in their brief before this Court. Dr. Ornstein has an interest in this matter (1) because he believes that Petitioners' reliance on his article is misplaced and the Petition mischaracterizes the legal and policy issues set forth in the

article, and (2) because of his commitment to advancing each individual's ability to participate in democracy in accordance with the law.

INTRODUCTION

The Petition cites repeatedly to Fortier and Ornstein. That article presents extensive historical information regarding the origins of absentee voting in the various states. The article explains the evolution of absentee voting requirements from prior to the Civil War through the early 2000's when the article was published. The article addresses issues surrounding absentee ballots both from a legal and a policy perspective. *Id.* From a legal perspective, the article explains that the courts' treatment of challenges to absentee voting statutes have depended on the specific language in the various states' constitutions. *Id.* at 496-499, 508. Some state constitutions (unlike Arizona's) had specific language that courts found required only in-person voting. In these states, the courts struck down absentee voting statutes. *Id.* at 497-498. However, in states without explicit constitutional requirements for in-person voting (like Arizona's) the courts have rejected challenges and have left absentee voting requirements to the legislature. *Id.* at 499.

The Petition also discusses various policy concerns raised in the article. In the absence of restrictive constitutional provisions, courts have left those policy issues for legislatures – rather than the courts – to consider. That being said, in the almost 20 years that have elapsed since the Fortier and Ornstein article was published, absentee or mail-in voting has been used extensively throughout the United States, and there is no evidence pointing to any widespread problems. To the contrary, there have been far more documented problems with in-person voting, including long wait times, an inadequate number of polling places, difficulties with mobility for some voters, etc. Arizona has not been immune from these problems.[1] In the absence of a clear constitutional prohibition, the legislature has appropriately balanced the competing interests in allowing absentee voting.

[1] *See, e.g.,* Arizona Polling Places Overwhelmed With Long Lines On Primary Day**,** **https://www.npr.org/2016/03/25/471891525/arizona-polling-places-overwhelmed-with-long-lines-on-primary-day**.

ARGUMENT

I. The Arizona Constitution Does Not Contain the Type of Language that Courts have Found to be Inconsistent with Absentee Voting.

A. Courts reject challenges to absentee voting laws in the absence of explicit constitutional prohibitions.

As Petitioners note, Fortier and Ornstein's 2003 article discusses the origins of the Australian ballot system in the United States as well as the adoption of absentee and mail-in voting by almost all states. Indeed, as the article explains, many states originally adopted absentee voting statutes to allow deployed soldiers to vote during the Civil War, and several state courts considered whether these statutes were consistent with language in various state constitutions. By the time Arizona became a state, the issue of whether language in state constitutions would allow absentee voting statutes was well known. Also well known was the type of constitutional language that courts had interpreted as requiring only in-person voting.

For example, New York's Constitution stated that an elector "shall be entitled to vote at such election in the election district of which he shall at the time be a resident, *and not elsewhere*." N.Y Const. of 1846, art. II, § 1 (emphasis added), *cited in* Fortier and Ornstein at 497, n.69. In

Pennsylvania, a constitutional amendment had required voters to reside "in the election district *where he offers to vote* . . . ." Pa. Const. of 1838, art. III, § 1 (emphasis added), *cited in* Fortier and Ornstein at 497, n.73. Courts in jurisdictions with such explicit constitutional provisions held that absentee voting statutes could not be upheld absent a constitutional amendment. *See, e.g.,* Fortier and Ornstein at 508.

However, in states without such clear limiting language, courts have upheld the ability of the legislature to pass laws permitting absentee voting. For example, in *State ex rel. Chandler v. Main,* 16 Wis. 398 (1863), the court noted that its constitution did not have the same explicit restrictions found in the Pennsylvania Constitution. As the *Chandler* court explained, "[I]f the framers had intended to enact any general provision confining the right of voting to any particular place, it would naturally have been inserted as a distinct provision *in connection with the article on suffrage.*" *Id.* at 415-416 (emphasis added). In *Chandler,* as in the present case, the opponents of the absentee voting law tried to rely on Pennsylvania court decisions. The court rejected those attempts:

> [The Pennsylvania case] is based upon an express provision of their constitution, requiring a residence by the voter "in the election district where he offers to vote . . . ." We have no such clause in our constitution, and the decision is therefore inapplicable here.

Id. at 418.

Similarly, in *Lehman v. McBride,* 15 Ohio St. 573 (1863), the court rejected a challenge to that state's absentee voting law. Ohio's Constitution included many clauses similar to Arizona's constitution. *See id.* at 592-593. The challengers in *Lehman* raised concerns with the potential for the lack of secrecy, as well as fraud and coercion. *Id.* at 609. The court rejected the challenges, stating that even though such issues present serious considerations, those considerations are addressed "solely to legislative wisdom and discretion." *Id.* at 610. The court rejected the challengers' reliance on decisions from other states including Pennsylvania because Ohio's constitution did not contain the "offer to vote" language that other courts found determinative. *Id.* at 610-613.

In *Morrison v. Springer,* 15 Iowa 304, 340-342 (1863), the court rejected a challenge that relied heavily on cases from Pennsylvania, Connecticut, Louisiana, and Kentucky, holding that, in the absence of an explicit restriction such as the "offer to vote" language from Pennsylvania's constitution, the legislature has full power to enact

absentee voting legislation. The Court explained that by the time Iowa's constitution was adopted in 1857, many states had "express and clear language" prohibiting the use of absentee voting. *Id.* at 344. Because "our convention had the benefit of such provisions and rights, it is fair to presume that the same or similar language would have been used, if it had been intended to fix the same qualification." *Id.*

The same logic applies with even more force here. By the time Arizona adopted its Constitution, the type of limiting language that could be placed in state constitutions to preclude absentee voting statutes was well known. If the framers of the Arizona Constitution had intended to deny the legislature of the power to provide for absentee voting, they would have used "the same or similar language" in connection with the article on suffrage. *Id.*[2]

---

[2] Citing Fortier and Ornstein, the Petition claims [at 5] that Arizona has never faced the question of the constitutionality of its absentee voting laws because of the timing of the adoption of the Arizona Constitution. To the contrary, it is much more reasonable to assume that Arizona courts have not had to directly face this question because the framers of the constitution intentionally did *not* include the type of language that courts had determined would limit the legislature's discretion to pass such laws.

B. The Arizona Constitution does not contain the type of language that precludes the legislature from enacting statutes permitting absentee voting.

Article VII of the Arizona Constitution specifically sets forth the rights and processes involved with suffrage and elections. This article has *none* of the type of language courts have found to be inconsistent with statutes permitting absentee voting.

The Secretary of State's Response Brief ably analyzes Article VII, § 1, and its clear grant of discretion to the legislature. This Amicus Brief will not repeat that analysis.

However, the Petition cites Fortier and Ornstein for the proposition that the reference to "secrecy" in Article VII, § 1 is equivalent to a command that all four elements of the Australian ballot system must be present in any statutes the legislature passes. Petition at 26-27. To the contrary, the Fortier and Ornstein article recognizes that legislatures have balanced the competing interests of expanding access to voting with issues such as secrecy. In the absence of clear language precluding absentee voting, the courts have deferred to the legislature in achieving that balance. *See* Section I(A), above, and Fortier and Ornstein at 499 & n.91.

Petitioners claim that *Miller v. Picacho Elementary Sch. Dist. No. 33,* 179 Ariz. 178, 180 (1994), supports their claim that mail-in ballots cannot be secret. But the case stands for the exact opposite proposition. There the court considered a challenge to an election after school district personnel violated mail-in voting statutes by hand delivering ballots to selected individuals' homes, and urging those selected residents to vote for an override. The court stated:

> Under the Arizona Constitution, voting is to be by secret ballot. Ariz. Const. art. VII, § 1. [*A.R.S.*] *Section 16-542(B) advances this constitutional goal by setting forth procedural safeguards to prevent undue influence, fraud, ballot tampering, and voter intimidation.*

Id. at 180 (citation omitted) (emphasis added). Thus, rather than supporting the notion that mail-in voting statutes *violate* Article VII, § 1, the court held that these statutes promote the very interest the Constitution seeks to protect. *See also Reyes v. Cuming,* 191 Ariz. 91, 93 (App. 1997) (Arizona's mail-in voting statutes "advance[] the constitutional goal of protecting a secret ballot" and "guarantee[] that the absentee ballots are being cast by the registered voters and prevent[] fraud and ballot tampering.") *citing* Ariz. Const. art. VII, § 12.

Petitioners also claim [at 34-35] that Article VII, § 2, is substantively identical to provisions in the constitutions of states, such

as Pennsylvania, that have struck down absentee voting statutes. In making this argument, Petitioners rely heavily on the word "at" in the first part of this section. *Id.* Reviewing the full text of the sentence upon which Petitioners rely reveals the paucity of this argument. Article VII, § 2(A), which deals with *the qualifications of voters rather than the method of voting,* states:

> No person shall be entitled to vote **at** any general election, or **for** any office that now is, or hereafter may be, elective by the people, or **upon** any question which may be submitted to a vote of the people, unless such person shall be a citizen of the United States of the age of eighteen years or over, and shall have resided in the state for the period of time preceding such election as prescribed by law . . . .

Ariz. Const. art VII, § 2(A) (emphasis added). Petitioners [at 34-35] provide dictionary definitions of the word "at" to mean the exact place and time. Yet it is clear from reading the entire first sentence that the prepositions "at," "for," and "upon" are all used interchangeably. Obviously, this section, read as a whole, imposes the same voter qualifications regardless of whether the voter is voting "at" a general election, "for" an elective office, and "upon" questions to be submitted to a vote of the people. The use of the word "at" simply does not support Petitioners' broad claims.

This is also made clear by looking at Arizona's first absentee voting law, passed soon after the Constitution was adopted. As the Secretary of State's Response Brief points out, Arizona adopted its first absentee voting statute in 1918. *See* 1918 Ariz. Sess. Laws ch. 11 (1st Spec. Sess.). That statute gave active military personnel the right to vote "**at such elections**" by using a mail-in ballot. *Id.* at Sections 1, 6 (emphasis added). Clearly, the legislature that drafted this statute shortly after Arizona became a state did not use the word "at" to denote an exact time and place, as Petitioners claim.[3]

Petitioners finally claim that a reference to "at the polls" in *Article IV* evidences an intent to preclude the legislature from adopting absentee or mail-in voting statutes. First, if the framers meant to preclude such legislation, one would expect that they would have limiting language in Article VII, which is the article of the constitution dealing with suffrage and elections. *See State ex rel. Chandler v. Main,* 16 Wis. at 415-16.

[3] Petitioners also claim that Article VII, § 4, which grants voters privilege from arrest while attending an election, evidences an intent to prevent the legislature from enacting vote by mail legislation. Courts have rejected similar challenges in states with substantively identical provisions. *See, e.g., Lehman,* 15 Ohio at 593.

Second, the reference in Article IV, § 1, states:

> (1) The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature.

It is clear that, in this section, "at the polls" is being used as a synonym for "in an election." That is, the people are reserving the rights to initiate legislation and to have the final say on statutes enacted by the legislature. There is no basis to conclude that this was meant to be a limitation on the legislature's power to control the manner in which elections are conducted. Indeed, common dictionary definitions of the word "poll" or "polls" show that the term can mean *either* an election *or* the place where people go to vote. *See, e.g.,* Collins Dictionary, available at https://www.collinsdictionary.com/us/dictionary/english/poll ("'The polls' means an election for a country's government, or the place where people go to vote in an election. *Incumbent officeholders are difficult to*

defeat at the polls. . . . .").[4] This reference to "the polls" in Article IV is far too flimsy a basis on which to invalidate a century of legislation defining the scope of absentee and mail-in voting in Arizona. *See State v. Arevalo*, 249 Ariz. 370, 373 ¶ 9 (2020) (discussing presumption in favor of constitutionality and heavy burden that must be met before court will declare statute unconstitutional).

II. The Policy Fears Discussed in the Article Have Not Come to Fruition.

For all the reasons discussed above, in the absence of an explicit constitutional ban, courts have left it to the legislatures to balance the increased convenience and participation that comes with mail-in voting against competing policy concerns such as reduced secrecy. Since statehood, the Arizona legislatures have made that balance and adjusted

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[4] *See also* Lexico.com, powered by the Oxford English Dictionary available at https://www.lexico.com/en/definition/poll (defining "poll (often the polls)" as "The process of voting at an election. *The country went to the polls on March 10",* as the first definition, and the "places where votes are cast" as an alternative definition); Legal Information Institute, available at https://www.law.cornell.edu/wex/poll#:~:text=Primary%20tabs,the%20result%20of%20the%20voting (defining "poll" as follows: "In the legal and colloquial sense, poll is frequently used in the context of elections. In this context, poll refers to either 1) the process of voting, 2) the place where the voting is conducted, or 3) the result of the voting.").

the absentee and mail-in voting process numerous times without challenge.

The Petition cites Fortier and Ornstein numerous times regarding the concerns that must be weighed when expanding absentee and mail-in voting systems. Thus, Dr. Ornstein wishes to point out that much has changed since his article was published in 2003.[5]

First, in the past 20 years mail-in voting has been used extensively throughout much of the country. Notwithstanding the multitude of elections since that time, there is no evidence of widespread fraud with the use of such systems. Indeed, despite numerous investigations and many court cases, significant problems with mail-in voting have been exceedingly rare. In sum, the fears raised regarding coercion, fraud, and lack of secrecy have not materialized.

On the other hand, problems with in-person voting have been well documented. There have been numerous, significant instances in which voting at the polls has been difficult or impossible for some voters due to a combination of barriers such as (1) a reduction in the number of voting

[5] Indeed, Fortier and Ornstein acknowledged that at the time their article was published "there is not enough data to make definitive judgments about vote by mail." 36 R. Mich. J. L. Reform at 511.

centers or poll workers that led to extremely long lines;[6] (2) the inability to vote on a Tuesday for many working people; (3) impaired mobility; and (4) other factors having to do with health, jobs, or family that make getting to the voting centers or standing in line for hours impractical or impossible.

The question of whether expanding mail-in voting is good policy is different than the legal question of whether the Arizona Constitution allows it. To the extent that Petitioners rely on his 2003 article to raise policy concerns, Dr. Ornstein feels compelled to explain that – in light of all the evidence that has emerged over the past 20 years – it is clear that mail-in voting has led to significant positive effects without any significant negative consequences.

CONCLUSION

Dr. Ornstein respectfully urges the Court to deny the relief sought in the Petition.

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[6] *See, e.g.,* Arizona Polling Places Overwhelmed With Long Lines On Primary Day, https://www.npr.org/2016/03/25/471891525/arizona-polling-places-overwhelmed-with-long-lines-on-primary-day; *'I Refuse Not to Be Heard': Georgia in Uproar Over Voting Meltdown,* https://www.nytimes.com/2020/06/09/us/politics/atlanta-voting-georgia-primary.html.

RESPECTFULLY SUBMITTED this 16th day of March, 2022.

ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST

By /s/ Daniel J. Adelman
Daniel J. Adelman
Samuel Schnarch
Attorneys for Amicus Curiae Norman Ornstein

EXHIBIT 18

I, KORI LORICK, declare as follows:

1. I am the State Elections Director in Secretary of State Katie Hobbs' Office. In this role, I oversee the day-to-day operation of the Election Services Division in the Department of State. I have served in this role since July 2021. Prior to that and since 2019, I served as the Elections Compliance Manager in the Election Services Division. In my current role as State Elections Director, my responsibilities include overseeing compliance with state and federal election laws and working with Arizona's counties on consistent procedures for election administration.

2. Preparations for the 2022 Mid-Term Elections are well underway and requiring such a drastic change to long-standing procedures would be impossible and wreak havoc on election administration in Arizona. Holding a statewide election requires months of advance planning given the logistics involved. Counties begin working far in advance of election day to confirm their budget, hire temporary election workers, and develop plans to carry out elections this year.

3. For example, many county election administrators began working with their print vendors in early 2021 to ensure that the vendors are able to supply the millions of pounds of paper required to hold elections (i.e., ballots, posters, stickers, forms). Likewise, counties have been working diligently for months on identifying polling locations that meet federal and state requirements. Counties must consider not only where to locate a polling site, but also whether the site is ADA accessible and has enough room for equipment and the number of expected voters, among other things. Identifying and securing compliant polling locations is often challenging and requires advance planning.

4. Upending the early voting system within months of two statewide elections (the Primary Election in August and the General Election in November) would cause administrative chaos for elections officials and potentially disenfranchise Arizona voters who have used the early voting system for decades. Elections officials plan for Election Day turnout, in part, based

on historical voter turnout—including the number of voters who cast early ballots versus in person on election day, voter registration statistics, as well as the number of voters who request to be on the Active Early Voting List. Ninety percent of Arizona's voters cast an early ballot in the November 2020 General Election, and currently 3,188,689 voters[1] are on the Active Early Voting list to receive a ballot by mail. Elections officials have budgeted, secured polling locations, and created staffing plans with this in mind. While elections officials also plan for contingencies to account for shifts in voter turnout, removing early voting options would require them to plan on an influx of millions of additional Election Day voters.

5. Additionally, changing a fundamental part of Arizona's elections process—and one that's been around for decades—will require significant voter outreach, which most, if not all, elections officials lack the staffing and monetary resources to conduct this far into the election year. As referenced above, the majority of Arizona's voters cast their vote via an early ballot in 2020, and many have done so for years. Notices have already gone to many voters who are on the Active Early Voting List for the August 2 Primary Election informing them of when to expect their ballot-by-mail. Making a fundamental change to Arizona's election system in the middle of an election year will result in voter confusion and require significant education and outreach to minimize the number of voters who are disenfranchised based on this change.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 1st day of June, 2022.

/s/ *Kori Lorick*
Kori Lorick

[1] This number was recorded as of June 1, 2022.