

No. 20-16759

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARIZONA DEMOCRATIC PARTY, et. al.,
Plaintiffs-Appellees.

v.

KATIE HOBBS et al.,
Defendants,

and

STATE OF ARIZONA, *et al.*,
Intervenor-Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
Case No. 2:20-cv-01143

**STATE OF ARIZONA'S EMERGENCY MOTION UNDER CIRCUIT
RULE 27-3 FOR A STAY PENDING APPEAL**

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Dated: September 18, 2020

CIRCUIT RULE 27-3 CERTIFICATE

Pursuant to Circuit Rule 27-3, Intervenor-Defendant-Appellant the State of Arizona (the “State”) respectfully submits this certificate in connection with its emergency motion to stay the injunction entered by the district court on September 10, 2020 pending resolution of the State’s appeal to this Court.

This case involves a signature requirement of Arizona election law. Specifically, in order to vote by mail in Arizona, a voter is required to sign a ballot affidavit where prominently indicated. ADD-134-38. If voters fail to sign their ballot, they may cure the non-signature up until polls close on election day at 7pm. ADD-4, 91. For the vast majority of voters (around 99.9%) this presents no apparent issue. ADD-21. In the 102 years that Arizona has permitted voting by mail, it has never allowed missing signatures to be cured after election day. ADD-128.

This suit challenges Arizona’s disallowance of post-election curing and contends that the U.S. Constitution demands the opportunity to cure non-signatures for five business days *after* the election. Plaintiffs’ asserted claims under both (1) the Fourteenth Amendment/*Anderson-Burdick* doctrine and (2) procedural due process under the Fourteenth Amendment.

Plaintiffs filed this action on June 10, 2020 and sought a preliminary injunction. ADD-184-221. The district court consolidated the preliminary injunction with trial on the merits under Rule 65, although no evidentiary hearings were conducted. ADD-1-2. Briefing was completed on the motion on August 10.

On September 10, less than two months from the election, the district court entered judgment in favor of Plaintiffs and issued a permanent injunction requiring Defendants to “allow voters who are determined to have submitted an early ballot (referred to in this order as a VBM ballot) in an envelope without a signature the opportunity to correct the missing signature until 5:00 p.m. on the fifth business day after a primary, general or special election that includes a federal office or the third business day after any other election.” ADD-24.

The State appealed the district court’s judgment and injunction the same day and filed a motion for a stay pending appeal in that court on Sunday, September 13. That motion was denied today (September 18). ADD-328. The State now files this emergency motion for a stay pending appeal in this Court.

A. Contact Information Of Counsel

The office and email addresses and telephone numbers of the attorneys for the parties are included below as Appendix A to this certificate.

B. Nature Of The Emergency

It is well-established that “a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined.” *Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997). *Accord Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) (“[A]ny time a State is enjoined by a court from effectuating [its] statutes ... it suffers a form of irreparable injury.”). Indeed, enjoining a “State from conducting [its] elections pursuant to a statute enacted by the

Legislature... would seriously and irreparably harm” the State. *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018).

The State is thus suffering irreparable harm already as it cannot enforce the election laws enacted by its duly enacted representatives. Nor could this Court reasonably resolve a full-blown appeal in this matter before the upcoming November 3, 2020 general election. The State therefore seeks expedited treatment of its motion for a stay, so that these harms can be avoided. The State further respectfully requests that this Court adjudicate this motion with sufficient time so that the State can seek relief from the U.S. Supreme Court before the general election if necessary.

The harms at issue are particularly significant because, as the Supreme Court has explained, “Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). The district court’s injunction was issued on September 10—less than two months before the general election—making these risks substantial.

Here the harms are particularly acute because the potential for voter confusion and chaos is already manifest. Arizona ballots for military and overseas voters began going out on Monday, September 14.¹ Those ballots will therefore start being

¹ See Maricopa County Elections Department, *2020 November General Election Plans* at 14 (Sept. 16, 2020) available at <https://maricopa.hylandcloud.com/198AgendaOnline/Documents/ViewDocument/>

returned soon, if not already. In addition, ballots for all voters that have requested mail-in ballots or are signed up for permanent mail-in balloting will go out no later than October 7. *See* A.R.S. § 16-542(C); *see also* <https://recorder.maricopa.gov/elections/electioncalendar.aspx>. In Arizona, that is nearly 80% of voters. ADD-121.

Based on past elections, some of those ballots will be unsigned. County recorders will therefore be required under Arizona law to assist voters in curing the lack of a signature. ADD-14. And in doing so, they will undoubtedly wish to inform the affected voters of the deadline for curing the non-signatures. But that date is uncertain while the potential for this Court or the Supreme Court granting a stay pending appeal remains open. County recorders will therefore need either to tell voters (1) that they may cure until five business days after the election and risk that this information becoming inaccurate following the grant of a stay (leading to voters not being able to have their votes counted despite reasonably relying on information provided by election officials) or (2) that the date for curing is currently uncertain and depends on litigation that is subject to change, which could easily confuse voters. *Purcell*, 549 U.S. at 4-5.

Every day that these issues remain open is therefore one in which voters may

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903&publishId=52840&isSection=false

be provided with either inaccurate or confusing information. The State therefore requests a decision from this Court as soon as possible, and within 14 days if at all possible.

C. Notification Of Counsel For Other Parties

The State notified all parties of its intent to seek an emergency stay pending appeal this morning.

The State and Plaintiffs have agreed upon the following briefing schedule:

- Friday, September 18: State files its emergency motion for a stay.
- Friday, September 25: Plaintiffs' response to State's motion due.
- Tuesday, September 29: State's reply to response due.

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INTRODUCTION

The injunction issued by the district court below—less than a month before voting begins in earnest in Arizona—is confusing. The district court properly recognized that the burden on voting imposed by the challenged state laws (the “Acts”) was “minimal”—repeating that “minimal” characterization *ten times*. Indeed, the burden at issue here is about as low as they come: to vote by mail in Arizona, voters must either (1) sign their name once where prominently indicated when returning their ballot, given about a month of time to do so and exceptionally clear instructions, or (2) cure their failure to sign before polls close on election day. That’s it. And for approximately 99.9% of Arizona voters, that presents no apparent issue. Indeed, as the district court aptly observed, “there is nothing generally or inherently difficult about signing an envelope by Election Day.” ADD-12.

Moreover, it is undisputed that Arizona law is *more generous* than numerous other states. Of the 31 states that use signatures as the primary method for verifying mail-in ballots, a full 15—*nearly half*—do not permit curing of any kind *whatsoever* for non-signatures. ADD-139. Arizona poll workers, by contrast, will actively assist voters in curing non-signatures or casting votes by alternative means, with the only limitation being that they do so by poll-close time. ADD-175-79; ADD-90-92.

But despite (1) this relative generosity of Arizona law, (2) the admitted and repeatedly observed “minimal” nature of the burden, and (3) recognition of multiple “important” state interests implicated by the State’s signature requirement, the district

court nevertheless held—on the eve of voting commencing—that Arizona’s refusal to provide a post-election cure period for non-signatures violates the U.S. Constitution, and necessarily did so as a *facial* matter (without ever acknowledging the standard for facial relief). In doing so, the district court upended 102 years of Arizona history in which the State has allowed voting by mail but *never* permitted curing of non-signatures after election day—all without suit by Plaintiffs for 101½ of those years.

The district court committed several legal errors that make reversal on appeal exceptionally likely. Five are particularly obvious. *First*, as explained below, Plaintiffs—who do not include any voters—lack Article III standing.

Second, because the burden of signing was only “minimal,” the courts’ inquiry “is limited to whether the chosen method is reasonably related to [an] important regulatory interest.” *Prete v. Bradbury*, 438 F.3d 949, 971 (9th Cir. 2006). Two such interests are readily apparent and served by the deadline: (1) The State has an uncontested interest in using the signature requirement to “preserv[e] the integrity of its election process.” *Purcell v. Gonzales*, 549 U.S. 1, 4 (2006). Notably, the signature requirement only works if it has a deadline attached to it. ADD-18-19. And there is nothing unconstitutionally unreasonable about an election day deadline—it is, after all, also the uncontroversial deadline for voting in person. Moreover, the State’s election-day cure deadline is at least as tailored as the three other states that use it, and patently more tailored than the 15 states that disallow curing entirely—all of which are violating the Constitution under the district court’s reasoning. (2) The administrative

burden at issue is more than sufficient to justify the Acts. Indeed, this Court has specifically held that the Constitution does *not* require an opportunity to cure mismatched signatures and that avoiding the “administrative burden” of cure procedures meant that the Oregon law at issue “must be upheld.” *Lemons v. Bradbury*, 538 F.3d 1098, 1105 (9th Cir. 2008). The same result should obtain here.

Third, the district court’s non-existent facial analysis of Plaintiffs’ facial-only claims fairly demands reversal. Plaintiffs do not include any actual voters and admit that their “claims are facial in nature.” ADD-282 n.4. But the district court failed to analyze the claims under the governing *Salerno* standard (or any other facial standard) completely. Because “circumstances exist[] under which the [Acts] would be valid,” *United States v. Salerno*, 481 U.S. 739, 745 (1987), Plaintiffs’ facial-only claims necessarily fail. In particular, if a voter receives three weeks of opportunity to cure a non-signature *pre*-election, the absence of five additional business days post-election cannot conceivably violate the Constitution.

Fourth, the consequence of the district court’s injunction is that, once again, “no good deed goes unpunished.” *Winter v. NRDC*, 555 U.S. 7, 31 (2008). Specifically, the reasoning is overwhelmingly based on the premise that because the State created a post-election “cure” period for signature mismatches—which is for the qualitatively different task of voters verifying to election officials that the existing signatures are actually theirs, not whether the ballot affidavit was executed at all—it was constitutionally compelled to provide one for non-signatures. ADD-13. But this is a

policy choice for the Legislature, not an invitation for federal courts to micromanage election procedures to ameliorate concededly “minimal” burdens.

In any event, there are entirely reasonable bases to distinguish between signature mismatches and non-signatures. Unlike mismatches (1) the risk of error for no-signature determinations is extremely low and (2) the resulting disqualification is typically the exclusive fault of the voter, not the government. Notably, Plaintiffs’ *own cases* made these vital distinctions clear. And it is eminently reasonable to distinguish between documents that appear to be executed and ones that plainly are not.

Fourth, the district court’s injunction violates the *Purcell* doctrine and fails to account properly for Plaintiffs’ delay in bringing suit. Despite Arizona law precluding post-election curing of non-signatures for over a century, Plaintiffs waited until June of this election year to file suit. And the injunction issued on September 10 is far too close to the general election to survive under *Purcell* doctrine, which notably reversed *unanimously* an injunction issued on October 5, 2006.

Moreover, the State will suffer irreparable harm in the absence of a stay due to the injunction against its laws and the burdens imposed by the injunction. And the balance of equities and public interest strongly favor a stay pending appeal given: (1) the admittedly “minimal” burden on voting rights, (2) Plaintiffs’ colossal delay in bringing this suit, and (3) *Purcell* doctrine and the imminent—and completely unnecessary but for Plaintiffs’ delay—proximity to the November election.

For all of these reasons, this Court should grant the State's emergency motion for a stay pending appeal.

BACKGROUND

Voting in Arizona. Arizona is a leader among states in making it easy for its citizens to cast votes. ADD-120-26. Arizona does so through a variety of means, including (1) online registration, (2) not requiring any excuse to obtain an absentee/mail-in ballot, (3) making it easy to sign up for permanent mail-in balloting, (4) pre-paying postage, (5) maintaining polling places despite high vote-by-mail usage, (6) placing voting drop boxes in areas with limited mail service, and (7) requiring nothing more than a timely signature to vote by mail (unlike other states that require witnesses or notarization). *Id.* That last requirement is directly at issue here.

Absentee/Mail-In Balloting. For nearly all of its history, *i.e.*, 1918-2020, Arizona has (1) always required a signature to cast a vote by mail and (2) never permitted "curing" of non-signatures after election day. ADD-178.

Signature Mismatches. In 2019, the Arizona Legislature enacted a bill permitting curing of signature mismatches for five business days post-election. ADD-126-27. It did not provide an equivalent cure period for non-signatures. "County Recorders historically viewed these two types of ballot problems differently," however, ADD-127, and have long had different procedures for them. ADD-127-32.

Although Arizona law does not permit post-election curing of non-signatures, it does permit curing up until polls close. ADD-124, 130-32. Its Election Procedures

Manual affirmatively mandates that county recorders take efforts to facilitate such curing. ADD-131. County officials further expend considerable efforts to assist voters in doing so in time. ADD-127-32; 175-78, 314-15, 320-23.

The signature requirement is the subject of extensive notice. Examples and pictures of notices provided to Maricopa County voters are included. ADD-134-37. Although Arizona law has precluded post-election curing of non-signatures for 102 years and the statute providing post-election curing only for signature mismatches was signed into law on April 1, 2019, Plaintiffs did not bring this suit until June 10, 2020, and the district court did not issue an injunction until September 10.

LEGAL STANDARD

In evaluating a motion for stay pending appeal, a court considers “four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 426 (2009) (citation omitted).

ARGUMENT

I. THE STATE IS LIKELY TO PREVAIL ON APPEAL

A. Reversal Is Likely Because Plaintiffs Lack Article III Standing

As an initial matter, the State is likely to prevail in its appeal because Plaintiffs lack standing. The district court’s conclusions that Arizona Democratic Party

(“ADP”) had established associational and organization standing (ADD-8-10) rest on manifest legal errors, and would also occasion a square circuit split if affirmed.

1. Plaintiffs Lack Associational Standing

To establish association standing, the Supreme Court has repeatedly “required plaintiff-organizations to make specific allegations establishing that *at least one identified member* had suffered or would suffer harm.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added). It is undisputed that Plaintiffs did not identify any members, ADD-236-37, which should have been fatal to their associational standing.

The district court excused this patent violation of *Summers* based on *National Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015). But *Cegavske* at most recognizes an exception “where the defendant need not know the identity of a particular member to understand and respond to an organization’s claim of injury.” *Id.* But here that is plainly not the case. Understanding what *pre-election* notices and cure opportunities that Plaintiffs’ members received is critical to understanding their claims of injury and the marginal value of *post-election* procedures. And identifying individual members would likely have turned up additional proof of constitutional applications of the Acts that are fatal to Plaintiffs’ facial-only claims. *See infra* at 13-14.

Moreover, this Court would have to create a square split with the Eleventh Circuit to affirm the associational standing holding, since that court specifically enforced the *Summers* requirement to political parties in an election case. *Jacobson v. Fla. Sec’y of State*, ___ F.3d ___, 2020 WL 5289377, at *7 (11th Cir. Sept. 3, 2020).

2. Plaintiffs Lack Organizational Standing

The district court's holding that ADP had organizational standing is also flawed for three reasons. *First*, organizational standing requires “frustration of [the organization's] mission.” *La Asociacion de Trabajadores de Lake Forest v. Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). And ADP has steadfastly refused even to allege it. In particular, Plaintiffs refused to allege (let alone prove) that “voters who fail to sign ... [were] more likely to vote for Democratic candidates than Republican candidates.” ADD-238. Absent such an allegation, it is entirely (and equally) plausible that the Acts actually *benefit* ADP by costing Republican candidates more net votes. ADP cannot derive organizational standing from statutes that *assist* their mission. Nor would spending money to enhance the amount of that *benefit* confer standing. Not only can an organization not “manufacture the injury by ... simply choosing to spend money fixing a problem that otherwise would not affect the organization at all,” *Lake Forest*, 624 F.3d at 1088, but moneys spent to enhance the amount of a *benefit* never amount to “injury-in-fact” along the way. *Summers*, 555 U.S. at 494-95.

Second, ADP's resource diversion is *far* too lacking in detail to suffice. Organizational standing requires that Plaintiffs “explain[] what activities [they] would divert resources away from in order to spend additional resources on combatting the [challenged harms].” *Jacobson*, 2020 WL 5289377 at *9. But ADP only alleged that the Acts divert “resources that it would otherwise spend on other efforts to accomplish its mission in Arizona.” ADD-189. Given that it only operates *in Arizona*, that is no

actual detail at all, and certainly not remotely “particularized.” *Summers*, 555 U.S. at 493.

Third, “[a]n organization’s general interest in its preferred candidates winning as many elections as possible is still a ‘generalized partisan preference’ that federal courts are ‘not responsible for vindicating.’” *Jacobson*, 2020 WL 5289377 at *7 (cleaned up) (quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1933 (2018)). ADP’s mere allegation that the Acts “decreas[e] the overall likelihood that ADP will be successful in its mission to help elect Democratic candidates,” ADD-188-89, is precisely that sort of “generalized partisan preference.”

The district court thus erred in holding ADP had alleged/proved organizational standing and any affirmance would create a square split with the Eleventh Circuit.

B. The District Court’s “Minimal” Burden Holding Renders Its Injunction Unsustainable

The district court got one thing quite right: the requirement of either signing a ballot affidavit correctly the first time or curing the error by election day is indeed “minimal”—which it repeated ten times. ADD-13-14, 16, 18-19, 24. Indeed, it is exceedingly minimal—about as low as voting burdens come without being zero. But that holding all but compels a conclusion that the Acts are constitutional. The district court erred in concluding otherwise.

Given the admittedly minimal burden, “the State need not narrowly tailor the means it chooses to promote ballot integrity.” *Timmons v. Twin Cities Area New Party*,

520 U.S. 351, 365 (1997). Instead, “there is *no requirement* that the rule is the *only or the best way to further the proffered interests.*” *Dudum v. Arntz*, 640 F.3d 1098, 1114 (9th Cir. 2011) (emphasis added). And this Court’s inquiry “is limited to whether the chosen method is reasonably related to [an] important regulatory interest,” *Prete*, 438 F.3d at 971,” and it is “not obliged to consider whether [the challenged laws] could or should be more narrowly tailored.” *Pest Comm. v. Miller*, 626 F.3d 1097, 1110 (9th Cir. 2010)

The district court turned that standard on its head. As it acknowledged, signature requirements are useless for securing elections without deadlines attached to them. ADD-13. And Arizona’s poll-close deadline is eminently reasonable and certainly amongst the ways of “further[ing] the proffered interests.” *Dudum*, 640 F.3d at 1114. Of the 31 relevant states, 15 do not provide any cure opportunity *whatsoever*. ADD-139 & Appendix. The Acts are *far* more tailored than these 15 states—all of whom would have their laws invalidated under the district court’s reasoning. And three other states (Georgia, Massachusetts, and Michigan) also use a poll-close deadline for curing non-signatures—and are thus equally tailored. ADD-125. And the remaining states provide a variety of time periods post-election for curing. *Id.*

The states thus show there are a variety of methods to address non-signatures—none of which have ever previously been found unconstitutional. Arizona’s approach is plainly reasonable—and indeed the same as, or substantially more generous than, a majority of relevant states. The election-day deadline thus reasonably advances the State’s interest in securing its elections. Given the minimal

burden, no more is required. But the district court effectively upended the governing standard by holding the Constitution demands a post-election cure period of at least five business days, thereby effectively holding there was an “*only or ... best way to further the proffered interests.*” *Dudum*, 640 F.3d at 1114 (emphasis added).

In addition to the State’s interest in securing its elections, its important interest in reducing administrative burdens is amply sufficient to sustain the Acts. Indeed, this Court has squarely rejected the proposition that the Constitution demands an opportunity to cure signature mismatches in *Lemons*. 538 F.3d at 1104-05. And, as explained below, the constitutional arguments for non-signatures are far weaker than signature mismatches. *See infra* at 14-16.

Lemons is ultimately controlling here. It held that Oregon’s outright denial of *any* opportunity to cure a signature mismatch—*i.e.*, not merely a time-restricted cure period—imposed only a “minimal” burden (a characterization it repeated five times). *Lemons*, 538 F.3d at 1102, 1104. It further rejected both *Anderson-Burdick* and procedural due process arguments, holding that the “administrative burden” of adding cure procedures meant that the law at issue “must be upheld.” *Id.* at 1105. And unlike *Lemons*, the State will permit voters to cure non-signatures as long as they do so by poll close. Similarly, the Sixth Circuit recognized that administrative burdens were sufficient to justify “minimally burdensome” regulations without requiring any actual quantification of the burdens. *Ohio Democratic Party v. Husted*, 834 F.3d 620, 634 (6th Cir. 2016).

Ultimately, the district court’s reasoning appears to amount to holding that—even where the burdens involved are “minimal”—the Constitution demands whatever “would not impose meaningful administrative burdens.” ADD-15-16. But that is directly contrary to the governing standard, *supra* at 9-10, and unworkable in practice. For example, there is no argument that the State’s polling hours (6am – 7pm) impose anything more than a “minimal” burden. But it is also likely the case that the State could probably feasibly keep polls open until 7:30pm without imposing a significant administrative burden. Under the district court’s reasoning, the Constitution would therefore demand ever-later closing hours, just as it putatively demands a post-election cure period for non-signatures.

The district court’s conclusion that the administrative burden was not “meaningful” is also clear legal error. The Roads declaration explains that a post-election cure would impose material administrative burdens and that Pima County’s resources are already stretched to their breaking point. ADD-179. Indeed, Pima County already requires all ten days allotted to it to canvass results following primary elections, and there is little or no spare capacity to take on new burdens and still satisfy the ten-day deadline. *Id.* This evidence easily satisfies the State’s burden—particularly because when the laws “are not unduly burdensome, the *Anderson-Burdick* analysis never requires a state to actually *prove* ‘the sufficiency of the ‘evidence.’” *Husted*, 834 F.3d at 632 (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 195 (1986)); accord *Timmons*, 520 U.S. at 364 (citing *Munro*, 479 U.S. at 195-96).

That Pima County, Arizona's second most populous county, specifically explained in detail how the burden assigned by the injunction awarded could prevent it from certifying election results on time is far more than what *Anderson-Burdick* requires.²

C. The District Court's Failure To Address The Facial-Only Nature Of Plaintiffs' Claims Is Patent Reversible Error

Plaintiffs do not include any voters and Plaintiffs do not assert any as-applied challenges to prior vote disqualifications. Instead, Plaintiffs admit the purely facial nature of their claims. ADD-282 n.4. And the State prominently challenged Plaintiffs' failure to satisfy the governing *Salerno*/"no set of circumstances" test, both in briefing and at oral argument. ADD-99-100; ADD-232.

The district court, however, simply failed to consider whether Plaintiffs were entitled to facial relief—*i.e.*, the only relief they could conceivably obtain on their facial-only claims. Notably, the words "face" and "facial" are simply nowhere to be found in its opinion, even though the court asked a pre-announced question at oral argument that is squarely relevant to the issue. ADD-54-55, 112.

Here, there are myriad constitutional applications of the Act. Where, for example, a voter receives three weeks of opportunity to cure a non-signature *before* an

² The district court's injunction also violates *Rosario v. Rockefeller*, which held that there is no constitutional violation where a voter simply fails to act "prior to the cutoff date," (there registering with a party). 410 U.S. 752, 758 (1973). In those circumstances, "if [plaintiffs'] plight can be characterized as disenfranchisement at all, it was not caused by [the challenged law], but by their own failure to take timely steps." *Id.* The same result should obtain here as any rejection of a mail-in ballot will also result from the voter's "failure to take timely steps."

election, there is no reason why the Constitution should demand a fourth, post-election cure week. Similarly, where the voter intentionally chose not to sign (*e.g.*, as a protest), there is no reason why the Constitution demands an opportunity to “cure.”

The district court’s injunction thus rests on a patent error requiring reversal: it granted facial relief without even acknowledging the standard for facial claims.

D. The State Permissibly Distinguishes Between Signature Mismatches And Non-Signatures

Much of the district court’s reasoning rests on another flawed premise: because Arizona permits voters to cure suspected signature mismatches for five business days after the election it is constitutionally compelled to provide the same treatment for non-signatures. *ADD-13-14*, 23. In essence, “no good deed goes unpunished.” *Winter*, 555 U.S. at 31. By acting to provide a cure mechanism for one issue, the Arizona Legislature purportedly violated the Constitution by not extending it to all possible signature issues. That is wrong for two reasons.

First, where—as here—the burden on voting rights is minimal, the discretion of the state legislatures is substantial: “Legislatures ... should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.” *Munro*, 479 U.S. at 195-96. That is precisely the case here: the district court held that the impingement on the voting rights of Plaintiffs’ members is “minimal”—*i.e.*, not “significant[.]” Indeed, this Court has

recognized that states have a “specific interest in incremental election-system experimentation [that can] adequately justify” a law with a minimal burden. *Short v. Brown*, 893 F.3d 671, 679 (9th Cir. 2018). But the district court instead rejected Arizona’s incremental step and instead held that adoption of a post-election cure period for signature mismatches effectively compelled the same for non-signatures.

The Arizona Legislature was thus free to provide a post-election cure period for signature mismatches as a matter of legislative grace without being constitutionally compelled to accord equal treatment to the entirely separate issue of non-signatures. That is particularly true as 15 relevant states provide no cure period *at all*. Arizona’s more-generous system is clearly constitutional.

Second, there are eminently reasonable, and constitutionally sound, reasons to distinguish between signature mismatches and non-signatures. In particular: (a) given the inherent subjectivity in analyzing signatures and a variety of factors that may cause both signatures and determinations to vary, courts have found the risk of error in signature matching to be material—thus creating value for additional procedural protections; and (b) when votes are disqualified for signature *mismatches*, the voter is often entirely blameless. ADD-17, 247-49. But for completely absent signatures, the disqualification will nearly always be the *exclusive fault* of the affected voters. Notably Plaintiffs’ own cases make these distinctions amply clear.³ And Arizona officials have

³ For example, *Democratic Exec. Comm. of Fla. v. Lee* (cited at ADD-212, 284), expressly

long distinguished between the two issues. ADD-177-78. But the district court disregarded these critical distinctions.

E. The District Court’s Procedural Due Process Holding Is Flawed

The district court also rested its injunction on Plaintiffs’ procedural due process claim. ADD-19-22. That holding is erroneous for four reasons.

First, this Court has repeatedly refused to permit freestanding constitutional challenges to electoral regulations outside of the *Anderson-Burdick* framework. Instead, *all* constitutional challenges to election regulations are governed by “a single analytic framework”—*i.e.*, the *Anderson-Burdick* framework. *Dudum*, 640 F.3d at 1106 n.15; *accord Soltysik v. Padilla*, 910 F.3d 438, 449 n.7 (9th Cir. 2018).

contrasts mismatches/no-signatures by explaining: “It is one thing to fault a voter if she fails to follow instructions about how to execute an affidavit to make her vote count.” 915 F.3d 1312, 1324-25 (11th Cir. 2019). But this case actually *is* that “one thing.” In contrast, “signature-match scheme can result in the rejection ... *through no fault of the voter.*” *Id.* at 1316 (emphasis added).

Similarly, *Saucedo v. Gardner*, (cited at ADD-215, 217, 219) explains that “handwriting analysis ... is fraught with error” and that “Plaintiffs seek no more than to ... [allow] evidence from the best source—the voter.” 335 F. Supp. 3d 202, 219 (D.N.H. 2018) . But determining whether a ballot is signed at all is *not* similarly “fraught with error” and Plaintiffs do not merely seek consideration of new evidence here, but rather to supersede the undisputed evidence of non-signature.

Husted, (cited at ADD-212) is even worse for Plaintiffs. It notably *reversed*, as an *abuse of discretion*, an injunction regarding a “deficient-affirmation remedy,” such as “missing or misplaced ... voter signature[s]”—*i.e.*, a strikingly similar claim to what is presented here. *Northeastern Ohio Coalition for Homeless v. Husted*, 696 F.3d 580, 584, 587 (6th Cir. 2012) (citation omitted). The Sixth Circuit there contrasted “right-place/wrong-precinct ballots” which mostly “result ... from poll-worker error,” *id.* at 595 (cleaned up) with “voters’ failure to follow the form’s rather simple instructions” to sign. *Id.* at 598-99.

Second, Plaintiffs' due process claim is actually *substantive* in nature: Plaintiffs do not seek new *procedures* to address whether no-signature determinations were actually correct but instead seek to have votes counted notwithstanding their uncontested violation of Arizona's poll-close deadline. ADD-91-92.

Third, Plaintiffs lack a cognizable liberty interest. "A liberty interest may arise from either of two sources: the due process clause itself or state law." *Carver v. Lehman*, 558 F.3d 869, 872 (9th Cir. 2009). State law precludes any post-election cure and the Due Process Clause does not supply a liberty interest itself as there is no right to cast an absentee ballot at all. *Mays v. LaRose*, 951 F.3d 775, 792 (6th Cir. 2020).

Fourth, the *Matthews* balancing supports the State. The burden at issue (and thus private interest) is admittedly "minimal"—particularly given the 99.9% compliance rate and that "procedural due process rules are shaped by ... the generality of cases." *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 321 (1985). Furthermore, given that the rate of error for non-signature determinations is not even alleged to be material, ADD-245, there is little value to additional procedures. Indeed, this Court has held that where the determination is straightforward, the "value of additional procedures and the risk of erroneous deprivation are *quite minimal*." *Brittain v. Hansen*, 451 F.3d 982, 1001 (9th Cir. 2006) (emphasis added).

F. The Balancing Of Harms Rests On Legal Error

The district court also committed legal error and/or abused its discretion in

balancing the harms in three ways:

- In balancing the harms the district court failed to account for the “minimal” nature of the burden *whatsoever*. ADD-23. Instead, the admitted minimal nature of the burden somehow *never* factored into the equitable weighing.
- The district court wrongly discounted Plaintiffs’ enormous delay in bringing suit. ADD-23. That court ignored uncontested evidence that Arizona has never permitted post-election curing in 102 years of allowing mail-in balloting. ADD-178. Instead, it focused on the December 2019 approval of the Election Procedures Manual, which it viewed as creating the “unjustified differential treatment” between signature mismatches and non-signatures. ADD-23. But that distinction was actually drawn by *statute* on April 1, 2019, A.R.S. §§ 16-548(A), 552(B); ADD-91-92, which the district court committed legal error in ignoring. In any event, the differential treatment is wholly justified by the differing nature of the defects. *Supra* at 14-16.
- The district court failed entirely to consider the *per se* irreparable harm that states suffer when their laws are enjoined. *Infra* at 19-20.

G. The District Court’s Injunction Violates *Purcell* Doctrine

Finally, the injunction runs squarely afoul of *Purcell* doctrine. As an initial matter, the district court’s discussion fails to address *the* critical consideration of that doctrine: *i.e.*, the proximity of the upcoming election. ADD-23-24. Indeed, the district court ignored that the election was less than two months away.

The district court appeared to believe that *Purcell* doctrine was categorically inapplicable because Plaintiffs sought to have election officials “continue applying the same procedures they have in place now, but for a little longer.” ADD-23-24. But alteration of the status quo by injunction close to an election is the essence of *Purcell* doctrine. 549 U.S. at 4-5. For example, prior to the district court’s injunction, county recorders would tell voters that failed to sign ballots that they needed to cure the non-

signature by election day. Now, they presumably will need to tell voters that they may do so by five business days after the election—unless the injunction is stayed by this Court or the Supreme Court. That sort of contradictory information is precisely the sort of “conflicting orders [that] can themselves result in voter confusion and consequent incentive to remain away from the polls,” which *Purcell* seeks to avoid. *Id.* And it was entirely avoidable if Plaintiffs had brought suit earlier.

This risk is already upon us. Ballots for military/overseas voters went on September 14, and will shortly start being returned with some unsigned. *Supra* at iii-iv. And ordinary mail-in ballots will be sent to most Arizona voters on October 7. *Id.*

This Court similarly attempted to sidestep *Purcell* in 2016, holding that *Purcell* doctrine did not apply because the injunction issued “preserve[d] the status quo prior to the recent [challenged statute].” *Feldman v. Arizona Sec’y of State’s Office*, 843 F.3d 366, 369 (9th Cir. Nov. 4, 2016) (en banc). But the Supreme Court disagreed: issuing a stay the next day (a Saturday) without any noted dissent. 137 S. Ct. 446 (Nov. 5, 2016). Thus, *Purcell* cannot be disregarded by simply characterizing the injunction at issue as a preservation or minor modification of the status quo.

II. ARIZONA WILL SUFFER IRREPARABLE HARM ABSENT A STAY

The State is certain to suffer irreparable harm absent a stay. It is well-established that “a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined.” *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997); accord *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in

chambers). Indeed, enjoining a “State from conducting [its] elections pursuant to a statute enacted by the Legislature... would seriously and irreparably harm” the State. *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018).

Moreover, the district court correctly observed that the State has multiple important interests at stake. ADD-14-18. But it wrongly discounted their applicability, and hence harm to the State. *Supra* at 12-13, 17-18. In particular, the court wrongly discounted evidence that its injunction could prevent counties from meeting applicable election deadlines. *Supra* at 12.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR A STAY

The balance of equities/harms and public interest also both strongly favor a stay. The district court’s balancing of the harms was largely a byproduct of its legal errors. *Supra* at 17-18. And once Plaintiffs’ harms are properly discounted for their enormous delay and the oft-observed “minimal” nature of the burden, they are sharply outweighed by the State’s harms—including the *per se* and “serious” harm that is occasioned any time a state election law is enjoined. *Abbott*, 138 S. Ct. at 2324.

In addition, as explained above, the public interest strongly tips in favor of a stay pending appeal due to *Purcell* doctrine. *Supra* at 18-19.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court stay the district court’s injunction pending appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2020, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

s/ Drew C. Ensign
Drew C. Ensign

APPENDIX A

Table 1. 50 State Absentee Vote-By-Mail Policies

State	Drop Off at any Early Voting Location	Drop off at any Election Day Voting Location	Ballot Drop - boxes	On-line System to Track VBM ballots	Pays for Postage	Election Day or Before VBM Receipt Deadline	Signature Matching Problem Cure Period (# of days)	No Signature Cure Period (# of days)
Alabama						✓	NA	NA
Alaska	✓	✓		✓			NA	NA
Arizona	✓	✓	✓	✓	✓	✓	5	ED
Arkansas						✓	NA	NA
California	✓	✓	✓	*	✓		2 days prior to certification	2 days prior to certification
Colorado	✓	✓	✓	✓		✓	8	8
Connecticut						✓	NA	NA
Delaware				✓	✓	✓	0	0
Florida				✓		✓	2	2
Georgia						✓	ED	ED
Hawaii	✓	✓			✓	✓	5	5
Idaho				✓	✓	✓	0	0
Illinois							14	14
Indiana					✓	✓	0	0
Iowa				✓	✓		NA	NA
Kansas	✓	✓	✓		✓		0	0
Kentucky						✓	0	0
Louisiana						✓	NA	NA
Maine						✓	0	0
Maryland				✓			NA	NA
Massachusetts				✓		✓	ED	ED
Michigan						✓	ED	ED
Minnesota				✓	✓	✓	NA	NA
Mississippi						✓	NA	NA
Missouri					✓	✓	NA	NA
Montana	✓	✓	✓	✓		✓	1	1
Nebraska			✓	✓		✓	0	0
Nevada					✓		7	7
New Hampshire						✓	NA	NA
New Jersey							0	0
New Mexico	✓	✓	✓		✓	✓	NA	NA
New York							0	0
North Carolina	✓	✓					NA	NA
North Dakota				✓			0	0
Ohio				✓			7	7
Oklahoma						✓	NA	NA

Oregon	✓	✓	✓	✓	✓	✓	14	14
Pennsylvania						✓	0	0
Rhode Island					✓	✓	7	7
South Carolina				✓		✓	NA	NA
South Dakota						✓	0	0
Tennessee						✓	0	0
Texas							0	0
Utah	✓	✓	✓	✓	✓		7-14	7-14
Vermont						✓	NA	NA
Virginia						✓	NA	NA
Washington	✓	✓	✓	✓	✓		21	21
West Virginia				✓	✓		0	0
Wisconsin					✓	✓	NA	NA
Wyoming						✓	NA	NA
Total State	12	12	10	19	18	34	NA	NA

Note: ED stands for Election Day, NA stands for Not Applicable, these states do not rely on signature verification or signature verification alone to verify ballot eligibility.

* Some counties have ballot tracking.

Source: Atkeson Expert Report, ADD-125-26.

ADDENDUM

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arizona Democratic Party, et al.,

Plaintiffs,

v.

Katie Hobbs, et al.,

Defendants.

No. CV-20-01143-PHX-DLR
ORDER

Plaintiffs the Arizona Democratic Party (“ADP”), the Democratic National Committee (“DNC”), and the Democratic Senatorial Campaign Committee (“DSCC”) seek to enjoin Arizona’s election officials from rejecting vote-by-mail (“VBM”) ballots¹ in unsigned envelopes without allowing non-signing voters the same five days after Election Day to correct their omissions as allowed to voters whose envelopes contain perceived mismatched signatures and in-person voters without proper identification. At issue are Plaintiffs’ motions for a preliminary and permanent injunction (Doc. 2) and to preclude certain opinions offered by Professor Lonna Atkeson, an expert retained by Intervenor-Defendant the State of Arizona (“State”) (Doc. 101). The Court consolidated the preliminary injunction hearing with the final bench trial on the merits pursuant to Federal Rule of Civil Procedure 65(a)(2). Having considered the parties’ briefs (Docs. 2, 85, 86, 91, 96, 97, 101, 105), their evidence,² and their presentations at the consolidated hearing,

¹ Arizona law refers to VBM ballots as “early ballots.” A.R.S. § 16-545.
² The parties stipulated to the admission of Plaintiffs’ Exhibits 1-32 (Doc. 107), and

1 the Court partially grants Plaintiffs’ motion to preclude and grants Plaintiffs’ motion for a
2 permanent injunction.³

3 **I. Background**

4 Arizona allows no-excuse VBM during the twenty-seven days before an election.
5 A.R.S. §§ 16-541, -542(C). Most voters choose this option. (Pl. Exh. 6.) VBM voters
6 must return their completed ballots in specially provided, postage-paid envelopes and sign
7 an affidavit printed on those envelopes. A.R.S. §§ 16-547, -548. Election officials
8 compare these signatures with signatures on record to verify that the ballot returned was,
9 in fact, cast by the voter to whom that ballot belongs. A.R.S. § 16-550. A ballot that cannot
10 be verified will not be counted. A.R.S. § 16-552(B).

11 Every election, officials receive some ballots in unsigned envelopes and some in
12 envelopes bearing signatures that appear not to match the signatures on those voters’
13 registration records. Until recently, Arizona law was silent on what election officials
14 should do with such ballots, leading each county to institute its own policies. (St. Exh. 101
15 ¶ 25.) Some counties allowed voters to cure perceived mismatched signatures after
16 Election Day, others did not. (*Id.*) Some counties allowed voters to cure missing signatures
17 by Election Day, but no county—except Santa Cruz—allowed voters to do so after Election
18 Day. (*Id.*; Pl. Exh. 7 at 3.)

19 This patchwork approach changed on August 27, 2019, when the Arizona legislature

20
21 to the State’s Exhibits 101-114, except for paragraphs 55-62, 72-76, and 94 of State Exhibit
22 101 (Doc. 108), which are the subject of Plaintiffs’ motion to preclude. This order cites
23 Plaintiffs’ exhibits as “Pl. Exh.” and the State’s exhibits as “St. Exh.”

24 ³ Federal Rule of Civil Procedure 52(a)(1) requires the Court to “find the facts
25 specially and state its conclusions of law separately,” either on the record or in a separate
26 opinion or memorandum decision. “One purpose behind Rule 52(a) is to aid the appellate
27 court’s understanding of the basis of the trial court’s decision. This purpose is achieved if
28 the district court’s findings are sufficient to indicate the factual basis for its ultimate
conclusions.” *Vance v. Am. Hawaii Cruises, Inc.*, 789 F.2d 790, 792 (9th Cir. 1986)
(internal citations omitted). The Court has chosen to issue a written decision “in narrative
form because a narrative format more fully explains the reasons behind the Court’s
conclusions, which aids appellate review and provides the parties with more satisfying
explanations. Any finding of fact that constitutes a conclusion of law is hereby adopted as
a conclusion of law, and any conclusion of law that constitutes a finding of fact is hereby
adopted as a finding of fact.” *Juan Pollo Franchising, Inc. v. B & K Pollo Enters., Inc.*,
No. EDCV 13-2010JGB (SPx), 2015 WL 10695881, at *1 (C.D. Cal. Aug. 6, 2015). Local
Rule of Civil Procedure 52.1 is suspended.

1 amended the election code to provide a uniform cure period for ballot envelopes with
 2 perceived mismatched signatures. Arizona law now allows voters to cure perceived
 3 mismatched signatures up to five business days after an election.⁴ A.R.S. § 16-550(A).
 4 This amendment mirrors Arizona’s treatment of ballots cast in person by voters who arrive
 5 at the polls without proper identification. Such voters are permitted to cast conditional
 6 provisional ballots, A.R.S. § 16-579(A), which will be counted if the voter presents an
 7 acceptable form of identification to the appropriate county recorder up to five business
 8 days after the election. (Pl. Exh. 3 at 196.) However, Arizona’s election code does not
 9 expressly address whether ballot envelopes with missing signatures may be cured.

10 Defendant Arizona Secretary of State Katie Hobbs (“Secretary”) sought to fill this
 11 gap. The Secretary is Arizona’s chief election officer and required by law to prescribe in
 12 the Election Procedures Manual (“EPM”) “rules to achieve and maintain the maximum
 13 degree of correctness, impartiality, uniformity and efficiency on the procedures for early
 14 voting and voting, and of producing, distributing, collecting, counting, tabulating and
 15 storing ballots.” A.R.S. §§ 41-121, 16-452(A). To that end, the Secretary’s October 2019
 16 draft EPM instructed election officials to permit voters to cure a missing signature within
 17 the same post-election time frame applicable to perceived mismatched signatures. (Pl. Exh.
 18 2 at 77.)

19 To become effective, the EPM must be approved by the Attorney General and
 20 Governor. A.R.S. § 16-452(B). The Attorney General objected to the Secretary’s draft
 21 because, in his view, Arizona law implicitly prohibits a post-election cure period for
 22 missing signatures. (Pl. Exhs. 24 (attached Excel spreadsheet), 26 at 11-13; St. Exh. 113.)
 23 Although the Secretary disagreed with the Attorney General’s interpretation of Arizona
 24 law,⁵ she acquiesced to removing the language in the interest of timely issuing an updated
 25 version of the EPM. (Pl. Exh. 26 at 11-13.) The finalized EPM provides:

26 ⁴ The five-day post-election cure period applies only to elections that include a
 27 federal office; a three-day post-election cure period applies to all other elections. A.R.S. §
 28 15-550(A). For ease, the Court describes this post-election period as lasting “up to five
 days” after an election.

⁵ This dispute over state law is immaterial. What matters is, at present, voters may
 not cure unsigned ballot envelopes after Election Day.

1 If the early ballot affidavit is not signed, the County Recorder
2 shall not count the ballot. The County Recorder shall then
3 make a reasonable and meaningful attempt to contact the voter
4 via mail, phone, text message, and/or email, to notify the voter
5 the affidavit was not signed and explain to the voter how they
6 may cure the missing signature or cast a replacement ballot
7 before 7:00pm on Election Day. The County Recorder shall
8 attempt to contact the voter as soon as practicable using any
9 contact information available in the voter's record and any
10 other source reasonably available to the County Recorder.
11 Neither replacement ballots nor provisional ballots can be
12 issued after 7:00pm on Election day.

13 (Pl. Exh. 3 at 82-83.)

14 On June 10, 2020, Plaintiffs filed a two-count complaint against the Secretary and
15 the recorders for each of Arizona's fifteen counties pursuant to 42 U.S.C. § 1983.⁶ (Doc.
16 1.) Both counts allege that the Election-Day cure deadline for unsigned ballot envelopes
17 violates the Fourteenth Amendment to the United States Constitution—in Count I, by
18 unjustifiably burdening the right to vote; in Count II, by denying procedural due process.⁷
19 (*Id.* ¶¶ 59-63.) Plaintiffs concurrently filed a motion for a preliminary and permanent
20 injunction requiring Defendants to allow voters to cure missing signatures in the same post-
21 election period applicable to perceived mismatched signatures. (Doc. 2.)

22 The Court granted motions to intervene filed by the State (Docs. 16, 28) and the
23 Republican National Committee, the Arizona Republican Party, and Donald J. Trump for
24 President, Inc. (Docs. 35, 60). At a June 23, 2020 scheduling conference, the Court
25 granted, without objection, Plaintiffs' request to consolidate the hearing on their
26 preliminary injunction motion with the final bench trial on the merits. (Docs. 38, 39.) On
27 August 18, 2020, the Court held the consolidated hearing. After the admission of evidence
28 and oral argument, the matter was taken under advisement.

⁶ Section 1983 creates a cause of action against any person who, under color of state law, deprives another of any rights, privileges, or immunities secured by the Constitution and laws of the United States. *Long v. Cty. of L.A.*, 442 F.3d 1178, 1185 (9th Cir. 2006).

⁷ Count I also cites the First Amendment. Because Plaintiffs are challenging a state law, their claims arise under the Fourteenth Amendment, which applies the First Amendment's protections against states and their political subdivisions. *See City of Ladue v. Gilleo*, 512 U.S. 43, 45 n.1 (1994).

1 **II. Motion to Preclude**

2 Federal Rule of Evidence 702, which governs the admissibility of expert opinion
3 testimony, provides:

4 A witness who is qualified as an expert by knowledge, skill,
5 experience, training, or education may testify in the form of an
6 opinion or otherwise if:

7 (a) the expert's scientific, technical, or other specialized
8 knowledge will help the trier of fact to understand the evidence
9 or to determine a fact in issue;

10 (b) the testimony is based on sufficient facts or data;

11 (c) the testimony is the product of reliable principles and
12 methods; and

13 (d) the expert has reliably applied the principles and methods
14 to the facts of the case.

15 The State retained Professor Atkeson to opine as an expert on matters related to election
16 administration and voter behavior. Professor Atkeson's report was stipulated into
17 evidence, except paragraphs 55-62, 72-76, and 94, which Plaintiffs challenged as
18 unreliable. (Doc. 101.)

19 **A. The First Challenged Opinion**

20 Professor Atkeson opined in paragraphs 55-62 and 94 that post-election cure
21 periods, especially generous ones, might result in lower cure rates. (St. Exh. 101.)
22 Professor Atkeson reached this conclusion in two ways: empirically and theoretically.

23 For her empirical analysis, Professor Atkeson looked to the total number of VBM
24 ballots rejected for a missing or mismatched signature in 2016 and 2018 across multiple
25 jurisdictions with different cure periods. She then calculated the percent of missing
26 signature or mismatched signature rejections as a percent of total ballots counted. These
27 calculations showed that some states with longer post-election cure periods rejected a
28 greater proportion of ballots with missing and mismatched signatures than other states with
shorter cure periods. In Professor Atkeson's opinion, this data indicates longer post-
election cure periods might result in lower cure rates.

Professor Atkeson's opinion regarding the implications of the empirical data is the

1 product of unreliable principles and methods. Rejection rates and cure rates are distinct,
 2 and there is no available statewide data on the number of ballots in each jurisdiction that
 3 initially were returned with missing or mismatched signatures and subsequently were
 4 cured. Focusing solely on the number of ballots in each category that ultimately were
 5 rejected reveals nothing about relative cure rates between these jurisdictions. Professor
 6 Atkeson also fails to control for other variables that could impact the relative rejection rates
 7 and does not assess whether the marginal differences between the examined jurisdictions
 8 are statistically significant. Professor Atkeson’s opinion regarding the empirical data
 9 therefore is inadmissible.

10 For her theoretical analysis, Professor Atkeson drew on her knowledge of and
 11 experience in political science to opine that voters might not be motivated to undertake the
 12 steps necessary to cure their ballots after an election unless a race is extraordinarily close.
 13 To the extent Professor Atkeson bases her opinion on her knowledge of and experience in
 14 political science, it is admitted. Professor Atkeson has significant, relevant experience in
 15 political science and election administration. She is a Professor of Political Science at the
 16 University of New Mexico, where she directs the Center for the Study of Voting, Elections
 17 and Democracy and the Institute for Social Research. (*Id.* ¶ 2.) Professor Atkeson has
 18 written extensively about election administration and political behavior, and she has spent
 19 significant time observing election administration processes. (*Id.* ¶¶ 3-4.) Based on her
 20 knowledge and experience in these areas, she may opine on the possible effects of post-
 21 election cure periods on voter behavior. However, the Court will accept this opinion for
 22 what it is—a political science theory about voter behavior—and assigns it little weight
 23 because the opinion lacks empirical support and is equivocal.

24 Accordingly, with respect to the first challenged opinion, the Court precludes the
 25 following portions of Professor Atkeson’s report: the third sentence of paragraph 56; the
 26 second and third sentences of paragraph 57; the first and third sentences of paragraph 58;
 27 the first sentence of paragraph 59; the words “and empirical results presented above suggest
 28 otherwise” from paragraph 60; paragraph 61; and paragraph 94. The remaining portions

1 of the challenged paragraphs are admitted but assigned little weight.

2 **B. The Second Challenged Opinion**

3 Professor Atkeson opined that the addition of a five-day post-election cure period
4 for missing signatures likely would make it difficult or impossible for some counties to
5 complete the election process under Arizona's current statutory limits.⁸ (*Id.* ¶¶ 72-76.)
6 This opinion is inadmissible for two reasons. First, Professor Atkeson bases her opinion
7 on an examination of Arizona's election code and the declaration of Pima County Deputy
8 Recorder and Registrar of Voters Christopher Roads (St. Exh. 107), but she does not
9 analyze specific data regarding county staffing resources and funding, or the amount of
10 time election officials would spend implementing a post-election cure period for unsigned
11 ballot envelopes. Her opinion therefore is not based on data or facts. Second, Professor
12 Atkeson's opinion will not help the Court understand the evidence or determine a fact at
13 issue. The Court can review and interpret Arizona law and draw inferences from Mr.
14 Roads' declaration without the assistance of an expert. Accordingly, the Court precludes
15 the following portions of Professor Atkeson's report: the second sentence of paragraph 73;
16 the first, second, sixth, and seventh sentences of paragraph 74; the second and sixth
17 sentences of paragraph 75; and paragraph 76. The remaining portions of the challenged
18 paragraphs are admitted.

19 **III. Motion for a Preliminary and Permanent Injunction**

20 Because the Court granted Plaintiffs' request to consolidate the preliminary
21 injunction hearing with the final bench trial on the merits, the standards for the issuance of
22 a permanent injunction govern. *See Knox v. Brnovich*, 336 F. Supp. 3d 1063, 1067 (D.
23 Ariz. 2018). Before the Court may grant a permanent injunction, Plaintiffs must succeed
24 on the merits of at least one of their claims and show that (1) they have suffered or
25 imminently will suffer an irreparable injury, (2) no remedy available at law can adequately

26
27 ⁸ This opinion is inconsistent with Professor Atkeson's opinion that post-election
28 cure periods, especially longer ones, might result in lower cure rates. If a generous post-
election cure period reduces cure rates, it should likewise reduce the administrative burdens
associated with curing deficient ballots. Thus, even if the second challenged opinion were
admissible, the Court would assign it little weight given this internal inconsistency.

1 compensate for that injury, (3) the balance of hardships warrants equitable relief, and (4) a
2 permanent injunction would not disserve the public interest. *See eBay Inc. v.*
3 *MercExchange, LLC*, 547 U.S. 388, 391 (2006).

4 **A. Standing**

5 Federal courts may exercise power only in the context of cases and controversies.
6 U.S. CONST. art. III, § 2, cl. 1. “Standing to sue is a doctrine rooted in the traditional
7 understanding of a case or controversy.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547
8 (2016). By “limit[ing] the category of litigants empowered to maintain a lawsuit in federal
9 court to seek redress for a legal wrong,” the doctrine “ensure[s] that federal courts do not
10 exceed their authority as it has been traditionally understood[.]” *Id.* (internal citations
11 omitted). To have standing to litigate in federal court, a plaintiff “must have suffered or
12 be imminently threatened with a concrete and particularized ‘injury in fact’ that is fairly
13 traceable to the challenged action of the defendant and likely to be redressed by a favorable
14 judicial decision.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118,
15 125 (2014) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Only one
16 plaintiff needs standing when, as here, only injunctive relief is sought. *Crawford v. Marion*
17 *Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d*, 553 U.S. 181, 189 n.7 (2008).

18 Plaintiffs assert standing to sue on behalf of their members under a doctrine known
19 as associational or representational standing. (Doc. 96 at 9.) To do so, Plaintiffs must
20 show that (1) their members would otherwise have standing to sue in their own right, (2)
21 the interests Plaintiffs seek to vindicate are germane to their organizational purpose, and
22 (3) neither the claim asserted nor the relief requested requires individual members to
23 participate in the lawsuit. *Smith v. Pac. Props. and Dev. Corp.*, 358 F.3d 1097, 1101-02
24 (9th Cir. 2004). Although Plaintiffs must establish that they have relevant members, they
25 need not identify by name specific injured members if “it is relatively clear, rather than
26 merely speculative, that one or more members have been or will be adversely affected” by
27 the challenged law, and where Defendants “need not know the identity of a particular
28 member to understand and respond to” Plaintiffs’ claims. *Nat’l Council of La Raza v.*

1 *Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

2 The Court finds that the ADP has standing to sue on behalf of its members.⁹ The
3 ADP is a formal membership organization whose members include Arizona voters
4 registered with the Democratic Party, of which there are 1,293,074 as of August 2020. (Pl.
5 Exh. 30 ¶ 5.) Roughly a third of Arizona voters are registered with the Democratic Party
6 (Pl. Exh. 1 at 10), and in past elections there has been at least one such voter whose ballot
7 was rejected due to a missing signature (Pl. Exh. 30 ¶ 16). It therefore is relatively clear,
8 rather than speculative, that on a prospective basis members of the ADP will be adversely
9 affected by the Election-Day deadline for curing missing signatures.¹⁰ Moreover,
10 Defendants (including the Intervenor-Defendants) do not need to know the identities of
11 specific affected ADP members to understand or respond to Plaintiffs’ claims. The voting
12 rights of registered Democratic voters are germane to the ADP’s organizational mission,
13 which is to elect Democratic Party candidates and promote Democratic ideals in Arizona.
14 (*Id.* ¶ 8.) Lastly, neither the claims asserted, nor the relief requested require individual
15 members to participate in the lawsuit.

16 Plaintiffs also assert standing to sue on their own behalves because the challenged
17 law adversely impacts their organizational missions. (Doc. 96 at 12.) “[A]n organization
18 may satisfy the Article III requirement of injury in fact if it can demonstrate: (1) frustration
19 of its organizational mission; and (2) diversion of its resources to combat” the adverse
20 effects of the challenged law. *Smith*, 358 F.3d at 1105.

21 The Court finds that the ADP has organizational standing.¹¹ Rejection of ballots
22 reflecting votes for Democratic Party candidates frustrates the ADP’s organizational
23 mission.¹² (Pl. Exh. 30 ¶ 9.) As a result, the ADP has diverted and anticipates further

24 ⁹ The Court does not address whether the DNC or the DSCC also have standing to
25 sue on behalf of their members.

26 ¹⁰ The Court rejects the State’s argument that the injury suffered by such voters is
27 not cognizable because it is self-inflicted. (Doc. 85-1 at 16.) Voters who forget to sign
28 their ballots have not done so deliberately. Forgetfulness is an involuntary state that any
voter might reasonably experience, and therefore is not avoidable in a practical sense.

¹¹ The Court does not address whether the DNC or the DSCC have organizational
standing.

¹² The Court rejects the State’s argument that the ADP must prove more Democratic
voters submit unsigned ballot envelopes than non-Democratic voters. This sets an

1 diversion of resources to counteract these effects. (*Id.* ¶ 24.) For example, the ADP invests
 2 significant resources in helping Democratic voters fix signature issues. The ADP refers to
 3 this process as “ballot chase.” Pre-election ballot chase requires the ADP to either divert
 4 resources from other pre-election work or to hire additional staff to focus on pre-election
 5 ballot chase. Post-election ballot chase, on the other hand, could be accomplished with
 6 existing staff unburdened by pre-election work. (*Id.* ¶¶ 19-22.) Also, the ADP currently
 7 channels additional educational resources to areas with low English literacy rates to ensure
 8 that voters in those areas understand the signature rules for VBM ballots. A post-election
 9 cure period for unsigned envelopes would liberate at least some of these resources for the
 10 ADP’s pre-election organizational priorities, such as get-out-the-vote efforts and voter
 11 persuasion. (*Id.* ¶¶ 25-28.) These are sufficiently concrete and particularized injuries that
 12 are fairly traceable to the challenged law, and that could be redressed by a decision in
 13 Plaintiffs’ favor. *See Crawford*, 472 F.3d at 951 (“Thus the new law injures the Democratic
 14 Party by compelling the party to devote resources to getting to the polls those of its
 15 supporters who would otherwise be discouraged by the new law from bothering to vote.”);
 16 *One Wis. Inst., Inc. v. Nichol*, 186 F. Supp. 3d 958, 967 (W.D. Wis. 2016) (finding
 17 expenditure of resources for educating voters about how to comply with new state voter
 18 registration requirements sufficient to establish standing).

19 **B. Unjustified Burden on Voting Rights**

20 The Constitution protects the right to vote, but not the right to vote in any manner
 21 one chooses. *See Burdick v. Takushi*, 504 U.S. 428, 433 (1992). “Common sense, as well
 22 as constitutional law, compels the conclusion that government must play an active role in
 23 structuring elections.” *Id.*; *see also Storer v. Brown*, 415 U.S. 724, 730 (1974) (“[T]here
 24 must be a substantial regulation of elections if they are to be fair and honest and if some
 25 sort of order, rather than chaos, is to accompany the democratic processes.”). Challenges
 26 to election regulations therefore are resolved under a flexible standard designed to balance

27
 28 impossibly high standard, as it cannot be known in advance how many voters will neglect to sign their ballot envelopes, who they will vote for, or how close those elections will be.

1 the individual’s right to vote with the need for rules ordering the process. The Court “must
 2 weigh ‘the character and magnitude of the asserted injury to the rights protected by the
 3 First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise
 4 interests put forward by the State as justifications for the burden imposed by its rule,’ taking
 5 into consideration ‘the extent to which those interests make it necessary to burden the
 6 plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S.
 7 780, 789 (1983)). This framework commonly is called the *Anderson/Burdick* framework,
 8 after the two Supreme Court decisions from which it derives.

9 Under *Anderson/Burdick*, the degree to which the Court scrutinizes “the propriety
 10 of a state election law depends upon the extent to which a challenged regulation burdens
 11 First and Fourteenth Amendment rights.” *Id.* A law that imposes severe burdens is subject
 12 to strict scrutiny, meaning it must be narrowly tailored to serve a compelling state interest.
 13 *Id.* “Lesser burdens, however, trigger less exacting review, and a State’s ‘important
 14 regulatory interests’ will usually be enough to justify ‘reasonable, nondiscriminatory
 15 restrictions.’” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (quoting
 16 *Burdick*, 504 U.S. at 434).

17 **1. Burdens**

18 Plaintiffs do not challenge the requirement that voters sign their ballot envelopes;
 19 they challenge the deadline by which voters must comply. They argue that the Election-
 20 Day cure deadline imposes severe, or at least “significant,” burdens because voters are
 21 disenfranchised if they fail to meet the deadline. (Doc. 2 at 12-13; Doc. 96 at 16.)

22 Plaintiffs’ argument misguidedly conflates the burdens imposed by a challenged law
 23 with the consequences of noncompliance. By definition, a voting prerequisite is something
 24 that voters must do before their votes will be counted. Whenever voters fail to comply
 25 with a voting prerequisite, their votes are not counted and they are, as Plaintiffs use the
 26 term, disenfranchised. If the burden imposed by a challenged law were measured by the
 27 consequence of noncompliance, then every voting prerequisite would impose the same
 28 burden and therefore would be subject to the same degree of scrutiny (presumably strict if

1 the burden is disenfranchisement). But this cannot be true because “not every voting
 2 regulation is subject to strict scrutiny,” *Pub. Integrity Alliance, Inc. v. City of Tucson*, 836
 3 F.3d 1019, 1024 (9th Cir. 2016), and the *Anderson/Burdick* framework necessarily
 4 contemplates that election laws can impose varying burdens. Although the number of
 5 voters whose votes are not counted can be evidence of the severity of the burdens imposed
 6 by a challenged law, the fact that those votes are not counted is not itself the burden.

7 *Crawford* is illustrative. There, the Supreme Court considered whether Indiana’s
 8 voter identification law, which required in-person voters to present photo identification,
 9 unconstitutionally burdened the right to vote. 553 U.S. at 185. A voter who had photo
 10 identification but was unable to present it on Election Day, or a voter who was indigent or
 11 had a religious objection to being photographed, could cast a provisional ballot, which then
 12 would be counted if the voter traveled to the circuit court clerk within ten days after the
 13 election and either presented photo identification or executed an affidavit. *Id.* at 185-86.
 14 In his controlling opinion, Justice Stevens explained “[t]he burdens that are relevant to the
 15 issue before us are those imposed on persons who are eligible to vote but do not possess a
 16 current photo identification that complies with the requirements of” the challenged law.
 17 *Id.* at 198. The Court described these burdens as “the inconvenience of making a trip to
 18 the [Indiana Bureau of Motor Vehicles], gathering the required documents, and posing for
 19 a photograph,” to obtain the required identification. *Id.* The Court did not characterize the
 20 burdens as disenfranchisement, even though failure to obtain the required identification or
 21 execute the appropriate affidavit would preclude the voter from casting a ballot that would
 22 be counted.

23 Here, there is nothing generally or inherently difficult about signing an envelope by
 24 Election Day. The small proportion of ballots regularly discarded due to a missing
 25 signature indicates that the challenged deadline imposes some degree of burden,
 26 particularly on voters who return their ballots too close to Election Day to receive notice
 27 of the problem or a meaningful opportunity to cure. But over 99% of voters timely comply.
 28 (St. Exh. 101 ¶¶ 56-57.) If the Election-Day cure deadline imposed significant burdens, it

1 is reasonable to expect that more voters would fail to overcome those burdens.¹³ The Court
2 therefore finds that the challenged deadline imposes only minimal burdens.

3 **2. Justifications**

4 The State offers four interests it believes are served by the challenged deadline: (1)
5 fraud prevention; (2) reducing administrative burdens on poll workers; (3) orderly
6 administration of elections; and (4) promoting voter participation and turnout. (Doc 85-1
7 at 34-35.) The Court addresses each in turn.

8 **i. Fraud Prevention**

9 The State's interest in preventing voter and election fraud is important. *See*
10 *Crawford*, 553 U.S. at 195. This interest is served by Arizona's signature requirement, and
11 all deadlines serve as an enforcement mechanism for the underlying requirements to which
12 those deadlines correspond. Thus, the State's fraud prevention interest is served by
13 imposing a deadline by which voters must sign their ballots. But the relevant question is
14 not whether the State may impose a deadline. It is whether the State has an interest in *this*
15 deadline that outweighs or justifies the minimal burdens it imposes. Because there is no
16 evidence that the challenged deadline reasonably prevents fraud, the Court finds that fraud
17 prevention does not justify the minimal burdens imposed.

18 To begin, Arizona provides a more generous post-election deadline for resolving at
19 least two other voter identification issues—VBM ballots in envelopes with perceived
20 mismatched signatures and conditional provisional ballots cast by in-person voters who
21 arrive at the polls without identification. Although these two identification issues differ in
22 some respects from unsigned ballot envelopes, they pose the same fundamental problem:
23 election officials cannot verify that the person who submitted the ballot is eligible to do so
24 without additional information. Moreover, the post-election cure periods applicable to
25 perceived mismatched signatures and conditional provisional ballots show that the
26

27 ¹³ The Court is not suggesting that there is some minimum threshold of voters that
28 must be affected before a voting rule can be deemed to impose a more substantial burden.
But the number of voters who fail to comply with a challenged law is probative (though
not necessarily dispositive) of the burdens imposed.

1 Election-Day deadline for curing missing signatures is not necessary to advance the State’s
2 fraud prevention interest. Although the State is not required to apply the least restrictive
3 deadline, the State has not explained how its fraud prevention interest would be harmed if
4 voters could cure missing signatures in the same post-election timeframe applicable to
5 these other identification issues.

6 Further, according to the State, most elections are not plagued by fraud, and fraud
7 generally is not suspected based on the number of ballots returned without signatures.
8 (Doc. 112 at 69:19-21, 72:1-4.) In most cases, ballots in unsigned envelopes are not
9 fraudulent ballots—they are ballots cast by otherwise eligible voters who neglected to sign
10 the envelope. The State is not preventing fraud by discarding these ballots without giving
11 voters a meaningful opportunity to supply their missing signatures.

12 **ii. Reducing Administrative Burdens**

13 The State’s interest in reducing administrative burdens on poll workers is important.
14 *See Lemons v. Bradbury*, 538 F.3d 1098, 1105 (9th Cir. 2008). On this record, however,
15 that interest does not justify the minimal burdens imposed by the challenged deadline.

16 Most Arizona counties historically have implemented some form of a pre-election
17 cure period for missing signatures, and the EPM now requires all counties to make
18 reasonable efforts to contact impacted voters and afford them an opportunity to cure
19 missing signatures by 7:00 p.m. on Election Day. The State has not shown that continuing
20 to implement these existing cure procedures for an additional five business days after an
21 election is likely to impose meaningful administrative burdens on election officials given
22 the relatively small number of ballots at issue. For example, in 2016, Arizona rejected
23 3,079 ballots in unsigned envelopes. In 2018, that number was 2,435. (St. Exh. 101 at 26,
24 Table 2.) In any given election, such ballots constitute roughly one tenth of one percent of
25 total ballots submitted, and available county-level data indicates that not all voters who are
26 notified of a missing signature before Election Day cure the problem. (Pl. Exhs. 8 at 3, 17
27 at 3-4, 20 at 3, 22 at 2.) Thus, if Arizona were to provide a post-election cure period for
28 unsigned ballot envelopes, likely only a subset of that fraction of a percent would take

1 advantage of the opportunity.

2 Further, in the Secretary's judgment, Arizona could implement a post-election cure
3 period without imposing significant administrative burdens on election officials because
4 counties already do so for other voter identification issues. (Pl. Exh. 26 at 7-8.) Coconino
5 County Recorder Patty Hansen echoed this sentiment, declaring that a post-election cure
6 period would not impose significant administrative burdens or impact Coconino County's
7 ability meet Arizona's certification deadline. (Pl. Exh. 29 ¶ 20.) Apache County and
8 Navajo County also support a post-election cure period for missing signatures. (Doc. 90.)
9 The Court assigns great weight to the Secretary's judgment, given her position as Arizona's
10 chief election officer and corroboration from these county officials.

11 In contrast, Mr. Roads, Pima County's Deputy Recorder and Registrar of Voters,
12 declared that a post-election cure period would impose significant administrative burdens
13 on Pima County because the process for curing a missing signature is more labor intensive
14 than curing a perceived mismatched signature:

15 The only way that this can occur is for the voter to travel to the
16 Ballot Processing Center, for our staff to locate the particular
17 ballot in the ballot room, to bring the ballot to the voter in the
18 lobby and have them sign it. Our procedures require that two
19 workers with different political party affiliations be present
20 whenever a ballot is being handled. This will result in
21 substantially more effort than occurs for a voter to confirm
22 their signature. A voter can simply call our office to confirm
23 their signature.

24 (St. Exh. 107 ¶ 19.) Later in his declaration, however, Mr. Roads stated that “[o]nly a very
25 small percentage of voters in Pima County fail to sign their ballots.” (*Id.* ¶ 21.) Indeed, in
26 the 2018 General Election, Pima County rejected only 75 ballots due to a missing signature.
27 This figure was 120 for the 2016 General Election, 64 for the 2014 General Election, and
28 72 for the 2012 General Election. (Pl. Exh. 28 at 7.) Although curing missing signatures
after an election might impose marginally greater administrative burdens on Pima County,
these additional burdens are not significant enough to justify the challenged deadline
considering these minimal figures.

Accordingly, on these facts, the Court finds that a post-election cure period would

1 not impose meaningful administrative burdens on election officials and, therefore, the
 2 State’s interest in alleviating administrative burdens does not justify the minimal burdens
 3 imposed by the challenged deadline. *Cf. Lemons*, 538 F.3d at 1104-05 (concluding that the
 4 state need not provide petition signers with notice that their signatures had been rejected
 5 and an opportunity cure where such procedures “would impose a *significant* burden” on
 6 election officials (emphasis added)); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915
 7 F.3d 1312, 1322-23 (11th Cir. 2019) (“In *Lemons*, the Ninth Circuit worried about the
 8 administrative difficulties associated with suddenly requiring state officials to provide
 9 notice and a chance to cure thousands of petition signers when no such requirement
 10 previously existed. . . . But here, Florida already had a cure mechanism for those with
 11 mismatched signatures.”); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 216 (D N.H. 2018)
 12 (noting that, in rejecting the claims in *Lemons*, the Ninth Circuit “assigned great weight to
 13 the administrative burden of additional procedures”).

14 **iii. Orderly Administration of Elections**

15 The State has an important interest in the orderly administration of elections,
 16 *Lemons*, 538 F.3d at 1104, but on this record that interest does not justify the minimal
 17 burdens imposed by the challenged deadline.

18 In the Secretary’s judgment, there is no meaningful difference between an unsigned
 19 ballot envelope and one with a perceived mismatched signature. The voter’s signature is a
 20 means of identity verification and in both scenarios the voter’s identity cannot be verified.
 21 (Pl. Exh. 26 at 5.) The Secretary also views VBM ballots in unsigned envelopes as
 22 functionally equivalent to conditional provisional ballots cast by in-person voters without
 23 identification, the latter of which benefit from a post-election cure period. (*Id.*) Contrary
 24 to the State’s litigation position, the Secretary believes that a uniform cure period for all
 25 three of these identification issues would promote the orderly administration of elections
 26 by reducing voter confusion and ensuring that more eligible voters have their ballots
 27 counted. (*Id.* at 5-6.) The Court gives great weight to the Secretary’s judgment, given her
 28 role as Arizona’s chief election officer.

1 The State insists there is a meaningful difference between unsigned envelopes and
 2 those with perceived mismatched signatures. For example, the State emphasizes that an
 3 unsigned envelope is almost always the result of voter error. In contrast, a poll worker
 4 determines whether an envelope contains a mismatched signature, and that determination
 5 easily can be erroneous because signature matching is not an exact science, poll workers
 6 are not handwriting experts, people’s signatures change over time, and the quality of a
 7 signature can vary depending on external factors, such as the writing surface or instrument.
 8 (Doc. 85-1 at 26-27.) This is true. But the State does not contend that the shorter deadline
 9 for curing unsigned envelopes is intended to penalize voters for their errors. Moreover, the
 10 differences between envelopes with missing and perceived mismatched signatures do not
 11 explain Arizona’s different and better treatment of conditional provisional ballots cast by
 12 in-person voters without identification. Failure to bring identification to the polls is
 13 generally an error of the voter not a poll worker. Yet, Arizona permits those in-person
 14 voters to cure the problem up to five days after an election.

15 The State’s position is further undermined by Arizona’s generous interpretation of
 16 what constitutes a signature. No uniform policy governs whether a mark qualifies as a
 17 signature triggering an entitlement to the post-election cure period, but the State encourages
 18 election officials to take a broad view. (Doc. 112 at 54:15-16, 55:13-15.) For example,
 19 Pima County officials are instructed that any mark could be a signature. (Pl. Exh. 28 at 4.)
 20 A system in which a voter who makes even the most minimal of marks receives the benefit
 21 of a post-election cure period while a voter who makes no mark does not is unreasonable.

22 Indeed, this differential treatment makes Arizona an outlier. According to Professor
 23 Atkeson, not all states rely on signatures or signatures alone to verify voters’ identities, and
 24 of those that do, not all provide cure periods. Among the states that provide cure periods,
 25 there is no consensus on the appropriate duration. Some states require voters to cure
 26 signature issues by Election Day, others permit post-election curing. Some have more
 27 generous cure periods than Arizona’s, and others less. But Arizona currently is the only
 28 state that sets a different deadline for curing a missing signature than a perceived

1 mismatched signature. (St. Exh. 101 at 9-10, Table 1.) Arizona’s outlier status in these
2 cross-state comparisons suggests that setting different deadlines for curing these two
3 identification problems is not rational or orderly.

4 On this record, treating unsigned envelopes worse than those with perceived
5 mismatched signatures or in-person conditional provisional ballots undermines, rather than
6 serves, the State’s interest in the orderly administration of elections. The Court therefore
7 finds that the State’s interest does not justify the minimal burdens imposed by the
8 challenged law.

9 **iv. Promoting Voter Participation and Turnout**

10 The State’s interest in promoting voter participation and turnout is important,
11 *Tedards v. Ducey*, 951 F.3d 1041, 1067 (9th Cir. 2020), but that interest is not served by
12 the challenged law, nor does it justify the minimal burdens imposed. There is no credible
13 evidence or empirical support for the proposition that a post-election cure period will
14 reduce cure rates. The State relies on Professor Atkeson’s report. (Doc. 85-1 at 34.) But
15 Professor Atkeson’s empirical analysis is inadmissible and her opinion that voters might
16 not be motivated to cure ballot defects after an election is given little weight. Further, the
17 State’s contention is undermined by the accommodations Arizona provides for ballots in
18 envelopes with perceived mismatched signatures and conditional provisional ballots cast
19 by in-person voters without identification. In these situations, the State is willing to tolerate
20 the risk that voters will forego curing their ballots after an election. Yet the State offers no
21 cogent explanation for why this highly speculative risk justifies differential treatment of
22 unsigned envelopes. The State’s litigation position also is undermined by its chief election
23 officer, who believes a uniform post-election cure period for all VBM signature issues will
24 result in more eligible voters having their votes counted. (Pl. Exh. 26 at 6.) Accordingly,
25 on this record, the State’s voter participation interest is not reasonably served by the
26 challenged law and does not justify the minimal burdens imposed.

27 **3. Conclusion**

28 Because a signature is Arizona’s method of verifying that a person who returns a

1 ballot is the person to whom that ballot belongs, it necessarily follows that Arizona may
 2 set a deadline by which voters must provide that signature. Deadlines come with an
 3 inherent arbitrariness, *see United States v. Locke*, 471 U.S. 84, 94 (1985), but that does not
 4 shield them from judicial review, *see, e.g., Anderson*, 460 U.S. at 805-06 (invalidating a
 5 state deadline for filing nominating petitions); *Nader v. Brewer*, 531 F.3d 1028, 1039 (9th
 6 Cir. 2008) (same). *Anderson* and *Nader* involved more burdensome deadlines, but even at
 7 its most deferential, the *Anderson/Burdick* framework is not a rubber stamp. Layers of
 8 minimal burdens can compound and, in the aggregate, prevent or deter otherwise eligible
 9 citizens from successfully voting. *Anderson/Burdick* therefore directs the Court in all cases
 10 to consider the extent to which a state’s regulatory interests make it necessary to impose
 11 additional burdens on voting rights. On the facts of this case, the challenged deadline fails
 12 to withstand the most deferential level of scrutiny. The Court therefore finds in favor of
 13 Plaintiffs on Count I.

14 **C. Denial of Procedural Due Process**

15 The Fourteenth Amendment prohibits state governments from depriving people of
 16 “life, liberty, or property without due process of law.” U.S. CONST. amend. XIV, § 1. To
 17 succeed on a procedural due process claim, a plaintiff must establish “(1) a deprivation of
 18 a constitutionally protected liberty . . . interest, and (2) a denial of adequate procedural
 19 protections.” *Franceschi v. Yee*, 887 F.3d 927, 935 (9th Cir. 2018) (internal quotation and
 20 citation omitted).

21 As an initial matter, the State argues that Plaintiffs may not bring a procedural due
 22 process challenge to an election regulation outside the *Anderson/Burdick* framework.
 23 (Doc. 85-1 at 19-20.) True, the Ninth Circuit has noted that First Amendment, equal
 24 protection, and due process claims are each “folded into the *Anderson/Burdick* inquiry.”
 25 *Soltysik v. Padilla*, 910 F.3d 438, 449 n.7 (9th Cir. 2018). But the Ninth Circuit made these
 26 remarks in cases that did not involve procedural due process claims. *See, e.g., Id.; Ariz.*
 27 *Libertarian Party v. Reagan*, 798 F.3d 723, 729 n.7 (9th Cir. 2015); *Dudum v. Arntz*, 640
 28 F.3d 1098, 1106 n.15 (9th Cir. 2011). Multiple district courts, both within and outside the

1 Ninth Circuit, have considered procedural due process challenges to election regulations
 2 under ordinary procedural due process principles. *See, e.g., Saucedo*, 335 F. Supp. 3d at
 3 214-17; *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1337-1340 (N.D. Ga. 2018); *Zessar v.*
 4 *Helander*, No. 05 C 1917, 2006 WL 642646, at *6-9 (N.D. Ill. Mar. 13, 2006); *Raetzel v.*
 5 *Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1355-58 (D. Ariz. 1990). The
 6 cases cited by the State, then, might be best understood as placing all *substantive* due
 7 process and equal protection challenges to election regulations under the *Anderson/Burdick*
 8 framework.

9 Regardless, the Court does not need to resolve this legal question. If procedural due
 10 process claims are analyzed under the *Anderson/Burdick* framework, as the State argues,
 11 then Plaintiffs prevail for the reasons discussed in Part III(B) of this decision. If, as
 12 Plaintiffs argue, ordinary procedural due process principles apply, then Plaintiffs prevail
 13 for the reasons discussed below.

14 **1. Constitutionally Protected Liberty Interest**

15 Voting is a fundamental right, *Reynolds v. Sims*, 377 U.S. 533, 560-562 (1964), and
 16 the right to vote necessarily includes the right to have one’s legitimately cast vote counted,
 17 *see Lee*, 915 F.3d at 1315. There is no corresponding right to vote absentee. *See McDonald*
 18 *v. Bd. of Election Comm’rs of Chi.*, 394 U.S. 802, 807-08 (1969); *Crawford*, 553 U.S. at
 19 209 (Scalia, J., concurring in the judgment); *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th
 20 Cir. 2004). “But once the State permits voters to vote absentee, it must afford appropriate
 21 due process protections . . . before rejecting an absentee ballot.” *Zessar*, 2006 WL 642646,
 22 at *5; *see also Saucedo*, 335 F. Supp. 3d at 217 (“Having induced voters to vote by absentee
 23 ballot, the State must provide adequate process to ensure that voters’ ballots are fairly
 24 considered and, if eligible, counted.”); *Martin*, 341 F. Supp. 3d at 1338 (“Having created
 25 an absentee voter regime through which qualified voters can exercise their fundamental
 26 right to vote, the State must now provide absentee voters with constitutionally adequate
 27 protection.”); *Raetzel*, 762 F. Supp. at 1358 (concluding that the privilege of absentee
 28 voting, once granted, is “deserving of due process”). Accordingly, the Court finds that

1 Plaintiffs—specifically, the ADP member voters on whose behalf Plaintiffs sue—have a
2 constitutionally protected liberty interest in having their ballots counted.

3 **2. Adequacy of Procedural Protections**

4 The Court assess the adequacy of Arizona’s procedural protections by balancing
5 three factors:

6 First, the private interest that will be affected by the official
7 action; second, the risk of an erroneous deprivation of such
8 interest through the procedures used, and the probable value, if
9 any, of additional or substitute procedural safeguards; and
10 finally, the Government’s interest, including the function
11 involved and the fiscal and administrative burdens that the
12 additional or substitute procedural requirement would entail.

13 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

14 The first factor favors Plaintiffs. “[T]he private interest at issue implicates the
15 individual’s fundamental right to vote and is therefore entitled to substantial weight.”
16 *Martin*, 341 F. Supp. 3d. at 1338; *see also Saucedo*, 335 F. Supp. 3d. at 218 (according
17 “significant weight” to the plaintiffs’ interest in having their absentee ballots counted).

18 The second factor is mixed. “[P]rocedural due process rules are shaped by the risk
19 of error inherent in the truthfinding process as applied to the generality of cases, not the
20 rare exceptions.” *Mathews*, 424 U.S. at 344. Only 0.10% of total ballots were disqualified
21 for lacking signatures in the 2018 General Election, a figure that stays roughly consistent
22 from election to election. Generally, then, the risk that one’s ballot will be rejected because
23 of a missing signature is low. *See, e.g., Veterans for Common Sense v. Shinseki*, 678 F.3d
24 1013, 1035-36 (9th Cir. 2012) (agreeing that “the risk of error was low” where “only 4%
25 of veterans who filed for benefits claims are affected”). Moreover, unlike signature
26 matching, which can be fraught with error, the risk that a poll worker will erroneously
27 conclude that a ballot envelope is unsigned is negligible.

28 On the other hand, Arizona does not require a signature for its own sake; the
signature serves as a means of identity verification. The risk that election officials will
erroneously conclude that a ballot in an unsigned envelope was not, in fact, cast by the
person to whom that ballot belongs is more significant, as most of these ballots likely are

1 returned by eligible voters rather than impostors. For these voters, a post-election cure
2 period likely would be valuable. For example, although there is no statewide data on cure
3 rates, available county-level data suggests that some (though not all) voters who receive
4 adequate pre-election notice of a missing signature correct the problem. (*See, e.g.*, Pl.
5 Exhs. 7 at 2, 8 at 3, 19 at 4.) It is reasonable to expect such trends to continue after the
6 election. Further, voters who return their ballots too close to Election Day, especially those
7 without phone numbers who must be notified of a problem via mail, often do not receive
8 adequate pre-election notice of a missing signature or a meaningful opportunity to cure. A
9 post-election cure period would increase the likelihood that such voters learn of and fix
10 such deficiencies.

11 The final factor favors Plaintiffs. For reasons explained in Part III(B)(2) of this
12 decision, the State's interests in maintaining its Election-Day deadline for curing unsigned
13 envelopes are weak. There is no reason to believe that an Election-Day cure deadline is
14 any better at preventing fraud (to the extent it exists) than the post-election cure deadlines
15 applicable to envelopes with perceived mismatched signatures or conditional provisional
16 ballots cast by in-person voters without identification. The State's abstract voter
17 participation concerns are speculative, equivocal, and lacking in empirical support. A post-
18 election cure period would not impose meaningful administrative burdens on election
19 officials. And Arizona's chief election officer believes that a uniform cure period would
20 promote the orderly administration of elections.

21 **3. Conclusion**

22 Because the second *Matthews* factor is mixed, Plaintiffs' procedural due process
23 claim largely comes down to balancing the ADP member voters' interest in having their
24 ballots counted against the State's interest in preserving its Election-Day cure deadline.
25 The balance might be different if implementing a post-election cure period would impose
26 significant administrative burdens or otherwise impair important state interests. But no
27 such showing has been made by the State here. The Court therefore finds in favor of
28 Plaintiffs on Count II.

1 **D. Equitable Factors**

2 In every election, the ballots of some otherwise eligible voters inevitably will be
3 rejected due to missing signatures, and some of those voters certainly will be members of
4 the ADP. This is more likely to occur if those voters return their ballots close to or on
5 Election Day. The loss of one's vote constitutes an irreparable harm for which there is no
6 adequate remedy available at law, and which could be mitigated with the implementation
7 of post-election cure procedures. The State argues that Plaintiffs' delay in bringing this
8 lawsuit implies a lack of irreparable harm (Doc. 85-1 at 39), but it was not until the EPM
9 was finalized near the end of 2019 that the State's unjustified differential treatment of
10 unsigned ballot envelopes became apparent. Though Plaintiffs could have brought this suit
11 sooner than they did, the Court does not find their delay so substantial as to undermine the
12 harms alleged.

13 Given the weightiness of the rights at stake and the negligible administrative
14 burdens a post-election cure period would impose on the State, the balance of equities
15 favors injunctive relief. The evidence does not support the State's argument that an
16 injunction would "divert scarce resources at a time when they are sorely needed for
17 tabulation." (Doc. 85-1 at 39.) The challenged deadline impacts a fraction of a percent of
18 voters, and only a subset of those voters would likely take advantage of a post-election cure
19 period. Election officials therefore are not likely to be overwhelmed with additional post-
20 election cure duties if the Court were to issue an injunction.

21 Nor would an injunction disserve the public interest. The evidence demonstrates
22 that a post-election cure period would better achieve the orderly administration of elections
23 and likely result in more eligible voters having their ballots counted, all without imposing
24 meaningful burdens on election officials. Citing *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006),
25 the State argues that an injunction altering election rules this close to an election diserves
26 the public interest by confusing voters. (Doc. 85-1 at 40.) But Plaintiffs are not asking
27 election officials to devise new rules out of whole cloth. They are asking those officials to
28 continue applying the same procedures they have in place now, but for a little longer. This

1 change is not likely to confuse voters, especially when the injunction would replace
2 arbitrary differential treatment with uniformity, and when the change is welcomed by
3 Arizona’s chief election officer.

4 **E. Conclusion**

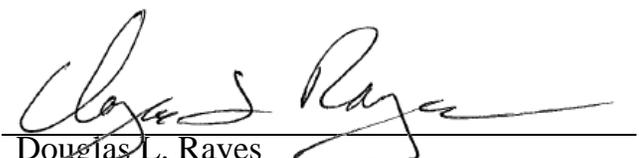
5 On the facts of this case, Arizona’s Election-Day deadline for curing unsigned ballot
6 envelopes imposes minimal but unjustifiable burdens on the right to vote and is an
7 inadequate procedural safeguard, particularly for voters who return their ballots too close
8 to Election Day to receive adequate pre-election notice of a missing signature and an
9 opportunity to cure. Plaintiffs have succeeded on the merits of their claims and shown that
10 the equities favor injunctive relief. Accordingly,

11 **IT IS ORDERED** that Plaintiffs’ motion to preclude certain opinions of Professor
12 Atkeson (Doc. 101) is **GRANTED IN PART** and **DENIED IN PART** as explained in
13 Part II of this order.

14 **IT IS FURTHER ORDERED** that Plaintiffs’ motion for a preliminary and
15 permanent injunction (Doc. 2) is **GRANTED**. Defendants, their respective agents,
16 officers, employees, and successors, and all persons acting in concert with each or any of
17 them, must allow voters who are determined to have submitted an early ballot (referred to
18 in this order as a VBM ballot) in an envelope without a signature the opportunity to correct
19 the missing signature until 5:00 p.m. on the fifth business day after a primary, general or
20 special election that includes a federal office or the third business day after any other
21 election.

22 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment in
23 favor Plaintiffs and against Defendants and terminate this case.

24 Dated this 10th day of September, 2020.

25
26 
27 Douglas L. Rayes
28 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arizona Democratic Party,)	
et al.,)	
)	No. CV-20-01143-PHX-DLR
Plaintiffs,)	
)	
vs.)	Phoenix, Arizona
)	August 18, 2020
Katie Hobbs, et al.,)	9:02 a.m.
)	
Defendants.)	

BEFORE: THE HONORABLE DOUGLAS L. RAYES, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VIDEOCONFERENCE EVIDENTIARY HEARING AND BENCH TRIAL

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A P P E A R A N C E S (Continued)

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I N D E XSUMMARY OF COURT PROCEEDINGSPAGE:

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>REC'D</u>
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1	State of Arizona Registration Report dated April 1, 2020	11
2	State of Arizona Draft Elections Procedures Manual dated October 2019	11
3	State of Arizona Approved Elections Procedures Manual dated December 2019	11
4	Answer of Defendant Katie Hobbs, in Her Official Capacity as Arizona Secretary of State dated July 2, 2020	11
5	Answer of the State of Arizona dated July 10, 2020	11
6	Summary of Arizona Vote by Mail Data (U.S. Election Assistance Commission)	11
7	Santa Cruz County Recorder Responses to Plaintiffs' First Set of Interrogatories dated July 1, 2020 (verified)	11
8	Mohave County Recorder Responses to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents dated July 10, 2020 with attachments (verified)	11
9	La Paz County Recorder Responses to State's First Set of Interrogatories, Request for Admission, and Request for Production dated July 13, 2020 (verified)	11

1	10	Yuma County Recorder Responses to Plaintiffs' First Set of Interrogatories dated July 21, 2020 with attachments (verified)	11
2			
3	11	Maricopa County Recorder Frequently Asked Questions, https://recorder.maricopa.gov/site/faq.aspx	11
4			
5	12	Yavapai County Recorder Response to State's First Set of Interrogatories, Requests for Admission, and Requests for Production dated July 8, 2020 with attachments (verified)	11
6			
7			
8	13	June 8, 2020 Letter from Perkins Coie regarding Public Records Request sent to all counties [PLFS001370-1371]	11
9			
10	14	Coconino County Recorder Response to Plaintiffs' Public Records Request [PLFS001362-1369]	11
11			
12	15	USPS First-Class Mail & Postage Information, https://www.usps.com/ship/first-class-mail.htm	11
13			
14	16	Maricopa County Recorder Responses to Plaintiffs' First Set of Interrogatories dated July 9, 2020 with attachments (verified)	11
15			
16	17	Cochise County Recorder Response to Plaintiffs' Public Records Request [PLFS001358-1361]	11
17			
18	18	Gila County Recorder Response to Plaintiffs' Public Records Request [PLFS001372-1427]	11
19			
20	19	Graham County Recorder Response to Plaintiffs' Public Records Request [PLFS001428-1476]	11
21			
22	20	Greenlee County Recorder Response to Plaintiffs' Public Records Request [PLFS001477-1480]	11
23			
24	21	La Paz County Recorder Response to Plaintiffs' Public Records Request [PLFS001481-1482]	11
25			

1	22	Navajo County Recorder Response to Plaintiffs' Public Records Request [PLFS001483-1484]	11
2			
3	23	Yavapai County Recorder Response to Plaintiffs' Public Records Request FPLFS001494-15511	11
4			
5	24	Secretary of State Email dated December 16, 2019 with Attachment Regarding EPM Follow-up Items [SOS00006521-6525]	11
6			
7	25	State's Responses and Objections to Plaintiffs' First Set of Requests for Admission dated July 9, 2020	11
8			
9	26	Arizona Secretary of State's Response to Plaintiffs' First Set of Interrogatories dated July 9, 2020 (verified)	11
10			
11	27	Apache County Recorder Response to Plaintiffs' First Set of Interrogatories and Request for Production dated July 22, 2020	11
12			
13	28	Pima County Recorder Response to Plaintiffs' Public Records Request [PLFS001485-1493]	11
14			
15	29	Declaration of Patty Hansen dated Aug. 10, 2020	11
16	30	Declaration of Herschel Fink dated Aug. 12, 2020	11
17	31	Declaration of Reyna Walters-Morgan dated Aug. 13, 2020	11
18			
19	32	Declaration of Sara Schaumburg dated Aug. 12, 2020	11
20			
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1	101	8/3/20 Expert Report of Professor Lonna Atkeson (except paragraphs 55 through 62, 72 through 2 76, and 94)	11
3	102	Apache County Recorder, Edison Wauneka's 4 Response to the State's First Set of Interrogatories and RFP	11
5	103	Problem Ballot Control Sheet (Apache County)	11
6	104	Coconino County Recorder's Response to State's 7 First Set of interrogatories, RFA, and RFP	11
8	105	Suzanne Sainz' Answers to State's First Set of 9 Interrogatories, RFA, and RFP (Santa Cruz County)	11
10	106	Suzanne Sainz' Verification of Answers	11
11	107	Declaration of Christopher J. Roads	11
12	108	2020-06-26 - No signatures 2012-2018.xlsx (Pima County)	11
13	109	Citizens Clean Elections Commission - Vote By 14 Mail <i>available at</i> https://www.azcleaselections.gov/en/how- to-vote/early-voting/vote-by-mail	11
15	110	Bylaws of the Arizona Democratic Party, as 16 Restated and Amended May 30, 2020	11
17	111	The Charter & The Bylaws of the Democratic 18 Party of the United States, August 25, 2018	11
19	112	AZ Dems membership website available at 20 https://secure.actblue.com/donate/activate- membership?refcode=web_home&amount=25&recurring =1	11
21	113	12-19-19 Email from Katie Hobbs to Herschel 22 Fink	11
23	114	8-2-19 Email from Chris Roads to Samba Dul	11
24			
25			

P R O C E E D I N G S

(Proceedings commenced at 9:02 a.m.)

THE COURTROOM DEPUTY: Civil Case No. 20-1143, Arizona Democratic Party and others versus Katie Hobbs and others, on for evidentiary hearing and bench trial.

Counsel, please announce for the record.

MR. STAFFORD: Good morning. Ben Stafford, counsel for the plaintiffs.

MS. DESAI: Good morning, Your Honor. Roopali Desai on behalf of the Secretary of State, Katie Hobbs.

MR. ENSIGN: Good morning, Your Honor. Drew Ensign on behalf of the State of Arizona.

MR. MOORE: Good morning, Your Honor. This is Jason Moore on behalf of Apache County, Coconino County, and Navajo County.

MR. LA RUE: Good morning, Your Honor. This is Joseph La Rue on behalf of the Maricopa County Recorder.

THE COURT: Okay. Good morning.

I'm glad everybody's here on Tuesday. Last week I kept talking about Wednesday's hearing, but I think everyone understood, I'm glad you did, that we were actually doing this today.

I understand that we have members of the media on the phone listening in. I want to remind everybody that pursuant to local Rule 43.1, audiotaping court proceedings is

1 prohibited.

2 We're here today to hear oral argument on the motion
3 for preliminary and permanent injunction brought by the
4 plaintiffs, the Democratic National Committee, the Arizona
5 Democratic Party, and the DSCC.

6 The parties have stipulated to the admission of
7 certain exhibits. And correct me if I'm wrong, you've
8 stipulated to the admission of all the exhibits for both
9 parties except for certain portions of the affidavit of the
10 expert, the Atkeson report.

11 Is my understanding correct?

12 MR. STAFFORD: Your Honor, Ben Stafford for the
13 plaintiffs.

14 That's correct. That exhibit is Exhibit 101 from the
15 State. The rest of the exhibits have been stipulated.

16 THE COURT: And am I correct that all the exhibits --
17 Exhibit 101 is admitted except for paragraphs 55 through 62, 72
18 through 76, and 94?

19 MR. STAFFORD: That's correct, Your Honor.

20 THE COURT: Okay. So at this point I'm going to enter
21 into evidence all the exhibits that have been filed by both --
22 by all the parties, including Exhibit 101, except paragraphs 55
23 through 62, 72 through 76, and 94 of the Atkeson report. I
24 will take under advisement the Daubert motion that pertains to
25 those paragraphs.

1 (Exhibit Nos. 1-32 and 102-114 admitted into evidence.
2 Exhibit 101 admitted into evidence, with the exception of
3 paragraphs 55-62, 72-76, and 94.)

4 I sent out an order giving you some of the areas we
5 wanted to cover, and I think we ought to just proceed with
6 those areas. I have some additional questions I'll bring up as
7 we go along. But let's start off with Mr. Stafford.

8 And the first question I wanted to talk about is
9 whether there's a difference between a member and a
10 constituent.

11 MR. STAFFORD: Your Honor, there's not a meaningful or
12 a relevant difference. The case law recognizes that an
13 association can proceed on behalf of its members, and the case
14 law recognizes that in some instances constituents are the
15 functional equivalents of members, for purposes of that
16 analysis.

17 So the *Oregon Advocacy* case from the Ninth Circuit at
18 322 F.3d 1101, in that instance there was an organization who
19 served the needs of mentally ill individuals, and the Court
20 recognized that that organization had standing to pursue claims
21 on behalf of incapacitated criminal defendants.

22 These weren't formal members of the organization, but
23 the organization served that specialized segment of the
24 population. Those would be the primary beneficiaries of this
25 group's activities, and that would suffice to give standing.

1 And so constituents, voters, may or may not be formal members,
2 quote/unquote, but as constituents, these organizations have
3 standing to pursue claims on their behalf.

4 THE COURT: And it's the *Oregon Advocacy* case you're
5 relying on that allows associational standing to be derived
6 from constituents?

7 MR. STAFFORD: That's correct. Constituents who are
8 the functional equivalent of members, I think is the phrase the
9 Court uses.

10 THE COURT: To be a constituent of plaintiffs'
11 organization, must a person be registered with the Democratic
12 Party in Arizona?

13 MR. STAFFORD: Your Honor, the answer to that would be
14 no. That said, I don't think the Court needs to go further
15 than determine that, at the very least, a registered Democratic
16 voter in Arizona, someone who has affirmatively taken steps to
17 associate with the Democratic Party in that regard, that those
18 folks, at the least, are members.

19 That said, the Democratic Party bylaws, this is
20 Exhibit 110, Section 2A of those bylaws -- or, excuse me, the
21 Democratic Charter, rather, that's Article 8, Section 1,
22 apologies -- states that the Democratic Party of the United
23 States is open to all who desire to support the party and who
24 wish to be known as Democrats.

25 In some states, there's formal registration with the

1 party. In other states, there is not. In Arizona, one can
2 register as a Democratic voter, and at the least, those folks
3 are members of the Democratic Party, all three plaintiffs.

4 THE COURT: Is any voter who casts a vote for any
5 Democratic candidate considered a member of any or all of the
6 plaintiff organizations?

7 MR. STAFFORD: So, again, in the plaintiff
8 organizations' view, anyone who associates with the parties,
9 who supports them, whether they be an Independent or whether
10 they be another voter who is supporting the Democratic Party
11 and its candidates, would be a constituent member; but, again,
12 at the least, those who are registered as Democrats certainly
13 would be.

14 THE COURT: So your argument is anybody who's
15 registered plus anybody who votes for a Democrat is a member?

16 MR. STAFFORD: Yes. Although I don't think we'll find
17 standing that the Court has jurisdiction, it's necessary for
18 the Court to reach that second stage of determination.

19 THE COURT: Okay. If a registered Democrat voter
20 chooses to vote for a non-Democratic candidate, is that voter
21 still considered a member of the plaintiff organizations?

22 MR. STAFFORD: Yes. That voter has still indicated
23 through their registration that they associate and affiliate
24 with the Democratic Party, and our organization, plaintiffs
25 would take the view that those are constituents whose needs and

1 interests they are seeking to serve.

2 So, yes, we don't take the view that someone has to
3 categorically cast a straight-ticket vote, if they're a
4 registered Democrat, to be a member of the Democratic Party.

5 THE COURT: So this leads to the -- the question is,
6 why didn't you bring any voters in as -- who had mailed ballots
7 and had them rejected because of missing signatures in past
8 elections? Why didn't you bring them in as plaintiffs in this
9 case?

10 MR. STAFFORD: A couple of answers on that, Your
11 Honor.

12 First, it's not necessary for multiple parties to have
13 standing, necessarily. The Court need only determine that one
14 party has standing. All three of these organizational
15 plaintiffs do.

16 The second point is that in this lawsuit, we are
17 seeking prospective relief. A voter whose ballot has been
18 rejected in the past due to a missing signature has suffered a
19 past injury, and so there may well be an open question of
20 whether that person would have standing to seek prospective
21 relief. In some instances, they might; in some instances, they
22 might not. So we didn't think it was necessary, and the harm
23 here is a little bit different for those folks.

24 At this point, we don't know who exactly of our
25 members will have their ballot rejected due to a missing

1 signature. We know someone will. That's happened in every
2 election, but we don't know precisely who.

3 THE COURT: Well, in order to establish standing for
4 the organizations, do plaintiffs need to show that their
5 preferred post-election cure period would net votes for
6 Democratic candidates relative to their competitors?

7 MR. STAFFORD: No, Your Honor. There's multiple bases
8 of standing that we believe exist here.

9 As far as associational standing goes, certainly we
10 think the Court has it -- or the parties have it, rather, in
11 this instance, and it's not necessary to show some competitive
12 advantage to show associational standing. All that's required
13 is to show injury to a member.

14 In addition, to show organizational standing, we don't
15 need to show a competitive injury. Diversion of resources, for
16 example, is a well-recognized harm for purposes of
17 organizational standing, and the three declarations from the
18 plaintiffs, Exhibits 30 through 32, lay out in some detail how
19 they've been injured in that regard.

20 So, finally, one could establish organizational
21 standing by showing some sort of competitive injury. And in
22 those cases, certainly if plaintiffs could prove that they
23 would lose votes, that net they would be disadvantaged by this,
24 that would establish organizational standing.

25 However, it's the case that in the -- the case law

1 looking at competitive injury, the cases don't necessarily
2 speak to whether a candidate or a party would be above or below
3 in terms of the ultimate outcome.

4 So, for example, if an incumbent could benefit from a
5 certain voting technique, they don't necessarily need to show
6 that they are further in advance because -- because of that.
7 So certainly that might be one basis that we could prove
8 organizational standing, but is not necessary to prove
9 organizational standing.

10 THE COURT: Do you agree that requiring a signature on
11 a ballot is a constitutionally permissible means of verifying
12 that an absentee ballot was cast by the voter to which that
13 ballot belongs?

14 MR. STAFFORD: In this lawsuit, we do not challenge
15 the bare requirement that a ballot affidavit be signed to be on
16 a mail ballot.

17 THE COURT: So you agree that requiring a signature on
18 a ballot is a constitutionally permissible prerequisite to
19 casting a ballot?

20 MR. STAFFORD: Yes. We do not challenge that
21 requirement in this lawsuit.

22 THE COURT: Do you agree that voters receive ample
23 pre-election notice of the signature requirement?

24 MR. STAFFORD: Of the signature requirement?

25 THE COURT: Yeah. Do you think -- you're not arguing

1 that they didn't have notice. You agree that they had ample
2 notice?

3 MR. STAFFORD: The materials that the State sends to
4 voters, whether they be effective or not, do contain notice
5 that a signature is required on the ballot affidavit, yes.

6 THE COURT: Well, your case isn't based on the idea
7 that voters who don't sign didn't understand they had to sign;
8 they just forgot or just inadvertently didn't do it?

9 MR. STAFFORD: We certainly believe that some voters
10 simply inadvertently fail to sign. There are, and I think the
11 papers suggest this, in some instances, English literacy or
12 other issues that may impact the voter's ability to understand
13 the materials. That was one of the animating issues in the
14 *Navajo* case.

15 But it's certainly the case, we believe, that some
16 voters simply fail to sign their ballot due to inadvertent
17 neglect.

18 THE COURT: Do you agree that courts that have held
19 that voters are entitled to pre-deprivation notice and an
20 opportunity to be heard when an election official makes a
21 judgment call that the signatures do not match -- let me
22 restate the question.

23 Do you agree that courts have held that voters are
24 entitled to a pre-deprivation notice and an opportunity to be
25 heard when election officials make a judgment call that the

1 signatures do not match?

2 MR. STAFFORD: Yes. So, for example, the *Florida*
3 *Democratic Party versus Detzner* case which involved the inverse
4 of this situation, where the State provided a cure period for
5 no signature ballots but not for signature mismatch ballots,
6 determined that it was necessary to have an opportunity for
7 those voters to cure.

8 The *Saucedo* case that's cited in our briefing is the
9 same effect.

10 THE COURT: And in that case, wasn't it a judgment
11 call, a handwriting opinion by a nonexpert that's led courts to
12 find due process violation if a voter isn't given a chance to
13 respond to that nonexpert judgment call about a signature?

14 MR. STAFFORD: Your Honor, in those signature mismatch
15 cases, there does tend to be discussion of the inherent issue
16 with matching signatures. But at the end of the day, the
17 problem is that the State can't determine, or believes it can't
18 determine, that the voter whose ballot it was actually cast
19 that ballot.

20 In the same way that provisional ballot voters who
21 don't have identification are given an opportunity to prove
22 they are indeed who they say they are. That's the signature
23 requirement. It's about voter identification.

24 And so that is -- the right is the right to vote. The
25 deprivation is the rejection of a ballot due to lack of surety

1 as to whether it was indeed the voter who cast that ballot.
2 The process to cure that is a cure period to allow the voter to
3 prove they are who they say they were.

4 THE COURT: But the concerns in those cases, the
5 Court's concerns in those cases of the due process violation is
6 you have a nonexpert making an expert decision on whose
7 signature that is. Isn't that ultimately what the cases come
8 down on regarding the due process violation?

9 MR. STAFFORD: In the context of the signature
10 mismatch case. Again, I certainly think that that was part of
11 the Court's concerns in those cases. It's not -- it's an
12 inherently flawed process to match one's signatures.

13 But the reason that the signatures are being matched
14 in the first instance isn't as a handwriting test. It's to
15 determine whether the voter is indeed the voter who cast the
16 ballot. And so --

17 THE COURT: But they use the handwriting to make that
18 determination. It's the handwriting --

19 MR. STAFFORD: That's correct. That's correct, Your
20 Honor.

21 THE COURT: And you have people who are given some
22 training on how to compare signatures who are making these
23 judgment calls. And isn't that the due process concern the
24 courts have had, that maybe these people who have a ten or --
25 ten-minute or hour-long training on how to match signatures may

1 be making the wrong call?

2 MR. STAFFORD: Your Honor, I think the due process
3 concern is that somebody who attempted to cast a vote, who
4 might actually be a lawful registered voter, who did -- who is
5 entitled to vote, is being deprived of the right to vote
6 because of a state determination that it can't verify that --
7 (audio interference). That's the concern.

8 THE COURT: Okay. Well, do you agree that when it
9 comes to determining if a signature's missing, that does not
10 involve a judgment call from an election official? Is that
11 right?

12 MR. STAFFORD: Your Honor, I don't know that I can
13 state that categorically, but in the overwhelming majority of
14 instances, yes, it's likely not a judgment call. There's not a
15 signature. There might be edge cases where an election
16 official is attempting to determine whether some mark is a
17 signature.

18 THE COURT: Now, is it a fair description of what the
19 plaintiffs are asking for is that they're asking for the right
20 to comply with the voting prerequisite of signing the ballot
21 after the election?

22 MR. STAFFORD: What the plaintiffs are asking for is
23 that voters who fail to sign their ballot affidavit be given
24 the same opportunity to prove their identity as those who cast
25 provisional ballots and those who cast mismatched signature

1 ballots, by signing the ballot affidavit in whatever -- we are
2 not asking for a particular form of relief, but that they be
3 given an opportunity to sign the ballot affidavit or otherwise
4 prove their identity.

5 THE COURT: Let's talk about burden for a second.

6 What, if anything, about signing a mail ballot by no
7 later than 7:00 p.m. on Election Day is burdensome for the
8 voters?

9 MR. STAFFORD: Your Honor, we're not challenging the
10 requirement that voters sign the ballot affidavit, but the lack
11 of a post-election cure period for those who don't, for one
12 reason or another. So this case is really about what happens
13 at 7:01 p.m. on Election Day when a voter has no opportunity to
14 cure whatsoever.

15 With regard to the pre-election period of time,
16 certainly the mere fact of signing a ballot, it's a
17 requirement. It's a step that one must take to have a vote
18 counted, so that's some burden. It's clearly a fairly minimal
19 burden.

20 On the other hand, of course, a voter who doesn't
21 learn that their ballot has been rejected until shortly before
22 Election Day, or who never learns that their ballot has been
23 rejected -- the Mohave County discovery responses indicate that
24 if a missing signature is identified shortly before Election
25 Day, the voter is not notified. So in some instances, that

1 requirement may result in disenfranchisement with no notice.

2 THE COURT: Well, explain to me, then -- you've just
3 done, but I want a better explanation. What is the burden that
4 you're arguing here that is the problem?

5 MR. STAFFORD: The burden is that a voter has no
6 opportunity to cure their ballot during the five-day period of
7 time that the State of Arizona allows all other voters to prove
8 their identity and cure their ballot.

9 Again, with regard to the pre-Election Day, 7:00 p.m.
10 period of time, the voter does need to sign the ballot. That
11 is some burden; whether it's conceived of as a large burden or
12 a small burden, it's a burden that exists on the right to vote
13 that always must be weighed against the State interest.

14 And the State has no interest whatsoever in not
15 providing the same opportunity to cure the ballot for those
16 voters as for all other voters.

17 THE COURT: Well, I'm not talking about harm. I'm
18 talking about burden. And what you've given me is the harm,
19 but what's the burden?

20 MR. STAFFORD: The burden is ultimately
21 disenfranchisement. And so the *Florida Democratic Party versus*
22 *Detzner* case, by way of example, said that that was the burden
23 at issue, disenfranchisement of a certain class of voters.
24 And, ultimately, the same harm exists here.

25 And in the *Crawford* case, for example, the burden was

1 showing up to the polls with a piece of identification. And
2 whether that's a large burden or a small burden, it is a
3 burden.

4 THE COURT: Well, I think the statistics that have
5 been presented is that roughly 1/10 of 1 percent of mail
6 ballots are rejected because of missing signatures. Why is
7 that not probative evidence that it's easy to comply with
8 Arizona's current law?

9 MR. STAFFORD: Your Honor, are you there?

10 THE COURT: Yes.

11 MR. STAFFORD: Oh, I apologize. I think I understood
12 your question. It's the Court's Question 10 on its list of
13 questions.

14 And so first, again, we're not challenging the
15 requirement that voters sign the ballot affidavit. The lack of
16 post-election cure period is what's at issue. The case is
17 about those voters who don't sign and whose ballots are
18 rejected as a result. So two further points.

19 First, the Supreme Court held in *Crawford* that in
20 assessing the burden, we do look to the voters who are impacted
21 by the law, not all voters. And that makes good sense. So if
22 we imagined a law in Arizona that required voters to pay \$25
23 before they voted, many Arizonans could afford that, some could
24 not. That's clearly a burden on the right to vote.

25 And, second, no matter how minimal the burden, it

1 always must be assessed against the State's interests. And
2 here, the State has no colorable interest that justifies
3 treating provisional and mismatched signature ballots any
4 differently from missing signature ballots.

5 And each of those votes -- we can look at the whole
6 number and we can look at those percentages -- each of those
7 votes is an Arizona citizen who attempted to participate in the
8 Democratic process to exercise their right to vote and whose
9 ballot is being rejected. And that is a real harm and injury.

10 And the courts in similar context, the *Saucedo* case
11 again speaks to this, that dozens, if not hundreds, of voters
12 being disenfranchised, in the language of that court, is a
13 serious injury even if that's less than 1 percent of all
14 voters.

15 THE COURT: Okay. Well, the question goes towards the
16 evidence, as to whether or not that is evidence of how easy it
17 is to comply with the Arizona law.

18 Would you agree that the fact that 1/10 of
19 1 percent -- 99.99 percent of the people who cast a vote give
20 their signature, would you say that's some probative evidence
21 of how easy it is?

22 MR. STAFFORD: Your Honor, again, when it comes to the
23 mere fact of signing a signature on a ballot affidavit, which
24 is not the requirement that we challenge, that is not a
25 significant burden or a serious burden on the right to vote,

1 the requirement to sign a signature on a ballot affidavit.

2 But that's not what we're challenging. We're
3 challenging the lack of a post-election cure period for those
4 voters who have not signed or had not cured their ballot prior
5 to Election Day for one reason or the other.

6 THE COURT: Now, I know where the five days came from
7 that you're asking for; that's the time that's given to cure
8 the mismatched signatures. But is it your position that the
9 Constitution requires at least a five-day post-election cure
10 period for ballots missing signatures?

11 MR. STAFFORD: In this particular instance, yes. It's
12 not our claim that every state in every context must provide a
13 five-day minimum cure period as opposed to a longer or a
14 shorter cure period. It's our claim that given the current
15 statutory scheme and the resulting burdens on the State that do
16 or do not result from that scheme in providing the relief that
17 plaintiffs seek, that a five-day cure period is
18 constitutionally required.

19 So certainly, if the State did not already provide a
20 five-day cure period for provisional voters and for those who
21 have submitted a mismatched signature, we would have a
22 different case.

23 THE COURT: Now, you've conceded that signing is easy,
24 but why is signing by 7:00 p.m. hard? Because -- because --

25 MR. STAFFORD: Your Honor --

1 THE COURT: Because if signing by 7:00 p.m. is easy,
2 then why would the State need to offer even more time after the
3 7:00 p.m. deadline?

4 MR. STAFFORD: Your Honor, a few points.

5 First, we could certainly say the same thing about
6 mismatched signatures. If just signing a piece of paper with a
7 signature that looks like your signature is difficult, then why
8 is there a post-election cure period? If it's easy to bring
9 identification to the polls, why is there a provisional cure
10 period?

11 But further, again, even setting aside that our claim
12 focuses on a particular burden, the burden imposed by the lack
13 of a five-day cure period for this particular category of
14 voter, the burden in some instances may be disenfranchisement,
15 because the voter doesn't actually have a meaningful
16 opportunity to cure before 7:00 p.m. on Election Day.

17 And, again, I would refer the Court to the discovery
18 responses by the counties where some voters don't receive
19 notice. Some voters may not be in the state of Arizona before
20 Election Day. That may be why they're casting mail ballots.
21 Some voters may not have a meaningful opportunity to cure. And
22 that's true every year, and that's certainly true this year.

23 THE COURT: So it's your position that the
24 Constitution requires Arizona to treat ballots with missing
25 signatures the same as ballots with mismatched signatures, but

1 does that necessarily establish the minimum cure period?

2 MR. STAFFORD: Your Honor, in this instance, whether
3 under a procedural due process claim or under our equal
4 protection *Anderson/Burdick* claim, we have to look at the
5 State's purported interests and the burdens on the State. And
6 so I have a very difficult time conceiving of a set of facts
7 where the State could show it would be particularly burdensome
8 to provide a cure period that's equal in all instances.

9 It's not categorically our claim that the State of
10 Arizona invariably must provide the same cure period for all of
11 these various categories of ballots. In a different record,
12 with different facts, I could conceive of the State trying to
13 make that argument.

14 On this record, on these facts, it is our position
15 that it's constitutionally required at the least for the same
16 five-day cure period to be provided to the missing signature
17 ballots.

18 THE COURT: Now, the affidavit from the election
19 official in Pima County talks about the burden and how
20 difficult it would be to try to determine if someone's missing
21 signature was actually a voter because it would take two -- a
22 member of each party to handle the ballot and so forth, and
23 they just have just enough time to get it done as it is.

24 What's your response to that explanation from that
25 election official about the extreme burden he claims they'd be

1 under if they were to be required to give an additional five
2 days for unsigned ballots?

3 MR. STAFFORD: Well, first and foremost, I would refer
4 the Court to the interrogatory responses by the Secretary of
5 State speaking to the anticipated burden on county election
6 officials, as well as the declaration, Exhibit 29, from the
7 Coconino County Recorder, Patty Hansen, which speaks to a very
8 different version of events.

9 But with regard to the Pima County Recorder's
10 declaration, I think what's notable is what that declaration
11 does not state. I don't think that anyone disputes that county
12 recorders and their employees would need to review additional
13 ballots and determine whether it's the voter's identification.
14 There is some amount of staff time that is connected to that.

15 I don't believe that the Pima County Recorder's
16 declaration attempts to quantify that time, purports to say
17 that it would be impossible to comply with existing
18 certification deadlines, that it would be necessary to hire
19 additional staff, or that even if the State was required to go
20 to some additional administrative expense or burden, that that
21 would justify the current consequence, which is that thousands
22 of Arizonans have their votes rejected for this reason every
23 election without the same time to cure that a provisional voter
24 who comes in and proves their identity in person.

25 The State already provides that opportunity. And I

1 don't think the Pima County Recorder indicates what is it
2 that's different about a missing signature population of
3 ballots that's so different from the provisional ballots that
4 this is what breaks the camel's back.

5 THE COURT: I think he said that, at least as far as
6 mismatched signatures, it's just a phone call. But when you
7 bring in the missing signature, it requires handling by two
8 people.

9 MR. STAFFORD: I believe that the Pima County Recorder
10 does indicate that that's how they verify witness -- identity
11 of the voter for a mismatched signature, but the provisional
12 cure process is different. I don't believe that that's just a
13 phone call or that the Pima County Recorder indicated that that
14 was just a phone call.

15 And it's also noteworthy that -- of course, the
16 numbers vary from election to election, but in 2014, for
17 example, the County's responses to our discovery and public
18 records request indicated that we're talking about 64 ballots
19 in Pima County.

20 And so 64 ballots in a five-day period of time, when
21 Ms. Hansen in her declaration indicates that what we're talking
22 about is a matter of minutes to cure a given ballot, that that
23 is, in fact, what it takes to have an in-person cure of a
24 missing signature ballot is a matter of minutes.

25 I don't believe the Pima County Recorder indicates how

1 much time it would actually take, simply that there would need
2 to be the presence of those individuals.

3 THE COURT: Now, going back to the five-day
4 post-election cure period. Is it your position that Arizona
5 could provide a shorter post-election cure period so long as it
6 extends the same cure period to ballots with missing and
7 mismatched signatures alike?

8 MR. STAFFORD: Again, it would be a different case,
9 Your Honor. And so I certainly wouldn't categorically say that
10 a shorter cure period would be constitutionally defensible.
11 But in looking at the State's ability to justify what's the
12 burden when it already provides this cure period to every other
13 category of voter who has to prove their identity
14 post-election, that really obviates or eliminates any claim
15 that there's particular burden here.

16 So if the State categorically said it's a three-day
17 cure period for everybody, there wouldn't be that differential
18 that I think undercuts the State's position so greatly here,
19 but I certainly don't think it categorically would be
20 constitutional. It would depend on a particular assessment of
21 the record. *Anderson/Burdick*, these are generally very
22 fact-intensive claims, as is a procedural due process claim.

23 THE COURT: If a voter receives notice of a missing
24 signature three weeks before the election yet fails to cure by
25 Election Day, is that voter still entitled to additional five

1 days after the election to do so under your theory?

2 MR. STAFFORD: Our position would be yes. The State
3 has not set up any sort of regime where the time one has to
4 cure one's ballot depends on when it received notice of a
5 rejection. So, again, for example, under current state law, a
6 voter might have notice that their ballot has been rejected due
7 to a signature mismatch three weeks before Election Day. That
8 voter is provided five additional days after the election to
9 cure.

10 So the dispositive question here is really whether the
11 State has such a weighty interest that it should be able to
12 throw out that lawful voter's ballot entirely unless the voter
13 cures by Election Day. And, frankly, even the Secretary
14 concedes that the State does not.

15 THE COURT: And one of the questions that you were
16 directed to be ready to talk about was situations as to whether
17 or not there are other voting requirements or prerequisites for
18 which the Constitution requires a post-election cure.

19 For example, an election for a single-occupant office,
20 a ballot typically instructs the voter to vote for only one
21 candidate. If the voter mistakenly votes for more than one
22 candidate, does the Constitution require Arizona to make
23 reasonable efforts to contact the voter and provide a
24 post-election period during which the voter can cure her
25 improperly marked ballot?

1 MR. STAFFORD: Your Honor, the short answer to the
2 Court's question is yes, and it depends on the facts. And
3 there's also a very clear distinction, I think, between the
4 administrative staff to prove that a ballot that's already been
5 cast was cast by a lawful Arizona voter and allowing somebody
6 to effectively vote after Election Day or change their vote
7 after Election Day, which would raise serious constitutional
8 concerns, as in the second part of the Court's example.

9 But in practice, the way that this issue has arisen
10 has been state verification of voter identity by a person who
11 casts a ballot by Election Day. Again, the *Florida Democratic*
12 *Party* case being an example, the *Saucedo* case being another
13 example.

14 We sometimes see court action keeping poll places open
15 past the scheduled close of Election Day for one reason or
16 another. *Obama versus America versus Cuyahoga County Board of*
17 *Elections* is an example of that, Northern District of Ohio
18 case.

19 There have been cases after severe weather moving
20 voter registration or similar deadlines back for reasons such
21 as that, or requiring states to accept ballots that had been
22 postmarked by Election Day, even if that's inconsistent with
23 existing state law.

24 Earlier this year, in the *Democratic National*
25 *Committee versus Republican National Committee* case out of

1 Wisconsin, that was the scenario. And the Court there
2 concluded that the ballot deadline, the Election Day deadline,
3 if you will, the deadline for casting a vote, was not so
4 compelling as to overcome the burden faced by voters who,
5 through no fault of their own, will be disenfranchised by its
6 enforcement. The Seventh Circuit affirmed, and the United
7 States Supreme Court agreed.

8 So there are instances where election deadlines are
9 moved back by courts due to the administrative burden that they
10 impose. Those are different scenarios than voter gets another
11 chance to actually fill out the bubbles on the ballot, or
12 however the voting system works.

13 THE COURT: I'm trying to understand what the
14 plaintiffs think we should be comparing mail ballots with
15 missing signatures to. Should we be comparing them to mail
16 ballots with mismatched signatures or in-person provisional
17 ballots cast by voters who show up to the polls without an ID?
18 Which is the better and more relevant comparison?

19 MR. STAFFORD: I think both are quite apt, for
20 different reasons. So when it comes to the functional way in
21 which the State would likely implement a remedy -- might not be
22 compelled to implement the remedy this way, but this is what I
23 would suspect they would do -- would be something that would be
24 similar to an in-person provisional voting proof of
25 identification process. So in that regard, that's a quite apt

1 comparison.

2 With regard to the mismatched signature issue, again,
3 the fundamental problem is the same. The State is not in the
4 business of looking at people's penmanship and deciding whether
5 it's good or bad. The State is attempting to prove or to
6 determine, is this really the voter who cast the ballot? This
7 voter requested the ballot. We sent them the ballot. A ballot
8 was returned under that voter's name. Is this really the
9 voter?

10 The signature verification process is like looking at
11 somebody's identification at the polls.

12 And so in that regard, the mismatched signature and
13 the no signature poses the same issue for the State: Was this
14 really the voter? And all we ask is that, in the same way that
15 a mismatched signature voter can say, "That was indeed me,"
16 that the person who does not sign says, "I, in fact, returned
17 that ballot. I returned it before Election Day. You would
18 count it. The only reason you're not counting it is because my
19 signature is not on that piece of paper so you don't know it's
20 me. It was me."

21 That is the relief that we seek. And both of those
22 examples, I think, are quite instructive. The same five-day
23 cure period is provided in both of those additional instances.

24 THE COURT: Now, is it plaintiffs' position that a
25 ballot is a legally valid vote even if it's unsigned, or that

1 an unsigned ballot is legally invalid but could easily be made
2 legally valid with the introduction of additional procedural
3 safeguards?

4 MR. STAFFORD: So for purposes of this lawsuit, no,
5 plaintiffs do not contend that unsigned ballots may be legally
6 counted under Arizona law.

7 Again, it's really just like provisional ballot
8 voting, where a person who lacks necessary identification,
9 votes the ballot, proves identity post-election. The signature
10 requirement is just the mail ballot analog.

11 So in both instances a lawful voter, in fact, timely
12 casts a lawful ballot, and we're just asking that lawful voters
13 who cast a ballot and don't sign the affidavit have the same
14 chance to prove their identity that a voter who shows up to the
15 polls without adequate identification has.

16 THE COURT: So you're saying that in the State's
17 election regime, a vote becomes legally valid for
18 constitutional purposes when it's signed? Is that what you
19 just said?

20 MR. STAFFORD: We are saying that we do not challenge
21 the signature requirement, so our claim is about the burden
22 provided by a lack of post-election cure period. If the relief
23 that plaintiffs sought was granted and a five-day cure period
24 was implemented and a given voter did not sign their ballot, it
25 is not -- during that cure period or before, it is not our

1 claim that the State must count that ballot.

2 THE COURT: Let's talk about the timing of this
3 lawsuit now. It's been long -- long been the law in Arizona
4 that a mail ballot without a signature will not be counted.
5 Why are you just now challenging this practice?

6 MR. STAFFORD: Your Honor, first, for purposes of --
7 rather than -- that speaks to if an irreparable injury has been
8 suffered. The irreparable injury inquiry looks at the adequacy
9 of alternative relief: money.

10 Clearly, money could not remedy this injury. It is an
11 irreparable injury. There may well have been irreparable
12 injury that was suffered in the past that was not remedied.

13 In addition, while it's long been the law that Arizona
14 required a signature, we don't challenge the signature
15 requirement. Our concern is about the cure period. Our
16 concern is about the current regime that the State has set up.
17 And that is a very recent creature.

18 This is the first election, 2020, that the State is
19 operating under the current disparate cure period structure
20 that really gives rise to our challenge. And so that's the
21 reason that we brought this lawsuit in 2020.

22 And certainly in the backdrop, you know, lingers COVID
23 and the likely effect that that will have on our country's mail
24 system, but our lawsuit was motivated by the disparate cure
25 period that is being utilized for the first time in Arizona in

1 this cycle.

2 THE COURT: So the fact -- your argument is that it's
3 the cure period that has just recently been employed for the
4 provisional and the mismatched ballots, it's this new procedure
5 that is the difference that's changed to make the harm suffered
6 irreparable?

7 MR. STAFFORD: No, Your Honor. That's not our
8 position.

9 Our position is that this is irreparable injury. A
10 voter not having their ballot counted because the State hasn't
11 determined or provided an adequate cure period, that is an
12 irreparable injury.

13 THE COURT: I'm talking about the timing. Why now are
14 you bringing -- why now are you saying this is an irreparable
15 harm and before you didn't?

16 And I understand your position --

17 MR. STAFFORD: Your Honor, we are --

18 THE COURT: Go ahead.

19 MR. STAFFORD: We are bringing the lawsuit now because
20 the State's election procedures changed, and after review and
21 analysis of what we believe to be a serious constitutional
22 issue, the lack of a five-day cure period, we brought this
23 lawsuit. We believe that irreparable injury exists.

24 It's not necessary for the Court to find irreparable
25 injury as to whether some earlier voter or some organizational

1 plaintiff or these organizational plaintiffs could have
2 asserted in a lawsuit brought at some different time that there
3 was also irreparable injury with regard to an earlier election
4 cycle.

5 But in terms of the Court's question why now, why now
6 is the State changed its election procedures in late 2019. And
7 we believe that gave rise to a constitutional challenge.

8 THE COURT: Now, plaintiffs discuss the potential
9 impact of COVID-19 pandemic on the equities in this case. Is
10 this issue determinative, or would plaintiffs' argument be the
11 same in the absence of a pandemic?

12 MR. STAFFORD: Plaintiffs' argument would be the same
13 in the absence of a pandemic. That's not an
14 outcome-determinative issue or an "only at the time of COVID-19
15 pandemic" challenge.

16 It is likely the case that there will be strain and
17 burden on Arizona's mail system because of COVID-19. The
18 Secretary and the State certainly are encouraging voters to
19 vote by mail to safeguard their safety. The State already, of
20 course, has fairly high levels of mail voting under its
21 election system, but the State is encouraging people to stay
22 away from the polls and vote by mail.

23 So at a time with likely increased mail voting and
24 decreased mail capacity, or at least strains on the postal
25 service, the problem is particularly acute in terms of voters

1 getting notice before Election Day and being able to cure their
2 ballot, but the same fundamental problem would exist whether
3 COVID-19 was going on or not. And so our claim is not
4 dependent on the existence of COVID.

5 THE COURT: Okay. Those are the questions I had for
6 you. Before you step down, is there anything else you wanted
7 to tell me or argue that we haven't discussed?

8 MR. STAFFORD: Your Honor, I would say, just fairly
9 briefly, that, at the end of the day, this is a simple case.
10 In late 2019, before we filed this lawsuit, the State's chief
11 election officer, Secretary of State, consulted with all the
12 county recorders and proposed an Election Procedures Manual
13 that would have provided the five-day post-election cure period
14 for voters who inadvertently failed to sign their ballots that
15 we seek.

16 After the Attorney General refused to agree to that
17 provision -- and the Attorney General refused to agree to that
18 provision, as the Court pointed out in its questions, not
19 because of policy and reasons, not because of burden, but
20 because, purportedly, the State didn't have the power to offer
21 that relief.

22 And after the Attorney General refused to agree to
23 that provision, we filed this lawsuit. And after we filed this
24 lawsuit, the Secretary of State and multiple county recorders
25 agreed that the State can and should provide a five-day

1 post-election cure period. This is, thus, the rare case where
2 a plaintiff sues and the defendant basically concedes the
3 point.

4 And so the final thing that I would say is that --

5 THE COURT: Let me interrupt you.

6 MR. STAFFORD: -- there are some things --

7 THE COURT: Mr. Stafford, let me interrupt you.

8 State specifically, what point did the State concede?

9 MR. STAFFORD: I think that the Secretary of State has
10 conceded that it is her view that no significant burden would
11 be imposed on the counties to provide a five-day post-election
12 cure period given the work that county recorders are already
13 performing at that time. That in the responses to discovery,
14 the Secretary indicated her view that counties could do that
15 work without additional resources or substantial additional
16 resources.

17 Ms. Hansen, the Coconino County Recorder, indicated
18 her view that certainly more lawful votes would be counted if a
19 five-day post-election cure period was provided and that no
20 significant burden would be imposed on her office -- and
21 Coconino County is a defendant -- if that relief was granted.

22 And so, certainly, the Attorney General, not the
23 State's chief election officer, but the Attorney General has
24 intervened, has expressed a different view, but multiple
25 defendants in this lawsuit have conceded those points. And the

1 Court can look to the Secretary of State's responses to our
2 discovery, which are an exhibit, and Ms. Hansen's declaration,
3 which is Exhibit 29, for those points.

4 THE COURT: Okay. Thank you.

5 I interrupted you, and you can finish what you were
6 saying before I interrupted you. I'm sorry.

7 MR. STAFFORD: Thank you, Your Honor.

8 And so, finally, I would note that in looking at this
9 analysis, the Court looks at the specific burdens that the
10 State puts forward and must assess each of those in turn. Not
11 the arguments of counsel, the record evidence as to what burden
12 would be imposed. I think the Court has put its thumb on it.
13 There is a single declaration from a county recorder that says
14 the staff would spend a bit more time if this relief was
15 granted. That is, at the end of the day, the burden that the
16 State has put forward into evidence.

17 So the State of Arizona does do some things right when
18 it comes to voting by mail, and my clients are glad that it
19 does. But that is irrelevant to the issue presented here.
20 Evaluation of the burden of a given law must be looked at from
21 the perspective of the impacted voters, not the electorate as a
22 whole.

23 And in our democracy, the thumb is on the scale of
24 counting more ballots, not fewer. The State has not and cannot
25 justify its failure to provide the same five-day cure period

1 for no signature ballots that it provides for provisional
2 ballots and mismatched signature ballots.

3 Thank you very much.

4 THE COURT: Thank you.

5 Let's hear from Mr. Moore next. Mr. Moore?

6 MR. MOORE: Yes, Your Honor.

7 THE COURT: You've seen the questions I have for you.
8 I have just a couple.

9 The first question is, have the settlement agreements
10 reached in *Navajo Nation versus Hobbs* been breached, in your
11 opinion?

12 MR. MOORE: Your Honor, it's our view, and I've spoken
13 to both counsel for Apache and Coconino County, it's our view
14 that the Secretary of State and each of the three county
15 recorders have done their level best to comply with the
16 agreement -- to comply with the agreements reached in the
17 *Navajo Nation* case and that they have not been breached.

18 THE COURT: Okay. The Apache, Coconino, and Navajo
19 County Recorders are not plaintiffs in this case, nor is the
20 Navajo Nation. Consequently, are the settlement agreements
21 reached in the *Navajo Nation versus Hobbs* relevant to this
22 case?

23 MR. MOORE: Your Honor, we don't think that they are
24 in any way binding on this Court or its decision, but we do
25 think, and the reason that we asked the Court for the

1 opportunity to brief separately was because, number one, we
2 wanted the Court to understand that our position is not --
3 cannot be lumped together with that of the State, and that we,
4 in fact, agree with the plaintiffs that the cure period is an
5 appropriate remedy.

6 And so, basically, we provided that -- that
7 information to the Court as background so the Court could kind
8 of understand our position and why it is that we got to where
9 we are.

10 THE COURT: All right. Anything else you want to add?

11 MR. MOORE: No, Your Honor.

12 THE COURT: All right. Thank you.

13 Let me next hear from Ms. Desai.

14 MS. DESAI: Good morning, Your Honor. I will take
15 each of your questions in turn.

16 Your first question was whether the Secretary believes
17 that Arizona's current procedure with the missing signatures is
18 unconstitutional.

19 So whether the current procedure regarding the mail
20 ballots with missing signatures is unconstitutional, as Your
21 Honor understands, is both a factual and legal inquiry. The
22 Secretary has not conducted a factual inquiry regarding burden
23 or considered the many factors that would prove the factual
24 component of a claim of unconstitutionality.

25 But on the legal side, the Secretary believes that the

1 current procedure is likely unconstitutional. Out of respect
2 for the separation of powers and also to not waste taxpayer
3 resources repeating arguments that plaintiffs have already made
4 in this litigation, we didn't present our view about the
5 constitutionality. But since the Court is asking, we are
6 willing to provide the Secretary's input that we believe the
7 language in the manual is likely unconstitutional.

8 In lieu of providing repetitive legal briefing on this
9 issue, the Secretary provided background information to make
10 clear that the Secretary does not agree with the current
11 procedure allowing only until 7:00 p.m. on Election Day to cure
12 missing signatures. The Secretary included that language in
13 the manual because the Attorney General reversed course,
14 including the settlement term relating to the five-day
15 post-election cure period.

16 And, in fact -- and this is included in the exhibit
17 relating to the discovery requests provided by the Secretary --
18 when the AG refused to approve the manual with the five-day
19 cure period, the Secretary had a very difficult decision to
20 make. She believed that the manual was too important to
21 abandon over a single disputed provision. This was
22 particularly true given that the manual had not been updated
23 since 2014 and elections officials were in great need of an
24 updated manual heading into this election cycle.

25 The Secretary's position, she believed then and she

1 still believes, that the five-day post-election cure period for
2 missing signatures is constitutional. It's not only authorized
3 by 16-452 A, which is the provision that allows the Secretary
4 to adopt the manual, which is the binding effective law, but
5 also pursuant to 16-550 A. And she stands by her decision to
6 include the five-day cure period in the initial draft of the
7 manual that was rejected.

8 Unless the Court has questions on that issue, I'll
9 move to the second question presented by the Court.

10 THE COURT: Okay. Go ahead.

11 MS. DESAI: That question, Your Honor, was whether the
12 Secretary's -- is it the Secretary's position that the
13 Constitution requires a five-day post-election cure period or
14 that the Constitution requires equal treatment of ballots with
15 missing and mismatched signatures but that doesn't necessarily
16 establish a constitutional minimum cure period.

17 Really, Your Honor, we think the answer is both.
18 They're really two sides of the same coin. The Constitution
19 requires equal treatment, and the Secretary agrees with
20 plaintiffs' equal protection claim.

21 And with respect to the equal protection issue, there
22 really are two apt comparisons. One is treating early voters
23 who have mismatched signatures differently than those with
24 missing signatures.

25 The second is treating early voters who forgot their

1 ID, so somebody who goes to the poll, forgets their ID, this is
2 the provisional, those folks have an opportunity to cure their
3 ballot just as somebody who forgets to sign their ballot would
4 have an opportunity, or should have the opportunity, to cure
5 their missing signature after they submit their early ballot.

6 But the Secretary also agrees with plaintiffs'
7 *Anderson/Burdick* claim with respect to the burden. And as we
8 outlined in our interrogatory responses, the Secretary believes
9 that including the five-day post-election cure period for
10 missing signatures would not impose an administrative burden on
11 county elections officials, because they will already manage
12 the same cure period for mismatched signatures and conditional
13 provisional ballots.

14 Apache County, Navajo County, and Coconino County
15 officials have all indicated that they would prefer to adopt
16 the post-election cure period that's consistent as between
17 these various categories.

18 And in the Secretary's view, applying the same cure
19 period for missing signatures would support, not undermine, the
20 orderly administration of elections. Applying the same cure
21 period for missing signatures, mismatched signatures, and
22 conditional provisional ballots would reduce voter confusion
23 and provide a clear and consistent standard for elections
24 officials.

25 And the Secretary also believes that allowing the

1 post-election cure period for missing signatures would further
2 the State's interests in preserving the integrity of its
3 elections. A voter's signature serves as a means of identity
4 verification. Whether the voter forgets to sign the ballot or
5 their signature does not appear to match registration records,
6 the problem is that the voter's identity can't be verified, a
7 problem that is resolved by notifying the voter and allowing
8 them to show up with their -- either their form of ID, in the
9 case of the provisional, or with their signature to verify
10 their identity.

11 And this process would allow more Arizonans' votes to
12 be counted, which of course, the Secretary of State, as the
13 chief elections officer for the State, fully supports.

14 THE COURT: Is it the Secretary's position that the
15 mail ballots with missing signatures are more analogous to
16 provisional ballots or to mail ballots with mismatched
17 signatures?

18 MS. DESAI: Your Honor, I think they're both apt
19 comparisons, but I think the first, the provisional, where
20 there is actually -- a voter forgets to bring an ID to the
21 polls, is probably more akin to the failure to include a
22 signature on the ballot altogether versus a mismatch.

23 THE COURT: Okay. All right. Thank you.

24 All right. I think we have one party left. That's
25 the State of Arizona.

1 Let me -- let me go to those questions.

2 MR. ENSIGN: Good morning, Your Honor. Drew Ensign on
3 behalf of the State of Arizona.

4 THE COURT: Mr. Ensign, let's go -- let's get started.

5 MR. ENSIGN: Sure.

6 THE COURT: Who, in the State's view, would have
7 standing to challenge the adequacy of Arizona's current cure
8 procedures for mail ballots missing signatures?

9 MR. ENSIGN: You know, certainly, Your Honor, voters
10 who have had their vote disqualified in past elections would
11 clearly have standing. Notably, all of plaintiffs' case law
12 seems to include those voters, and those voters could seek
13 nominal damages and thereby get complete adjudication of all
14 the constitutional merit of the issues presented.

15 And so that's the way that it's previously been done.
16 Notably, in the Navajo Tribe case as well, they did join
17 voters. But here, the absence of voters is just completely
18 inexplicable and notably deprives plaintiffs of standing.

19 THE COURT: Would any early mail voter have standing?

20 MR. ENSIGN: Not here, Your Honor. And let me explain
21 why.

22 If plaintiffs were challenging the signature
23 requirement itself, any early voter would have standing,
24 because all of those early voters are required to sign their
25 ballots and thus they incur the burden, which would therefore

1 be the injury in fact.

2 But here there is no challenge to the signature
3 requirement itself, merely the timing of the signature. And
4 the timing is something that's exclusively within the control
5 of the voter. And so if they fail to sign their ballot by
6 Election Day and fail to avail themselves of the cure period,
7 that's purely self-inflicted injury. And it's well established
8 that self-inflicted injury is not cognizable for purposes of
9 Article III.

10 THE COURT: So would an early mail voter who had her
11 ballot rejected due to a missing signature in a prior election
12 have standing?

13 MR. ENSIGN: Because there it's an accomplished fact
14 and it (audio interference) -- or where a voter has it within
15 their complete control and capacity to avoid harm, Article III
16 requires them to avoid that harm rather than intentionally take
17 it on and thereby use it as a fig leaf for these suits.

18 THE COURT: So your answer is yes or no?

19 MR. ENSIGN: A voter who was disqualified previously
20 would have standing to challenge that record --

21 THE COURT: And that voter could sue --

22 (Court reporter clarification.)

23 THE COURT: You're trailing off. The court reporter's
24 not hearing everything you're saying. Can you repeat your
25 answer?

1 MR. ENSIGN: Certainly, Your Honor. And I apologize
2 if the audio isn't working, and I can try to change that if
3 this continues.

4 Our position is that a voter who previously had their
5 vote disqualified, that injury is now an accomplished fact and
6 is not avoidable by the voter, and therefore they have standing
7 to seek retrospective relief.

8 However, as to prospective relief where it's still
9 absolutely within their control to avoid the injury that
10 they're complaining of, then it's self-inflicted injury that is
11 not cognizable under Article III.

12 THE COURT: So if the harm is self-avoidable, that
13 means that no voter can challenge it.

14 MR. ENSIGN: No, Your Honor. I think for past
15 elections where the harm is now accomplished and no longer
16 avoidable, those voters would have standing to seek
17 retrospective injury, so they could seek nominal damages and
18 thereby get an adjudication of all the constitutional merits at
19 issue here.

20 THE COURT: Okay. All right. So could such a voter
21 sue to enjoin the procedure on a prospective basis then?

22 MR. ENSIGN: No, Your Honor. In general, in that
23 posture where it's self-inflicted injury, they could not. You
24 could have a voter who, for whatever reason, is disqualified,
25 tenders performance within that five-day cure period, and then

1 could seek -- likely seek injunctive relief as to the
2 certification of the results to compel counting of their
3 ballot.

4 So there may be instances where they could get
5 prospective relief, but our position is here, particularly with
6 the absence of any known voter, that no one here has standing
7 to seek prospective relief.

8 THE COURT: So this lawsuit couldn't be brought by
9 anybody, then?

10 MR. ENSIGN: Certainly, Your Honor, voters who were
11 disqualified in past elections could seek retrospective injury,
12 and I suppose if they had tendered performance during those
13 prior elections, they could also seek prospective injury to try
14 to change the certification of results to have their vote
15 counted. That is, obviously, an entirely theoretical
16 possibility in this posture.

17 But certainly the ability to seek retrospective injury
18 will get an adjudication of the constitutional merits. And
19 once that's settled, there's no indication that anyone in the
20 State is going to intentionally violate what federal courts
21 have said the U.S. Constitution requires.

22 So we think that the ability to adjudicate these on a
23 retrospective basis, which is notably what plaintiffs' case law
24 in *Saucedo* and in *Zessar* and in all those other cases, and
25 *Detzner* and *Lee*, you know, that's what they relied upon and

1 that that would be equally adequate here.

2 THE COURT: Let me just make sure I understand.

3 What you're saying is that because the plaintiffs are
4 asking for prospective relief, no one would have standing to
5 bring this lawsuit. Isn't that what you've just said?

6 MR. ENSIGN: No one would have -- no one named here
7 currently has prospective injury. I think it could be the case
8 that if a voter was previously disqualified, they tried to
9 tender performance during the would-be cure period, and then
10 sought to challenge the results for not including their vote,
11 that person, potentially, could have prospective injury.

12 That's not presented here, but I think that's one
13 conceivable voter that could, for example, have standing to
14 seek prospective relief.

15 THE COURT: Anybody else?

16 MR. ENSIGN: Certainly none that are presented here
17 and none that occur to us.

18 THE COURT: Okay.

19 All right. Do the State, Secretary of State, or
20 county recorders have data concerning the party affiliations of
21 voters whose ballots have in past elections been rejected
22 because of missing signatures?

23 MR. ENSIGN: We are not aware of any such data, Your
24 Honor. And certainly, we think this is an issue on which
25 plaintiffs bear the burden of proof and production, and

1 therefore the silence of the record is dispositive.

2 I think this is particularly important for
3 organizational standing, because in order to have
4 organizational standing, you have to have injury and
5 frustration of purpose.

6 And if this is actually disqualifying more Republicans
7 than Democratic votes, it's actually conveying a benefit on
8 plaintiffs. And if they want to spend more money to enhance
9 the amount of that benefit, they certainly can, but none of
10 that amounts to injury in fact.

11 So in the absence of any proof of actual injury, you
12 can't have -- you can't have Article III standing. And so we
13 are -- we're not aware of any evidence to that effect, and
14 indeed, plaintiffs disclaim any attempt to prove it, and we
15 have no reason to believe that they're wrong.

16 THE COURT: Well, the plaintiffs aren't claiming that
17 more Democrats than Republicans are losing out on their votes.
18 They're just saying anybody who's a member of the Democratic
19 Party, or member of the plaintiffs, who doesn't get a chance to
20 vote is the one who's harmed.

21 MR. ENSIGN: That's certainly their claim, Your Honor.
22 And to the extent that they are trying to use that to do
23 associational standing, they would have to comply with the
24 *Summers* requirement that they name individual affected members
25 in order to have associational standing.

1 To the extent they're trying to rely on organizational
2 standing, they need to show frustration of purpose. And if
3 this is actually enhancing their electoral prospect, that's not
4 a frustration of purpose and it's not cognizable injury. It's
5 a -- notably, a benefit, which Article III does not let you
6 challenge benefits or tribal enhanced benefits.

7 THE COURT: I see. All right.

8 What does the State consider to be a signature
9 triggering the five-day post-election cure period for
10 mismatches?

11 MR. ENSIGN: Your Honor, this is actually something
12 that's largely left to the discretion of the county recorders,
13 and the Election Procedure Manual doesn't have a lot of
14 guidance on this.

15 I can tell you the general view of the State is that
16 the inquiry should be a generous one. Certainly, an X should
17 be sufficient, because many people do sign using X as a
18 signature. That was certainly more in vogue in past decades
19 and centuries, but is not unheard of today. And so if you had
20 an X, you would then go check if that person's signature on
21 file was an X.

22 You know, some things we think wouldn't count. If it
23 was something that was just clearly a stray pen mark or an ink
24 splotch, I don't think that would count for the signature.

25 Similarly, if someone intentionally wrote out "void"

1 or "voter deceased," those would not be counted as potential
2 signatures, because on their face they are not, you know,
3 potential signatures.

4 So that -- our view -- that's the view of the State,
5 although this is something that would be largely resolved by
6 the county recorders and an issue on which the Election
7 Procedure Manual doesn't provide a lot of guidance.

8 THE COURT: So I think what I heard you say, it's the
9 view of the State that if a voter attempts to sign, whether
10 it's with an X or some other mark, that would be considered a
11 mismatch or a missing signature? Excuse me, that would be
12 considered a mismatch and not a missing signature?

13 MR. ENSIGN: That's correct, Your Honor. Our view is
14 that the county recorder should take a broad view of what a
15 potential signature is. And so an X or anything else that
16 looks like it could be a signature should be treated as a
17 potential signature and checked for whether it matches.

18 THE COURT: Now, is the post-election cure period
19 offered by the State for in-person provisional ballots cast by
20 voters without ID constitutionally required?

21 MR. ENSIGN: Our position is that it is not. There
22 was litigation over this that ultimately got mooted out by a --
23 as to mismatches that got mooted out by the legislature
24 enacting its provision.

25 You know, certainly this is a situation where it

1 shouldn't be a "no good deed goes unpunished." As we've
2 indicated, there's very good reasons to distinguish between
3 signature mismatches and signature -- and nonsignatures, you
4 know. And I think that provisional ballots and lack of voter
5 ID is even farther appealed in that it doesn't involve a
6 signature whatsoever. And, you know, I'm happy to walk through
7 those distinctions, which notably plaintiffs' own case law
8 makes very clear.

9 THE COURT: Well, you're talking about mismatches. I
10 asked about provisionals.

11 Is the post-election cure period offered by the State
12 for in-person provisional ballots cast by voters without ID
13 constitutionally required?

14 MR. ENSIGN: Your Honor, and although I'm not
15 absolutely certain of that, I need to check, and I'm happy to
16 submit a supplemental brief on that.

17 THE COURT: So your answer is you don't know?

18 MR. ENSIGN: I'm not sure. I don't believe so, but I
19 hesitate to speak with confidence, absolute confidence on that.

20 THE COURT: Why does the State treat mail ballots with
21 missing signatures different from in-person provisional ballots
22 cast by voters without ID?

23 MR. ENSIGN: Your Honor, I think that they're
24 completely apples and oranges. None of them -- it does not
25 involve the signature at all. It involves a different sort of

1 regime. You know, notably, I think the Supreme Court's
2 decision in *Crawford* recognizes that the burden of getting an
3 ID is not substantial, but, you know, it's several orders of
4 magnitude more burdensome than simply signing on the dotted
5 line where prominently indicated, given nearly a month of time
6 to do so.

7 And so that differing burden certainly would justify
8 differential treatment between provisional ballots not having
9 an ID and the exceedingly simple requirement to comply with the
10 signing of your ballot.

11 THE COURT: Well, in both cases, they're comparing the
12 person to the ID. In one case, the person is there at the
13 polling place without an ID but his signature's there. In the
14 other case, he's not at the balloting box but the State has the
15 signature on record somewhere, his ID on record and his
16 signature on record, he just hasn't supplied the signature. So
17 it's basically the converse, or the reverse, of each other.

18 Why are they being treated differently?

19 MR. ENSIGN: Your Honor, I think, you know, the
20 biggest reason would be that it is more of a burden to require
21 someone to give an ID, and that that is something that you
22 could forget in the spur of the moment going to a polling
23 place. That is not the case where you have an absentee ballot
24 for more than a month. It has very clear instructions. All
25 you have to do is sign where prominently indicated.

1 And notably, you know, plaintiffs have not even cited
2 any case law that relies on this analogy to provisional
3 ballots. Their case law is overwhelmingly based on an analogy,
4 which we think is inapt, to signature mismatches.

5 THE COURT: When did the State start offering a
6 post-election cure period for in-person provisional ballots
7 cast by voters without ID?

8 MR. ENSIGN: I'm not certain of that, Your Honor. I
9 am happy to look that up and let you know by supplemental, you
10 know, brief.

11 THE COURT: Would it harm the State's legitimate
12 regulatory interests in any way if it were required to treat
13 unsigned ballots like it treats ballots that are signed with a
14 mismatched signature?

15 MR. ENSIGN: Yes, Your Honor. And let me start with,
16 I think there's an exceedingly simple path to resolve this
17 case, is that -- that is the easiest before we go into all of
18 the State's multifaceted interests.

19 Notably, plaintiffs do not challenge the existence of
20 the signature requirement generally. They only quibble with
21 timing.

22 And, because of that, you have a situation where the
23 signature requirement which serves the State's compelling
24 interest in securing the validity of its ballots is
25 unchallenged. A signature requirement cannot work without a

1 deadline. It simply can't be done. Plaintiffs would prefer a
2 different deadline, but you can't have a signature requirement
3 that actually works to secure an election without a deadline.

4 And because plaintiffs have not established that
5 there's a severe burden, *Anderson/Burdick* only requires that
6 the State signature requirement and its deadline be reasonably
7 related to its regulatory interests.

8 An Election Day deadline is exceedingly reasonable.
9 Tons of states require it. Notably, of the 31 states that rely
10 on signatures, 15 provide no cure period at all, and another 4,
11 including Arizona, have an Election Day cutoff. So that is
12 actually about three-fifths of the states that use that highly
13 reasonable deadline.

14 And it's simply the case that within the -- because
15 the validity of the signature requirement, the State's interest
16 is conceded, we're simply at the tailoring analysis. And, you
17 know, an Election Day deadline, just as it's eminently
18 reasonable to require you to vote by poll close, it's eminently
19 reasonable to require you to either sign your ballot by poll
20 close or fix the absence of your signature by then.

21 So we think that's the easiest path to resolve this
22 case. We have additional interests, which are, you know,
23 reducing the State's administrative burden, having orderly
24 elections, and also increasing voter turnout. I'm happy to go
25 through all of those, but the simplest grounds --

1 THE COURT: Why don't you go through them.

2 What's the administrative burden, other than what's
3 been identified by the election official from Pima County?
4 Anything else?

5 MR. ENSIGN: That, we view that as emblematic. That,
6 certainly, as they've explained, they are already under
7 extremely tight time deadlines that are difficult to comply
8 with. Notably, they only have ten days to certify results
9 after a primary, and they continually only get to it to the
10 tenth day.

11 There's simply no, you know, safety margin there to
12 take on gratuitous new undertaking without risking violating
13 state law and imposing burdens that they can't, in fact, take.
14 And so, you know, we --

15 THE COURT: I guess there's a disagreement there, and
16 I'm not sure how I resolve that. Because I've got the
17 Secretary of State and other counties saying it's not a burden
18 at all of any significance and it would be easily met. So what
19 do I do in that case?

20 MR. ENSIGN: Well, Your Honor, I think it may well be
21 the case that both the Coconino and Pima County declarations
22 are accurate. It may be the case that Pima County could, in
23 fact, do this. And perhaps, if plaintiffs really wanted to,
24 they could bring an as-applied challenge in Pima County and say
25 that, you know, as here, you could do this and you should.

1 But there's nothing that actually impeaches the Pima
2 County declaration that this would be very difficult for them
3 and burdensome, and that they -- this is not something that
4 they can easily take on.

5 And, notably, within *Anderson/Burdick*, it is a sliding
6 scale analysis. Given the extremely low nature of the burden
7 here, the State's interests need -- you know, the burden needs
8 to be correspondingly very, very minimal in order to justify
9 the nearly infinitesimal burden on plaintiffs' right to vote.

10 THE COURT: Well, so far you've identified the State's
11 burden as having a deadline that it can't meet, although it
12 extends it a five-day period for two types of votes, and having
13 the extra time it takes down in Pima County.

14 Are there any other burdens?

15 MR. ENSIGN: Yes, Your Honor. I mean, I think there's
16 one of orderly administration. You know, by and large, it is
17 helpful to have poll workers focus on getting the vote in and
18 helping voters out until poll close, and then, at that point,
19 shifting over to focusing on counting the votes.

20 Now, mismatches are a limited exception to that, but
21 the more that you expand that exception, the more that it may
22 swallow the overall focus of, you know, post-poll close, focus
23 on getting the votes counted.

24 In addition, our expert has explained that a
25 post-election cure period may actually increase the number of

1 disqualified votes. That actually makes a lot of sense. You
2 know, if people have the results or likely results as reported,
3 they may well not avail themselves of the post-election cure
4 period. And certainly, there are states that allow extensive
5 post-election cure periods that have significantly higher
6 disqualification rates than Arizona.

7 And so Arizona has an interest in maximizing turnout.
8 And certainly, where there's at least a suggestion that a
9 post-election cure period may actually make the problem worse,
10 it need not gratuitously make the situation worse simply
11 because that's what, you know, litigants would like it to do.

12 THE COURT: Wouldn't having a single rule for all
13 ballots make the election more orderly?

14 MR. ENSIGN: In one respect, yes, Your Honor. But by
15 expanding the exception to focus -- you know, you should be
16 focusing on counting the results rather than getting the vote
17 in. I think it's a two-edged sword there, that it would be
18 harmful and divert poll worker efforts, and that's what Pima
19 County has explained.

20 And, you know, I think that, as our brief explained,
21 there are entirely reasonable reasons to distinguish between
22 signature mismatches and nonsignatures.

23 You know, first of all, as Your Honor has noted,
24 there's an apparent level of subjectivity to mismatches that
25 simply doesn't exist for nonsignature determinations. And

1 certainly in the generality of cases, the risk of error, you
2 know, is asymptotic to zero.

3 Second, you know, the Constitution can rightly be more
4 concerned with a voter having their vote disqualified in
5 circumstances that are potentially not their fault at all, but
6 a nonsignature is virtually always going to be the exclusive
7 fault of a voter. And so in that circumstance, you know, the
8 State can rationally distinguish between the two.

9 And, notably, plaintiffs' own case law, you know,
10 including *Saucedo* and *Lee* and *Husted I* all actually
11 affirmatively make that connection.

12 So we think that's entirely reasonable. You know, to
13 the extent that plaintiffs' constitutional claims are based on
14 equal protection, you may note the complete absence of the word
15 "equal protection," or phrase "equal protection" anywhere in
16 their motion for preliminary injunction.

17 And so we don't view -- all of their own case law
18 believes that this distinction is entirely reasonable, and
19 Arizona has drawn that same distinction that their own case
20 law, affirmatively flagged, should be made.

21 THE COURT: Now, as I understand it, in any given
22 election, there's roughly 2- to 4,000 ballots that arrive
23 without signature across the state. And the State has the
24 administrative apparatus in place to cure perceived mismatches
25 of signatures, doesn't it?

1 MR. ENSIGN: It does, Your Honor. That is new for
2 this election, but it does.

3 THE COURT: But you're arguing that extending similar
4 treatment to the two types of ballots would harm the State's
5 legitimate regulatory interests for the reasons you argued
6 earlier; is that true?

7 MR. ENSIGN: That's correct, Your Honor. And, you
8 know, a facet of that is all this ultimately comes down to is
9 an Election Day deadline reasonably tailored under
10 *Anderson/Burdick*. And if that deadline for the signature is
11 reasonably related to the State's interest in having a
12 signature requirement, then *Anderson/Burdick* requires entry of
13 judgment for the State.

14 THE COURT: If there was no harm to the State's
15 legitimate regulatory interests, would the balance of equities
16 tip in plaintiffs' favor?

17 MR. ENSIGN: If there were absolutely no harm to the
18 State, that's in some ways hypothetical, because the Ninth
19 Circuit recognizes that anytime a state's law is enjoined, it
20 suffers irreparable harm. So it's difficult to concede that
21 posture exactly.

22 But leaving aside that generic harm, you know,
23 certainly if there were no administrative burdens whatsoever,
24 the balance of harm would be more favorable than it is on this
25 record here.

1 You know, we also think the balance of harm,
2 importantly, is greatly -- or plaintiffs' showing there is
3 greatly harmed by their monumental delay here, you know,
4 amounting to 102 years.

5 But even if you take them at their word that this is
6 all based about signature mismatches, that law was passed in
7 2018, and notably, the Election Procedure Manual was finalized
8 in December 2019.

9 There's absolutely no explanation of their delay from
10 the statute or the Election Procedure Manual till June, which
11 has effectively jammed this Court and all the parties to a
12 breakneck pace completely unnecessarily, and put this case
13 squarely within *Purcell* doctrine which further, you know,
14 weighs against any sort of injunctive relief here.

15 THE COURT: This is a yes-or-no question: If there
16 was no harm to the State's legitimate regulatory interests,
17 would the balance of equities tip in plaintiffs' favor?

18 MR. ENSIGN: No, Your Honor. Given the extreme
19 minimal showing of the burden on voting, and given that the
20 Ninth Circuit recognizes that anytime a state law is enjoined,
21 the state suffers irreparable harm, we still think in that
22 instance the balance of harms would not favor plaintiffs.

23 THE COURT: Well, you're not following my
24 hypothetical.

25 If there is no harm to the State's legitimate

1 regulatory interests, would the balance of equities tip in
2 plaintiffs' favor in that case?

3 MR. ENSIGN: In that case, Your Honor, it seems that
4 only plaintiffs have put anything on the scales at all, and, in
5 that case, the balance of harms would have to tilt in their
6 favor, given that the State, in that hypothetical, has failed
7 to put anything on the scales at all.

8 THE COURT: Is it the State's position that the
9 settlement agreements with the Navajo Nation reached in *Navajo*
10 *Nation versus Hobbs* have been breached?

11 MR. ENSIGN: No, Your Honor. You know, notably,
12 neither the Attorney General nor the governor, both of whom
13 rejected this language for parties there, they certainly can't
14 breach an agreement that they're not parties to.

15 The settlement agreement is also very clear that it
16 only requires the Secretary to propose this language. And on
17 its face, it contemplates that either the governor or the
18 Attorney General could reject it, and both of them did. And
19 that's at Docket 91-3, at 3 to 4.

20 THE COURT: Although the State now offers policy-based
21 justifications for not extending the same post-election cure,
22 the cure period to ballots with missing signatures, it appears
23 from the record that the Attorney General's initial objection
24 to the inclusion of such a post-election cure period in the
25 Elections Procedure Manual was based on his interpretation of

1 Arizona law, not policy disagreements.

2 Please explain this interpretation of Arizona law.

3 Has any Court issued a decision interpreting Arizona law as it
4 relates to this issue?

5 MR. ENSIGN: Certainly, Your Honor. And I think it's
6 important to note at the outset, the plaintiffs themselves
7 actually agree that state law affirmatively precludes any
8 post-election cure, and that's their complaint at paragraphs 48
9 to 50.

10 But that conclusion that Arizona law affirmatively
11 precludes a post-election cure for nonsignatures really follows
12 from two -- the combination of two statutes. ARS 16-548 A
13 requires that a ballot affidavit, quote, must be received, dot
14 dot dot, by no later than 7:00 p.m. on Election Day. And then
15 ARS 16-552 B provides that, quote, if the ballot is
16 insufficient, the vote shall not be allowed.

17 So the combination of those two requires that the
18 affidavit must be received by poll close and that if it's not
19 valid, which is to say, includes that it's, you know -- and an
20 unsigned ballot is not valid. The combination of those two
21 things mean Arizona law directs the vote not to be counted and
22 thereby precludes any post-election cure.

23 We also think that this conclusion is underscored by
24 the fact that the legislature has expressly created a
25 post-election cure for signature mismatches but not

1 nonsignatures. And so under the, you know, ordinary canon of
2 *expressio unius*, that is compelling evidence that the exclusion
3 is intentional and must be given effect.

4 We are not aware of any specific cases that address
5 this, but because this has been, you know, settled Arizona law
6 and seemingly uncontroversial, we're not surprised that there's
7 a lack of case law addressing what seems to be a very
8 straightforward reading of Arizona law.

9 THE COURT: If Arizona law did not prohibit such a
10 post-election cure period, would the Attorney General still
11 have objected to its inclusion in the Elections Procedure
12 Manual?

13 MR. ENSIGN: Your Honor, the Attorney General has not
14 conducted that analysis. Because it became very clear early on
15 in the analysis that Arizona law affirmatively precluded the
16 post-election cure for nonsignatures, he did not reach those
17 sort of policy considerations.

18 If that issue were ever presented, I think, you know,
19 consideration is an administrative burden, and the possibility
20 that more, not fewer, votes would be disqualified would all be
21 fair game. But that's not something the Attorney General has
22 specifically analyzed, because early on in the analysis it was
23 clear that Arizona law precluded it.

24 And it's also the case that the governor rejected this
25 post-election cure, so you would also need to know whether

1 the -- you know, the governor's position on this, who's not a
2 party here, for that ever to be accomplished through the
3 Election Procedure Manual.

4 THE COURT: So your answer is you don't know the
5 answer?

6 MR. ENSIGN: That's correct, Your Honor, because --
7 the Attorney General has not conducted that analysis because he
8 viewed it as moot, and has not -- and has not revisited that
9 prior analysis.

10 THE COURT: Why isn't the State's interest in
11 preventing potential voter and election fraud not advanced by
12 additional procedures to verify whether an unsigned mail ballot
13 was submitted by the voter?

14 MR. ENSIGN: Your Honor, as an initial matter, you
15 might actually get less cure and not more, as Professor Atkeson
16 explained.

17 But as a more general matter, the availability of the
18 cure period is likely to provide extremely little probative
19 evidence of anything at all. In the vast majority of
20 elections, there won't be fraud and -- or fraud of any
21 meaningful character, and so it will typically produce evidence
22 that goes nowhere.

23 But if you were to have an election, for example,
24 where all of a sudden the number of unsigned ballots jumps
25 from .1 percent to 5 percent, there, you know, you would

1 rightly suspect fraud, and there the investigators would not be
2 limited to, you know, five business days after the election to
3 investigate voters but would rightly concentrate their efforts
4 there.

5 So it's conceivable that a post-election cure period
6 might produce some volume of additional probative evidence, but
7 we think it would be de minimis at best and is unlikely to
8 produce anything that is meaningfully advancing the State's
9 interest.

10 THE COURT: So you're saying that there is no
11 legitimate substantial or any evidence of mail-in voter fraud,
12 and therefore, there's no probative value in checking up on
13 unsigned ballots? Is that what you just said?

14 MR. ENSIGN: No, Your Honor. It's the case that in
15 most elections, that will not be the case. You know, we have
16 submitted evidence, for example, of the recent elections in New
17 Jersey where there is very strong evidence of mail-in voter
18 fraud.

19 You know, I think you can also look to the North
20 Carolina, I believe, Ninth Congressional District of 2018,
21 where they affirmatively had to throw out the election results
22 and leave, you know, 800,000 people completely without
23 representation in Congress because of fraud in mail-in vote
24 process.

25 But those are not going to be typical, and so where --

1 having a post-election cure in every single instance in most
2 cases is going to lead to a de minimis amount of evidence that
3 simply is not probative to anything that people are looking at.

4 THE COURT: Okay. So what you just said is the risk
5 of voter fraud is so de minimis that you're not going to get
6 any significant value from having the ballots that are unsigned
7 followed up on?

8 MR. ENSIGN: Not exactly, Your Honor. I think it's
9 the case that in most elections, fraud will not be suspected
10 and therefore not be investigated. And in those -- and in
11 those cases, a post-election cure period will not produce
12 evidence that anyone will be looking at.

13 THE COURT: And you're saying that if there is voter
14 fraud, it's likely to be evident from some other outside
15 source, such as a large number of unsigned ballots, which would
16 lead someone to follow up with an investigation?

17 MR. ENSIGN: Yes, Your Honor. I think in that case,
18 they certainly would, and they wouldn't limit themselves to
19 five business days; but instead they would, you know, cast a
20 broad net and likely go to a lot of those voters to see if they
21 had sent in their ballots but failed to sign it.

22 THE COURT: So the State isn't hindered by its lack of
23 knowledge of who's mailed in those unsigned ballots because the
24 State doesn't believe the risk of voter fraud is anything more
25 than de minimis? Is that what you just said?

1 MR. ENSIGN: In most cases, fraud will not be
2 suspected, and thus the post-election cure will not turn up
3 evidence that serves the State -- that is relevant to an
4 investigation of voter fraud.

5 THE COURT: If a voter completes her ballot in red
6 ink, contrary to the ballot instructions, do election officials
7 offer a post-election cure period?

8 MR. ENSIGN: No, Your Honor, although this is an
9 interesting one where Arizona law has a separate provision.
10 ARS 16-621 A permits the vote -- the county recorder to copy
11 that ballot in red ink into a duplicate ballot in black ink and
12 count that.

13 And so in that circumstance, there isn't an offered
14 opportunity to cure. The board itself, or the county recorder,
15 will simply -- and it has to be agreed upon by the bipartisan
16 board, but they will simply carry over the intended votes to a
17 different ballot and allow that vote to count that way.

18 THE COURT: The State argues that the *Anderson/Burdick*
19 framework governs all constitutional challenges to election
20 regulations, but plaintiffs cite several cases applying the
21 *Mathews v. Eldridge* procedural due process framework to
22 election procedures related to absentee voting.

23 How is this case different than those cases cited by
24 the plaintiffs?

25 MR. ENSIGN: The primary difference, Your Honor, is

1 all of those cases are outside of the Ninth Circuit. And the
2 Ninth Circuit has been very clear for the last decade that
3 everything is folded into the *Anderson/Burdick* analysis.

4 That's clear in *Dudum*, which refers to as a single
5 analytical framework. *Soltysik* says each is folded into the
6 *Anderson/Burdick* inquiry instead. You know, both of the
7 *Arizona Libertarian Party* cases that we cited repeats either
8 the single analytical framework, and that's *Arizona Libertarian*
9 *Party versus Reagan*, or the *Hobbs* one considered each of
10 plaintiffs' constitutional challenges under the
11 *Anderson/Burdick* balancing framework.

12 You know, notably, the *Lemons* case as well does not
13 treat it as a distinct constitutional claim, but simply moves
14 on from -- you know, includes, as a single paragraph or so, the
15 procedural due process analysis.

16 And so, you know, within the Ninth Circuit, and
17 certainly for the last ten years, it's been very clear that
18 everything is folded into *Anderson/Burdick* and independent
19 claims are not permitted.

20 Now, *Saucedo* is District of New Hampshire; their
21 Florida cases are in the Eleventh Circuit. So other circuits
22 may have a different standard, but this Court is obviously
23 bound by the Ninth Circuit 's clear explication that everything
24 is folded into *Anderson/Burdick*.

25 THE COURT: Does the State have an interest in denying

1 post-election cure period for ballots missing signatures that
2 is distinct from the State's interest in requiring mail ballots
3 to be signed generally?

4 MR. ENSIGN: Yes, Your Honor. I think there's two
5 interests that we have pointed to in particular. One is the
6 administrative burden, which is best shown by the Roads/Pima
7 County declaration. And the other is that the potential that a
8 post-election cure period may actually lead to greater
9 disqualification of votes and thereby decrease voter turnout,
10 and the State has an interest in maximizing voter turnout
11 rather than actively hindering it.

12 THE COURT: Well, it would decrease voter turnout
13 because you didn't check their signatures; is that what you're
14 saying?

15 MR. ENSIGN: It would -- Professor Atkeson has
16 expressed the view that the availability of the post-election
17 cure period may actually increase the number of disqualified
18 votes. And that follows mostly from the intuition of, if
19 people know the outcome of the election, or likely outcome, and
20 think it isn't close, they may have not availed themselves to
21 the post-election cure period. And you may actually have --

22 THE COURT: Let me interrupt you. I've read all that.

23 MR. ENSIGN: Yes.

24 THE COURT: My question -- let me ask you this: If
25 it's a close election, then it becomes a very important vote,

1 doesn't it?

2 MR. ENSIGN: It may, Your Honor, although it's also
3 the case in Arizona that you may not know within five business
4 days if it's close or not. You know, certainly, five business
5 days out, I don't know that -- if the Sinema and McSally race
6 had shaped up or if it was clear who had won, you know. In
7 Secretary Hobbs and her opponent Gaynor, it may not have even
8 been clear. So even if you know that, you may not --

9 THE COURT: Well, let me interrupt you.

10 MR. ENSIGN: Yes.

11 THE COURT: First of all, my question just asked yes
12 or no.

13 If it's a close election, then it may become a very
14 important vote; true?

15 MR. ENSIGN: Yes, Your Honor.

16 THE COURT: All right. Thank you.

17 All right. Do you have anything else you want to add?

18 MR. ENSIGN: Yes, very quickly, Your Honor.

19 I think it's important to focus on that plaintiffs
20 have admitted that their claim is necessarily facial in nature,
21 which follows from the fact that they don't challenge any
22 applications of it. Given that admission, and because this is
23 neither a First Amendment nor abortion case, the facial inquiry
24 is governed by *Salerno*, which requires that there be no set of
25 circumstances under which the challenged laws are

1 constitutional in order to obtain any facial relief.

2 We can think of two obvious circumstances where there
3 would be constitutional applications. One, Your Honor flagged
4 in a question. If a voter has, you know, three weeks of notice
5 and opportunity to cure pre-election, there's no reason to
6 believe that it's an unconstitutional burden to not give them a
7 post-election cure.

8 And, secondly, if a voter intentionally doesn't
9 vote -- or sign their ballot as a form of protest, there's no
10 reason why the Constitution demands a post-election Mulligan.

11 And so given the existence of constitutional
12 application, we think that plaintiffs' claim necessarily fails
13 under the facial standard. And because all they have is facial
14 claims, that is ultimately dispositive of this case as well.

15 THE COURT: Okay.

16 All right. Does anybody else have anything they want
17 to argue or bring up before we recess?

18 MR. STAFFORD: Your Honor, I'd ask for the
19 opportunity -- (audio interference).

20 THE COURT: Well, let's take a recess then and come
21 back at 11:00 o'clock.

22 MR. STAFFORD: Yes, Your Honor.

23 THE COURT: All right. Thank you.

24 (Recess taken, 10:40 a.m. to 11:00 a.m.)

25 THE COURT: Are we ready to proceed, Mr. Stafford?

1 MR. STAFFORD: Yes, Your Honor. Thank you for the
2 opportunity to --

3 THE COURT: Hold on. Hold on. Whoa, whoa.
4 You're not coming through clearly. You're cutting
5 out. So --

6 MR. STAFFORD: Is this any better?

7 THE COURT: That's a little better, yeah.

8 MR. STAFFORD: Okay. Thanks for the Court's patience
9 with the technology here.

10 First, just a factual point to clarify the State's
11 argument. Plaintiffs' claim as set out in the complaint,
12 paragraph --

13 THE COURT: You're better, but you're still not right.
14 Did you do something differently?

15 MR. STAFFORD: I have to choose which computer that
16 I'm on, given -- (audio interference) the other one, if the
17 Court will bear with me. Give me just one second, I'll try to
18 switch back.

19 THE COURT: Why don't you do that, because it's not
20 coming across well.

21 I don't see -- is Mr. Ensign on? Are you on the line?

22 THE COURTROOM DEPUTY: Judge, it looks like his
23 microphone is muted.

24 THE COURT: Mr. Ensign?

25 MR. ENSIGN: Apologies, Your Honor. Can you hear me

1 now?

2 THE COURT: I can hear. I just want to make sure
3 you're on the line.

4 MR. ENSIGN: I am, and I apologize for being on mute.

5 THE COURT: Not a problem. I just didn't want to
6 start without you.

7 MR. ENSIGN: Thank you, Your Honor.

8 MR. STAFFORD: Great, okay. I am back on the line,
9 and hopefully this is much clearer.

10 THE COURT: Yeah, that's much better. Thank you.

11 MR. STAFFORD: Okay. Very good.

12 All right. So then let me begin just with a quick
13 factual clarification from the State's argument regarding the
14 nature of plaintiffs' claims and position on the status of
15 Arizona law.

16 Plaintiffs' claim, as set out in complaint
17 paragraphs 47 through 50, is not that Arizona law affirmatively
18 prohibits a post-election cure period, and that, to our
19 understanding, is certainly not the point of view of the
20 Secretary of the State.

21 Our point is that Arizona, as a practical matter, is
22 not providing a post-election cure period that we seek, and
23 that it's constitutionally compelled to do so given that it is
24 already providing the same cure period for other voters. What
25 the State can't do is pick and choose.

1 With regard to standing, first, I would note that the
2 Court, of course, will recall in *DNC versus Reagan*, decided a
3 couple of years ago by Your Honor, the Court held with regard
4 to the same three plaintiffs that those parties had both
5 organizational and associational standing. So, of course, that
6 was a ballot collection case. The facts of the case were
7 somewhat different.

8 But all of the reasons that those parties had standing
9 in that earlier matter really apply with equal force as well
10 here to some of the foundational arguments that the State was
11 proffering.

12 With regard to the fact that we have not named
13 individual plaintiffs in this lawsuit, again, only one party
14 need have standing, and it's Ninth Circuit authority, *National*
15 *Council of La Raza*, 800 F.3d 1032, that in some instances
16 there's no purpose to be served by requiring an organization to
17 identify by name the member or members injured.

18 And here, precisely who will be disenfranchised by the
19 operation of the inadequate cure period cannot be known until
20 the election, in fact, occurs.

21 So the State certainly knows what our arguments are.
22 It certainly is capable and has responded to those arguments.
23 There's no need to have a specific individual voter, given the
24 nature of this claim.

25 I would also note that the State's position was that

1 no one has standing to seek prospective relief. And that's an
2 extraordinary proposition, that there could be a forthcoming
3 election with an unconstitutional law and no one could seek
4 prospectively to prevent the harm that that law would occur.
5 That's wrong, and it has to be wrong.

6 And, indeed, I would submit that it's telling that the
7 State both says it's too early to bring the lawsuit and it's
8 too late under the *Purcell* doctrine, and that no party has
9 standing to seek prospective relief because voters haven't yet
10 forgotten to sign their ballot, even though this happens every
11 election to thousands of voters. And that just can't be right.

12 Let me turn to the State's interests. The State,
13 during its argument, in response to Your Honor's questions,
14 said that fraud is not typical. And, indeed, the State in the
15 papers before the Court has not pointed to a single instance of
16 voter fraud in the history of Arizona, let alone one involving
17 an unsigned mail ballot affidavit.

18 And regardless, the State says, fraud is so
19 vanishingly rare that a post-election cure period isn't needed,
20 because even if this issue came up, the State could determine
21 whether fraud occurred through some mechanism other than
22 reviewing voter signatures on ballots.

23 And I would submit that what the State is really
24 saying is that it throws out several thousand ballots in every
25 election because voters haven't verified their identity, even

1 though it really has no reason to believe that there's voter
2 fraud.

3 And that severely undercuts the State's contention
4 that it has legitimate interests in failing to provide a cure
5 period given what it has suggested about the underlying regime
6 that that cure period is needed for.

7 The Pima County declaration, the State relies heavily
8 on that. And I would commend to the Court's attention review
9 of that declaration itself, Mr. Roads' declaration. Because in
10 reality, the Pima County Recorder offered a very narrow factual
11 statement about the impact of the post-election cure period.

12 And what the recorder says is that with regard to an
13 in-person verification process for unsigned mail ballots,
14 quote: This will result in substantially more effort than
15 occurs for a voter to confirm their signature. A voter can
16 call our office to confirm their signature.

17 The recorder does not indicate that additional staff
18 would be required to process, that there would be additional
19 cost to the county to provide this cure period, and certainly
20 not that the election results could not be certified timely if
21 this cure period was provided just as it is for all other
22 ballots.

23 And so I would commend the review of the Pima County
24 Recorder's declaration with the much more detailed declaration
25 from the Coconino Recorder's office.

1 And then finally, I would note that it was the State's
2 Secretary of State who not only proposed the very cure period
3 that we seek, but who counsel indicated during argument today
4 believes it to be constitutionally required on the facts before
5 the Court.

6 The Secretary of State is the state official most
7 familiar with this machinery, the burden on the voters, and
8 most importantly, the burden on state election officials. In
9 other words, the person who is familiar, the most familiar with
10 precisely the analysis required by *Anderson/Burdick*. Of
11 course, the State will and must make its own determination.

12 But it's the Secretary who's most familiar, of all the
13 parties before the Court, with the state law in question, with
14 the operation of the state's election administration apparatus,
15 and her statement of agreement with the Court -- with the
16 plaintiffs' view is remarkable. And her judgment based on her
17 assessment of the relevant facts as the state's chief election
18 officer should be given significant weight as the Court reviews
19 this matter.

20 Thank you.

21 THE COURT: All right. Thank you.

22 I'll take it under advisement and issue a ruling
23 relatively soon.

24 Also, I have taken under advisement the motion to
25 preclude certain opinions from the Atkeson affidavit. And

1 those two rulings will come out soon.

2 Thank you very much. Your arguments were good and
3 very helpful. We'll stand in recess.

4 MR. STAFFORD: Thank you, Your Honor.

5 (Proceedings concluded at 11:09 a.m.)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arizona Democratic Party, et al.,
Plaintiffs,
v.
Katie Hobbs, et al.,
Defendants.

No. CV-20-01143-PHX-DLR
**AMENDED NOTICE REGARDING
AUGUST 18, 2020 HEARING¹**

In addition to any prepared remarks, arguments, or presentations the parties wish to make, the Court requests that the parties come to the August 18, 2020 hearing prepared to discuss the following matters.²

For Plaintiffs:

1. “An association has standing to bring suit on behalf of its *members* when its *members* would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual *members* in the lawsuit.” *Friends of the Earth Inc. v. Laidlaw Env’tl. Servs.*, 528 U.S. 167, 181 (2000) (emphasis added). The briefs argue that the Arizona Democratic Party (“ADP”),

¹ This notice amends the version at docket entry 99 by adding some additional questions to the parties.

² These questions are not exhaustive or intended to limit the parties’ presentations. They are designed to focus attention on some of the Court’s initial concerns based on a review of the briefs, with the goal of facilitating a more productive hearing.

1 the Democratic National Committee (“DNC”), and the Democratic Senatorial
2 Campaign Committee (“DSCC”) (collectively “Plaintiff organizations”) each has
3 “members or constituents” who would have standing to challenge the adequacy of
4 Arizona’s current cure procedures for unsigned mail ballots. Is there a difference
5 between a “member” and a “constituent?” If so, what is that difference? What case
6 allows associational standing to be derived from constituents (as Plaintiffs use that
7 term) rather than members?

- 8 2. Who specifically are considered members of each of the Plaintiff organizations?
- 9 3. To be a “member” of the Plaintiff organizations must a person be registered with
10 the Democratic Party in Arizona?
- 11 4. Is any voter who casts a vote for any Democratic candidate considered a member of
12 any or all Plaintiff organizations? For example, if a registered Republican or
13 Independent voter in Arizona votes for a Democratic candidate, is that person
14 considered a member of any Plaintiff organization (and if so, which one(s))? If a
15 registered Democratic voter chooses to vote for non-Democratic candidates, is that
16 voter still considered a member of any Plaintiff organization? Is a split-ticket voter
17 a member of both major parties?
- 18 5. Why are no voters (for example, voters who had mail ballots rejected because of
19 missing signatures in *past* elections) joined as plaintiffs in this case?
- 20 6. Is it Plaintiffs’ position that, based solely on the number of mail ballots rejected for
21 missing signatures, at least some of those ballots must have been cast by registered
22 Democratic voters, or that at least some of those ballots must reflect votes for
23 Democratic candidates, regardless of the voters’ party affiliations? If so, is there
24 statistical evidence in the record that substantiates this position?
- 25 7. For purposes of organizational standing, would the organizational mission of the
26 Plaintiff organizations (namely, to elect Democratic candidates to public office) be
27 frustrated by Arizona’s current signature regime if more ballots casting votes for
28 non-Democratic candidates are rejected for missing signatures than ballots casting

1 votes for Democratic candidates? Stated differently, in order to establish
2 organizational standing, do Plaintiffs need to show that their preferred post-election
3 cure period would net votes for Democratic candidates relative to their competitors?
4 If not, why?

5 8. With respect to diversion of resources: (a) what specific resources will the Plaintiff
6 organizations expend in the absence of their preferred post-election cure period,
7 (b) from where will those resources be diverted, and (c) what will those resources
8 be used for?

9 9. Plaintiffs argue that the challenged law is the “Inadequate Cure Period,” which they
10 define as “any requirement under Arizona law that election officials reject unsigned
11 mail ballot envelopes without offering the voter the chance to correct the missing
12 signature until five days after election day[.]” (Doc. 96 at 9.) The current
13 requirement under Arizona law is that election officials reject unsigned mail ballot
14 envelopes that are not cured by 7:00pm on election day. Therefore, Plaintiffs are
15 necessarily challenging the requirement that voters sign their ballots within this
16 timeframe.³ Assume (without arguing with the premise) that the burdens relevant
17 to the Court’s inquiry are the burdens on voters to comply with Arizona’s current
18 requirement of signing a mail ballot by no later than 7:00pm on election day. What,
19 if anything, about signing a mail ballot by no later than 7:00pm on election day is
20 difficult or burdensome for voters?⁴

21 ³ Whether Plaintiffs choose to articulate their *Anderson/Burdick* claim as a challenge
22 to the requirement placed on voters (sign by 7:00pm on election day), or to the State’s
23 enforcement of that requirement (reject ballots that do not comply) is of no moment. To
24 say that the State cannot enforce its current requirement is necessarily to say that the
25 requirement itself, in its present form, is unlawful. In either case, the fundamental nature
26 of Plaintiffs’ *Anderson/Burdick* claim is that what Arizona currently requires voters to do
27 (sign by 7:00pm on election day) is constitutionally infirm.

28 ⁴ The Court is looking for specific, concrete examples and not a generic reference
to “disenfranchisement.” If the burden imposed by a challenged voting procedure were
measured by the consequence of non-compliance, then every voting prerequisite would be
subject to the same degree of scrutiny (presumably strict) because any time a voter fails to
comply with a state’s voting prerequisites, the result is the same—her vote does not count.
But “not every voting regulation is subject to strict scrutiny.” *Pub. Integrity Alliance, Inc.*
v. City of Tucson, 836 F.3d 1019, 1024 (9th Cir. 2016). Instead, the degree to which the
Court scrutinizes the propriety of an election law changes depending on the nature and
magnitude of the burdens imposed. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). It

- 1 10. Roughly one tenth of one percent of mail ballots are rejected because of missing
2 signatures, meaning more than 99% of voters who vote by mail successfully comply
3 with Arizona’s current requirement without a post-election cure period. Why is this
4 not probative evidence that it is easy to comply with Arizona’s current law? If a
5 voting procedure is significantly burdensome, it is not reasonable to expect that
6 more than a fraction of one percent of voters would fail to overcome those burdens?
- 7 11. Is it Plaintiffs’ position that the Constitution requires at least a 5-day post-election
8 cure period for ballots missing signatures? If so, what authority establishes 5 days
9 as the constitutional minimum?
- 10 12. Alternatively, is it Plaintiffs’ position that the Constitution requires Arizona to treat
11 ballots with missing signatures the same as ballots with mismatched signatures, but
12 does not necessarily establish a minimum cure period duration? If so, does this
13 claim sound in equal protection? Could Arizona provide a shorter post-election cure
14 period so long as it extends the same cure period to ballots with missing and
15 mismatched signatures alike? Could Arizona extend a longer cure period to ballots
16 with mismatched signatures so long as it extends at least a 5-day post-election cure
17 period to ballots missing signatures?
- 18 13. If a voter receives notice of a missing signature three weeks before the election yet
19 fails to cure that error by election day, is that voter still entitled to an additional 5
20 days after the election to do so? If not, then isn’t Plaintiffs’ claim better
21 characterized as an as-applied challenge?
- 22 14. Are there other voting requirements or prerequisites for which the Constitution
23 requires a post-election cure period? For example, in an election for a single-

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26 therefore is not appropriate to equate the burden of complying with a voting law to the
27 consequences that follow when that burden is not overcome. For example, in *Crawford v.*
28 *Marion Cty. Election Bd.*, 553 U.S. 181, 198 (2008), the Supreme Court characterized the
burdens relevant to the challenged voter identification law as “the inconvenience of making
a trip to the [Indiana Bureau of Motor Vehicles], gathering the required documents, and
posing for a photograph,” to obtain the required identification. The Supreme Court did not
characterize the relevant burdens as the consequence of not obtaining the required
identification (which likewise would have been “disenfranchisement,” as Plaintiffs use that
term).

1 occupant office, a ballot typically instructs the voter to vote for only one candidate.
2 If the voter mistakenly votes for more than one candidate, does the Constitution
3 require Arizona to make a reasonable effort to contact the voter and provide a post-
4 election period during which the voter can cure her improperly marked ballot?

5 15. Is it Plaintiffs' position that a ballot is a legally valid vote even if it is unsigned, or
6 that an unsigned ballot is legally invalid but could easily be made legally valid with
7 the introduction of additional procedural safeguards? If the former, what other
8 voting prerequisites or instructions may voters disregard and still have their votes
9 be deemed legally valid? At what point in a state's election regime does a vote
10 become legally valid for constitutional purposes?

11 16. As a general matter, is a signature a constitutionally permissible method of
12 verifying that an absentee ballot was cast by the voter to which that ballot belongs?

13 17. Although there have been recent changes to the way in which Arizona treats ballots
14 with *mismatched* signatures, it has long been the law in Arizona that a mail ballot
15 without a signature will not be counted. Why are Plaintiffs only now challenging
16 this practice? Why doesn't the fact that Plaintiffs seemingly acquiesced to this
17 practice in numerous prior elections undermine their claim that they will be
18 irreparably harmed if the practice is not enjoined before this next election? Stated
19 differently, if ballots have been rejected because of missing signatures for decades,
20 what has changed to make the harm suddenly irreparable?

21 18. Plaintiffs discuss the potential impact of the COVID-19 pandemic on the equities
22 in this case. Is this issue determinative, or would Plaintiffs' arguments be the same
23 in the absence of the pandemic?

24 19. The State's expert, Lonna Atkeson, recites several facts upon which her opinions
25 are based. Do Plaintiffs object to the accuracy or admissibility of her underlying
26 facts, or is their objection directed only to her opinions?

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1 **For Defendants the Apache, Coconino, and Navajo County Recorders:**

- 2 1. Have the settlement agreements reached in *Navajo Nation v. Hobbs*, CV-18-
3 083329-PCT-DWL been breached? If so, are there efforts underway to compel
4 compliance with those agreements?
- 5 2. The Apache, Coconino, and Navajo County Recorders are not plaintiffs in this case,
6 nor is the Navajo Nation. Consequently, are the settlement agreements reached in
7 *Navajo Nation v. Hobbs* relevant to this case and, if so, how?

8

9 **For Defendant Arizona Secretary of State:**

- 10 1. From the record, it appears that the Secretary of State previously supported, as a
11 matter of public policy, a 5-day post-election cure period for ballots with missing
12 signatures. There is a difference between sensible public policy (about which
13 reasonable minds might disagree) and constitutionally mandated policy (which
14 places the issue beyond debate by the political actors typically assigned
15 responsibility for balancing competing interests and crafting elections
16 procedures). The Secretary has thus far declined to take a position on Plaintiffs'
17 claims, but as Arizona's chief elections official, the Court would value her input
18 and expertise if she is willing to provide it. Does the Secretary believe Arizona's
19 current procedure regarding mail ballots with missing signatures is
20 unconstitutional? If so, is it the Secretary's position that the Constitution
21 requires a 5-day post-election cure period, or that the Constitution requires equal
22 treatment of ballots with missing and mismatched signatures but does not
23 establish a constitutional minimum cure period?

24

25 **For Defendant the State of Arizona:**

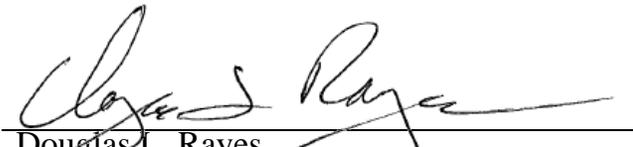
- 26 1. Who, in the State's view, would have standing to challenge the adequacy of
27 Arizona's current cure procedures for mail ballots missing signatures? Would any
28 early mail voter have standing? What about an early mail voter who had her ballot

- 1 rejected due to a missing signature in a prior election? Could such a voter sue to
2 enjoin the procedure on a prospective basis?
- 3 2. Do the State, Secretary of State, or County Recorders have data concerning the party
4 affiliations of voters whose ballots have, in past elections, been rejected because of
5 missing signatures?
- 6 3. What does the State consider to be a “signature” triggering the 5-day post-election
7 cure period for mismatches?
- 8 4. What is the bare minimum type of mark a voter can make and still have that ballot
9 be considered “signed?” For example, if a voter marks the ballot with an “X,” will
10 that mark be considered a mismatch or a missing signature?
- 11 5. Have the settlement agreements with the Navajo Nation reached in *Navajo Nation*
12 *v. Hobbs* been breached?
- 13 6. Although the State now offers policy-based justifications for not extending the same
14 post-election cure period to ballots with missing signatures, it appears from the
15 record that the Attorney General’s initial objection to the inclusion of such a post-
16 election cure period in the Elections Procedures Manual was based on his
17 interpretation of Arizona law, not policy disagreements. Specifically, the Attorney
18 General believes that Arizona law prohibits a post-election cure period for ballots
19 missing signatures. Please explain this interpretation of Arizona law. Has any
20 Arizona court issued a decision interpreting Arizona law as it relates to this issue?
- 21 7. If Arizona law did not prohibit such a post-election cure period, would the Attorney
22 General still have objected to its inclusion in the Elections Procedures Manual?
- 23 8. Why isn’t the State’s interest in preventing potential voter and election fraud not
24 *advanced* by additional procedures to verify whether an unsigned mail ballot was
25 submitted by the voter? For example, if the State offered a post-election cure period
26 for unsigned ballots and received confirmation from some voters that they did not,
27 in fact, submit the ballots in question, would that not *help* the State uncover potential
28 instances of voter impersonation fraud? Under current law, the State would never

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- know whether those unsigned ballots were, in fact, cast by the voter herself. Doesn't that blindness hinder, rather than advance, the State's fraud-avoidance interests?
9. If a voter completes her ballot in red ink, contrary to the ballot instructions, do election officials offer a post-election cure period? If so, why?
10. The State argues that the *Anderson/Burdick* framework governs all constitutional challenges to election regulations, but Plaintiffs cite several cases applying the *Matthews v. Eldridge* procedural due process framework to election procedures related to absentee voting. How is this case different than those cited by Plaintiffs?
11. Does the State have an interest in denying a post-election cure period for ballots missing signatures that is distinct from the State's interest in requiring mail ballots to be signed, generally? If so, what is the State's distinct interest in denying a post-election cure period?

Dated this 14th day of August, 2020.



Douglas L. Rayes
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

The Arizona Democratic Party; The
Democratic National Committee; DSCC,

Plaintiffs,

v.

KATIE HOBBS, in her official
capacity as Arizona Secretary of State, et
al.,

Defendant.

Case No. CV-20-01143-PHX-DLR

Report of Lonna Atkeson, PhD

July 31, 2020

I. Statement of Inquiry

1. I have been retained as an expert by the State of Arizona in the lawsuit Arizona Democratic Party et al v. Katie Hobbs (“the complaint”) to examine the procedures used by Arizona and other states when ballots are returned by mail and are missing a signature.

II. Background and Qualifications

2. I am a Professor of Political Science at the University of New Mexico. I earned my PhD at the University of Colorado, Boulder in 1995. Since 1995, I have been employed by the University of New Mexico, and have been a Professor since 2006. At the University of New Mexico, I also direct the Center for the Study of Voting, Elections and Democracy (since 2010), and the Institute for Social Research (since 2016).

3. I study American politics including election science, election administration, survey methodology, public opinion, political behavior, gender, and race and ethnicity. I have written over 50 articles and book chapters, dozens of technical reports, monographs, amicus curiae briefs and other works on these topics. Many of my peer reviewed articles are published in top journals in my field, including *the American Political Science Review*, *the American Journal of Political*

Science, the Journal of Politics, Political Analysis, Electoral Studies, Election Law Journal, Political Research Quarterly, American Politics Quarterly, Political Behavior, Social Science Quarterly, etc., and several articles, book chapters, reports and briefs speak specifically to the election ecosystem, including election implementation. I have spent countless hours observing elections since 2006 from start to finish, including attending poll worker training, observing voting, observing the VBM voter process, the provisional process, chain-of-custody process, and postelection audits, *etc*; and, in 2010 recreated an election to test the reliability of voting machines and to assist in promulgating rules for postelection audits. I also have written or co-edited 4 books, two of which bear directly on my expertise in election administration. The first is a co-authored book with R. Michael Alvarez and Thad Hall entitled, *Evaluating Elections: A Handbook of Methods and Standards* (Cambridge, 2013). The second is a coedited book with the same set of authors on election audits, entitled *Confirming Elections: Creating Confidence and Integrity through Election Audits* (Palgrave, 2012).

4. In addition, I have worked as a consultant for the Department of Defense, Federal Voting Assistance Program (FVAP), and worked with private companies to assess the Election Administration Voting Survey (EAVS), a national survey of county and state election administration data for the Election Assistance Commission (EAC). I have testified at legislative hearings, EAC hearings, and have been asked to advise legislators on election reforms. My work in New Mexico that partners with local and state elected officials to improve the conduct of elections has led to a number of external awards from groups such as Common Cause and Verified Voting. My research has been supported by the National Science Foundation, the Pew Charitable Trusts, the Thornburg Foundation, the Galisano Foundation, the JEHT Foundation, Bernalillo County, the New Mexico Secretary of State, and the New Mexico Department of

Transportation. I am regularly asked to comment on surveys, election administration, elections, and American politics to the local and national press and serve as the election analyst for KOB-TV, our local NBC affiliate.

5. My curriculum vitae for the last 10 years, including all publications, is attached as

Appendix A.

6. In the last four years, I submitted an expert report in the following (1) Driscoll, et al v. Stapleton. Corey No DV 20-0408 (testifying); (2) *Voto Latino, et al. v. Hobbs*, No 2:19-cv-05685-DWL 2020; (3) in *Holmes, et al. v. Moore, et al.*, No. 18-cv-15292 (Wake Cnty. Sup. Ct.); (4) *Curling, et al. v. Brian Kemp, et al.*, C.A. No. 1:17-CV-2989-AT, 2018; (4) *Greater Birmingham Ministries, et al., v. John Merrill*, C.A. No. 2:15-cv-02193-LSC, 2015-2018 (testified).

7. I am being compensated at an hourly rate of \$225.

III. Data and Sources

8. I reviewed information provided by election officials and County Recorders' offices in Arizona obtained through public records requests, as well as certain of their declarations and discovery responses in this case and note those sources throughout this report. I also examined Arizona statutes, materials on the Secretary of State's ("SOS") website (e.g. *2019 Election Procedures Manual*, voter turnout statistics) and on the Arizona Clean Elections website, and websites of County Recorders especially their VBM ballot envelope and instructions.¹ In addition, I examined the Election Assistance Commission's Election Administration and Voting Survey (EAVS).²

¹ The Arizona Secretary of State's website is here: <https://azsos.gov/>, accessed April 27, 2020.

² The EAVS data can be found here: <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>, accessed May 1, 2020.

IV. Election Administration in Arizona

9. Arizona is considered a state election leader in their vote-by-mail (VBM) programs and was praised by President Obama's *Presidential Commission on Election Administration* (referred to as the *Commission*) in this area.^{3 4} Arizona, in keeping with national best practices, has a variety of options to ensure access to the ballot for all of its citizens, including those that make mistakes on their VBM ballot such as a signature mismatch or a missing signature.

10. The *Commission* recommends a number of best practices related to voter registration, access to the polls, polling place management, and voting technology. Arizona performs well on a number of these metrics, especially its VBM policies and procedures, but in other policies and procedures as well.

11. The *Commission* recommends that jurisdictions expand options for voting before Election Day.⁵ Arizona offers extensive pre-election voting through a large, no-excuse, and permanent VBM program that provides many ways to cast a ballot including through the mail, at in-person early voting locations, and through ballot drop-box stations.

12. In 2007, Arizona changed its election laws to allow for permanent VBM lists.⁶ The Permanent Early Voting List ("PEVL") file is the administrative list that voters are placed on when they request permanent early voting status. Permanent early voting status allows a voter to automatically receive a ballot by mail for every election in which they are eligible to vote.

Voters may register for PEVL online.⁷

³ *Report and Recommendations of the Presidential Commission on Election Administration*, available at: <http://web.mit.edu/supportthevoter/www/>, accessed April 9, 2020.

⁴ *Ibid* p. 27.

⁵ The *Commission* p. 54-58.

⁶ Technically speaking uniform and overseas voters are also absentee voters. However, for this report I only focus on regular absentee voters.

⁷ Voters can sign up for PEVL on-line at: <https://www.azcleaselections.gov/register-to-vote>, accessed May 1, 2020.

13. To register for PEVL electronically, voters update their registration through an online portal and change their status to permanent early vote status.⁸ Voters also have the option of submitting a written request by mail or in-person to their County Recorder to place themselves on the PEVL. Many county websites include specific forms for voters who want to submit their request via mail or in-person.⁹

14. Voters can also make a one-time request to VBM telephonically (but not be added to the PEVL) or in writing.¹⁰ Voters not on the PEVL can request a one-time ballot by mail up to 11 days before the election,¹¹ which must be mailed within five days of receiving the request.¹²

15. The vote at home model empowers voters because they get to decide when, how, and where they vote. It also empowers voters to research candidates with ballot in hand. To cast their ballot, voters do not have to take time off work or stand in line. Ballots in this model arrive automatically and voters, importantly, can choose how to cast their vote. They are not required to send in their ballot by mail, although that is the most commonly-utilized option. Altogether, 69% of voters have placed themselves on the PEVL list and in 2018, roughly 79% of early ballots were cast by mail.¹³ This demonstrates that most Arizonans have embraced the VBM model. Voters on the PEVL are sent a ballot through the mail between 24 and 27 days before the election and can return it by mail with postage paid return envelopes.¹⁴

⁸ The URL is Servicearizona.com, accessed May 1, 2020.

⁹ For example, see here: <https://recorder.maricopa.gov/site/faq.aspx> and here: https://recorder.maricopa.gov/pdf/PEVL_Request_Form.pdf, accessed May 1, 2020.

¹⁰ See A.R.S. § 16-156-542, & <https://azsos.gov/votebymail>, accessed July 31, 2020.

¹¹ See A.R.S. § 16-542(E).

¹² See A.R.S. § 16-542(C).

¹³ According to the Election Administration Survey 2,545,198 registered voters were on the PEVL list in 2018. According to the Secretary of State (<https://azsos.gov/elections/voter-registration-historical-election-data>) there were 3,716,263 registered voters for the 2018 election. 1,874,489 were cast early with nearly all of these returned by mail.

¹⁴ See <https://www.azcleelections.gov/how-to-vote/early-voting/ballot-by-mail>, accessed May 1, 2020 and A.R.S. 16-542(C).

16. Voters also can keep track of their ballot through an online portal that tells them when their ballot was processed, whether it was qualified or not, and if not qualified, the reason why. The ballot tracking system allows voters to monitor their ballot and help determine if they should request another ballot because theirs was lost or if they should vote provisionally on Election Day if their ballot has not arrived. A tracking system is also a recommendation of the *Commission* and is considered a safeguard to ensure that voters have every opportunity to have their vote counted and participate in the franchise.¹⁵

17. Arizona voters can also use the voter information portal to check their registration status on-line, find polling locations in their county, request an early ballot, verify their early ballot status, or verify their provisional ballot status. These tools make it easy for voters to stay informed about their ballot status and resolve ballot issues as they arise.

18. Besides VBM, which has included pre-paid postage since 2008, voters who do not trust the United States Postal Service (USPS) to deliver their ballot on time or cannot complete their ballot in time to have it delivered by the USPS by the Election Day receipt deadline have the option of dropping off their VBM ballot at any early or Election Day voting location within their county without standing in line or at drop-box locations.¹⁶ A ballot drop-box is a location where voters can drop-off their signed and sealed mail ballots. Arizona is one of only 10 states to use drop-boxes to expand opportunities for voter access and participation.¹⁷ ¹⁸ Importantly these are often placed in areas that have difficulty with mail service. For example, in Yuma County they

¹⁵ *Commission* p. 47.

¹⁶ See A.R.S. § 16-548, “Voters may drop off voted ballots at any polling site within the county during regular hours.”

¹⁷ The other states are California, Colorado, Kansas, Montana, Nebraska, Oregon, Utah and Washington, and New Mexico. For more information on drop-boxes see: <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#permit>, accessed May 1, 2020.

¹⁸ Arizona statute indicates voters may drop off vote ballots at any polling site (A.R.S. § 16-548) or designated ballot drop-box location (see *2019 Election Procedures Manual* P. 60-62 for an overview).

have three drop boxes all of which are placed in the “South County” where there is no personal mail service.¹⁹

19. This means that VBM voters may return their ballot through the mail in time for its receipt by the time polls close on Election Day, or deliver it to an in-person vote center, precinct, or drop-box within the county by the close of voting on Election Day. Thus, delivery options accommodate voters who want to wait up until Election Day to make their candidate choices. Voters also have the option of visiting an emergency vote center the 3 days before Election Day if life circumstances prevent them from being able to vote on Election Day.²⁰

20. When comparing Arizona’s VBM-regime to other states,²¹ as seen in Table 1 below, Arizona’s voting system provides more opportunities for voters to exercise the franchise than nearly all the states and provide the same opportunities as a few other all or mostly VBM states. These opportunities demonstrate a state that administratively encourages and supports voter participation. Indeed, registered voters in Arizona on the PEVL list have likely some of the lowest costs of voting relative to other states that do not have a permanent absentee VBM system and perhaps as cheap as Colorado, which is considered to have the most sophisticated all VBM operation in the country for casting absentee ballots.

21. There are also good fail safes for VBM voters in Arizona. For example, if a voter spoils their ballot or it does not arrive, voters can call their County Recorder office and request a new ballot be mailed to them, or if there is not enough time for a new ballot to be sent to the voter he or she can go to any early or Election Day vote center and vote in-person there or if in a precinct-

¹⁹ Email Communication with Yuma County Recorder, April 2, 2020.

²⁰ See A.R.S. § 16-411(B)(5) and page 65 of the *2019 Elections Procedure Manual*.

²¹ These data come from the National Conference of State Legislatures available at: <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>, accessed May 1, 2020 and data on VBM receipt deadlines from https://www.vote.org/absentee-ballot-deadlines/?gclid=Cj0KCQjwhZr1BRCLARIsALjRVQMOzMFOBkbo-qBvene1-AV3h91VBPjECzHs2xU4YWJtNOTpRdpqR38aAgVaEALw_wcB, accessed May 1, 2020

based Election Day model can go to their local precinct and vote in-person there. Voters can also just walk-in to any ballot center in their county within the 27 days before the election and on Election Day and request a new ballot and vote in-person.²²

22. Voters are also alerted by the County Recorder's office if there is a problem with their ballot such as a mismatching or missing signature. For ballots with matching signature problems, the State in September 2019 implemented a postelection 5 business day curing period to fix the problem. Ballots with missing signatures have to cure the problem by 7:00 PM on Election Day. In both these situations, consistent with the *2019 Election Procedures Manual*, Arizona election workers email, phone, mail, and/or text voters when there are problems with their ballot and provide them with information on how they can cure it.

23. Thus, it is very easy to vote in Arizona especially for permanent absentee voters because a ballot is automatically sent to them in every election in which they are eligible. These voters have many avenues available to them to cast a vote and many fail-safes to ensure their vote is counted. Indeed, when we consider Arizona's full array of voting opportunities, we find a full-service state that provides many ways for voters to cast their ballots.

24. In summary, voters can mail their ballots in postage paid envelopes in time to have it received by the County Recorder by 7:00 PM on Election Day, they can drop their ballot off at any in-person voting location within the county by 7:00 PM on Election Day or during early in-person voting operations, or can drop it off at drop-boxes across their county during the 27 days of early voting and up to 7:00 PM on Election Day. And, if voters lost or spoiled their ballot, they can go to a voting location up to Election Day and obtain a new ballot and vote in-person or if there is enough time call their local election official and obtain a new one through the mail.

²² For a good overview of these options see: <https://recorder.maricopa.gov/site/faq.aspx>, accessed May 1, 2020.

Voters can also choose to vote in-person at early vote centers, at emergency vote centers the 3 days before Election Day, or vote on Election Day at traditional precincts or vote centers. Voters with health issues can also request a ballot be delivered to them by special election boards.

Table 1. 50 State Absentee VBM Policies

State	Drop Off at any Early Voting Location	Drop off at any Election Day Voting Location	Ballot Drop-boxes	On-line System to Track VBM ballots	Pays for Post-age	Election Day or Before VBM Receipt Deadline	Signature Matching Problem Notification (# of days)	No Signature Notification (# of days)
Alabama						✓	NA	NA
Alaska	✓	✓		✓			NA	NA
Arizona	✓	✓	✓	✓	✓	✓	5	ED
Arkansas						✓	NA	NA
California	✓	✓	✓	*	✓		2 days prior to certification	2 days prior to certification
Colorado	✓	✓	✓	✓		✓	8	8
Connecticut						✓	NA	NA
Delaware				✓	✓	✓	0	0
Florida				✓		✓	2	2
Georgia						✓	ED	ED
Hawaii	✓	✓			✓	✓	5	5
Idaho				✓	✓	✓	0	0
Illinois							14	14
Indiana					✓	✓	0	0
Iowa				✓	✓		NA	NA
Kansas	✓	✓	✓		✓		0	0
Kentucky						✓	0	0
Louisiana						✓	NA	NA
Maine						✓	0	0
Maryland				✓			NA	NA
Massachusetts				✓		✓	ED	ED
Michigan						✓	ED	ED
Minnesota				✓	✓	✓	NA	NA
Mississippi						✓	NA	NA
Missouri					✓	✓	NA	NA
Montana	✓	✓	✓	✓		✓	1	1
Nebraska			✓	✓		✓	0	0
Nevada					✓		7	7
New Hampshire						✓	NA	NA
New Jersey							0	0
New Mexico	✓	✓	✓		✓	✓	NA	NA
New York							0	0
North Carolina	✓	✓					NA	NA
North Dakota				✓			0	0
Ohio				✓			7	7
Oklahoma						✓	NA	NA
Oregon	✓	✓	✓	✓	✓	✓	14	14
Pennsylvania						✓	0	0

Rhode Island					✓	✓	7	7
South Carolina				✓		✓	NA	NA
South Dakota						✓	0	0
Tennessee						✓	0	0
Texas							0	0
Utah	✓	✓	✓	✓	✓		7-14	7-14
Vermont						✓	NA	NA
Virginia						✓	NA	NA
Washington	✓	✓	✓	✓	✓		21	21
West Virginia				✓	✓		0	0
Wisconsin					✓	✓	NA	NA
Wyoming						✓	NA	NA
Total State	12	12	10	19	18	34	NA	NA

Note: ED stands for Election Day, NA stands for Not Applicable, these states do not rely on signature verification or signature verification alone to verify ballot eligibility.

* Some counties have ballot tracking.

V. Background to Arizona’s Curing Law

25. Prior to August 27, 2019 Arizona’s law was silent on what local election officials should do with VBM ballots that arrived but were missing a signature or the signature could not be verified. Although there was no statutory requirement to fix or “cure” these rejected ballots, election norms within Arizona led to every county instituting some sort of policy to handle these sorts of ballot problems. Some counties at the time allowed for a mismatched signature problem, but not a missing signature problem to be cured after Election Day.²³ These ballots were treated differently by election officials because ballots with mismatched signatures were seen as complete, but invalid ballots, while ballots with missing signature were seen as incomplete and invalid ballots.²⁴

26. This led to a lawsuit after the 2018 general election that requested that all ballots with mismatched signature across the state be treated the same way.²⁵ This led to a legislative change

²³ See Pima County Declaration by Christopher J. Road, Pima County Chief Deputy Recorder, July 11, 2020 who states they were one of the first counties to allow voters to cure their mismatch signature problem after Election Day.

²⁴ Ibid.

²⁵ See *Navajo Nation, et al. v. Hobbs, et al.*, 3:18-cv-08329-DWL

in the law in 2019 to institute a uniform statewide policy to mandate County Recorders to make meaningful attempts to contact voters to let them know their option to cure ballots with mismatched signature and to allow voters 5 business days after the election to cure the signature problem. The statute reads:

A. On receipt of the envelope containing the early ballot and the ballot affidavit, the County Recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on the elector's registration record. If the signature is inconsistent with the elector's signature on the elector's registration record, the County Recorder or other officer in charge of elections shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature. The County Recorder or other officer in charge of elections shall allow signatures to be corrected not later than the fifth business day after a primary, general or special election that includes a federal office or the third business day after any other election. If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold the envelope containing the early ballot and the completed affidavit unopened in accordance with the rules of the secretary of state.

27. Election practices in Arizona prior to this law did not treat missing signature and mismatched signature ballots the same way because County Recorders historically viewed these two types of ballot problems differently.²⁶ In the case of a missing signature the ballot has always been defined as incomplete and invalid because it does not satisfy the minimal requirement to verify and count the ballot. To rectify the problem voters must either sign the old ballot or submit a new signed replacement ballot for processing. Unlike ballots with mismatched signature problems, ballots with missing signatures cannot simply receive a voter's verbal confirmation for continued processing, each absentee ballot must be signed and verified to be counted as the signature and signature verification are the only authentication process required by Arizona law. Once a mismatched signature is confirmed it can be counted, but a ballot without a signature cannot be verified because a voter must physically sign their ballot affidavit with a wet signature and then be verified.

²⁶ Pima County Chief Deputy Recorder, Ibid.

28. Because of these structural differences between the two types of ballot problems, voters who did not sign the ballot have never been afforded the opportunity to cure their ballot after Election Day.²⁷ For example, Pima County Chief Deputy Recorder Road assigns both types of ballots to their problem ballot team, but the disposition process for each type of ballot problem are different.²⁸ Pima is a large county with 393,352 counted ballots in 2018.²⁹ In the case of a missing signature, a member of the problem ballot team enters the absentee ballot system and identifies that the voter needs a replacement ballot sent to them.³⁰ A letter, independent of the replacement ballot, is also sent to the voter, which explains that the ballot was incomplete and invalid because it did not have a signature and therefore they will be receiving a replacement ballot on which they should vote and resubmit.³¹

29. This letter also includes information on the Election Day receipt deadline required for their replacement ballot to be counted and is sent the same day the ballot is identified as a problem.³² The replacement ballot is sent under separate cover by a vendor who is required to send it no later than the second business day after it was invalidated.³³

30. If it is too late for a replacement ballot to arrive by mail, the ballot problem team attempts to contact the voter by phone, email and text to alert the voter of the problem.³⁴ If they are able to contact the voter they explain the problem and advise them to go to any in-person early or

²⁷ Ibid.

²⁸ Ibid.

²⁹ Data for Pima County 2018 totals come from their website

(https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/elections/Election%20Results/Pima%20G-2018%20Canvass%20FINAL.pdf).

³⁰ Pima County Recorder, Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

emergency voting location the weekend before Election Day and vote a replacement ballot or wait until Election Day and vote at their precinct provisionally.³⁵

31. However, voters who have a signature verification problem do not get a replacement ballot. In this case, voters are not mailed a replacement ballot unless the voter confirms that it is not their ballot.³⁶ Instead, voters get a phone call, email or text telling them of the problem and to contact the Pima County Recorder.³⁷ If the voter does not respond within one week this process is repeated.

32. Other counties like Coconino, a smaller county with 55,948 general election voters in 2018, attempts to contact the voter by phone, email or text and if they do not respond send them a letter the next business day.³⁸ They provide information to the voter that explains the problem and the voter has to come in sign the current ballot, or be sent a replacement ballot, or pick up a replacement ballot at an early voting location, or vote provisionally on Election Day.³⁹

33. Apache County on the other hand highlights the signature problem and then sends the ballot back to the voter.⁴⁰ Since the ballot is incomplete and invalid the office does not feel they have to maintain custody so they send it back to the voter with information that it is due to the election office by Election Day at 7:00 PM.

34. However, ballots that have signature matching problems are complete they just cannot be verified. Therefore, no replacement ballot is sent to the voter unless one is requested from the voter at which point the original ballot would be spoiled. In most cases, a simple verbal confirmation from the voter that her ballot was mailed and that the signature on the affidavit

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ See Interrogatory Responses of Coconino Country Recorder, Patty Hansen, July 9, 2020.

³⁹ Ibid.

⁴⁰ See Interrogatory Responses of Apache County Recorder Edison Wauneka, July 22, 2020.

belongs to her is enough to satisfy the County Recorder's office and the ballot is counted. This process is more simple than a missing signature since voters can confirm their ballot signature via phone, mail, email or text, but they cannot resolve a signature problem over the phone, by email, or by text. A confirmation of a ballot that is already complete (signed, but no match), therefore, is distinctly different from a ballot that is incomplete (unsigned) and consequently the ballots get treated differently both in law and in their administrative processes.

35. The *2019 Election Procedures Manual* reflects these differences by including the 5 business day curing period for the ballots with mismatched signature issues as described in the second paragraph below:

If not satisfied that the signatures were made by the same person the County Recorder shall make a reasonable and meaningful attempt to contact the voter via mail, phone, text message, and/or email, notify the voter of the inconsistent signature, and allow the voter to correct or confirm the signature. The County Recorder shall attempt to contact the voter as soon as practicable using any contact information available in the voter's record and any other source reasonably available to the County Recorder.

Voters must be permitted to correct or confirm an inconsistent signature until 5:00 p.m. on the fifth business day after a primary, general, or special election that includes a federal office or the third business day after any other election. For the purposes of determining the applicable signature cure deadline: (i) the PPE is considered a federal election; and (ii) for counties that operate under a four-day workweek, only days on which the applicable county office is open for business are considered "business days."⁴¹

36. However, since missing signatures were disposed of as incomplete and invalid they have not received the same legislative or administrative response. The law is silent when it came to missing voter signatures. Nevertheless, while there was no statute requiring unsigned ballots to be cured, the Elections Procedure Manual instituted an administrative change to ensure a uniform statewide policy that mandates that County Recorders make meaningful attempts to contact voters to let them know their options to ensure a complete and valid ballot is cast by 7:00 PM

⁴¹ *2019 Arizona Election Procedures Manual*, p. 68.

Election Day. If there is a signature matching problem these voters would have 5 business days to confirm their signature.

37. The *2019 Election Procedure Manual* also reflects these facts with nearly identical phrasing about attempting to contact the voter, but instead focuses on informing voters that they must solve the problem by Election Day:

If the early ballot affidavit is not signed, the County Recorder shall not count the ballot. The County Recorder shall then make a reasonable and meaningful attempt to contact the voter via mail, phone, text message, and/or email, to notify the voter the affidavit was not signed and explain to the voter how they may cure the missing signature or cast a replacement ballot before 7:00pm on Election Day. The County Recorder shall attempt to contact the voter as soon as practicable using any contact information available in the voter's record and any other source reasonably available to the County Recorder. Neither replacement ballots nor provisional ballots can be issued after 7:00pm on Election Day.⁴²

38. The Arizona signature verification process recognizes that signatures change over time or are not always perfectly captured upon registration and therefore there is a possibility of error on the part of the poll workers who are following the signature verification process. Pima County's Chief Deputy Recorder in his declaration indicates that a lot of problems seem to stem from Motor Vehicle Division signatures where an electronic signature, not a wet signature, is used.⁴³ Therefore, the state allows time postelection to "cure" or "confirm" these complete, but invalid ballots. But, the lack of a signature on a ballot is not afforded the same opportunity because these ballots are incomplete and invalid. Ballots with missing signatures are unqualified, incomplete and invalid ballots and so the state makes an effort for ballots that arrive before Election Day to alert the voter of the problem, but does not provide the postelection cure period.

⁴² Ibid, p. 68-69.

⁴³ Pima County Chief Deputy Recorder, Ibid.

It is unclear whether these are valid votes or manufactured votes given their ballot status of incomplete and invalid and the State, therefore, treats them accordingly.

39. The plaintiffs treat no signature and signature mismatch as the same type of ballot problem. But Arizona law, statute, administrative processes, and culture do not. The plaintiffs say, “each general election cycle, thousands of mail ballots are rejected because election officials are unsure whether the voter signed the mail ballot envelope,”⁴⁴ but they are wrong. The lack of a signature is not an ambiguous event. Either there is or there is not a signature on the ballot envelope, which is qualitatively different from the presence of a signature that may be unverifiable with current records. In the case of the absence of a signature there is no signature to compare and the voter did not do the minimum required to ensure the veracity of their ballot and satisfy the County Recorder of its validity. Therefore these ballots are incomplete and invalid and are only given the opportunity to fix the problem up to Election Day.

VI. Voter Verification or Authentication Procedures

40. The point of signature verification is to create integrity around the election. Within election administration there is a need for both voter access and election security. On the one hand, the State wants to provide voters with every opportunity to fulfill their democratic responsibility and on the other needs to ensure that only qualified electors participate. There is a continuous tension in election administration between these two goals, yet both are critical to a free and fair election. Therefore, it is reasonable and appropriate for the state to set different rules for different voter contexts.

⁴⁴ Plaintiffs complaint, page 4.

41. For example, for in-person voters Arizona requires either a valid and current photo id, two non -photo IDs, or a mix and match of both photo and non-photo IDs if there are problems with the photo ID.⁴⁵ Voters presenting a “Sufficient Photo ID including name and address” includes a valid Arizona driver’s license, a valid Arizona non-operating identification card, tribal enrollment card or other form of tribal identification or a valid US federal, state or local government issued identification. Voters can present “Sufficient ID without a photograph that bears the name and address” of the voter including a utility bill, telephone bill, cable bill or bank or credit union statement of the elector that is dated within 90 days of Election Day, a valid Arizona vehicle registration, Indian census card, property tax statement of the elector’s residence, tribal enrollment card or other tribal identification, Arizona vehicle insurance card, recorder’s certificate, valid US federal, state or local government-issued ID, or any mailing to the elector marked “official Election Material”. If the voter cannot provide sufficient ID from these two methods, they can show one ID from List 1, and one ID from List 2. This includes any valid photo identification from List 1 in which the address does not reasonably match the precinct register accompanied by a non-photo identification from List 2 in which the address does reasonably match the precinct register. For example, a U.S. Passport without an address and one valid item from List 2, or a U.S. Military identification without an address and one valid item from List 2.

42. Thus, voter identification at the polls requires voter verification to ensure that the voter is an eligible elector. To treat voter’s consistently across modes, and to protect the system against

⁴⁵ See <https://azsos.gov/elections/voting-election>

VBM fraud, voters who VBM are also required to sign their ballots, which is then verified by election officials.

43. If we examine the Arizona VBM ballot and envelope, compared to other states, which often ask for other details about the voter, Arizona VBM verification and is exceptionally simple and only requires a matching signature to be processed. Figure 1 shows a picture of the back of the ballot envelope that voters place their ballot in for Maricopa County. Maricopa County is the largest county in Arizona representing 60.3% of statewide voters in 2018.⁴⁶

44. Voters must examine the back of the envelope in order to seal it for delivery. In large red capital letters the Maricopa County affidavit reads in both English and Spanish that the voter's signature is required in a large red highlighted box.⁴⁷ Next to the signature box and also in red capital letters the envelope reads, "**BALLOT WILL NOT BE COUNTED WITHOUT YOUR SIGNATURE**". This instruction is also in both English and Spanish.

⁴⁶ This ballot comes from Maricopa County and was from a November 5, 2019 special election. In 2018 Maricopa had 1,454,103 counted ballots out of 2,409,906 counted ballots statewide. See <https://recorder.maricopa.gov/electionarchives/2018/11-06-2018%20Canvass%20COMPLETE%20NOV%202018.pdf> for information on counted ballots and

<https://azsos.gov/elections/voter-registration-historical-election-data> for information on total ballots cast statewide.

⁴⁷ Most counties include the ballot instructions in both English and Spanish (and sometimes other languages) or make those instructions available online. In fact, three of Arizona's top five most populous counties (Maricopa, Pima, and Yuma) are covered jurisdictions for Spanish language minority groups under Section 203 of the Voting Rights Act, requiring all election-related material to be printed in both English and Spanish. In addition, Santa Cruz County is covered for Spanish, while Apache, Coconino, Navajo counties are covered for the Navajo language and Gila, Graham, and Pinal counties are covered for Apache. See <https://www.govinfo.gov/content/pkg/FR-2016-12-05/pdf/2016-28969.pdf>. Further, the 2019 Elections Procedures manual encourages all counties to provide voting materials in Spanish. EPM pg 159 ("Nonetheless, counties and other political subdivisions are strongly encouraged to continue to provide voting materials in Spanish, as well as other languages previously required in the county."). Prior to the U.S. Supreme Court's Decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), the entire State of Arizona was a considered a covered jurisdiction and required to provide all voting material in both English and Spanish. Most counties have continued to provide bilingual materials based on the long-standing requirements, despite the fact they are no longer "covered". Arizona Clean Elections also provides instructions online in both English and Spanish on how to vote by mail. See <https://www.azcleelections.gov/en/how-to-vote/early-voting/vote-by-mail>

Figure 1. Reproduced Facsimile of the Back Side of Maricopa County’s VBM Envelope

MARICOPA COUNTY BALLOT AFFIDAVIT – STATE OF ARIZONA
I declare the following under penalty of perjury: I am a registered voter in Maricopa County, Arizona, I have not voted and will not vote in this election in any other county or state and if this is a replacement ballot, that the ballot was lost, spoiled, destroyed or not received. 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.

IF THE VOTER WAS ASSISTED BY ANOTHER PERSON IN MARKING OR RETURNING THE BALLOT, COMPLETE THE FOLLOWING: **I declare under penalty of perjury:** at the registered voter’s request I assisted the voter identified in this affidavit with marking or returning the voter’s ballot, I marked or returned the ballot as directly instructed by the voter, I provided the assistance because the voter was physically unable to mark the ballot solely due to illness, injury or physical limitation or was otherwise unable to return the ballot and I understand that there is no power of attorney for voting and that the voter must be able to make the voter’s selection even if they cannot physically mark the ballot.

Name of Voter Assistant: _____
 Address of Voter Assistant: _____

DECLARACIÓN JURADA DE LA BOLETA DEL CONDADO DE MARICOPA – ESTADO DE ARIZONA
Declaro lo siguiente bajo pena de perjurio: Soy un votante inscrito en el Condado de Maricopa, Arizona, no he votado y no votaré en esta elección en ningún otro condado o estado y si esta es una boleta de reemplazo, la boleta se extravió, se estropeó, se destruyó o no se recibió. Entiendo que votar deliberadamente más de una vez en cualquier elección es un delito grave de Clase 5, yo voté en la boleta adjunta y firmé esta declaración jurada personalmente, a menos que se indique a continuación.

SI OTRA PERSONA AYUDÓ AL VOTANTE A MARCAR O DEVOLVER LA BOLETA, COMPLETE LO SIGUIENTE: **Declaro bajo pena de perjurio:** A petición del votante inscrito, ayudé a el votante identificado en esta declaración jurada a marcar o devolver la boleta del votante, yo marqué o devolví la boleta de acuerdo a lo que el votante me indicó directamente, proporcioné ayuda porque el votante físicamente no pudo marcar la boleta debido únicamente a enfermedad, lesión o limitación física o porque no podía devolver la boleta y entiendo que no hay ningún poder notarial para votar y que el votante debe hacer su selección aunque físicamente no pueda marcar la boleta.

Nombre del Asistente del Votante: _____
 Dirección del Asistente del Votante: _____

Bar Code & Related Info.
 [Redacted]

SPECIAL GENERAL ELECTION
 CITY OF SCOTTSDALE/FTN HILLS SAN/JSD #48/JSD #69
Name & Address
 [Redacted]

SIGNATURE REQUIRED/FIRMA REQUERIDA

BALLOT WILL NOT BE COUNTED WITHOUT YOUR SIGNATURE. POWERS OF ATTORNEY are not valid for voting purposes.

LA BOLETA NO SE TRAMITAR SIN SU FIRMA. PODER DE ABOGADO no es válido para fines de votación.

(☐ SIGNATURE REQUIRED / FIRMA REQUERIDA ☐)

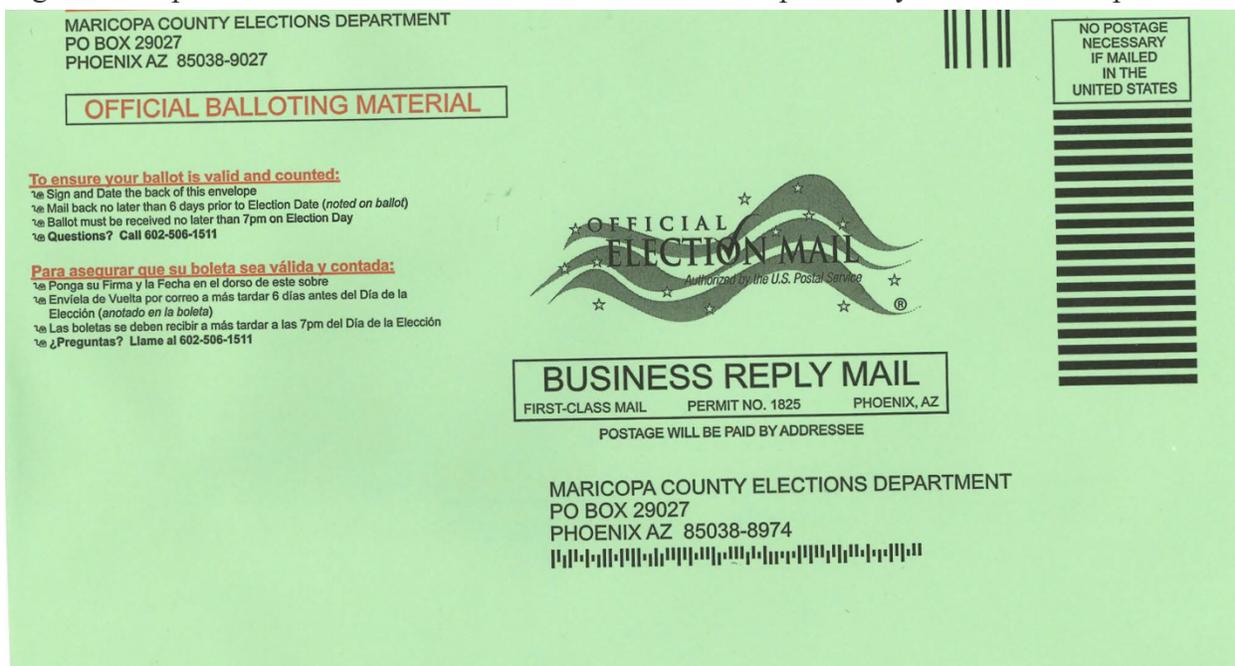
(PHONE; if signature is questioned) _____ (DATE / FECHA)
 (TELÉFONO; si la firma es cuestionada)

Within U.S. - MAIL no later than 6 days prior to Election Day (noted on ballot)
Dentro de EE.UU. – ENVÍE a más tardar 6 días antes del Día de la Elección (anotado en la boleta)

If you MISMARKED your ballot and need another, CALL 602-506-1511.
Si marcó su boleta INCORRECTAMENTE y necesita otra, LLAME AL 602-506-1511.

45. The front of the ballot envelope also indicates to the voter that they must sign and date the back of the envelope. This information is on the left side of the envelope as shown in Figure 2. In red in both English and Spanish the envelope reads, “To ensure your ballot is valid and counted sign and date the back of the envelope.” It also provides other pertinent information including a recommendation that the voter mail back the ballot at least 6 days prior to Election Day because the ballot must be received by the end of Election Day.

Figure 2. Reproduced Facsimile of the Front Side of Maricopa County’s VBM Envelope



46. Finally ballot instructions in both English and Spanish included with the ballot and the ballot envelope also highlight the signature instruction and point out that “the ballot and signed affidavit” must be received by 7:00pm on Election Day. The instructions are reproduced in Figure 3 and show voters that after they vote their ballot they should fold it, insert it into the ballot envelope, sign the affidavit and then send it or drop it off at any ballot center or polling location by Election Day.

Figure 3. VBM Ballot Instructions included with Maricopa County’s Ballot

47. Pima County, which is the second largest county in Arizona and in 2018 was responsible for 16.3% of Arizona’s voters, has similar instructions and states clearly that the ballot will not be counted unless it is received by 7:00 PM on Election Day.⁴⁸

48. Each county is responsible for its own design. For example, some counties have both an outer envelope for mailing and an inner envelope that contains the affidavit and within that envelope the ballot. But, all County Recorders must include “printed instructions to early voters

⁴⁸ Pima County absentee ballots can be observed here: https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/elections/Election%20Results%20and%20Information/2020%20Provisional%20&%20Early%20Ballot%20Envelope%20Handout.pdf

that direct them to sign the affidavit, mark the ballot and return both in the enclosed self-addressed envelope,” and are required to include the following instructions, “In order to be valid and counted, the ballot and affidavit must be delivered to the office of the County Recorder or other officer in charge of elections or may be deposited at any polling place in the county no later than 7:00 p.m. on Election Day.”⁴⁹

49. The Arizona Clean Elections Commission also provides instruction online in English and Spanish about how to complete a mail-in ballot, including prominent instructions to sign the ballot before returning: “Step 5. SIGN the early ballot affidavit envelope. Your ballot will not be counted unless you do this step.”⁵⁰ The Clean Elections website also explains the following about the signature requirement and its connection to election integrity:

It’s important to note that a voter’s identity is confirmed before their ballot is counted, whether it’s an early ballot or a ballot cast at the polls. When you vote by mail, your signature on the early ballot affidavit is compared to the signature on file with your voter registration record. Voters must sign this envelope in order for their ballot to be counted. County election staff receive professional training to verify the signature on the affidavit envelope matches the signature on the voters’ registration record. This is done to ensure the integrity of the early voting process.⁵¹

VII. How does Arizona Compare to other States?

Comparative State Analysis of Procedures for Verifying VBM Ballots

50. Unlike in-person voting, VBM takes place in an unsupervised environment, probably the voter’s home. Because the voter does not appear in person, election officials must verify the authenticity of the voter to ensure that the ballot they are receiving comes from the intended voter. In-person Election Day voters likewise face voter ID laws, so they are also required to

⁴⁹ See A.R.S 16-547 (C). Also see the discussion on page 56 of the *2019 Elections Procedure Manual* for language substitutes allowed.

⁵⁰ See <https://www.azcleanelections.gov/en/how-to-vote/early-voting/vote-by-mail>

⁵¹ See *ibid*

authenticate themselves through a voter identification policy. Among states, the most common method for VBM ballot authentication is signature verification. Thirty-one, or 62%, of states, including Arizona, use signature verification matching as their primary means for voter authentication. Nineteen states rely on other methods, including requiring signatures plus additional information such as witnesses or notaries, requiring a copy of an ID, using other information on the outer ballot envelope (e.g. date of birth, address), or requiring a signature but not doing matching.

51. Among the 31 states that primarily rely on signature matching to verify and qualify ballots 15, or just less than half, do not have any statutes that require them to attempt to contact the voters of unqualified ballots to try and rectify the problem. These states are coded 0 in the last two columns of Table 1. For these states, ballots are simply rejected. Thus, about half of the states that use signature verification offer ballot curing, and the other half do not.

52. Among the remaining states that rely on signature verification, sixteen states, or about half, attempt to contact the voter to help resolve or “cure” the mismatch or signature problem. In some states, voters are allowed additional time after the election to cure their ballot; in 3 states, the cure period ends on Election Day for both types of signature problems.

53. Other curing periods vary quite a bit by state. Florida has a 2 day postelection window and Hawaii has 5. Three states provide for a 7-day period, while Colorado provides an 8-day period. Utah requires a cure be completed the day before the local canvass is complete, which is between 7 and 14 days after Election Day. Washington allows 21 days, and Oregon allows 14 days to cure a ballot postelection. California, as of the 2020 election, allows voters to cure their signature up to 2 days before state certification.⁵² In Montana, ballots not cured by the end of

⁵² See https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC§ionNum=3019 for California’s current laws, accessed July 31, 2020.

Election Day become provisional ballots, and all provisional ballots are treated the same. To cure either a ballot signature problem or an in-person problem like voter ID, the required information must be received by the election administrator by the day after the election at 5:00 PM for in-person responders, or by mail by 3:00 PM on the 6th day after the election with an envelope postmarked by the day after the election.

54. Arizona allows for a 5 days postelection window for mismatching signature problems, but ballots with missing signatures must be resolved by Election Day. While Arizona is currently the only state that has different dates for these ballot signature problems, in 2016 and 2018 in California, voters who had missing signatures were allowed only 8 days postelection to cure an unsigned ballot and up to 2 days before certification to cure a mismatch signature problem.⁵³

Comparative State Analysis of Ballot Rejection Rates

55. Vote by mail always leads to some ballots not being counted. Ballots are primarily not counted because they are late or fail a validity check such as a missing signature or signature mismatch. Unfortunately, there is no national data that tells us how many ballots were cured in each condition. The only data we can look at is the number of the ballots that fall into each category –no signature and mismatched signature. In Table 2 below, I examine the states that are either all VBM or majority VBM to see how Arizona compares with other similarly situated states in terms of ballot rejections for these types of problems.⁵⁴ A mostly VBM state has a permanent VBM list, and has a majority of registered voters currently on the permanent absentee or VBM list. Some voters, however, remain in-person voters and are not sent a ballot. Colorado,

⁵³ See <https://calmatters.org/politics/election-2018/2018/11/did-you-vote-by-mail-if-your-signature-doesnt-match-that-might-mean-a-rejected-ballot/> for a discussion of the 2018 election rules for these ballots in California, accessed July 31, 2020.

⁵⁴ I do not include Hawaii or Utah because of missing data problems.

Oregon, and Washington are all VBM states. I define all VBM states as those states that mail a ballot in each election to every eligible voter. I include the actual number of ballots rejected in each category and then calculate the percent of no signature and mismatched signature rejections as a percent of total ballots counted or the rate for every 100 ballots. Because I am interested in the effect of these processes on total disenfranchisement I use all ballots counted as my denominator. This is consistent with how the Election Performance Index calculates rejected ballots.⁵⁵

56. Table 2 shows the results for Arizona and other mostly or all VBM states. The first half of the table focuses on ballots rejected for no signature while the second half presents the data for rejected ballots with a mismatch problem. The data in the table demonstrates that Arizona's cure deadlines, even before the changes for the 2020 election, appear to be very effective. The fact is rejection rates as a percent of all ballots counted is quite low. Here we see that the two states in 2016 with the shortest deadlines, Arizona and Montana, had equal rates of rejection of .12% for ballots missing signatures. California with an 8 day missing signature requirement if the ballot is postmarked by Election Day also shows low rates of rejection of .10% and .09%, respectively, but other states with later curing periods have ballot rejections rates of between 16% and .27%.

57. A similar pattern emerges in 2018 for no signature rejections, with Arizona's rejection rate at .10% of all ballots counted, while other states rejection range is between .07 and .18. Importantly, these results suggest that expanding the curing period would not have significant effects on the proportion of ballots accepted. States with longer cure periods do not see

⁵⁵ See <https://elections.mit.edu/#indicatorProfile-ABR> for a description of how indicators to the EPI are calculated, accessed July 31, 2020.

substantively more ballots counted, and in 2016, the results suggest that, on average, states with longer periods actually rejected more ballots as a percent of all ballots cast.

58. We come to a slightly stronger conclusion with the data on rejections for mismatched signatures because the spread is much greater between the early curing deadline states and later curing deadline states. The states with the shortest curing period in both election years, Arizona and Montana, have the lowest percentage of ballots rejected for a mismatched signature, while Colorado, with an 8 day cure period, has the highest (.5% or above) in both election years.

Washington, which has the longest cure period (21 days) sees the second highest rate of rejection for mismatched signatures (.52% in 2016 and .39% in 2018). Thus, the data demonstrate that a curing deadline on or one day after the election produces the *lowest* rates of rejected ballots for mismatched signatures.

Table 6. 2018 and 2016 VBM Ballot Rejections for No signature and Mismatched Signature in VBM or Mostly VBM states

State	# no signature rejected	% of counted ballots	# mismatch rejected	% of counted ballots
<i>2016</i>				
Arizona	3079	.12	2657	.10
Montana	611	.12	241	.05
California	14781	.10	25965	.18
Utah	2247	.21	3215	.30
Colorado	2542	.09	16149	.56
Oregon	5630	.27	9637	.47
Washington	5219	.16	17592	.52
<i>Average non bolded states</i>		.12		.08
<i>Average Bolded States</i>		.17		.41
<i>2018</i>				
Arizona	2435	.10	1516	.06
Montana	586	.12	391	.08
California	10215	.08	16116	.13
Utah	1989	.18	2443	.23
Colorado	2498	.10	13027	.50
Washington	4310	.14	17228	.39
<i>Average non bolded states</i>		.11		.07
<i>Average Bolded States</i>		.13		.31

Bold indicates states that allow curing to happen more than 1 day after the election for both types of ballots.

59. These results suggest that the push to have post-Election Day curing periods may be misguided and may actually lead to greater disenfranchisement. Many experts discuss the calculus of voting and how the relationship between the costs and the benefits of voting influence turnout.⁵⁶ Of course, because the benefit of voting is discounted by the probability that the vote will be decisive, costs are always higher than the benefit since the probability of a single vote changing the election outcome is next to 0. This yields a prediction that no one will vote, which of course is not the case, and so the duty term becomes relatively important and, of course, the costs are very, very low making the expected utility worthwhile.⁵⁷ Costs in voting in Arizona are extremely low because voters can get on the permanent absentee voter list and be mailed a ballot early and return it by mail or in-person up to Election Day.

60. However, the costs of voting likely changes after the election when the results are widely known. At this point, the game is over and unless a race is particularly razor thin the voter has increased incentives not to participate; therefore, the duty term has to be very high for any individual voter to attempt to cure their ballot after the election. Therefore, a deadline of Election Day or the day after Election Day, such as Arizona's (for missing signatures) and Montana's (for mismatched signatures or missing signatures), helps to motivate voters to participate and resolve any claims as soon as possible. If you contact a voter about a curing problem and tell him or her they have until 21 days after the election, as they do in Washington, to cure the problem, they may likely not be incentivized to do it before the election and then after the election their incentives decrease even further because the outcomes are known. Thus, it is

⁵⁶ For a good overview see Anthony Downs, 1957, *An Economic Theory of Democracy*. Harper.

⁵⁷ See Andre Blais, 2000, *To Vote or Not to Vote: The Merits and Limits of Rational Choice Theory*, University of Pittsburgh Press.

not clear theoretically that longer curing times will lead to more votes being counted and empirical results presented above suggest otherwise.

61. Thus, if these data are correct, in the end, voters with missing signatures, who are required to cure before or on Election Day, may be more likely to cure their ballot problem than voters with mismatching signatures, who are permitted to cure up to five days after Election Day. The observed voting behavior shown in Table 6 is directly contrary to the plaintiffs' theory that the current missing signature cure period results in disenfranchisement. Disenfranchisement rates are larger in states for signature mismatches when they have rather long curing periods.

62. Even assuming all of Arizona's non-signature determinations in 2016 and 2018 were incorrect, which is extremely doubtful, that would still only result in a maximum error rate of .12% percent in 2016 and .10% in 2018.

VIII. Election Integrity

63. Election integrity and voter confidence are critical components in US elections.⁵⁸ The perception that citizens have about the accuracy and integrity of their vote and the accuracy and integrity of the larger electoral process especially as it relates to the counting of all the votes in an election jurisdiction or at the state level provides the glue that makes democracy work successfully. Elections are the fundamental link between citizen and elected officials. If voters do not have faith in the outcome of elections and the correct counting of votes—then the legitimacy of representative government might be at risk.

⁵⁸ Research suggests that voter confidence is distinct from other measures of system level or diffuse system support (see Lonna Rae Atkeson, R. Michael Alvarez, and Thad E Hall, 2015, "Trust in Elections and Trust in Government: Why Voter Confidence Differs from Other Measures of System Support," *Election Law Journal* 14(3): 207-219) that tends to test the evaluation of elected leaders in government (Jack Citrin and Samantha Luks, 2001, "Political Trust Revisited: Déjà Vu All Over Again?" In *What Is it about Government that Americans Dislike?*, eds. John R. Hibbing and Elizabeth Theiss-Morse. New York: Cambridge University Press.), and an accumulation of grievances and disappointments within and across administrations (Arthur H. Miller, 1974, "Political Issues and Trust in Government: 1964-1970." *American Political Science Review* 68:989-1001.).

64. The importance of electoral confidence can be seen in the activities of legislators, policy makers, secretaries of states, political activists and others who are bringing new technologies into election administration to make it both more accessible and secure. For example, advances in technology have allowed greater cross agency communication and the implementation of automatic voter registration (AVR) by allowing for linkages between state DMV systems and voter registration files.⁵⁹ AVR was first implemented in Oregon in 2016 and has rapidly expanded across the country as state leaders see it as a way to ensure greater accuracy and security to their voter registration file and opportunities for participation.⁶⁰ Other security measures like the use of paper ballots and postelection audits have also rapidly been adopted.⁶¹ Postelection audits check the voting systems against the paper voting trail to determine whether the machines are functioning correctly, whether the votes are counted accurately, and ultimately whether the election outcomes are legitimate. All of these measures and reforms are justified, in part, due to a desire to maintain voter confidence. Thus, voter confidence in the perceived legitimacy of election outcomes and the election process is an important policy matter and provides one reason why public opinion on voter confidence should receive close scrutiny.

65. Election fraud involves the manufacturing of fake ballots and theft of ballots from existing voters to produce, alter, or discard them to change election outcomes. Election fraud is difficult to find because as Christensen and Shultz (2014) state, “Election fraud in established democracies typically involves only a small percentage of votes in a closely contested race.

⁵⁹ See <https://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx> for a good overview of AVR, accessed July 1, 2020.

⁶⁰ Nineteen states currently practice some variant on AVR including Alaska, California, Colorado, Connecticut, District of Columbia, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Vermont, Virginia, Washington, West, Virginia.

⁶¹ See <https://www.ncsl.org/research/elections-and-campaigns/post-election-audits635926066.aspx> for a good overview, accessed July 31, 2020. Also, see R. Micahel Alvarez, Lonna Rae Atkeson and Thad Hall, 2012, *Confirming Elections: Creating Confidence and Integrity through Election Auditing*, Palgrave.

Such a small number of fraudulent ballots can easily be concealed in a sea of otherwise legitimate ballots.”⁶²

66. Voters intuitively understand this fact and are especially concerned about the possibility of VBM fraud, even as they agree to its importance this election season as localities and states move to extensive VBM policies because of the COVID health pandemic.

67. A recent Gallup poll suggests that 64% of voters favor states allowing all voters to VBM this year.⁶³ Yet at the same time, voters are concerned about the possibility that fraud would likely increase due to increases in VBM. The Gallup poll asked, “Do you think there would be [more fraud, same amount, less fraud] if all voters cast their votes by mail. Nearly ½ (49%) of all American indicated they thought VBM would likely lead to more fraud,⁶⁴ while only one in five (20%) of Americans thought it would lead to less fraud. And, when voters were asked specifically about how much fraud, just over three in ten (31%) said “a great deal,” another three in ten (30%) said “a fair amount,” while only a little less than three in ten (28%) said “only a little” and one in ten (10%) said “none.” Thus, voters generally have a strong belief that mail balloting can result in election fraud, and that fraud will increase this year and possibly by a great deal.

68. These feelings are not without foundation, recent cases in VBM fraud highlight concerns about both the manufacturing and stealing of votes and their impact on the legitimacy of the election. VBM offers opportunities for fraud because administrative control of the ballot or the ballot chain-of-custody is lost and nefarious actors may attempt to manipulate the open nature of

⁶² See Ray Christensen and Thomas J. Schultz. 2014. “Identifying Election Fraud Using Orphan and Low Propensity Voters.” *American Politics Research* 42(2):311–37.

⁶³ See <https://news.gallup.com/poll/310586/americans-favor-voting-mail-option-november.aspx>.

⁶⁴ This is bolstered by another recent poll by ABC News that showed that 49% of voters thought VBM was more vulnerable to fraud. See, <https://abcnews.go.com/Politics/trust-trumps-false-rhetoric-vote-mail-resonating/story?id=71887848>, Accessed July 23, 2020.

the process. Although vote fraud may be rare, incidences or perceived incidences of vote fraud likely reduce voter confidence and voter attitudes in the legitimacy and fairness of the process.⁶⁵

Therefore, the state has an interest in promoting and ensuring a secure election system.

69. In particular the illegal activities in the 2016 general election in North Carolina's 9th Congressional District demonstrate the type of fraud that voters, legislators and election administrators fear from VBM. In this case, a political machine was used to steal and manufacture votes. Leslie McCrae Dowless, Jr., the fraud manager, submitted forged ballot requests using data he had collected over time from completed VBM applications⁶⁶ and according to the report by the North Carolina State Board of Elections, which voted to not certify the election and instead have another one, he engaged in the following practices:

- “delivering small batches of ballots to the post office;
- ensuring that ballots were mailed from a post office that was geographically close to where the voter lived;
- ensuring that witnesses signed and dated absentee by mail container envelopes with the same date as the voter;
- ensuring that witnesses signed in the same color ink as the voter, which included tracing over existing signatures to ensure conformity;
- ensuring that stamps were not placed in such a way as to raise a red flag for local elections administrators;
- asking some collected ballots back to the voter for hand-delivery to the local Board of Elections; and
- limiting the number of times a witness's signature appeared on the ballot; and
- forging witness signatures on ballot envelopes.”⁶⁷

⁶⁵ Lonna Atkeson and Chris Mann, 2020, “Looking for Election Anomalies” with Christopher Mann, Southern Political Science Association, San Juan, Puerto Rico January 8-11, 2020; Lonna Atkeson “Voter Confidence Ten Years after Bush V. Gore,” in *Election Administration in the United States: The State of Reform after Bush V Gore*, edited by R. Michael Alvarez and Bernard Grofman, Cambridge University Press.

⁶⁶ See https://dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/Order_03132019.pdf for the state board of elections order, accessed July 1, 2020, p. 64.

⁶⁷ Ibid.

70. During the 2020 pandemic, a second case has recently emerged that has very similar allegations related to the manufacturing and stealing of votes. This case involves a municipal election in Paterson, New Jersey held on May 12, 2020. Because of COVID-19 the state moved to all VBM elections pursuant to a statewide executive order. So far there have been 4 arrests in this case with charges of election fraud, fraud in casting a mail-in vote, unauthorized position of ballots, false registration or transfer, tampering with public records, and falsifying or tampering with records.⁶⁸ In addition, one of the candidates in the race has filed a lawsuit to overturn the election because of rampant fraud.⁶⁹ He claims that another campaign stole both completed and uncompleted ballots from mailboxes, and for uncompleted ballots used signatures from a database they had been building for years to manufacture viable votes. Although the case is still developing, the state attorney general is prosecuting four individuals for election fraud, and therefore the allegations must be taken very seriously.

71. As explained, requiring VBM voters to sign their ballots is one of the primary methods the State of Arizona uses to verify the authenticity of VBM ballots and ensure the integrity of its elections. Thus, the presence of a signature is a necessary, but not sufficient step to maintain voter confidence and electoral election integrity.

IX. Administrative Interests in Keeping Election Day and Cure deadlines

72. A single cut-off date for signing ballot affidavits (including any curing of non-signatures), getting absentee ballots delivered, and voting in-person reduces voter confusion by reducing the number of relevant deadlines to remember, provides desirable finality and certainty,

⁶⁸ See <https://www.northjersey.com/story/news/paterson-press/2020/06/25/paterson-nj-election-fraud-who-charged-and-what-we-know/3260250001/>, accessed July 2, 2020.

⁶⁹ See <https://newjerseyglobe.com/local/evidence-of-massive-voter-fraud-in-paterson-election-court-records-show/> and the lawsuit is included at the bottom of the article, accessed July 31, 2020.

provides clear delineations for election officials and workers, and allows election officials to focus on getting ballots counted prior to statutory deadlines.

73. Because of the prevalent use of VBM voting in Arizona, election results already take significant time and effort. There are election administration processes in place to ensure the integrity and legitimacy of the process that would become problematic for some counties if Arizona expanded its rules for ballots with no signature. Arizona processes its early ballots through its Early Ballot Boards. The Board first verifies all signatures. Ballots with verified signatures are credited as voted at which point the ballot envelope, which contains the voter's affidavit and other personal information, is separated from the ballot and counted. This procedure must happen before provisional ballots are qualified and counted because some voters vote more than once –because they forgot and voted a second or third time, or because they wanted to be sure their vote counted and were concerned their vote would not arrive on time, or for other reasons. Currently this process is completed as soon as possible after Election Day, allowing the provisional balloting process to begin immediately thereafter. Under current statute, for general elections all provisional ballots must be verified by 10 days after the election and then counted.⁷⁰

74. The change proposed in the Complaint would make it extremely difficult if not impossible for some counties to complete the election process under current statutory limits. This is especially true for the Arizona primary and likely for the general election. The state holds a relatively late primary for state and local offices in August of federal election years. This year the primary contest will be held on August 4, 2020. This is less than 1 month away from the traditional general election kick-off of September 1 and leads to a very short canvass of only 10

⁷⁰ A.R.S. § 16-584(E)

days after the primary so that a winner can be declared and the general election can begin.⁷¹ If provisional ballot qualification cannot begin until VBM ballots are completely processed and that could take up to 7 or more days, it seems unlikely that provisional ballots could be qualified and counted in the remaining 3 days especially for large counties. But even in a general election this would likely be very difficult because even though there is a 20 day canvass period there are many, many more ballots that have to be processed and that complicates and lengthens the process.⁷²

75. For example, large counties such as Pima County already process between 5,000 and 6,000 signature mismatches and may make up to 10,000 phone calls to voters to confirm a ballot signature in a statewide general election.⁷³ The change plaintiffs propose in this case would substantially expand this process after Election Day possibly delaying the start of the counting of provisional ballots because staff resources would have to be used providing opportunities for voters to sign their ballots at the County Recorder office. This would require the staff to locate the ballot and participation by two members of opposite parties on the problem ballot team because security procedures require all unvoted ballots to be observed by at least two poll workers.⁷⁴ Currently Pima County completes its provisional process on the 10th or last day required by statute, processing upwards of 25,000 provisional ballots.⁷⁵ Because many voters choose not to vote their VBM ballot and instead go to the polls on Election Day, many provisional ballots are voted in Arizona counties and have to be qualified to ensure no double

⁷¹ See p. 240 of the *2019 Elections Procedures Manual* for primary canvass due dates or A.R.S. § 16-241(C); A.R.S. § 16-645(B).

⁷² See A.R.S. § 16-642(A).

⁷³ Pima County Chief Deputy Recorder, *ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

voting. The plaintiffs' proposed change would likely prevent them from meeting statutory deadlines.

76. In addition, if the process was extended, this would cost the state additional funding since the Early Ballot Board would have to be expanded to both serve voters coming to the office and do the hard work of processing, qualifying and counting regular VBM ballots and then provisional ballots.

X. COVID-19 and the 2020 Election

77. This spring, the COVID-19 pandemic has upended some of our nation's election systems with over a dozen states rescheduling their primary and several more making changes in their implementation to attempt to move more voters to VBM.⁷⁶ It is unclear at this point whether life will be normal when the 2020 federal general election happens in November due to COVID-19, but it seems unlikely. In an election environment, the pandemic raises serious questions about the safety of voters, poll workers, and other election staff for in-person voting.

78. One way in which an election can be more safely conducted during a pandemic is to shift from mostly in-person voting to mostly VBM so voters and poll workers do not have to come into contact. This minimizes the spread of the virus.

79. Unlike many states that are not prepared at all for implementing a mostly VBM election, Arizona is one of the few states that is in a strong position to do so with relative ease. This is because Arizona is already effectively a mostly VBM state with almost 4 in 5 (79%) voters

⁷⁶ Alaska, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maryland, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia, and Wyoming all moved their presidential primary dates. See "16 States Have Postponed Their Primaries Because of Coronavirus. Here's a List," The New York Times, April 9, 2020, available at <https://www.nytimes.com/article/2020-campaign-primary-calendar-coronavirus.html>, accessed April 23, 2020. The New Mexico Secretary of State and County Clerks filed a lawsuit to move to all VBM for the June, 2020 primary, see: https://www.santafenewmexican.com/news/local_news/new-mexico-county-clerks-request-mail-in-primary-election/article_659eeebc-6e00-11ea-b712-b3ed157b8b2b.html.

voting by mail in 2018.⁷⁷ Only full VBM states such as Colorado, Oregon, Hawaii, and Washington have more VBM voters. Thus, Arizona has the experience and preparedness to shift their election from mostly VBM to nearly all VBM if more voters choose to VBM, and to account for an increase in VBM ballots.

80. It is easy in Arizona for voters to make a one-time choice to VBM either by phone or by written request.⁷⁸

81. Because Arizona is already a heavy mail state it has invested significant time, money, and other resources into an election administration infrastructure that already serves a VBM system. These include the items we discussed above in Section III as well as the following.

82. First, Arizona has good voter registration list maintenance. VBM states invest a lot of time and effort to maintain a high quality and accurate voter list to help ensure that ballots are correctly addressed. Because Arizona counties have several elections a year, the PEVL list is continually being updated through the National Change of Address data base maintained by the USPS, the Electronic Registration Information Center (ERIC), and the Arizona Motor Vehicle Division.⁷⁹ Voters are also encouraged to update their registration on-line, or by-mail or in-person by their Secretary of State and their county elections department.⁸⁰

83. Second, Arizona has a system for ballot tracking so that voters can check when their ballot was sent to them by election officials and confirm whether their ballot was counted. This allows voters to identify if they need to request a new ballot or vote provisionally on Election Day

⁷⁷ The percent VBM is based on the EAVS data, summing the question to C4a-absentee ballots returned counted—(participation absentee) for all 15 counties. In the data I substitute the amount in question F1d for Apache County, which did not report any data in C4a. The total participation in 2018 was 2,409,910 according to the Arizona Secretary of State (<https://azsos.gov/elections/voter-registration-historical-election-data>). I note there is some error in the EAVS data because of how different counties define absentee-early, but this is a very close approximation.

⁷⁸ See A.R.S. 156-542, <https://azsos.gov/votebymail>.

⁷⁹ Information about ERIC can be found here: <https://ericstates.org/>, accessed April 21, 2020.

⁸⁰ Voter registration information can be found here: <https://azsos.gov/elections/voting-election/register-vote-or-update-your-current-voter-information>, accessed April 21, 2020.

because their ballot has not arrived in their mailbox or been received by their local election official.

84. Third, Arizona validates ballots through a rigorous, uniform, and fair signature matching program that uses multiple signatures on-file and voters are notified if there is a problem with the signature matching process so that it can be cured and their ballot can be counted.⁸¹

85. Fourth, Arizona has many ways to cast a mail ballot other than mailing it in. Voters can drop their ballots off at a ballot drop-box location or hand it in at any early or Election Day in-person location. Although in-person voting would presumably be curtailed to some degree during the pandemic, there would still be some in-person voting options available where voters could drop off their ballots late in the process. For example, during the presidential preference election (“PPE”), Coconino County operated a drive up ballot drop-off at their election office.⁸²

86. Fifth, because Arizona already has large quantities of mail balloting they have the organization and staff necessary to qualify and count many VBM relatively quickly. Arizona law allows counties to start counting VBM ballots 14 days before Election Day to meet their canvassing deadlines. (A.R.S. § 16-550(b)).

87. Sixth, counties have the authority to establish and all counties do establish each election emergency vote centers (A.R.S. § 16-411(b)(5)). Emergency vote centers are for voters who will be unable to vote on Election Day and have not yet voted. All a voter has to do to receive a ballot at an emergency vote center is to sign a statement that declares they had an emergency after 5:00 PM on the Friday immediately preceding the election and before 5:00 PM on the Monday immediately preceding the election that will prevent them from voting on Election

⁸¹ Please see page 68 of the *2019 Election Procedures Manual* for a discussion of signature verification rules.

⁸² See Plaintiff Exhibit 23 from their additional filings.

Day.⁸³ This procedure provides voters who delay returning their ballot in the mail, but cannot vote on Election Day, an alternative means of casting their ballot or dropping it off.

88. Thus, all things considered, Arizona is one of only a handful of states that is in a strong position to ensure both the safety of its voters, and a fair VBM system in the November 2020 election.

XI. Conclusion

89. All in all, Arizona's election ecosystem appears to be a well-functioning mostly-VBM system that provides many different methods in which voters can cast a regular in-person ballot or a VBM ballot.

90. Local election officials who reject a ballot because of a missing signature are required to attempt to notify the owner of that ballot so it can be rectified. Although Arizona does not allow for a post-election curing period, their attempt at contact puts them ahead of almost half of all states that use signature verification as their primary means of VBM voter authentication, but do not engage in any attempt to rectify ballot problems.

91. Missing signature ballots are treated as incomplete or invalid ballots, while mismatching ballots are treated as complete, but invalid, which necessarily require different administrative processes.

92. VBM voters who have a missing signature have the opportunity to vote through regular voting means or through provisional voting up to Election Day. This includes the possibility of a replacement ballot via mail, or an in-person ballot at an in-person early voting location or on Election Day. Ballots with signature verification problems are given 5 days postelection to cure

⁸³ See the *2019 Elections Procedure Manual*, p. 65-66.

the ballot, but voters can simply phone, email, or text a confirmation that the ballot signature belongs to them.

93. For largely VBM states, regardless of cure periods for these types of ballots, the number of ballots rejected as a percent of all ballots counted is very small with Arizona logging .12% in 2016 and .10% in 2018 of ballots rejected for no signature. Rejection rates for other similarly situated states in both those years were between .08% and .27%, making Arizona's percentage of rejected ballots both relatively small and unremarkable.

94. We find a much clearer pattern with ballots rejected for mismatched signature problems. In this case, it appears that more voters cure their ballots when they have an earlier as opposed to later deadline. This may suggest that state policies intended to enfranchise more voters may actually have the opposite effect.

95. Election integrity is an important piece of election administration and VBM increases voter concerns about the possibility of election fraud. Arizona only instituted their cure period for mismatching signatures in 2019, and thus this is the first federal election in which this will be implemented. The state has a strong interest in ensuring both security and access and has made laws that balance both of these election pillars. Its laws that delineate different processes for ballots with missing signature and ballots with no signatures is embedded within its election culture and represents its long term understanding of how these ballots interact with its election ecosystem.



Lonna Atkeson, PhD

XI. Appendix A. Curriculum Vitae Last 10 Years

Lonna Rae Atkeson
Curriculum Vitae
 May 2020

ACADEMIC and ADMINISTRATIVE APPOINTMENTS:

2006-Present	Professor, University of New Mexico
2019-Present	Board Member, American National Election Study
2018-Present	Associate Editor <i>Political Analysis</i>
2017-Present	Board Member MIT Election Data Science Lab (MEDSL)
2016-Present	Director, Institute for Social Research, University of New Mexico
2010-Present	Director, Center for the Study of Voting, Elections and Democracy, University of New Mexico
2001- 2006	Associate Professor and Regents Lecturer, University of New Mexico
1995-2001	Assistant Professor, University of New Mexico

EDUCATION:

1995	Ph.D., Political Science, University of Colorado, Boulder
	Dissertation Title: <i>Divisiveness or Unity? Reassessing the Divisive Nomination Hypothesis in the Presidential Selection Process</i> (Chair: Professor Walter J. Stone)
Summer 1990	ICPSR Summer Training in Quantitative Methods for Social Science Research, University of Michigan.
1987	BA, Political Science, University of California, Riverside

BOOKS:

R. Michael Alvarez and Lonna Rae Atkeson. 2018. *Oxford University Press Handbook on Polling and Survey Methods*. New York: Oxford University Press.

Alvarez, R. Michael, Lonna Rae Atkeson and Thad E. Hall. 2013. *Evaluating Elections: A Handbook of Methods and Standards*. Cambridge University Press.

Alvarez, R. Michael, Lonna Rae Atkeson and Thad E. Hall (Editors). 2012. *Confirming Elections: Creating Confidence and Integrity Through Election Auditing*. Palgrave.

Atkeson, Lonna Rae and Cherie D. Maestas 2012. *Catastrophic Politics: How Extraordinary Events Redefine Perceptions of Government*. Cambridge: Cambridge University Press.

PEER REVIEWED ARTICLES:

- Stein, Robert M et al. 2020. "Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-County Study," *Political Research Quarterly* (forthcoming), available online: <https://doi.org/10.1177/1065912919832374>
- Atkeson, Lonna Rae and Brian T. Hamel. 2020. "Fit for the Job: Candidate Qualifications and Vote Choice in Low Information Election," *Political Behavior* (Forthcoming). Online: <https://DOI:10.1007/s11109-018-9486-0>.
- Atkeson, Lonna Rae and Andrew Taylor. 2019. "Partisan Affiliation in Political Science: Insights from Florida and North Carolina." *PS: Political Science and Politics* 52(4): 706-710.
- Alvarez, R. Michael, Lonna Rae Atkeson, Ines Levin, and Yimeng Li. 2019. "Paying Attention to Inattentive Survey Respondents," *Political Analysis* 27(2): 145-62.
- Kerevel, Yann and Lonna Rae Atkeson. 2017. "Campaigns, Descriptive Representation, Quotas and Women's Political Engagement in Mexico," *Politics, Groups and Identities* (4): 454-477.
- Atkeson, Lonna Rae & Cherie D. Maestas. 2016. "Presidential Primary Turnout 1972-2016," *PS: Political Science & Politics* 49(4): 755-760.
- Associated Blog: "Atkeson, Lonna. 2016. "Primary Turnout and the Importance of Party Position." *Mischiefs of Faction*. Vox.com. Available at: <http://www.vox.com/mischiefs-of-faction/2016/3/24/11301108/presidential-primary-turnout>"
- Gurian, Paul-Henri, Nathan Burroughs, Lonna Rae Atkeson, Damon Cann, and Audrey Haynes. 2016. "National Party Division and Divisive State Primaries in US Presidential Elections, 1948-2012," *Political Behavior* 689-711.
- Kerevel, Yann and Lonna Rae Atkeson. 2015. "The Effect of Disconfirming Stereotypes on Perceptions of Female Political Leaders in Mexico," *Political Research Quarterly* 68: 732-44.
- Atkeson, Lonna Rae, R. Michael Alvarez, Thad E. Hall. 2015. "Trust in Elections and Trust in Government: Why Voter Confidence Differs from Other Measures of System Support," *Election Law Journal* 14(3): 207-219.
- Atkeson, Lonna Rae, R. Michael Alvarez, Andrew Sinclair, Thad E. Hall. 2014. "Balancing Fraud Prevention and Electoral Participation: Attitudes Toward Voter Identification." *Social Science Quarterly* 95(5): 1381-98.
- Atkeson, Lonna Rae, Yann Kerevel, R. Michael Alvarez, Thad E. Hall. 2014. "Who Asks for Voter Identification?" *Journal of Politics* 76(4): 944-57.
- Associated Blog: "Poll Workers Rely on their own Attitudes and Beliefs to Determine How to Apply Voter ID Laws" The LSE US Center's Daily Blog on American Politics and Policy (available at: <http://blogs.lse.ac.uk/usappblog/2014/08/20/poll-workers-rely-on-their-own-attitudes-and-beliefs-to-determine-how-to-apply-voter-id-laws/>)
- Atkeson, Lonna Rae, Alex N. Adams, and R. Michael Alvarez. 2014. "Nonresponse and Mode Effects in Self and Interviewer Administered Surveys," *Political Analysis* 22(3): 304-320.

Associated Blog: Improving Survey Methodology a Q&A with Lonna Atkeson(available at: <https://blog.oup.com/2014/08/improving-survey-methodology-q-a-with-lonna-atkeson/>)

- Kerevel, Yann and Lonna Rae Atkeson. 2013. "Explaining the Marginalization of Women in Legislative Institutions." *Journal of Politics* 75(4):980-993.
- Atkeson, Lonna Rae, Lisa A. Bryant, Alex N. Adams, Luciana Zilberman, Kyle L. Saunders, 2011. "Considering Mixed Mode Surveys for Questions in Political Behavior: Using the Internet and Mail to Get Quality Data at Reasonable Costs." *Political Behavior* 33:161-178.
- Atkeson, Lonna Rae, Lisa Bryant, Thad Hall, Kyle L Saunders and R. Michael Alvarez. 2010. "New Barriers to Voter Participation: An Examination of New Mexico's Voter Identification Law." *Electoral Studies* 29(1):66-73.
- Atkeson, Lonna Rae and Cherie D. Maestas. 2009. "Meaningful Participation and the Evolution of the Reformed Presidential Nominating System," *PS: Political Science & Politics* 42(1):59-64.
- Reprinted in *Current Controversies: Federal Elections*, Volume 1, Gale/ Cengage Learning (Greenhaven).
- Maestas, Cherie D. and Lonna Rae Atkeson, Lisa Bryant, and Thomas Croon. 2008. "Shifting the Blame: Federalism, Causal Attribution and Political Accountability Following Hurricane Katrina," *Publius* 38(4): 609-632.
- Atkeson, Lonna Rae and Timothy Krebs. 2008. "Press Coverage of Mayoral Candidates: The Role of Gender in News Reporting and Campaign Issue Speech" *Political Research Quarterly* 61 (2): 239-53.
- Atkeson, Lonna Rae & Lori Tafoya. 2008. "Surveying Political Activists: An Examination of the Effectiveness of a Mixed Mode (Internet and Mail) Survey Design." *Journal of Elections, Public Opinion and Parties* 18(4): 367-386.
- Atkeson, Lonna Rae & Kyle L. Saunders. 2007. "Voter Confidence: A Local Matter?" *PS: Political Science & Politics* 40(October):655-660.
- Atkeson, Lonna Rae & Nancy Carrillo. 2007. "More is Better: The Impact of Female Representation on Citizen Attitudes Toward Government Responsiveness," *Gender and Politics* 3(1): 79-101.
- Atkeson, Lonna Rae. 2003. "Not All Cues are Created Equal: The Conditional Impact of Female Candidates on Political Engagement," *Journal of Politics* 65(4): 1040-61.
- Atkeson, Lonna Rae and Ronald B. Rapoport. 2003. "The More Things Change the More they Stay the Same: Examining Differences in Political Communication, 1952-2000," *Public Opinion Quarterly* 67(4):495-521.
- Atkeson, Lonna Rae and Randall W. Partin. 2001. "Candidate Advertisements, Media Coverage, and Citizen Attitudes: The Agendas and Roles of Senators and Governors in a Federal System," *Political Research Quarterly* 54(4): 795-813.

- Atkeson, Lonna Rae. 1999. "'Sure, I voted for the Winner!' Over Report of the Primary Vote for the Party Nominee in the American National Election Studies," *Political Behavior* 21(3): 197-215.
- Atkeson, Lonna Rae and Randall W. Partin. 1998. "Economic and Referendum Voting and the Problem of Data Choice: A Reply," *American Journal of Political Science* 42:1003-1007.
- Atkeson, Lonna Rae. 1998. "Divisive Primaries and General Election Outcomes: Another Look at Presidential Campaigns," *American Journal of Political Science* 42:256-271.
- Rapoport, Ronald O. Walter J. Stone, and Lonna Rae Atkeson. 1996. "Candidate Chances, Ideological Moderation and American Nomination Politics: A Simulation Approach," *European Journal of Political Research* 29:147-168.
- Atkeson, Lonna Rae and Randall W. Partin. 1995. "Economic and Referendum Voting: A Comparison of Senate and Gubernatorial Elections," *American Political Science Review* 89:99-107.
- Stone, Walter J., Ronald Rapoport and Lonna Rae Atkeson. 1995. "A Simulation Model of Presidential Nomination Choice," *American Journal of Political Science* 39:135-161.
- Atkeson, Lonna Rae. 1993. "Moving Toward Unity: Attitudes in the Nomination and General Election Stages of the Presidential Campaign." *American Politics Quarterly* 21:272-289.
- Stone, Walter J., Lonna Rae Atkeson and Ronald Rapoport. 1992. "Turning On or Turning Off: Mobilization and Demobilization Effects of Participation in Presidential Nomination Campaigns," *American Journal of Political Science* 36:665-691.

BOOK CHAPTERS, MONOGRAPHS:

- Benstead, Lindsay J., Lonna Rae Atkeson, and Mohammad Adnan Shahid. 2019. "Why Does Satisfaction with a Non-Democratic Regime Increase Support for Democracy? The Role of Perceived Corruption," in *Informal Practices and Corruption in the Middle East*, edited by Ina Kubbe and Aiysha Varraich. Routledge.
- Atkeson, Lonna Rae and Alex N. Adams. 2018. "Mixing Survey Modes and Its Implications," in the *Oxford University Handbook on Polling and Polling Methods*, edited by Lonna Rae Atkeson and R. Michael Alvarez, Oxford University Press.
- Atkeson, Lonna Rae and Wendy L. Hansen. 2017. "Campaign Finance in US Politics: An Era without Limits," in *Changing How America Votes*, edited by Todd Donovan, Rowman & Littlefield.
- Atkeson, Lonna Rae. 2014. "Election Data Transparency," in *The Measure of American Elections*, edited by Barry Burden and Charles Stewart III, pp. 271-298, Cambridge University Press.
- Atkeson, Lonna Rae. 2014. "Voter Confidence Ten Years after Bush V. Gore," in *Election Administration in the United States: The State of Reform after Bush V Gore*, edited by R. Michael Alvarez and Bernard Grofman, Cambridge University Press.
- Atkeson, Lonna Rae, R. Michael Alvarez and Thad E. Hall. 2012. "The New Mexico Pilot Project," in *Confirming Elections: Creating Confidence and Integrity through Election Auditing*, edited by R. Michael Alvarez, Lonna Rae Atkeson and Thad E. Hall, New York:

Palgrave McMillan.

- Kerevel, Yann and Lonna Rae Atkeson. 2012. "Counting the Ballots: A Comparison of Machine and Hand Counts in New Mexico," in *Confirming Elections: Creating Confidence and Integrity through Election Auditing*, edited by R. Michael Alvarez, Lonna Rae Atkeson and Thad E. Hall, New York: Palgrave McMillan.
- Bryant, Lisa A. and Lonna Rae Atkeson. 2012. "The Cost of Election Audits: Time and Money," in *Confirming Elections: Creating Confidence and Integrity through Election Auditing*, edited by R. Michael Alvarez, Lonna Rae Atkeson and Thad E. Hall, New York: Palgrave McMillan.
- Alvarez, R. Michael, Lonna Rae Atkeson and Thad E. Hall. 2012. "Procedural Audits: Utah and Auditing Elections," in *Confirming Elections: Creating Confidence and Integrity through Election Auditing*, edited by R. Michael Alvarez, Lonna Rae Atkeson and Thad E. Hall, New York: Palgrave McMillan.
- Rocca, Michael, Lonna Rae Atkeson, Yann Kerevel and Lisa Bryant. 2010. "Moving from Red to Blue: The 2008 New Mexico Presidential, Senate, and First Congressional District Races," in *The Change Election: Money, Mobilization, and Persuasion in the 2008 Federal Elections*, edited by David Magleby, Philadelphia: Temple University Press.
- Rapoport, Ronald, Kira Allman, Daniel Maliniak, Lonna Rae Atkeson. 2010. "'Internet-ilization of American Parties: The Implications of the Unity08 Effort," in *The State of the Parties*, 6th edition Edited by John Green, Boulder: Roman and Littlefield.
- Atkeson, Lonna Rae. 2010. "The State of Survey Research as a Research Tool," in the *Oxford Encyclopedia of American Elections and Political Behavior*, edited by Jan Leighley, Oxford, Oxford University Press.
- Atkeson, Lonna Rae. 2010. "Voter Decision-Making on the Heels of Iowa," in *The Rise of the West*, eds. David Patton and Jennifer L. Robinson. Salt Lake City: University of Utah.

GRANTS:

- | | |
|---------|---|
| 2018-19 | New Mexico Secretary of State, "2018 Election Administration and Security Voter Survey," (\$49,587) |
| 2017-18 | National Science Foundation, "Emotion Regulation and Extraordinary Political Events" (\$200,000) |
| 2016-17 | Bernalillo County, New Mexico 2016, "2016 New Mexico Election Study," (\$49,871) |
| 2016-17 | Thornburg Foundation, Santa Fe, New Mexico, "A Look at Campaign Finance in New Mexico," (59000) with Wendy L. Hansen. |
| 2016-19 | New Mexico Department of Transportation, "New Mexico Dust Storm Study," (160,000) |
| 2014-15 | Bernalillo County, New Mexico 2014, "2014 New Mexico Election Ecosystem " (49,763) |

- 2012-13 “Bernalillo County, New Mexico 2012, “2012 New Mexico Election Administration An Examination of Vote Centers” (47,700)
- 2011 “Pew Charitable Trusts, Center on the States, Turnout and Mobilization in Low Voter Turnout Projects,” (\$12,281)
- 2011 Tom Golisano Foundation, “New Mexico, the Nation and the National Popular Vote Initiative,” (\$66000)
- 2010-11 Bernalillo County, New Mexico, “2010 New Mexico Election Administration Report” (\$25000)

AWARDS:

- 2015 Society for Political Methodology’s Excellence in Mentoring Award
- 2013 Mentoring Award, College of Arts and Sciences, University of New Mexico
- 2013 Lucius Barker Award for the best paper, “Latino Descriptive Voting: Evidence in The 2010 Gubernatorial Race in New Mexico,” presented at the 2012 Midwest Political Science Association Meeting on Race or Ethnicity
- 2010 Jack Taylor Best in Government Award, presented by Common Cause New Mexico
- Fellowship, Political Methodology Conference, Society for Political Methodology, University of Iowa

Public Policy Reports, Amicus Curiae Briefs, encyclopedia entries, blogs, and other non-peer reviewed items:

Atkeson, Lonna Rae, Adriana Crespo-Tenorio, Jeff Gill, D. Sunshine Hillygus, Daniel H. Hopkinds, Xun Pang and Betsy Sinclair. 2018. “Comments on Single-Blind Reviewing from the Editorial Staff,” *Political Analysis* 26(3): 255-57.

Atkeson, Lonna Rae and Wendy L. Hansen. 2017. “Albuquerque’s Upcoming Election is Unlike the Others,” Huffington Post Listen To America Tour, (available at: https://www.huffingtonpost.com/entry/albuquerques-upcoming-election-is-unlike-the-others_us_59ea6333e4b00f08619ed2db)

Atkeson, Lonna Rae and Wendy L. Hansen. 2017. “The 2017 Campaign Finance Report.” Typescript, University of New Mexico. Available at: <http://polisci.unm.edu/common/c-sved/papers/2017%20Campaign%20Finance%20Report.pdf>

Atkeson, Lonna Rae and Wendy L. Hansen. 2017. The 2016 Bernalillo County Election Administration Report. Typescript, University of New Mexico. Available at: <http://polisci.unm.edu/c-sved/2016-bernalillo-county-election-administration-report.pdf>

Atkeson, Lonna Rae. 2017. Voter Identification. *Sage Encyclopedia of Political Behavior*, edited by Fathali M. Moghaddam. Thousand Oaks: Sage

- Alvarez, R. Micahel, Atkeson, Lonna Rae and Thad E. Hall. 2016. "Are U.S. elections 'rigged?' Here's how to help voters believe that they're not, *The Washington Post, The Monkey Cage* (https://www.washingtonpost.com/news/monkey-cage/wp/2016/09/28/are-u-s-elections-rigged-heres-how-to-help-voters-feel-confident-that-theyre-not/?postshare=1331475070527091&tid=ss_in)
- Atkeson, Lonna. 2016. "Primary Turnout and the Importance of Party Position." *Mischiefs of Faction*. Vox.com. Available at <http://www.vox.com/mischiefs-of-faction/2016/3/24/11301108/presidential-primary-turnout>.
- Atkeson, Lonna Rae, Alex N. Adams, Charles Stewart and Julia Hellewege. 2015. "The 2014 Bernalillo County Election Administration Report." Typescript, University of New Mexico. Available at: <https://polisci.unm.edu/common/documents/2014-bernalillo-county-nm-election-administration-report.pdf>.
- Atkeson, Lonna Rae and R. Michael Alvarez. 2014. Introduction to Political Analysis Mini-Symposium on Advances in Survey Methodology. *Political Analysis* 22(3): 281-284.
- (Associated Blog: <http://blog.oup.com/2014/08/improving-survey-methodology-q-a-with-lonna-atkeson/>).
- Atkeson, Lonna Rae, Lisa A. Bryant and Alex N. Adams. 2013. "The 2012 Bernalillo County Election Administration Report. Typescript, University of New Mexico. Available at: <http://www.unm.edu/~atkeson/newmexico.html>.
- Atkeson, Lonna Rae. 2012. "Don't Go Coloring New Mexico Blue Just Yet?" Op-ed Albuquerque Journal, Sunday, November 18, 2012. (Available at: <http://www.abqjournal.com/main/2012/11/18/opinion/dont-go-coloring-nm-blue-just-yet.html>).
- Atkeson, Lonna Rae.. R. Michael Alvarez. Alex N. Adams, Lisa Bryant. 2011. "The 2010 New Mexico Election Administration Report. Typescript, University of New Mexico. Available at: <http://polisci.unm.edu/common/documents/c-sved/papers/nm-2010-general-election.pdf>.
- Atkeson, Lonna Rae, R. Michael Alvarez, Thad E. Hall, Lisa A. Bryant, Yann Kereval, Morgan Llewellyn, David Odegaard. 2009. "The 2008 New Mexico Post Election Audit Report," available at: <http://polisci.unm.edu/common/documents/c-sved/papers/nm08pew.pdf>
- Atkeson, Lonna Rae, R. Michael Alvarez, Thad E. Hall. 2009. "Provisional Voting in New Mexico," Pew Charitable Trusts, The Center for the States, *Provisional Ballots: An Imperfect Solution*.
- Adams, et al. 2009. Statement to the National Institute of Technology regarding Voluntary Voting Standard Guidelines in relation to post election audits, October 2009.
- Atkeson, Lonna Rae, Matt A. Barreto, Lorraine C. Minnite, Jonathan Nagler, Stephen A. Nuno and Gabriel Ramon Sanchez, 2009, *Amicus Curiae Social Science Brief to the Indiana Supreme Court*, League of Women Voters of Indiana and leagues of Women Voters of Indianapolis v. Todd Rokita.
- Atkeson, Lonna Rae, Alex Adams, Lisa Bryant, Angelina Gonzalez-Aller, Willard Hunter, Yann Kerevel, Kimberly Proctor, Lisa Sanchez and Lori Tafoya. 2010. "The City of Albuquerque

2009 Mayoral Election Administration Report,” Available at:
<http://polisci.unm.edu/common/documents/c-sved/papers/nm-abq-2009-mayor-race.pdf>

Atkeson, Lonna Rae. R. Michael Alvarez, Thad E. Hall. 2010. “Assessing Electoral Performance in New Mexico using an Eco-system Approach: New Mexico 2008,” Typescript, University of New Mexico. Available at:
<http://www.unm.edu/~atkeson/newmexico.html>

COURSES TAUGHT:

Undergraduate

Introduction to American Politics
 Public Opinion and Political Behavior
 Women in American Politics
 Junior Honors Seminar
 Introduction to Political Research

Graduate

Political Behavior
 American Politics Pro-seminar
 Introduction to Statistics
 Topics in Advanced Research Methods:
 Linear Structural Equation Modeling
 Introduction to Methods of Political Science
 Research/Scope and Methods
 Survey Methodology
 Writing for Research

PROFESSIONAL ACTIVITIES:

Invitations

- “Disenfranchisement, Gerrymandering and the Black Vote,” Sandia’s Diversity Cinema, African Americans and the Vote, February 25, 2020
- “2016 Primary Voting and the Economy,” Iowa Conference Caucus, University of Iowa, Iowa City, IA, February 1-3, 2020.
- “Economic Voting in the 2016 Presidential Election: It’s Manufacturing,” University of Massachusetts, Amherst, February 6, 2020.
- “Economic Voting in the 2016 Presidential Election: It’s Manufacturing,” University of Georgia, Athens, GA., January 20, 2020.
- “Messaging and Public Perception: Understanding what Voters, communities, and election officials think about Vote By Mail,” Pantheon Analytics, Washington DC, June 20, 2019.
- “The Election Landscape,” Corrales Independent, Corrales, NM April 17, 2019
- “The Science of Elections,” Taos Democrats, Taos, NM March 4, 2019.
- “Reflections on the 2018 Midterm Elections,” Albuquerque League of Women Voters, Albuquerque, December 13, 2018.
- “Another Electoral College Misfire,” Santa Fe League of Women Voters Public Forum on the National Popular Vote, Santa Fe, NM, November 10, 2018
- “Why We Need Intellectual Humility in the 21st Century,” Wednesday Women, Albuquerque, NM, August 15, 2018

- “Economic Voting in the 2016 Election,” Florida State University, Tallahassee Florida, April 18-20, 2018.
- “de Tocqueville and the State of the Nation 2018,” St. John’s College, Santa Fe, New Mexico, February 3 & 10, 2018.
- “Social Identity Primes and Public Opinion: A comparison of Black and White Attitudes During Extraordinary Events,” University of Delaware, Newark, Delaware, March 20, 2017.
- “Voting Convenience Centers,” American Bar Association Standing Committee on Election Law Town Hall on Voting Convenience Centers, State Bar of New Mexico, Albuquerque, New Mexico, December 1, 2016.
- “The 2016 General Election: Change, Revolution or Status quo? Confessions of a Political Scientist,” Indiana University Purdue University Indianapolis, Indianapolis, Indiana, November 17, 2016.
Also, Santa Fe, New Mexico
Also, University of New Mexico, Albuquerque, New Mexico
- “The Virtues of Election Observation,” The National Conference of State Legislatures, Chicago, Illinois, August 7-11, 2016.
- Speaker, League of Women Voters Santa Fe, March 2016
- “The Iowa Caucus 2016,” the University of Iowa, Iowa City, January 31-February 1, 2016.
- “*Data Quality, Professional Respondents and Discontinuous Surveys: Issues of Engagement, Knowledge and Satisficing*,” *The International Methods Colloquium* (available at: <http://www.methods-colloquium.com/single-post/2015/11/06/Lonna-Atkeson-Data-Quality-Professional-Respondents-and-Discontinuous-Survey-Issues-of-Engagement-Knowledge-and-Satisficing>), November 6, 2015.
- “Protecting the Vote: Dialogues on Citizenship, Elections and the Franchise,” A Symposium by the University of Kansas, Lawrence Kansas, October 8, 2015.
- Plenary – Connecting the Dots: Who Collects Election Data and How are they Doing It? Election Assistance Commission Election Data Summit, August 12-13, American University, Washington DC.
- “The Effect of Election Lines on Turnout: A Case Study in Sandoval County, New Mexico,” New Research on Election Administration and Reform, MIT, Cambridge, Mass. June 8, 2015
- “Professional Respondents and Data Quality,” Visions in Methodology Conference, University of Kentucky, May 13-16, 2015.
- “Do You See What I see? Panel Affects in The American Panel Study,” presented at the St. Louis Area Methods Meeting (SLAMM), Washington University, St. Louis, April 24, 2015.
- “The Effect of Disconfirming Stereotypes on Perceptions of Female Political Leaders in Mexico,” presented at the First Annual School of Politics and Global Studies Working Group Conference Women, Media, and Politics: A Comparative Perspective, Arizona State University, April 10-11, 2014.
- “Electoral Competition Workshop,” Laguna Beach, California, December 18, 2014.
- Guest Editor, 2014, Symposium on “The State of Survey Research,” *Political Analysis* 22(3): 304-320
- Guest Commissioner, The National Commission on Voting Rights Colorado/New Mexico State Hearing, March 7, 2014, Sturm College of Law, University of Denver
- “Measurement Error in Online Survey Panels: Panel Conditioning and Data Quality,” presented at the American Panel Survey (TAPS) Workshop, Washington University, St. Louis, November 8-9, 2013

Speaker, League of Women Voters, January 2013
 Visions in Methodology Conference, Florida State University, April 26-27, 2013.
 Electoral Competition Workshop, Australian National University, Canberra, Australia, February 18-22, 2013.
 “Panel Conditioning in Online Panels,” Washington University, St. Louis, February 1, 2013.
 “Election Accessibility and Transparency,” Measure of Elections Conference, MIT, June 18-19, 2012
 Speaker, Women’s Press of Albuquerque, December 2012
 “Catastrophic Politics,” February 28-29, 2012, Appalachian State University
 “Comparative Cross National Electoral Research Launch and Workshop,” University of Exeter, September 8-9, 2011.
 “Electing the President A Citizen Panel: A Comparison of the Electoral College and the National Popular Vote,” Directed 3 meetings with a citizen panel.
 “National Popular Vote Initiative Meeting,” San Francisco, California, July 15, 2011.
 “Voter Confidence in 2010,” Bush V. Gore, 10 Years Later: Election Administration in the United States, Center for the Study of Democracy, University of California, Irvine and the Cal Tech/MIT Voting Technology Project, April 16-17, 2011.
 Judge, We the People Civics Contest, December 11, 2010 Capitol Building, Santa Fe, New Mexico
 “Election Auditing,” Computer Science Department, University of New Mexico, September 17, 2010.
 “Thinking about Politics: The Role of Gender,” Metro Federated Republican Women, July 14, 2010, Seasons Restaurant, Albuquerque
 “Gender of Interviewer and Gender-Related Attitudes in Morocco: A Field Experiment” by Lindsay Benstead, Discussant, Society for Political Methodology, University of Iowa, Iowa City, July 22-24, 2010.
 Speaker, “Negative Advertising,” Albuquerque Republican Federation of Women, July 2010
 “Who is Asked and Who Asks for Voter ID,” UT-Pan Am, April 29, 2010.
 “How Crisis Shapes Attitudes: Hurricane Katrina, External Efficacy and Public Confidence in Government,” Visions in Methodology Conference, University of Iowa, Iowa City, Iowa, March 18-20, 2010 with Cherie Maestas.
 “New Mexico Politics,” US State Department, A Discussion with Foreign Journalists, Albuquerque, NM, January 26, 2010

Conference Participation:

2020 “Looking for Election Anomalies” with Christopher Mann, Southern Political Science Association, San Juan, Puerto Rico January 8-11, 2020.
 2020 “Election Laws and Turnout,” Discussant, Southern Political Science Association, San Juan, Puerto Rico January 8-11, 2020.
 2019 “Mobilization or Fraud” with Christopher Mann, Southern Political Science Association, Washington DC, August 29-September 1, 2019
 2019 “Emotion Regulation and Survey Response Quality” with Mathew Cawvey, Cherie Maestas, Sara Levens, and Cherie Maestas, European Survey Research Association, Zagreb, Croatia, July 15-19.

- 2019 “Presidential Nomination Politics 2016: Who Voted for the Insurgent Candidate?” with Jared Clay and Wendy Hansen, Midwest Political Science Association, Chicago, IL, April 4-6.
- 2019 “It’s Worth Waiting For: the Willingness to Wait to Vote Compared to Other Services,” with Lisa Bryant and Paul Gronke, Midwest Political Science Association, Chicago, IL, April 4-6.
- 2018 “Fit for the Job: Candidate Qualifications and Low Information Elections,” Midwest Political science Association, Chicago, IL, April 4-7 with Brian Hamel.
- 2018 “Economic Voting in the 2016 Election,” Midwest Political Science Association, Chicago, IL, April 4-7, with Jacob Altik and Wendy L. Hansen.
- 2017 “Paying Attention to Inattentive Survey Respondents,” American Political Science Association, San Francisco, CA, August 30-September 2,
- 2017 Summer Conference on Election Sciences, Program Chair along with Bernard Fraga, Reed College and Portland State University, Portland, OR July 26-28.
- 2017 “Public Opinion and Election Reform,” Panel Discussant and Chair, Midwest Political Science Association, Chicago, IL, April 4-6, 2017.
- 2017 “Exploring Voter Overreport and Turnout in Mexico,” Southern Political Science Association, January 11-14, 2017, New Orleans, Louisiana, with Yann Kerevel.
- 2016 “Are Voting Centers Convenient?” Midwest Political Science Association, April 7-10, Chicago, Illinois with Lisa Bryant.
- 2016 “The Effect of Continuous Panels on Survey Response,” Southern Political Science Association, January 7-9, San Juan, Puerto Rico.
- 2015 “Data Quality in Online Panels,” European Survey Research Association, Reykjavik, Iceland, July 13-17.
- 2014 “Easy Versus Hard Issues and Satisficing,” International Total Survey Error Workshop, Washington D.C., Washington DC, October 3-4 with Alex Adams.
- 2014 “Controlling for Satisficing in Models of Public Opinion,” American Political Science Association, Washington D.C. August 28-31 with Alex Adams.
- 2014 Discussant, “Experiments in Digital Democracy,” American Political Science Association, Washington D.C. August 28-31.
- 2013 Discussant, The Determinants and consequences of Trust, Midwest Political Science Association, Chicago, Illinois, April 11-14.
- 2013 “Intragender gubernatorial Elections: Stereotypes and Vote Choice,” presented at the Midwest Political Science Association, Chicago, Illinois, April 11-14.
- 2012 “Panel Conditioning in Online Panels” presented at the Pacific American Public Opinion Research, San Francisco, CA, December 5-7.
- 2012 “Latino Descriptive Voting: Evidence in The 2010 Gubernatorial Race in New Mexico,” Presented at the Midwest Political Science Association, April 2-15, Chicago, Il., with Alex Adams and Shannon Terry.
- 2012 “Two Challenges in Verification: Poll Workers and the National Popular Vote,” Election Verification Network Conference, Santa Fe, NM March 28-30
- 2012 “Plenary: Taking the Long View,” Election Verification Network Conference, Santa Fe, New Mexico, March 28-30
- 2012 “Mobilization of Local Voters,” State Politics and Policy Meeting, Houston, Texas, February 16-18 with Lisa Bryant.
- 2012 Discussant, State Politics and Policy Meeting, Houston, Texas, February 16-18.

- 2011 “Gender and Legislative Participation in Mexico’s Chamber of Deputies Before and After the Adoption of Gender Quotas,” Midwest Political Science Association, March 31-April 3, with Yann Kerevel.
- 2011 “Consolidating Democracy in the Arab World: The Role of Government Satisfaction in Building Popular Support for Democracy” 1st International Conference on Survey Research, “Survey Research in the Gulf: Challenges and Policy Implications” Sponsored by the Social & Economic Survey Research Institute (SESRI), Qatar University, Doha, Qatar ,February 27- March 1, 2011, with Lindsay Benstead.
- 2010 “Attribution of Blame and Hurricane Katrina” presented at the American Political Science Association, Washington DC, September 2-5.
- 2010 “Assessing Data Quality across Probability Samples: An Examination of a Post General Election Mixed-Mode (Internet and Mail) and Telephone Survey,” presented at the American Association of Public Opinion Research, May 13-16, Chicago, Illinois with Alex N. Adams and R. Michael Alvarez.
- 2010 “Who Asks for Voter ID,” Presented at the Midwest Political Science Association, April 22-25, Chicago, Illinois with Yann Kerevel.
- 2010 “Mixed Mode (Internet and Mail) Probability Samples and Survey Representativeness: The Case of New Mexico 2008,” presented at the Western Political Science Association, April 1-3, San Francisco, California, with Alex N. Adams.
- 2010 “Elections and Happiness: The Effect of Electoral Institutions on Life Satisfaction,” presented at the Western Political Science Association, April 1-3, San Francisco, California, with Alex N. Adams.

Professional Service:

Selected Media Appearances and Interviews:

Numerous (1000s of) interviews with local, national and international print, radio, and TV journalists (1996-2020)

(Outlets include (selected list): Factcheck.org, *The Hill*, *Time*, *Huffington Post*, National Public Radio (NPR), Arizona Public Radio, NM public Radio, Minnesota Public Radio, New Mexico Public Radio, KUNM, VOX, C-net, *Washington Post*, *New York Times*, Jewish Insider, KOAT, Vermont Public Radio, *The News Hour*, *Salon.com*, *The Nation*, *USA Today*, *Albuquerque Journal*, *Albuquerque Tribune*, *Santa Fe New Mexican*, *Milwaukee Journal Sentinel*, *Atlanta Journal Constitution*, *Denver Post*, AP Reporters, *New Mexico Independent*, BBC, the *Washington Monthly*, *ABC News*, Delaware Talk News, *Congressional Quarterly*, etc.)

HuffPost, “Election Security Challenges in 2020” available at

https://www.huffpost.com/entry/election-security-challenges-in-2020_n_5e0fa491c5b6b5a713ba2c89?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAFxuYCW3X_vMKYHpbnd8sj86XBrPrZKa0vPVrokJiYkp8WYHshooMrZzBCKoiIpHotvx11yGRSc9ZbfsRpM_tGewKonRY1kFrWy5fyfyaHOQnix6-zJKXUTleKipPd9Jp9FxFkKhBIW46HBY-UXKINfmPGohcOl_B1zOFKWm99Co2N9J

KJZZ Arizona NPR, “Maricopa County Recorder Adrian Fontes: Arizona Moving To Mail-In Ballots Makes Sense,” available at: <https://kjzz.org/content/1150546/maricopa-county-recorder-adrian-fontes-arizona-moving-mail-ballots-makes-sense>,

KOBT, NBC Affiliate, Political Commentary, Election Analyst, Primary night, General Election night, and general election coverage throughout the campaign 2016-present

KSFR, Impeaching the President, <https://www.ksfr.org/post/unm-s-lonna-atkeson-impeaching-president-trump>, October 23, 2019

KJXX, NPR, Vote-ByMail, <https://kjzz.org/content/1150546/maricopa-county-recorder-adrian-fontes-arizona-moving-mail-ballots-makes-sense>, September 3, 2019

KNME, *In-Focus New Mexico Politics*, August 9, 2019, March 24, 2020

KOBT, Santa Fe Municipal Election, March 6, 2018

KNME, *In-Focus New Mexico Politics*, September 5, 2017

KNME, *In-Focus New Mexico Politics*, June 9, 2016

KRCW, NPR, *Background Briefing with Ian Masters*, May 26, 2016, (http://ianmasters.com/sites/default/files/mp3/bbriefing_2016_05_25full_audioport.mp3)

KSFR, Santa Fe Radio Café, “On Disenfranchised Voters in New Mexico and Beyond,” May 3, 2016, (<http://ksfr.org/post/may-3-unm-professor-lonna-atkeson-disenfranchised-voters-new-mexico-and-beyond#stream/0>)

KPCC, *Airtalk*, “Are Voter Registration Rules Like New York Suppressing Votes?” April 19, 2016 (<http://www.scpr.org/programs/airtalk/2016/04/19/48086/are-voter-registration-rules-like-new-yorks-suppre/>)

NPR, *All Things Considered*, April 4, 2016, “Once Ruled By Washington Insiders, Campaign Finance Reform Goes Grass Roots” (<http://www.npr.org/2016/04/04/473005036/once-ruled-by-washington-insiders-campaign-finance-reform-goes-grassroots>)

KPCC, *Airtalk*, “Long lines and flawed lists mar presidential primaries in Arizona and beyond,” March 24, 2016 (<http://www.scpr.org/programs/airtalk/2016/03/24/47472/long-lines-and-flawed-lists-mar-presidential-prima/>)

KNME, *In Focus New Mexico Politics*, November 7, 2014

KNME, *Election Night Coverage*, November 4, 2014

KUNM, *Call in Show*, October 30, 2014

KUNM, *Local NPR*, August 15, 2013

KNME, *In Focus New Mexico*, February 7, 2013, April 2014

KNME, *State of the State Address*, January 14, 2013

KUNM, *In Focus New Mexico*, February 24, 2012

KUNM, NPR, *In Focus New Mexico*, Legislative Politics and Election Reform, March 1, 2011

KRQE, *State of the State Address*, January 19, 2011

KNME, *State of the State Address*, January 17, 2011

KNME *Election Night Coverage*, November 2, 2010

National Public Radio, *All Things Considered*, June 8, 2010

KNME Interview, *In Focus New Mexico Politics*, June 5, 2008; January 8, 2010; May 2010; August 21, 2010, October 2010, March 2 2011

Department/University Committee Work/Service:

Chair, 19th Amendment 100th Anniversary Celebration
 Executive Committee, AY 2012-13, 2015-16
 Provost Promotion and Tenure Committee AY 2014-15
 Graduate Committee, AY 2012-13
 On-line Class Committee, Fall 2010, Spring 2011

Ph.D. Dissertation Committees:

Alex Adams (Chair)
 Clifford C. Clogg Award, ICPSR, 2010
 Holly Garnett (External Reviewer, PhD Spring 2017, McGill University)
 Title: *Strengthening Electoral Integrity through Electoral Management*
 Julia Hellwege (Chair, PhD Summer 2016)
 Ted Robinson Memorial Award for the best research proposal by a graduate student
 in the field of minority politics
 Assistant Professor, University of South Dakota
 Title: *Constituency, Identity, and Surrogate Substantive Representation: Minority
 Women in U.S. State Legislatures*
 Kim Proctor (Chair, PhD Spring 2016)
 Janet Box-Steffensmeier ICPSR Summer Fellowship Award, 2010
 Senior Scientist, Health and Human Services
 Justin Delacour (Chair, PhD, May 2014)
 Assistant Professor, Lewis University, Romeo, Illinois
 Lisa Bryant (Chair, PhD Summer 2014)
 Assistant Professor California State University - Fresno
 Yann Kerevel (Chair, PhD Summer 2012)
 Assistant Professor Louisiana State University
 IFES Fellowship Summer 2009
 Elizabeth Wemlinger (PhD, July 2011, University of North Carolina, Charlotte)
 Prakash Adhikari (PhD, July 2011)
 Associate Professor, Central Michigan University
 Received Popejoy Dissertation Award, 2013

Manuscript Referee/Editorial Boards (30+ /year):

<i>American Political Science Review</i>	<i>British Journal of Politics</i>
<i>American Journal of Political Science</i>	<i>Politics and Policy</i>
<i>American Politics Quarterly</i>	<i>Gender and Politics</i>
<i>American Politics Research</i>	<i>Politics, Groups and Identities</i>
<i>Political Research Quarterly</i>	<i>Political Analysis</i>
Editorial Board Member, 2013-2016	Guest Editor 2016,
<i>Election Law Journal</i>	Associate Editor 2017-2020
<i>American Politics Review</i>	<i>Social Science Quarterly</i>

<i>Journal of Politics</i>	<i>State Politics and Policy Quarterly</i>
Editorial Board Member, 2009-2014	Editorial Board Member, 2001-2003
<i>Legislative Studies Quarterly</i>	<i>Perspectives on Politics</i>
<i>The Policy Studies Journal</i>	<i>Political Behavior</i>
	Editorial Board Member, 2014-2018
<i>Women and Politics</i>	<i>Electoral Studies</i>
<i>Journal of Theoretical Politics</i>	<i>Southeastern Political Review</i>
<i>Journal of Elections, Public Opinion and Parties</i>	<i>Journal of Women, Politics and Policy</i>
<i>European Journal of Political Research</i>	<i>Field Methods</i>
<i>Comparative Political Studies</i>	<i>Public Opinion Quarterly</i>
<i>Political Psychology</i>	<i>International Journal of Public Opinion Quarterly</i>
<i>Social Science Research</i>	<i>Political Parties and Identities</i>
<i>PS: Politics and Political Science</i>	<i>Sociological Methods</i>
<i>Political Science Research Methods</i>	<i>Statistics, Politics and Policy</i>
<i>Social Forces</i>	<i>Journal of Personality and Social Psychology</i>
	<i>Sociological Research and Methods</i>
<i>Social Influence</i>	<i>Cambridge Elements</i>
<i>Sociological Perspective</i>	

Grant Referee:

Canadian National Science Foundation 2020
 National Science Foundation, 1995, 1996, 1997, 1999, 2000, 2003, 2004, 2005, 2008, 2009, 2010, 2013 (Fall & Spring)
 Time-sharing Experiments for the Social Sciences, 2003, 2010

Board of Directors Membership

ANES Board of Overseers 2019-Present
 MIT Election Data Science Lab 2016-Present
 Local Election Office Survey Advisory Board 2018

Associations and Association Service:

American Political Science Association
 Chair, Emerging Scholar Committee Elections, Voting Behavior and Public Opinion 2017
 Chair, EE Schattschneider Best Dissertation Award Committee 2014-15
 Gladys M. Kammerer Award Committee, 2012-13
 Section Chair, Political Methodology, 2012
 Member, 2007 APSA Sullivan Award Committee (Best Graduate Student Paper), Public Opinion and Voting Behavior
 Member, 2007 APSA Best Paper Award Committee Elections, Public Opinion and Voting Behavior,
 Council Member, Political Organizations and Parties, 2006-2008
 Section Chair, Elections, Voting Behavior and Public Opinion, 2007
 Section Chair, Society for Political Methodology, 2012

Chair, Emerging Scholar Award, Political Parties and Organizations Section,
American Political Science Association, 2007

Council Member, State Party and Politics, 2003-2004

Council Member, Elections, Public Opinion and Voting Behavior, 1998-2000

Election Science and Reform Association

Program Chair, ESRA First Annual Conference, Portland, OR, July 26-28, 2017

Southern Political Science Association

V.O. Key Book Award Committee 2017-18

Program Committee, 2016

Nominations Committee, 2016

Editorial Board Member, *Journal of Politics*, 2009-2013

Chair, Best Article in *Journal of Politics* 2015

American Association for Public Opinion Research

International Society for Political Psychology

Western Political Science Association

Politics, Groups and Identities Editor Search Committee 2015

Committee on Professional Ethics, 2004-2005

Member, Charles Redd Award Paper Committee, 2003-2004

Program Committee, Political Parties, 2003-2004

Chair, Betty Nesvold Women and Politics Award, 1999-2000

Program Committee, Voting and Elections, 1998-1999

Nomination Committee, 1999-2000

Midwest Political Science Association

Section Chair, Political Behavior, 2019

MPSA Pi Sigma Award Committee, Best Paper Presented at the Annual Meeting
in 2015, 2015-16

Best Paper by an Emerging Scholar Award Committee, 2006-2007

Society For Political Methodology

Nomination Committee, 2019

Chair, Emerging Scholar Award Committee 2017

Associate Editor, *Political Analysis* 2017-2020.

Member, Political Methodology Lifetime Career Award Committee 2014-15,
2015-2016, 2016-17

Member-at-large, Society for Political Methodology, 2014-17

Section Chair, Political Methodology 2012

Member, Long Range Planning Committee, 2010-2012

Member, Committee on Undergraduate and Graduate Methods, Society for
Political Methodology, 2008-2013

Chair, Committee on Undergraduate and Graduate Methods, Society for Political
Methodology, 2006-2007

Member, Nomination Committee, 2018-2019

Southwestern Political Science Association

President, 2006-2007

President Elect, 2005-2006

Southwestern Social Science Association Nomination Committee, 2002-2005,
Nomination Committee Chair 2003-2004, 2004-2005

Nomination Committee Chair, 2002-2003, 2003-2004

Nomination Committee, 2001-2004
 Vice President and Program Chair, 2001-2002
 Vice President Elect, 2000-2001
 Chair, Pi Sigma Alpha Award for Best Paper, Political Science Program, 2000
 Council Member, 1999-2000
 Program Committee, Political Parties and Interest Groups, 1997
 Election Verification Network

Other Service:

Reviewer, Tenure and Promotion files, University of Kentucky, University of Georgia, Colorado State University, University of North Carolina-Charlotte, University of Texas Austin, Kent State University, American University, University of North Texas, University of New Hampshire, Auburn University, Tufts University, University of Florida, Texas Tech University

OTHER EXPERIENCE:

Expert Witness, *Voto Latino, et al. v. Hobbs*, No 2:19-cv-05685-DWL 2020
 KOB-TV Election Analyst 2016-Present
 Expert Witness, *Holmes, et al. v. Moore, et al.*, No. 18-cv-15292 (Wake Cnty. Sup. Ct.), 2019-2020
 Exit Poll Analysis, Las Cruces Municipal Election 2019
 Expert Witness, *Curling, et al. v. Brian Kemp, et al.*, C.A. No. 1:17-CV-2989-AT, 2018
 Expert Witness, *Greater Birmingham Ministries, et al., v. John Merrill*, C.A. No. 2:15-cv-02193-LSC, 2015-2018
 Exit Poll, Santa Fe Municipal Election 2017
 Consultant, IFC, Election Administration and Voting Survey, Election Administration Commission, 2014-16
 Consultant, Fors Marsh Group, Overseas Voter Project, 2015-17
 Expert Witness, *Fleming et al. v. Gutierrez, et al.*, 1:13-cv-00222 WJ-RHS (D. N.M., 2014)
 Expert Report, *Baca v. Berry*, No. 13CV0076, 2014 WL 11430906 (D. N.M. Aug. 29, 2014)
 Consultant, SBG & FMG, Federal Voting Assistance Program, 2013-15
 Expert Witness, Bernalillo County Metropolitan Detention Center, October 2012
 Consultant, Penny Adrian for Judge, Summer 2006
 Consultant, Duran, Giles and Rappaport vs The City of Albuquerque, Summer 2001
 Consultant, Modrall, Sperling, Roehl, Harris and Sisk, September-November, 1999
 Expert Witness: *The People versus Nathan Dunlap*, Change of Venue Motion, 1995
 Public Opinion Research Analyst, various election campaigns, 1994, Talmey-Drake Research and Strategy, Inc. Paul Harstedt, Project Director, Boulder, Colorado

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DECLARATION OF CHRISTOPHER J. ROADS

I, Christopher J. Roads, declare that the following is true and accurate and based on my personal knowledge, except those statements which are based on information and belief:

1. I am the Chief Deputy Recorder and Registrar of Voters for Pima County. I have been the registrar of voters for Pima County since June, 1999, and the Chief Deputy Recorder for Pima County since April, 2004. In my capacity for both positions, I am the senior manager overseeing the day-to-day operations of the Recorder's Office and report directly to the elected Pima County Recorder, F. Ann Rodriguez.
2. This declaration is being prepared in response to the State of Arizona's interrogatories in the case of Arizona Democratic Party v. Hobbs, 2020 CV 01143-DLR.
3. In Pima County, election tasks are divided between different departments. The Pima County Elections Department is responsible for candidate nomination petitions, campaign finance reports, ballot design, precinct boundary determinations, polling place selection, poll worker recruitment, hiring and training, ballot design, the operation of the polling places, tabulation of ballots and the preparation of the official canvass of the election.
4. The Pima County Recorder's Office is responsible for maintaining the Pima County Voter Registration roll, mailing and validating early ballots, the preparation of the poll rosters and precinct registers and the processing of provisional ballots. While I am familiar with a number of the Elections

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Department processes and procedures, this declaration is based only on the activities of the Recorder's Office.

5. We include an instruction sheet with every early ballot sent to a voter by mail. That instruction sheet includes directions to the voter to sign their early ballot affidavit. The mailing envelope that is included in the ballot package includes reminder notices on the side of the envelope with the adhesive flap. Included as one of the reminders is the direction for the voter to sign their affidavit. Both instructions are in English and Spanish.

6. For each election, we prepare written instructions to staff as to the exact procedures to follow for each ballot handling task. The instructions are revised before each election cycle and workers assigned to the task must attend a training class prior to performing the task in each election. The written instructions to staff for the 2020 General Election have not yet been written and will not be written until a few weeks before the election cycle begins. Absent a court order directing otherwise, we do not anticipate making any changes to our procedures for processing early ballots during the 2020 general election cycle compared to the processes we followed in 2018 and 2019. A number of the processes have not significantly changed in a number of years.

7. Each day during the election cycle our office sends two couriers to the main United States Postal Service processing plant in Tucson to pick up any inbound voted ballots. The ballots are then immediately transported to the Pima County Recorder's Office Ballot Processing Center. We have a standard pick-up time scheduled with the Postal Service of 9:00 a.m. each weekday. The ballots generally arrive at the Ballot Processing Center by 9:30 a.m.

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8. Any Pima County voter may also drop off their voted early ballot at any of our walk-in early voting sites. Ballots dropped off at a walk-in site are regularly picked up by couriers and transported to the Ballot Processing Center. Ballots dropped off at the sites are processed the same way as ballots picked up at the post office.

9. In Pima County, we provide voters with a separate mailing envelope along with the Early Ballot Affidavit envelope in order to protect the confidentiality of the voter's information. Once the ballots arrive at the Ballot Processing Center, the first step in processing the ballots is to open the mailing envelope and remove the contents of that envelope. The contents generally consist of the Early Ballot Affidavit Envelope that contains the voter's voted ballot. Workers performing that task are instructed to immediately examine the Early Ballot Affidavit envelope to confirm that the envelope is sealed, contains something that feels like a ballot, does not show any indications that the envelope has been tampered with and contains a signature on the affidavit envelope. If the affidavit envelope shows no signs of tampering, feels like it contains a ballot and has a signature it is sent for further processing. If any problems are detected, including an affidavit with a missing signature, the affidavit is immediately set aside for further processing by what we refer to as our Problem Ballot Team. Our staff have normally completed the opening and inspection process by early afternoon on the day that the ballots have been received that morning.

10. Our problem ballot team generally consists of 7 to 11 workers depending on the amount of early voting activity in the election cycle. During the time period when the mailing envelope is opened and the affidavit is inspected, the Problem Ballot Team members or a supervisor gather any problem ballots

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from the mail opening team. If the problem discovered is a missing signature, a problem ballot team member will immediately enter a request for a replacement ballot for the voter in the computer system. We then enter the voter's information into a tracking program and prepare a letter to the voter notifying them that they will be receiving a replacement ballot in the mail. The letter also informs the voter as to why the replacement ballot is being sent and the deadlines for returning the replacement ballot. That letter is prepared the same day that the unsigned ballot arrives in our office and is taken directly to the main postal processing plant in Tucson that afternoon. That post office is open during evening hours each weekday.

11. We use a third party vendor to print and assemble our early ballot packages. The data to the vendor is uploaded at approximately 3:00 p.m. each workday. The vendor will then print the replacement ballot materials, assemble the packages and deliver the replacement ballots to the post office either the next business day or no later than the second business day after the data is uploaded.

12. The original unsigned ballot affidavit is marked as invalid by our problem team and placed in the ballot storage room.

13. The procedures listed above are followed in every election from the first day that we start receiving voted ballots until the Thursday immediately before Election Day. Once we have reached the Thursday prior to Election Day it is generally too late for a voter to receive and return a replacement ballot by mail. Instead of issuing a replacement ballot to the voter, the problem team will attempt to contact the voter by phone and/or email if we have that information in the record. If we do not reach the voter directly, we will also send a text message notifying the voter that there is a problem with their early

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ballot and ask the voter to contact our office as soon as possible. A letter asking the voter to contact our office is also mailed until the Friday prior to Election Day. If the team is able to reach the voter, the voter is notified that the unsigned ballot affidavit cannot be processed. The voter is advised to go to any walk-in early voting site or emergency voting location in Pima County to vote a replacement early ballot in person or to go to their assigned polling place on Election Day to vote a provisional ballot. The Problem Ballot Team members track all efforts made to contact the voter and if the contact was successful, notes are taken as to the substance of the conversation. This procedure is followed for all unsigned early ballot affidavit envelopes we receive between the Thursday prior to Election Day and the close of business on the day before Election Day. During that period, our office regularly works on the weekend and the problem ballot team continues its efforts during that entire time period. During the 2020 General Election cycle, all but two of our walk-in early voting sites will be open for Emergency voting on the Saturday prior to Election Day and on the Monday, the day before Election Day. A number of our walk-in voting sites will also be open during evening hours until 7:00 p.m. at least two nights during the final week.

14. The Pima County Recorder’s Office was the first office in Arizona to make efforts to allow a voter to confirm their questioned signature on an early ballot affidavit envelope after Election Day. We do not refer to the process as “curing” the signature. We simply ask the voter to confirm that the signature on the affidavit is their signature or if the voter was assisted by another individual (and that individual signed the affidavit) that the voter was not able to mark the ballot themselves but requested the assistance of the other person and that the ballot was marked according to their direction. We

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do not allow a voter to alter an early ballot affidavit once it has been received in our office. During general election cycles, we will process between 350,000 and 450,000 early ballot affidavits during the 28-day early voting cycle.

15. The Pima County Recorder's Office has never allowed a voter to sign an affidavit after Election Day. I do not believe any county in Arizona has ever allowed that to occur. We consider an unsigned early ballot to be incomplete and invalid under Arizona law.

16. The Pima County Ballot Processing Center is located near the intersection of Country Club Road and Valencia Road near the Tucson International Airport. The early ballots are processed in that location and the Problem Ballot Team works directly in that facility. The most common problem ballot issue involves a questioned signature on an early ballot. The procedure for dealing with that issue is for a team member to attempt to call the voter. If they cannot reach the voter by phone, an email and a text message is sent. If the voter does not respond immediately a letter is sent to the voter asking them to contact our office. If the voter does not respond within one week, we repeat the phone call attempts, emails and texting. We do not routinely send replacement ballots to voters with questioned signatures unless we make contact with them and they confirm they did not sign the affidavit.

17. The most common signature comparison issues occur with voter registration forms originating at Motor Vehicle Department Offices. Almost 70% of voters in Pima County submit registration forms through MVD. Individuals sign on an electronic pad at an MVD office but sign their early ballot affidavit with a pen. There are significant differences in the writing between the two methods. During major election cycles the Problem Team will process 5,000

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to 6,000 questioned signatures and can make as many as 10,000 phone calls. In the days immediately following an election the problem ballot team is busy making final attempts to contact voters with questioned signatures.

18. Immediately after Election Day the rest of the staff are processing early ballots that were dropped off at the polls and provisional ballots. In a presidential general election we can receive as many as 25,000 to 35,000 early ballots dropped off at the polls. We generally receive between 15,000 and 25,000 provisional ballots in each general election. The most common reason for a voter to receive a provisional ballot at the polling place is because the voter received an early ballot and did not vote it. We must complete processing early ballots before we can process provisional ballots to ensure that a provisional ballot voter did not also drop off their early ballot. By state law, we must complete the validation process for all provisional ballots within 10 calendar days after Election Day. For the past several general election cycles the Pima County Recorder's Office has completed the provisional ballots on that 10th day.

19. The Plaintiffs have requested that the court order counties to allow a voter to sign their early ballot affidavit during the same post-election period as permitted to voters to confirm the existing signature on affidavits. The only way that this can occur is for the voter to travel to the Ballot Processing Center, for our staff to locate the particular ballot in the ballot room, to bring the ballot to the voter in the lobby and have them sign it. Our procedures require that two workers with different political party affiliations be present whenever a ballot is being handled. This will result in substantially more effort than occurs for a voter to confirm their signature. A voter can simply call our office to confirm their signature.

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20. Pima County is the 15th largest geographical county in the United States consisting of 9,189 square miles. The Tucson metropolitan area is at the eastern end of the county. Voters living in Ajo, Lukeville or in many areas on the Tohono O’odham Nation would be required to travel up to 100 miles or more to get to the Ballot Processing Center to sign their ballot. Voters living on the southern edge of the county would be required to travel up to 60 miles to arrive there. Voters living in the Towns of Marana or Oro Valley at the northern end of the metropolitan area would need to travel 20 to 30 miles to arrive at the Ballot Processing Center. Pima County is not the largest geographical county in Arizona.

21. Only a very small percentage of voters in Pima County fail to sign their early ballot affidavit. Most of those are issued replacement ballots or are able to go to a walk-in site, emergency voting site or to their polling place on Election Day.

22. The voter assistance programs we will implement during the 2020 General Election cycle are still being developed. Difficulties caused by the COVID-19 virus have required significant changes to our planned procedures.

23. In past elections, we would provide special election boards (referred to in Pima County as Team Voting) pursuant to A.R.S. § 16-549(A) for individuals who were confined to nursing homes, rehabilitation centers, pre-trial detainees or those serving misdemeanor jail sentences and those in hospitals and other similar facilities. However, many of those facilities are not permitting individuals from outside to enter the facilities. We have therefore contacted as many facilities in Pima County that we could identify to request their assistance in making certain that voters in the facilities are registered prior to the cutoff date, those that wish to receive a ballot can

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receive a ballot by mail and that someone will be available inside the facility to assist the voter with marking the ballot when necessary.

24. The Pima County Recorder’s Office regularly provides ballots in both large print and in braille when requested.

25. The Pima County Recorder’s Office has outreach workers for both of the Native American communities in Pima County, the Tohono O’odham Nation and the Pascua Yaqui Tribe. The outreach workers have been involved in a number of community activities with the Native American population in providing education on methods of voting including attending in person meetings and public service announcements broadcast on radio stations owned by both of the Native American Tribes.

26. We will be operating walk-in early voting sites near both Native American communities and our outreach workers will be among the staff at those sites.

27. The Recorder’s Office has a number of workers who are fluent in Spanish for both phone calls and walk-in issues.

28. For voters who are hearing impaired we have workers available to communicate in American Sign Language either in person or through video communication. We have also used a third-party vendor to set up video conferencing interpretation services when needed.

29. During the 2020 General Election cycle, we will be operating 14 walk-in early voting sites throughout Pima County. 13 of those sites will be able to issue ballots to any voter. The one site that will be for limited voter access is located in Ajo, Arizona and serves only the four westernmost precincts. Each of the full service walk-in voting sites will be equipped with an Express Vote ballot marking device that allows a number of voters with physical limitations to mark an early ballot without assistance.

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30. In order to reduce the spread of COVID-19, the Pima County Board of Supervisors has enacted a requirement that all individuals over age 5 wear a mask while in public and have required masks to be worn in all county facilities. Temperature taking requirements are also in effect in a number of county facilities including several of the walk-in early voting sites.

31. We have always allowed curbside voting at our walk-in early voting sites for individuals who cannot physically enter the walk-in voting site. During the 2020 elections, we will be providing curbside ballot drop off sites at most of our walk-in sites so that voters may drop off their mailed ballot without getting out of their car. We will also be setting up two voting booths outside each walk-in site location in the metropolitan area for voters who either are running a fever over 100.4 or who refuse to have their temperature taken or refuse to wear a mask. Their ballot will be brought outside to them to allow them to vote at the site.

32. The Pima County Recorder's Office has significantly increased its public outreach through social media accounts including Face Book, Twitter, Instagram, and Nextdoor. Videos of a number of our activities are also being posted on YouTube with links on our website. Our website is being redesigned and the new upgraded site is expected to be deployed within the next couple of weeks to be mobile friendly as well as to enhance viewing options by individuals with some physical limitations.

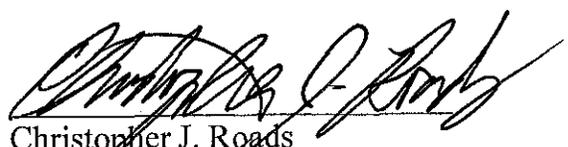
33. To my knowledge, we have not received any complaints from voters regarding communication issues due to either language considerations or

BARBARA LAWALL
PIMA COUNTY ATTORNEY
CIVIL DIVISION

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access issues for individuals with physical limitations for any of our early voting activities.

Dated this 17th day of July, 2020



Christopher J. Roads
Chief Deputy Recorder
Registrar of Voters
Pima County Recorder's Office

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15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT
 17 DISTRICT OF ARIZONA

18 The Arizona Democratic Party; The
 19 Democratic National Committee; DSCC,

20 Plaintiffs,

21 v.

22 Katie Hobbs, in her official capacity as
 Arizona Secretary of State; Edison Wauneka,
 23 in his official capacity as Apache County
 Recorder; David Stevens, in his official
 24 capacity as Cochise County Recorder; Patty
 Hansen, in her official capacity as Coconino
 25 County Recorder; Sadie Jo Bingham, in her
 official capacity as Gila County Recorder;
 26 Wendy John, in her official capacity as
 Graham County Recorder; Sharie Milheiro, in
 27 her official capacity as Greenlee County

No.

**COMPLAINT FOR INJUNCTIVE
 AND DECLARATORY RELIEF**

28

1 Recorder; Richard Garcia, in his official
 2 capacity as La Paz County Recorder; Adrian
 3 Fontes, in his official capacity as Maricopa
 4 County Recorder; Kristi Blair, in her official
 5 capacity as Mohave County Recorder; Michael
 6 Sample, in his official capacity as Navajo
 7 County Recorder; F. Ann Rodriguez, in her
 8 official capacity as Pima County Recorder;
 9 Virginia Ross, in her official capacity as Pinal
 10 County Recorder; Suzanne Sainz, in her
 11 official capacity as Santa Cruz County
 12 Recorder; Leslie Hoffman, in her official
 13 capacity as Yavapai County Recorder; and
 14 Robyn Stallworth Pouquette, in her official
 15 capacity as Yuma County Recorder,

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 Defendants.

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 12 Plaintiffs the Arizona Democratic Party (“ADP”), the Democratic National
 13 Committee (“DNC”), and the DSCC (collectively, “Plaintiffs”), by and through their
 14 undersigned attorneys, file this Complaint for Injunctive and Declaratory Relief against
 15 Defendant Katie Hobbs, in her official capacity as the Secretary of State of the State of
 16 Arizona (“Secretary”); Edison Wauneka, in his official capacity as Apache County
 17 Recorder; David Stevens, in his official capacity as Cochise County Recorder; Patty
 18 Hansen, in her official capacity as Coconino County Recorder; Sadie Jo Bingham, in her
 19 official capacity as Gila County Recorder; Wendy John, in her official capacity as Graham
 20 County Recorder; Sharie Milheiro, in her official capacity as Greenlee County Recorder;
 21 Richard Garcia, in his official capacity as La Paz County Recorder; Adrian Fontes, in his
 22 official capacity as Maricopa County Recorder; Kristi Blair, in her official capacity as
 23 Mohave County Recorder; Michael Sample, in his official capacity as Navajo County
 24 Recorder; F. Ann Rodriguez, in her official capacity as Pima County Recorder; Virginia
 25 Ross, in her official capacity as Pinal County Recorder; Suzanne Sainz, in her official
 26 capacity as Santa Cruz County Recorder; Leslie Hoffman, in her official capacity as
 27 Yavapai County Recorder; and Robyn Stallworth Pouquette, in her official capacity as

1 Yuma County Recorder (collectively, “Defendants”). Upon information and belief,
2 Plaintiffs allege the following:

3 **NATURE OF THE CASE**

4 1. The right to vote is “a fundamental matter in a free and democratic society.”
5 *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966) (citation and quotation marks
6 omitted). “No right is more precious in a free country than that of having a voice in the
7 election of those who make the laws under which, as good citizens, we must live. Other
8 rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v.*
9 *Sanders*, 376 U.S. 1, 17 (1964).

10 2. Plaintiffs bring this lawsuit to protect this right and to prevent the
11 disenfranchisement of thousands of Arizona voters, whose right to vote will be
12 disenfranchised in the upcoming November 2020 general election (the “2020 General
13 Election”) by the failure of Arizona law to provide a cure opportunity for up to five days
14 after election day (“Election Day”) for otherwise valid mail ballots that have no signature
15 (the “Inadequate Cure Period”).

16 3. Arizonans have a right to vote by mail. A.R.S. § 16-541(A). Over the past
17 decade, early voting by mail has grown exponentially in Arizona. In the 2008 general
18 election, for example, just over a million Arizona voters cast their ballot by mail. By the
19 2016 general election, that number had doubled to over two million voters. In 2018, a lower-
20 turnout midterm election, around 1.9 million voters voted by mail.

21 4. The number of mail ballots cast in the 2020 General Election also promises
22 to be significant. Arizona is suffering the results of a highly infectious coronavirus, which
23 causes the dangerous and sometimes deadly disease COVID-19. Considering this crisis, the
24 Secretary has encouraged increased voting by mail.

25 5. Under Arizona’s no excuse necessary absentee ballot system, any registered
26 voter can cast a mail ballot. A.R.S. § 16-541. Arizona employs a system by which election
27 officials verify that a given ballot was, indeed, cast by the voter in question by reviewing

1 the signature on the mail ballot envelope. And each general election cycle, thousands of
2 mail ballots are rejected because election officials are unsure whether the voter signed the
3 mail ballot envelope.

4 6. Arizona recognizes that this process of signature verification is fundamentally
5 flawed; that is, that election officials will inadvertently reject mail ballots that were, in fact,
6 cast by a registered voter. And so, it established a process by which some voters are
7 provided the post-Election Day opportunity to “cure” this election official error by
8 submitting proof that a voter did cast the ballot in question.

9 7. The problem under Arizona law that gives rise to this lawsuit is simple: In the
10 upcoming 2020 General Election, not all mail ballots that are initially rejected will be
11 treated equally regarding the ability of a voter to “cure” his or her ballot.

12 8. Voters whose signatures on their mail ballots do not match the signature in
13 the voter’s registration record are afforded an opportunity to correct their signature after
14 Election Day, for up to five days. But voters whose mail ballots are rejected for missing
15 signatures (a determination that the voter’s signature, executed on the envelope containing
16 the ballot, is missing) have no similar opportunity to cure their ballot after the election. If
17 not remedied by 7 p.m. on Election Day, their votes are simply not counted. Voters who are
18 in fact registered to vote, and who did in fact timely submit their mail ballots, will have
19 their votes disregarded without due process.

20 **JURISDICTION AND VENUE**

21 9. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the
22 deprivation under the color of state law of rights secured by the U.S. Constitution.

23 10. This Court has jurisdiction to hear Plaintiffs’ claims pursuant to 28 U.S.C.
24 §§ 1331, 1343(a)(3), and 1357.

25 11. This Court has jurisdiction over the Secretary, as she is sued in her official
26 capacity as an elected official in Arizona or Maricopa County. Further, the Secretary works
27 or resides in the State of Arizona.

1 help elect Democratic candidates to public office. Further, as part of its get-out-the vote
 2 (“GOTV”) efforts, ADP engages in a robust mail voter contact program, informing
 3 thousands of voters statewide about their ability to cast mail ballots; the rules and deadlines
 4 surrounding vote by mail; and encouraging voters to utilize vote-by-mail. The Inadequate
 5 Cure Period decreases overall confidence in the mail voting process, generally, and as a
 6 result, directly undermines the efforts ADP takes to encourage voters to utilize mail voting
 7 and to assist them in exercising their right to vote.

8 17. In 2020, ADP is making significant expenditures to educate, register,
 9 mobilize, and turn out Democratic voters in Arizona. The Inadequate Cure Period directly
 10 harms the ADP because it burdens and disenfranchises the very voters the ADP seeks to
 11 support. As a result, the ADP has had to—and will continue to—expend and divert
 12 additional funds and resources that it would otherwise spend on other efforts to accomplish
 13 its mission in Arizona to combat the effects that Arizona’s Inadequate Cure Period has on
 14 Democratic voters. For example, the ADP anticipates needing to focus additional
 15 educational resources on areas of Arizona with low English literacy rates. This is due to the
 16 heightened risk that voters in such areas will fail to understand mail ballot instructions,
 17 inadvertently mail the ballot without a signature, and be disenfranchised if their ballot is
 18 received with insufficient time to cure under the Inadequate Cure Period.

19 18. Further, ADP’s members are directly harmed by the Inadequate Cure Period.
 20 As of April 1, 2020, there were nearly 1.3 million registered Democratic voters in Arizona,
 21 32.5% of the total number of registered voters in Arizona (just over 3.9 million). In the 2016
 22 and 2018 general elections, respectively, 2.0 million and 1.9 million Arizonans voted by
 23 mail ballot. And in Maricopa County alone, the county recorder rejected 1,856 unsigned
 24 mail ballots in the 2018 general election and 2,209 in the 2016 general election. Given that
 25 Democratic voters represent nearly a third of registered voters in Arizona, that millions of
 26 Arizonans vote by mail ballot, and that thousands of Arizonans have inadvertently failed to
 27 sign mail ballot envelopes in recent elections, it is virtually certain that at least some ADP
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1 members will mail a ballot without a signature in 2020. These ADP members face an
2 imminent threat of having their vote denied in 2020 due to the Inadequate Cure Period, and
3 ADP is capable of obtaining relief for them without their individual participation. ADP
4 brings this claim on its own behalf, as well on behalf of its members.

5 19. Plaintiff the DEMOCRATIC NATIONAL COMMITTEE is a national
6 committee, as that term is defined and used by 52 U.S.C. § 30101, dedicated to electing
7 local, state, and national candidates of the Democratic Party to public office throughout the
8 United States. The DNC has constituents across the United States, including Democratic
9 voters in Arizona. To accomplish its mission, among other things, the DNC works closely
10 with Democratic public officials and assists state parties and candidates by contributing
11 money; making expenditures for their benefit; and providing active support through the
12 development of programs benefiting Democratic candidates.

13 20. The Inadequate Cure Period directly harms the DNC. It is inevitable that
14 Democrats, or those who would vote for Democrats, will not have their vote counted as a
15 result of the Defendants’ failure to allow voters to cure missing signatures after Election
16 Day. As a result, the Inadequate Cure Period decreases the likelihood that the DNC will be
17 successful in its efforts to help elect candidates of the Democratic Party to public office.
18 Arizona has a number of competitive Democratic races in the upcoming 2020 General
19 Election and is a key state in the presidential contest; accordingly, it is critical to the DNC’s
20 mission that every Democratic vote be counted and that its constituents have an equal
21 opportunity to cast their votes.

22 21. In 2020, the DNC anticipates making significant expenditures to educate,
23 register, mobilize, and turn out voters in Arizona. The Inadequate Cure Period directly
24 harms the DNC because it burdens and disenfranchises the very voters the DNC seeks to
25 support. As a result, the DNC has had to—and will continue to—expend and divert
26 additional funds and resources that it would otherwise spend on efforts to accomplish its
27 mission in Arizona to combat the effects that the Inadequate Cure Period has on Democratic
28

1 voters.

2 22. The DNC’s constituents are directly harmed by the Inadequate Cure Period.
 3 Given that Democratic Party voters represent nearly a third of the total registered voters in
 4 Arizona, that millions of Arizonans vote by mail ballot, and that thousands of Arizonans
 5 did not sign mail ballots in recent elections, it is virtually certain that at least some DNC
 6 constituents will mail a ballot without a signature in 2020. These DNC constituents face an
 7 imminent threat of having their vote denied in 2020 due to the Inadequate Cure Period, and
 8 the DNC is capable of obtaining relief for them without their individual participation. The
 9 DNC brings this claim on its own behalf, as well on behalf of its constituents.

10 23. Plaintiff DSCC is the national senatorial committee of the Democratic Party,
 11 as defined by 52 U.S.C. § 30101(14), and its mission is to elect Democratic candidates to
 12 the U.S. Senate, including in Arizona. The DSCC works to accomplish its mission in
 13 Arizona and across the country by, among other things, making expenditures for, and
 14 contributions to, Democratic candidates for U.S. Senate. It also assists state parties
 15 throughout the country, including in Arizona, by providing financial support to state parties
 16 to support coordinated campaign activities that further shared interest in electing
 17 Democratic candidates for U.S. Senate. In 2018, the DSCC made contributions and
 18 expenditures in the tens of millions of dollars to persuade and mobilize voters to support
 19 Democratic Senate candidates, including money spent in Arizona. In 2020, the DSCC again
 20 has made and expects to continue to make substantial contributions and expenditures to
 21 support the Democratic candidate for U.S. Senate in Arizona.

22 24. The Inadequate Cure Period directly harms the DSCC. It is inevitable that
 23 Democrats, or those who would vote for Democrats, will not have their vote counted as a
 24 result of the Defendants’ failure to allow voters to cure missing signatures after Election
 25 Day. Further, the DSCC is aware of the Inadequate Cure Period and will have to expend
 26 and divert additional funds and resources on voter persuasion efforts and other activities in
 27 Arizona, at the expense of its efforts in other states, in order to combat the effects of the

1 Inadequate Cure Period in the 2020 General Election for U.S. Senate in Arizona. This
2 frustrates the DSCC’s mission of, and efforts in, electing the Democratic candidate to the
3 U.S. Senate in Arizona and other Democratic candidates to the U.S. Senate nationwide.

4 25. The DSCC’s members and constituents are directly harmed by the Inadequate
5 Cure Period. Given that Democratic Party voters represent nearly a third of the total
6 registered voters in Arizona, that millions of Arizonans vote by mail ballot, and that
7 thousands of Arizonans didn’t sign mail ballots in recent elections, it is virtually certain that
8 some DSCC members and constituents will mail a ballot without a signature in 2020. These
9 DSCC members and constituents face an imminent threat of having their vote denied in
10 2020 due to the Inadequate Cure Period, and the DSCC can obtain relief for them without
11 their individual participation. The DSCC brings this claim on its own behalf, as well on
12 behalf of its members and constituents.

13 26. Defendant Katie Hobbs is the Secretary of State for the State of Arizona and
14 is the Chief Elections Officer for Arizona. A.R.S. § 16-142. As Arizona’s Chief Elections
15 Officer, the Secretary is responsible for overseeing the voting process in Arizona and is
16 empowered with broad authority to carry out that responsibility. She is also responsible for
17 prescribing rules related to procedures for, among other things, mail ballots, which are set
18 forth in the Arizona Election Procedures Manual (“Manual”). A.R.S. § 16-452. The
19 Secretary is sued in her official capacity for actions taken under color of state law.

20 27. Defendant Edison Wauneka is the duly elected Apache County Recorder and
21 is named as a defendant in this action solely in his official capacity.

22 28. Defendant David Stevens is the duly elected Cochise County Recorder and is
23 named as a defendant in this action solely in his official capacity.

24 29. Defendant Patty Hansen is the duly elected Coconino County Recorder and
25 is named as a defendant in this action solely in her official capacity.

26 30. Defendant Sadie Jo Bingham is the duly elected Gila County Recorder and is
27 named as a defendant in this action solely in her official capacity.

1 sign the affidavit and shall then mark his ballot in such a manner that his vote cannot be
2 seen.”).

3 43. To verify the voter, signatures are reviewed by the “county recorder or other
4 officer in charge of elections.” A.R.S. § 16-550(A). Specifically, in evaluating mail ballots,
5 Arizona law requires that “the county recorder or other officer in charge of elections shall
6 compare the signatures thereon with the signature of the elector on the elector’s registration
7 record.” *Id.*

8 44. Using signature “matching” to verify voter identity is an inherently dubious
9 process. Election officials are not handwriting experts, and the simple fact is that signatures
10 change all the time for any number of reasons.

11 45. Effective August 27, 2019, perhaps in recognition of the fact that the signature
12 verification process invariably disenfranchises lawful voters, the legislature amended
13 A.R.S. § 16-550(A) to include a cure period for signature mismatches in mail ballots. The
14 statute provides that “[i]f the signature is inconsistent with the elector’s signature on the
15 elector’s registration record, the county recorder or other officer in charge of elections shall
16 make reasonable efforts to contact the voter, advise the voter of the inconsistent signature,
17 and allow the voter to correct or the county to confirm the inconsistent signature.” *Id.*

18 46. As to those mail-in ballots where an election official determines that the
19 signatures do not “match,” “[t]he county recorder or other officer in charge of elections
20 shall allow signatures to be corrected not later than the fifth business day after a primary,
21 general or special election that includes a federal office or the third business day after any
22 other election” (the “Signature Mismatch Cure Period”). *Id.*

23 47. The statute does not provide that a voter may similarly be permitted to correct
24 or confirm a missing signature. It is silent on cure periods for missing signatures.

25 48. But the current version of the Elections Procedures Manual, which was
26 approved by the Governor and Attorney General in December 2019, as required by statute,
27 A.R.S. § 16-452(B) (the “Manual”), does address this issue. And it does so in a way that

1 treats missing signatures arbitrarily different from mismatched signatures.

2 49. According to the Manual, “[i]f the early ballot affidavit is not signed, the
3 County Recorder shall not count the ballot.” Unlike the Signature Mismatch Cure Period,
4 which extends for five days after Election Day, the Manual only requires the County
5 Recorder to make a “reasonable and meaningful attempt to contact the voter” and explain
6 how the missing signature can be cured “before 7:00pm on Election Day.” *Id.*

7 50. Accordingly, Arizona law does not provide a cure period for missing
8 signatures following Election Day, as exists with the five-day Signature Mismatch Cure
9 Period.

10 51. This will result in disenfranchisement. In recent general elections, a
11 significant number of mail ballots have been rejected in Arizona for missing signatures.

12 52. For example, in the Arizona general elections from 2008 to 2018, Maricopa
13 County election officials alone rejected a total of 18,420 mail ballots because they had
14 missing signatures.

15 53. Specifically, in Maricopa County the following number of mail ballots were
16 rejected for having “no signature”: 1,856 in the 2018 general election; 2,209 in the 2016
17 general election; 3,749 in the 2014 general election; 4,610 in the 2012 general election;
18 3,352 in the 2010 general election; and 2,644 in the 2008 general election.

19 54. Other counties in Arizona have rejected mail ballots based on a voter’s failure
20 to sign, as well. For example, in Pinal County, 131 ballots were rejected for missing
21 signatures, or similar reasons, during the 2018 general election.

22 55. Eligible Democratic voters will inevitably submit unsigned mail ballots in the
23 2020 General Election, too, whether for a simple oversight or inability to understand the
24 instructions. County recorders will inevitably receive some of those ballots on or shortly
25 before Election Day, when the Inadequate Cure Period would provide no or insufficient
26 time for those recorders to make reasonable efforts to contact the voter and cure the ballot.

27 56. This is particularly true under present conditions, where the United States

1 Postal Service (“USPS”) is facing serious funding shortfalls and significant challenges
2 timely delivering mail given complications due to the ongoing global pandemic. Simply
3 put, voters who timely submit their mail ballot may, through the vagaries of mail delivery
4 that are entirely outside their control, be deprived of a meaningful opportunity to prove their
5 identity to election officials and have their vote counted.

6 57. To the extent the cure process must be conducted via physical mail, the State’s
7 failure to provide a post-Election Day cure period for unsigned ballots further heightens the
8 likelihood of wrongful disenfranchisement due to the unpredictability and lag time in
9 sending and receiving physical mail. This could happen where, for instance, the county
10 recorder only has a voter’s mailing address (but not a phone number) on file, or where a
11 voter must obtain and submit a new ballot by mail.

12 58. It would impose little to no administrative burden to extend the Signature
13 Mismatch Cure Period to voters whose mail ballots lack signatures. That this is true is
14 evidenced by the fact that the State is already providing a post-Election Day cure period to
15 other voters whose signatures do not match.

16 **COUNT I**

17 **(Undue Burden on the Right to Vote in Violation of the First Amendment and the**
18 **Equal Protection Clause of the Fourteenth Amendment)**

19 59. Plaintiffs reallege and incorporate by reference all prior paragraphs of this
20 Complaint and the paragraphs in the counts below as though fully set forth herein.

21 60. Under the First Amendment and the Equal Protection Clause of the
22 Fourteenth Amendment, a court considering a challenge to a state election law must
23 carefully balance the character and magnitude of the injury to First and Fourteenth
24 Amendment rights that the plaintiff seeks to vindicate against the justifications put forward
25 by the state for the burdens imposed by the rule. *See Burdick v. Takushi*, 504 U.S. 428, 434
26 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

27 61. The court “must weigh ‘the character and magnitude of the asserted injury to
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1 the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to
2 vindicate’ against ‘the precise interests put forward by the State as justifications for the
3 burden imposed by its rule,’ taking into consideration ‘the extent to which those interests
4 make it necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting
5 *Anderson*, 460 U.S. at 789).

6 62. The practices outlined above impose a severe burden—disenfranchisement—
7 on the right to vote. The Inadequate Cure Period does not serve any legitimate, let alone
8 compelling, state interest. The State already has a similar cure process in place for other
9 mail ballots. This means that election results will not be finalized during the cure period
10 anyway. And as the State can contact many voters through simple measures such as phone
11 calls, texts, and email, the cost of extending this cure process to additional voters is
12 marginal, particularly when balanced against the harm caused by complete
13 disenfranchisement.

14 63. Many Arizona voters will suffer direct and irreparable injury if Defendants
15 refuse to allow them an opportunity to cure the rejection of their mail ballots without
16 signatures after Election Day. Without relief from this court, these voters will be deprived
17 of their right to vote in the 2020 General Election.

18 **COUNT II**

19 **(Denial of Procedural Due Process in Violation of the Fourteenth Amendment)**

20 64. Plaintiffs reallege and incorporate by reference all prior paragraphs of this
21 Complaint and the paragraphs in the counts below as though fully set forth herein.

22 65. A procedural due process claim under the Due Process Clause of the
23 Fourteenth Amendment requires “(1) a deprivation of a constitutionally protected
24 liberty . . . interest, and (2) a denial of adequate procedural protections.” *Franceschi v. Yee*,
25 887 F.3d 927, 935 (9th Cir. 2018). If there is a constitutionally protected liberty interest at
26 stake, a court must then determine the adequacy of procedural protections by examining
27 ““first, the private interest that will be affected by the official action; second, the risk of an

1 erroneous deprivation of such interest through the procedures used, and the probable value,
2 if any, of additional or substitute procedural safeguards; and finally, the Government’s
3 interest, including the function involved and the fiscal and administrative burdens that the
4 additional or substitute procedural requirement would entail.” *Brittain v. Hansen*, 451 F.3d
5 982, 1000 (9th Cir. 2006) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976)).

6 66. Because Arizona law allows fundamental voting rights to be exercised by
7 mail, there is a constitutionally protected liberty interest in mail voting that Defendants may
8 not deprive without adequate procedures. The nature of the private interest at stake in this
9 case—the right to vote and to have that vote count—is the most precious liberty interest of
10 all because it is preservative of all other basic civil and political rights.

11 67. It is virtually certain that the Inadequate Cure Period, by failing to allow
12 unsigned ballots to be cured after Election Day, will erroneously deprive some eligible
13 Democratic voters of this liberty interest. Additional procedural safeguards for missing
14 signatures—namely, the same five-day post-Election Day cure period that exists for
15 mismatched signatures—would be immensely valuable in safeguarding against that
16 deprivation.

17 68. Providing an additional cure process for unsigned mail ballots would create
18 little to no additional fiscal or administrative burden, since the State already has the same
19 cure process in place for other mail ballots. This additional cure process for unsigned mail
20 ballots would also promote the State’s interest in ensuring that eligible voters are not
21 wrongly disenfranchised.

22 69. Many Arizona voters will suffer direct and irreparable injury if Defendants
23 refuse to allow them an opportunity to cure the rejection of their mail ballots without
24 signatures after Election Day. Without relief from this Court, these voters will be deprived
25 of their right to vote in the 2020 General Election.

26 **PRAYER FOR RELIEF**

27 Plaintiffs respectfully request that this Court enter judgment:

1 A. Declaring that all voters who submit a ballot without a signature must be
2 allowed the same opportunity to cure that defect as is allowed to voters who submit a mail
3 ballot with a signature mismatch; specifically, voters must be allowed to correct missing
4 signatures until the fifth business day after a primary, general, or special election that
5 includes a federal office or the third business day after any other election.

6 B. Preliminarily and permanently enjoining enforcement by Defendants of any
7 source of state law that requires election officials to reject mail ballots with no signature
8 without offering the voter the opportunity to correct the ballot until the fifth business day
9 after a primary, general, or special election that includes a federal office or the third business
10 day after any other election.

11 C. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees
12 pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

13 D. Granting such other and further relief as the Court deems just and proper.

14
15 Dated: June 10, 2020

PERKINS COIE LLP

16
17 By: /s/ Alexis E. Danneman
Alexis E. Danneman
Joshua L. Boehm

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19 148402177.8

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16 UNITED STATES DISTRICT COURT
 17 DISTRICT OF ARIZONA

18 The Arizona Democratic Party; The
 19 Democratic National Committee; DSCC,

20 Plaintiffs,

21 v.

22 Katie Hobbs, in her official capacity as
 Arizona Secretary of State; Edison Wauneka,
 23 in his official capacity as Apache County
 Recorder; David Stevens, in his official
 24 capacity as Cochise County Recorder; Patty
 Hansen, in her official capacity as Coconino
 25 County Recorder; Sadie Jo Bingham, in her
 official capacity as Gila County Recorder;
 26 Wendy John, in her official capacity as
 Graham County Recorder; Sharie Milheiro, in
 27 her official capacity as Greenlee County

No.

**MOTION FOR PRELIMINARY
 AND PERMANENT
 INJUNCTION; MEMORANDUM
 OF POINTS AND AUTHORITIES**

**(ORAL ARGUMENT
 REQUESTED)**

1 Recorder; Richard Garcia, in his official
2 capacity as La Paz County Recorder; Adrian
3 Fontes, in his official capacity as Maricopa
4 County Recorder; Kristi Blair, in her official
5 capacity as Mohave County Recorder; Michael
6 Sample, in his official capacity as Navajo
7 County Recorder; F. Ann Rodriguez, in her
8 official capacity as Pima County Recorder;
9 Virginia Ross, in her official capacity as Pinal
10 County Recorder; Suzanne Sainz, in her
11 official capacity as Santa Cruz County
12 Recorder; Leslie Hoffman, in her official
13 capacity as Yavapai County Recorder; and
14 Robyn Stallworth Pouquette, in her official
15 capacity as Yuma County Recorder,

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Defendants.

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1 For the reasons set forth in this memorandum, Plaintiffs—the Arizona Democratic
 2 Party (“ADP”), the Democratic National Committee (“DNC”), and the DSCC (collectively,
 3 “Plaintiffs”)—move the Court pursuant to Rule 65(a)(2) of the Federal Rules of Civil
 4 Procedure to preliminarily and permanently enjoin enforcement by Defendants of any
 5 source of state law that requires election officials to reject unsigned mail ballot envelopes
 6 without offering the voter the opportunity to correct the omission of a signature on the ballot
 7 envelope until five days after election day—as voters whose ballots are turned in with
 8 “mismatched” signatures are permitted to do. This law impermissibly burdens the
 9 fundamental right to vote and provides constitutionally inadequate process for voters with
 10 unsigned mail ballot envelopes. It will disenfranchise a significant number of voters in the
 11 upcoming general election unless this Court enters injunctive relief. This motion is based
 12 on the memorandum of points and authorities included in this memorandum.

13 **Memorandum and Points of Authorities**

14 **Statement of the Case**

15 Every election, Arizona election officials initially reject mail ballots that are cast by
 16 lawful Arizona voters because they determine they cannot verify the voter’s identity based
 17 on the voter’s signature—or lack thereof—on the ballot envelope.¹ Unless such voters are
 18 allowed to remedy this determination, their ballots are rejected, and they are
 19 disenfranchised. But in the upcoming 2020 general election (the “2020 General Election”),
 20 Arizona voters whose mail ballots are rejected because of a lack of signature will *not* have
 21 an equal opportunity to “cure” their ballots as those voters whose ballots are flagged for
 22 rejection based on a perceived signature mismatch. Voters in the latter category are afforded
 23 an opportunity to correct their signature after election day (“Election Day”), for up to five
 24 days. But voters whose mail ballots are rejected based on a determination that the voter’s
 25 signature, executed on the envelope containing the ballot, is missing have no similar

26
 27 ¹ Mail ballots are often referred to as “early ballots” under Arizona law. A.R.S. § 16-
 545.

1 opportunity (the “Inadequate Cure Period”).

2 The result is an unjustifiable burden on Arizonans’ fundamental right to vote, as well
3 as the deprivation of that right without constitutionally adequate procedures, in violation of
4 the First and Fourteenth Amendments of the U.S. Constitution.

5 Without immediate relief from this Court, a significant number of lawful Arizona
6 voters, whose votes should count in the upcoming election, will be unconstitutionally
7 disenfranchised.

8 **Facts**

9 Under Arizona’s no excuse absentee ballot system, any registered voter may cast a
10 mail ballot. A.R.S. § 16-541. Arizona employs a system by which election officials verify
11 that a given ballot was, indeed, cast by the voter in question by reviewing the signature on
12 the mail ballot envelope. *See* A.R.S. § 16-548 (“The early voter shall make and sign the
13 affidavit and shall then mark his ballot in such a manner that his vote cannot be seen.”).

14 To verify the voter’s identity, signatures are reviewed by the “county recorder or
15 other officer in charge of elections.” A.R.S. § 16-550(A). Specifically, in evaluating mail
16 ballots, Arizona law requires that “the county recorder or other officer in charge of elections
17 shall compare the signatures thereon with the signature of the elector on the elector’s
18 registration record.” *Id.*

19 Using signature “matching” to verify voter identity is an inherently dubious process.
20 Election officials are not handwriting experts, and the simple fact is that signatures change
21 all the time for any number of reasons. Perhaps in recognition of the fact that the signature
22 verification process invariably disenfranchises lawful voters, the Arizona legislature
23 amended A.R.S. § 16-550(A), effective August 27, 2019, to include a cure period for
24 signature mismatches in mail ballots.

25 The statute now provides that “[i]f the signature is inconsistent with the elector’s
26 signature on the elector’s registration record, the county recorder or other officer in charge
27 of elections shall make reasonable efforts to contact the voter, advise the voter of the

1 inconsistent signature and allow the voter to correct or the county to confirm the
 2 inconsistent signature.” *Id.* As to those mail ballots where an election official determines
 3 that the signatures do not “match,” “[t]he county recorder or other officer in charge of
 4 elections shall allow signatures to be corrected not later than the fifth business day after a
 5 primary, general or special election that includes a federal office or the third business day
 6 after any other election” (the “Signature Mismatch Cure Period”). *Id.*

7 The statute does not provide that a voter may similarly be permitted to correct or
 8 confirm a missing signature. In fact, it is silent on cure periods for missing signatures.² The
 9 current version of the Elections Procedures Manual (the “Manual”)—which was approved
 10 by the Governor and Attorney General in December 2019, as required by statute, A.R.S. §
 11 16-452(B)—does address this issue. But it does so in a way that treats missing signatures
 12 arbitrarily and unreasonably different from mismatched signatures.

13 According to the Manual, “[i]f the early ballot affidavit is not signed, the County
 14 Recorder shall not count the ballot.” Unlike the Signature Mismatch Cure Period, which, in
 15 most cases, extends the cure period for five days after Election Day, the Manual only
 16 requires the County Recorder to make a “reasonable and meaningful attempt to contact the
 17 voter” and explain how the missing signature can be cured “before 7:00pm on Election
 18 Day.” [Declaration Ex. 1].

19 Because Arizona law does not provide a cure period for missing signatures following
 20 Election Day, disenfranchisement will result. In recent general elections, a significant
 21 number of mail ballots have been rejected in Arizona for missing signatures. For example,
 22 in the general elections from 2008 to 2018, Maricopa County election officials alone

23
 24 ² In the most recent legislative session a legislator introduced a bill to amend A.R.S.
 25 § 16-550 to add: “If the signature is missing, the county recorder or other officer in charge
 26 of elections shall make reasonable efforts to contact the elector, advise the elector of the
 27 missing signature and allow the elector to add the elector’s signature not later than 7:00
 28 p.m. on election day.” This bill has not yet passed. *See* Bill History of SB 1032, ARIZ.
 LEGISLATURE, <https://apps.azleg.gov/billStatus/BillOverview/72575> (last visited June 4,
 2020). Even if this bill were to pass, it would not remedy the issue giving rise to this
 lawsuit—the unequal treatment of “missing” and “mismatched” signatures.

1 rejected a total of 18,420 mail ballots because they had missing signatures. Specifically, in
 2 Maricopa County the following number of mail ballots were rejected for having “no
 3 signature”: 1,856 in the 2018 general election; 2,209 in the 2016 general election; 3,749 in
 4 the 2014 general election; 4,610 in the 2012 general election; 3,352 in the 2010 general
 5 election; and 2,644 in the 2008 general election. [Declaration Exs. 2–7] Other counties in
 6 Arizona have rejected mail ballots based on a voter’s failure to sign, as well. For example,
 7 in Pinal County, 131 ballots were rejected for, among other things, missing signatures
 8 during the 2018 general election. [Declaration Ex. 8]

9 Over the past decade, early voting by mail has grown exponentially in Arizona. In
 10 the 2016 and 2018 general elections, respectively, 2.0 million and 1.9 million Arizonans
 11 voted by mail ballot. [Declaration Exs. 9, 10] The increase in early voting by mail has been
 12 further accelerated this election cycle by the spread of a highly infectious novel coronavirus,
 13 which causes the dangerous and sometimes deadly disease COVID-19. Considering this
 14 crisis, the Secretary and other election officials have encouraged increased voting by mail.
 15 [Declaration Exs. 11, 12] Based on both past data and current events, the number of mail
 16 ballots cast in the 2020 General Election promises to be significant.³

17 In the end, county recorders will inevitably receive some of those unsigned voter
 18 ballots on or shortly before Election Day, when Arizona law would provide no or inadequate
 19 time for those recorders to make reasonable efforts to contact the voter and cure the ballot.

20 To the extent the cure process is conducted via physical mail, the failure of A.R.S.
 21 § 16-550(A) to provide a post-Election Day cure period for unsigned ballots only heightens
 22 the likelihood of wrongful disenfranchisement due to the lag time in sending and receiving
 23 physical mail.⁴ This happens in Maricopa County, where the cure process for unsigned mail

24
 25 ³ It is inevitable that eligible Democratic voters within Plaintiffs’ memberships and
 26 constituencies will submit unsigned mail ballots in the 2020 General Election, too, whether
 27 for a simple oversight or based on a misunderstanding of the instructions. As of April 1,
 2020, there were nearly 1.3 million registered Democratic voters in Arizona, 32.5% of the
 total number of registered voters in Arizona (just over 3.9 million). [Declaration Ex. 13]

⁴ For example, the average time of first-class mail delivery in the United States is 1–

1 ballots is conducted by mail. [Declaration Ex. 15 (“In the case of a missing signature, the
2 unopened packet is sent back to the voter along with a letter explaining why it was returned
3 and a postage paid envelope for the voter to send it back signed.”)] This could also happen
4 where, for instance, the county recorder only has a voter’s mailing address (but not a phone
5 number) on file, or where a voter is unable to remedy the missing signature in person and
6 must instead obtain and submit a new ballot by mail.

7 These heightened risks are worsened by present conditions, where the United States
8 Postal Service is facing serious funding shortfalls and significant challenges delivering mail
9 given complications due to the ongoing global pandemic. [See Declaration Exs. 16, 17]
10 Simply put, voters who timely submit their mail ballot may be deprived of a meaningful
11 opportunity to prove their identity to election officials and have their vote counted.⁵

12 It would impose little to no administrative burden to extend the Signature Mismatch
13 Cure Period, a procedure that Defendants already have in place, to voters whose mail ballots
14 lack signatures. In fact, the Secretary was required by Arizona law to consult with each
15 county board of supervisors when preparing the Draft Manual, A.R.S. § 16-452(A), which
16 contained such a cure opportunity.

17 **Argument**

18 To obtain preliminary injunctive relief, a plaintiff must establish that it is (1) “likely
19 to succeed on the merits,” (2) “likely to suffer irreparable harm in the absence of preliminary
20 relief,” (3) “that the balance of equities tips in” their “favor,” (4) and “that an injunction is
21 in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A
22 preliminary injunction is also appropriate when “a plaintiff raises ‘serious questions’ as to
23 the merits and ‘the balance of hardships tips sharply in [plaintiff’s] favor,’” so long as the

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25 3 business days. [Declaration Ex. 14] Though, as discussed below, these are not typical
times and the United States Postal Service is experiencing significant and unusual delays.

26 ⁵ This risk is more than just speculative. It has happened. In the recent elections in
27 Wisconsin, the United States Postal Service struggled to deliver mail ballots to voters in
Wisconsin, with some ballots being delayed, and others not arriving at all. [Declaration Ex.
18]

1 plaintiff still establishes irreparable harm and that the injunction is in the public interest.
2 *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1103 n.4 (9th Cir. 2016) (alteration in original)
3 (quoting *All for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)).

4 **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.**

5 **A. Plaintiffs Are Likely to Succeed on Their First and Fourteenth**
6 **Amendment Undue Burden Claim.**

7 The Inadequate Cure Period unconstitutionally burdens the fundamental right to vote
8 and is impermissible. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442,
9 451 (2008). The Supreme Court has laid out a “flexible standard” to resolve challenges to
10 state election laws that burden voting rights in violation of the Fourteenth Amendment.
11 *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434
12 (1992). “This is a sliding scale test, where the more severe the burden, the more compelling
13 the state’s interest must be, such that ‘a state may justify election regulations imposing a
14 lesser burden by demonstrating the state has important regulatory interests.’” *Ariz. Green*
15 *Party v. Reagan*, 838 F.3d 983, 988 (9th Cir. 2016) (quoting *Ariz. Libertarian Party v.*
16 *Reagan*, 798 F.3d 723, 729–30 (9th Cir. 2015)).

17 A challenged election regulation imposing “severe” restrictions, at the far end of the
18 scale, is subject to strict scrutiny. *Soltysik v. Padilla*, 910 F.3d 438, 444 (9th Cir. 2018)
19 (citation omitted). But even if the burden is less than severe, the challenged law must be
20 justified by state “interest[s] sufficiently weighty to justify the limitation.” *Norman v. Reed*,
21 502 U.S. 279, 288–89 (1992). This analysis considers only “‘the precise interests put
22 forward by the State as justifications for the burden imposed by its rule,’ taking into
23 consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s
24 rights.’” *Burdick*, 504 U.S. at 434.

25 **1. The Inadequate Cure Period Imposes a Severe Burden on the**
26 **Fundamental Right to Vote.**

27 The fact that Defendants will reject a significant number of mail ballots for lack of
28

1 signature in the 2020 General Election—without opportunity to cure them in the five days
2 following Election Day, as it does for other mail ballots—presents a severe, or at the very
3 least, significant burden on Arizona voters’ right to vote.

4 It is all but certain that, if not provided a further cure period, a significant number of
5 voters will be disenfranchised because election officials determine their ballot envelopes
6 lack signatures. Based on past elections, a significant number of ballots will be cast without
7 signatures on the ballot envelopes. And not all of these ballots will be able to be cured prior
8 to Election Day. [*See, e.g.*, Declaration Ex. 7 (Maricopa County did not count 1,856 ballots
9 in 2018 because of determination ballot envelopes did not have signatures.)]
10 Disenfranchisement of a significant number of voters severely burdens the fundamental
11 right to vote, as federal courts have repeatedly held. *See Fla. Democratic Party v. Detzner*,
12 No. 4:16-cv-607-MW/CAS, 2016 WL 6090943, at *6 (N.D. Fla. Oct. 16, 2016) (“If
13 disenfranchising thousands of eligible voters does not amount to a severe burden on the
14 right to vote, then this Court is at a loss as to what does.”); *Stewart v. Blackwell*, 444 F.3d
15 843, 871–72 (6th Cir. 2006) (finding “severe” burden where unreliable punch card ballots
16 and optical scan systems resulted in thousands of votes not being counted).

17 In the context of voting rights, “the basic truth [is] that even one disenfranchised
18 voter—let alone several thousand—is too many[.]” *League of Women Voters of N.C. v.*
19 *North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014); *see also Democratic Exec. Comm. of*
20 *Fla. v. Lee*, 915 F.3d 1312, 1318, 1321 (11th Cir. 2019) (same). And courts have found a
21 severe burden even where relatively small numbers of votes were not counted. *See Ne.*
22 *Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 593 (6th Cir. 2012) (disqualifying
23 provisional ballots that constituted less than 0.3% of total votes inflicted “substantial”
24 burden on voters).

25 **2. Defendants’ Interests Cannot Justify the Burdens Imposed on the**
26 **Right to Vote.**

27 Because the burden on Arizona voters’ fundamental right to vote is severe, the

1 government must advance a corresponding interest that is “sufficiently weighty” to justify
2 the burden and show that the scheme producing the burden is narrowly drawn to further that
3 interest. *Norman*, 502 U.S. at 288–89. Defendants cannot justify the burdens that the
4 Inadequate Cure Period imposes on Plaintiffs’ right to vote with any regulatory interest, let
5 alone a “sufficiently weighty” one.

6 The Inadequate Cure Period does nothing to further a perceptible regulatory interest,
7 such as preventing voter fraud or ensuring timely counting of ballots. Where a person is
8 provided an opportunity to cure an unsigned ballot envelope and can produce a signature
9 that matches prior records, then the State’s interest in preventing fraud is met just the same
10 as it is under the Signature Mismatch Cure Period. In this lawsuit, Plaintiffs do not challenge
11 the process of signature verification; only Arizona’s failure to afford voters who cast a mail
12 ballot with a “missing” signature to remedy that issue to the State’s satisfaction. That is,
13 providing an additional cure period would work to prevent fraud and minimize the severe
14 burden of disenfranchisement that the law places on lawful, eligible voters. *See Detzner*,
15 2016 WL 6090943, at *7 (“[L]etting mismatched-signature voters cure their vote by proving
16 their identity *further* prevents voter fraud[.]”). And because A.R.S. § 16-550(A) already
17 includes the Signature Mismatch Cure Period, providing the same cure period for unsigned
18 mail ballots would not delay election results further or affect election finality since it would
19 merely extend the same opportunity in the case of missing signatures.

20 The existence of the Signature Mismatch Cure Period also undercuts any argument
21 Defendants may proffer as to the negligible administrative burden of Plaintiffs’ requested
22 relief. Because Defendants already provide mail ballot voters with mismatched signatures
23 five days after Election Day to cure their ballot, no new procedures would be required to
24 apply those same efforts to unsigned mail ballots. *See Zinermon v. Burch*, 494 U.S. 113,
25 136 (1990) (“[W]e cannot say that predeprivation process was impossible . . . [where the
26 state] already has an established procedure.”). Any incremental administrative burden
27 would consist solely of making reasonable efforts, for five additional days, to contact voters

1 with unsigned mail ballots and help them cure their ballots to ensure their vote counts. That
2 incremental burden is minimal by any objective measure.

3 Notably, the Secretary’s draft of the Manual (the “Draft Manual”), which was not
4 approved by the Governor and Attorney General, would have allowed for a five-day cure
5 period post-Election Day for mail ballots with missing signatures. [Declaration Ex. 19
6 (“Voters must be permitted to correct or confirm an inconsistent or missing signature until
7 5:00 p.m. on the fifth business day after a primary, general, or special election that includes
8 a federal office or the third business day after any other election.”)] So, Defendants could
9 hardly contend that the missing signature cure period Plaintiffs request would be too
10 burdensome when they proposed that very same cure period in the Draft Manual just nine
11 months ago.

12 In the end, even assuming some lesser level of scrutiny applies (which it does not),
13 the Inadequate Cure Period would still be unconstitutional. In *Detzner*, 2016 WL 6090943,
14 the State of Florida provided a cure period for unsigned mail ballots but no cure period for
15 mail ballots with mismatched signatures: the mirror image of this case. *Detzner* concluded
16 that it is “illogical, irrational and patently bizarre for the State of Florida to withhold the
17 opportunity to cure from mismatched-signature voters while providing that same
18 opportunity to no-signature voters.” *Id.* at *7. For the same reason, the Inadequate Cure
19 Period would “not even survive rational basis review.” *Id.*

20 **B. Plaintiffs Are Likely to Succeed on the Merits of Their Fourteenth**
21 **Amendment Procedural Due Process Claim.**

22 Plaintiffs are equally likely to succeed on the merits of their procedural due process
23 claim against the Inadequate Cure Period.

24 The Due Process Clause of the Fourteenth Amendment provides that a state shall not
25 “deprive any person of life, liberty, or property, without due process of law.” U.S. Const.
26 amend. XIV, § 1. A procedural due process claim under the Due Process Clause requires a
27 showing of a “(1) a deprivation of a constitutionally protected liberty . . . interest, and (2) a

1 denial of adequate procedural protections.” *Franceschi v. Yee*, 887 F.3d 927, 935
2 (9th Cir. 2018). Plaintiffs are likely to satisfy each of these requirements.

3 **1. Plaintiffs Have a Constitutionally-Protected Liberty Interest.**

4 The first requirement of a procedural due process claim is easily satisfied here. It is
5 well settled that Arizona mail ballot voters have a protected “liberty interest which may not
6 be confiscated without due process.” *Raetzl v. Parks/Bellefont Absentee Election Bd.*, 762
7 F. Supp. 1354, 1357 (D. Ariz. 1990). Federal courts have consistently held that “[w]hile it
8 is true that [mail ballot] voting is a privilege and a convenience to voters,” a state does not
9 have “the latitude to deprive citizens of due process with respect to the exercise of this
10 privilege” once it is extended. *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018);
11 *see also Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018) (“Having induced
12 voters to vote by absentee ballot, the State must provide adequate process to ensure that
13 voters’ ballots are fairly considered and, if eligible, counted.”).

14 **2. The Inadequate Cure Period Denies Plaintiffs’ Rights Without**
15 **Adequate Process.**

16 When a constitutionally protected interest is at stake, as here, a court must next
17 determine whether that interest is deprived without adequate process. To make that
18 determination, courts use the three-part test from *Mathews v. Eldridge*, which requires
19 balancing of: “first, the private interest that will be affected by the official action; second,
20 the risk of an erroneous deprivation of such interest through the procedures used, and the
21 probable value, if any, of additional or substitute procedural safeguards; and finally, the
22 Government's interest, including the function involved and the fiscal and administrative
23 burdens that the additional or substitute procedural requirement would entail.” *Brittain v.*
24 *Hansen*, 451 F.3d 982, 1000 (9th Cir. 2006) (*quoting Mathews v. Eldridge*, 424 U.S. 319,
25 349 (1976)). Under the *Mathews* balancing test, Plaintiffs are likely to show that the
26 Inadequate Cure Period denies the right to vote without adequate process.

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a. Plaintiffs’ Private Interest is of Paramount Importance.

When Defendants erroneously reject an unsigned mail ballot envelope, an eligible Arizona citizen is denied the most “precious” of all rights: the right to vote in our democracy. *Yick Wo v. Hopkins*, 18 U.S. 356, 370 (1886). For this reason, the private interest affected by A.R.S. § 16-550(A) is of paramount importance. *See Martin*, 341 F. Supp. 3d at 1338 (“the private interest at issue,” in mail ballot case, “implicates the individual’s fundamental right to vote and is therefore entitled to significant weight”); *Raetzl*, 762 F. Supp. at 1358 (adequate process required before mail ballot voters are “denied so fundamental a right”). The first *Mathews* factor therefore weighs strongly in Plaintiffs’ favor.

b. The Risk of Erroneous Deprivation of Plaintiffs’ Rights Is High, and Applying the Same Cure Period for Mismatched Signatures Would Significantly Lessen That Risk.

It is virtually certain that some Democratic voters, who are registered to vote and who timely submit their mail ballots, will inadvertently fail to sign their mail ballots, given that 32.5 percent of voters in Arizona register as Democrats. Every mail ballot that is unsigned, unless cured, will be rejected. While voters who cast mail ballots rejected for an unsigned ballot envelope *may* be afforded the opportunity to cure their ballot until election day under the Manual, that cure period does not adequately mitigate the risk of erroneous deprivation. Given the press of other pre-election day work, there will be a delay between a county’s receipt of an unsigned ballot envelope and the county recorder connecting with the voter to inform them of the issue. Further, it is inevitable that county recorders will receive some unsigned Democratic voter ballots on or shortly before Election Day, when Arizona law would provide no or inadequate time for those recorders to make reasonable efforts to contact the voter and cure the ballot. County recorders and voters will likely conduct at least some cure processes via physical mail, for instance, if the voter is unreachable by phone or unable to cure a ballot in person. There is always some lag time with physical mail, creating a higher baseline risk that unsigned mail ballots won’t be cured

1 whenever physical mail is used. But that risk is especially high today, where the United
2 States Postal Service faces significant funding gaps and the global pandemic has slowed its
3 service.

4 At bottom, voters who could cure their unsigned mail ballot envelope will be
5 deprived of a meaningful opportunity to prove their identity to election officials and have
6 their vote counted. *See Martin*, 341 F. Supp. 3d at 1339 (agreeing with plaintiffs that post-
7 Election Day cure period for mismatched signatures was necessary, in part, because of
8 “voters who cannot vote in person due to physical infirmity”).

9 These factors combine to create a substantial risk of erroneous deprivation of
10 Plaintiffs’ rights.

11 Conversely, and for the same reasons, an extra five days to cure unsigned mail ballots
12 would significantly lessen the risk that Plaintiffs’ rights will be erroneously deprived.
13 Where the county recorder manages to contact a voter regarding a missing signature on or
14 shortly before Election Day, for instance, the additional cure period gives the voter time to
15 fix the missing signature—and by mail to the extent necessary. Potentially thousands of
16 eligible voters may be affected: in Maricopa County alone, the county recorder rejected
17 1,856 unsigned mail ballots in the 2018 general election and 2,209 in the 2016 general
18 election.

19 But, again, “even one disenfranchised voter . . . is too many.” *League of Women*
20 *Voters of N.C.*, 769 F.3d at 244. Given this, courts adjudicating challenges to signature cure
21 procedures in other states have found simple procedural safeguards to add significant
22 probative value where potential disenfranchisement was in an even smaller range. *See*
23 *Saucedo*, 335 F. Supp. 3d at 217 (so holding, where potential “disenfranchisement of
24 dozens, if not hundreds, of otherwise qualified voters” was at issue); *Zessar v. Helander*,
25 No. 05 C 1917, 2006 WL 642646, at *9 (N.D. Ill. Mar. 13, 2006) (where 1,100 mail ballots
26 were rejected for signature mismatches, “the risk of erroneous deprivation” is “not
27 enormous, but the probable value of an additional procedure is likewise great in that it serves

1 to protect the fundamental right to vote”).

2 Given these facts, the second *Mathews* factor weighs significantly in favor of
3 Plaintiffs as well.

4 **c. Additional Procedures Would Further Defendants’**
5 **Interests and Involve Minimal Administrative Burdens.**

6 To the extent there is any additional administrative burden entailed by the cure period
7 Plaintiffs request, it is negligible. Defendants need only do what they already do for
8 “mismatched” signatures: try for five more days to contact voters who didn’t sign their mail
9 ballots, help those voters understand how to cure their ballots, and count the additional
10 cured ballots. *Martin*, 341 F. Supp. 3d at 1339–40 (“Because many of the procedures
11 Plaintiffs request are already in place, the Court finds that additional procedures would
12 involve minimal administrative burdens . . .”). No new procedures would be required to
13 apply those same efforts for unsigned mail ballots.

14 Any incremental administrative burden of making reasonable efforts, for five
15 additional days, to contact additional voters with unsigned mail ballots and help them cure
16 their ballots would be minimal and would not justify the burden on Plaintiffs’ rights. *Taylor*
17 *v. Louisiana*, 419 U.S. 522, 535 (1975) (“administrative convenience” cannot justify
18 practices that impinge upon fundamental rights); *Johnson v. Halifax Cty.*, 594 F. Supp. 161,
19 171 (E.D.N.C. 1984) (“[A]dministrative and financial burdens on the defendant . . . are not
20 . . . undue in view of the otherwise irreparable harm to be incurred by plaintiffs.”). The fact
21 that Defendants have recently proposed the very same cure period that Plaintiffs request for
22 unsigned mail ballots, in the October 2019 Draft Manual, underscores that such cure period
23 would not be administratively burdensome.

24 A five-day, post-Election Day cure period for unsigned mail ballots would not
25 otherwise harm Defendants’ interest in any perceptible way. It would not remove any of the
26 identification requirements under Arizona law which Defendants will argue prevent fraud.
27 And it would not delay counting votes since there is already a five-day cure period for

1 missing signatures. Rather, it would simply ensure that voters have an adequate opportunity
2 to cure a missing signature. If anything, the cure period Plaintiffs seek would further
3 Defendants’ interest in ensuring that no mail ballot is erroneously rejected. *See, e.g.,*
4 *Saucedo*, 335 F. Supp. 3d at 220 (“[A]dditional procedures further the State’s interest in
5 preventing voter fraud while ensuring that qualified voters are not wrongly
6 disenfranchised . . . [and] only serve to enhance voter confidence in elections.”).

7 For these reasons, the third *Mathews* factor, like the first and second factors, weighs
8 strongly in Plaintiffs’ favor. Thus, under the *Mathews* balancing test, Plaintiffs are likely to
9 show that the Inadequate Cure Period denies the right to vote without adequate process.

10 **II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT AN**
11 **INJUNCTION.**

12 For the reasons set forth above, Defendants’ failure to allow voters who have not
13 signed their ballots to cure them after Election Day, as it does for other voters, violates the
14 First and Fourteenth Amendments. “It is well established that the deprivation of
15 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*,
16 695 F.3d 990, 1002 (9th Cir. 2012) (citation omitted).

17 Further, “[c]ourts routinely deem restrictions on fundamental voting rights
18 irreparable injury.” *League of Women Voters of N.C.*, 769 F.3d at 247. In this case, without
19 extending the cure period to cover ballots with no signatures—as opposed to only ballots
20 with mismatched signatures—votes will not be counted in the 2020 General Election.
21 “[O]nce the election occurs, there can be no do-over and no redress” to those voters that
22 were improperly disenfranchised. *Id.* Thus, courts have long recognized that
23 disenfranchisement constitutes irreparable injury. *Obama for Am. v. Husted*, 697 F.3d 423,
24 436 (6th Cir. 2012); *see also Touchston v. McDermott*, 234 F.3d 1133, 1158–59
25 (11th Cir. 2000) (“[B]y finding an abridgement to the voters’ constitutional right to vote,
26 irreparable harm is presumed and no further showing of injury need be made.”); *Williams*
27 *v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (denial of the right to vote is “irreparable
28

1 harm”).

2 **III. THE PUBLIC INTEREST AND BALANCE OF EQUITIES TIP SHARPLY**
3 **IN PLAINTIFFS’ FAVOR.**

4 As a general matter, “[t]he public interest and the balance of equities favor
5 prevent[ing] the violation of a party’s constitutional rights.” *Ariz. Dream Act Coal. v.*
6 *Brewer*, 855 F.3d 957, 978 (9th Cir. 2017) (quoting *Melendres*, 695 F.3d at 1002). This is
7 particularly so where voting rights are at issue because “[t]he public has a ‘strong interest
8 in exercising the fundamental right to vote,’” *League of Women Voters of N.C.*, 769 F.3d at
9 248 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)), and in “permitting as many
10 qualified voters to vote as possible,” *id.* at 247 (quoting *Husted*, 697 F.3d at 247)). The
11 threatened injury of voter disenfranchisement as a result of the Inadequate Cure Period
12 outweighs whatever administrative inconvenience Defendants will experience (if any) in
13 contacting additional voters to cure their ballots. *See Taylor*, 419 U.S. at 535; *Johnson*, 594
14 F. Supp. at 171.

15 In all events, Plaintiffs have raised “‘serious questions’ as to the merits.” *Puente*
16 *Ariz.*, 821 F.3d at 1103 n.4. Those serious questions, combined with the fact that the
17 “balance of hardships tips sharply in plaintiff[s]’ favor,” favors the requested relief. *See All*
18 *for the Wild Rockies*, 632 F.3d at 1132.

19 **Conclusion**

20 For the reasons stated above, Plaintiffs respectfully request that the Court enter a
21 preliminary injunction as set forth in the proposed order. Further, Plaintiffs believe that a
22 hearing on this motion can be consolidated with a trial on the merits. Plaintiffs request that
23 the Court consolidate any trial on the merits with a hearing on this Motion. Fed. R. Civ. P.
24 65(a)(2).

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Dated: June 10, 2020

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19 **UNITED STATES DISTRICT COURT**
 20 **DISTRICT OF ARIZONA**

21 Arizona Democratic Party, et al.,
 22 Plaintiffs,
 23 vs.
 24 Katie Hobbs, et al.,
 25 Defendants,
 26 and
 27 State of Arizona,
 28 Intervenor-Defendant.

Case No: 2:20-cv-01143-DLR

**STATE’S COMBINED (1) RESPONSE
 TO PLAINTIFFS’ MOTION FOR A
 PRELIMINARY INJUNCTION AND
 (2) RULE 12(C) MOTION FOR
 JUDGMENT ON THE PLEADINGS**

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INTRODUCTION

This suit is one of a multitude that Plaintiffs and aligned interests have filed this election cycle to attempt to invalidate or alter duly-enacted laws for their own electoral benefit. And as Plaintiffs scrape deeper and deeper into the metaphorical barrel, the lack of merit in the suits has become increasingly obvious. This case continues the trend: as explained below, Plaintiffs’ case suffers from at least half a dozen case- or claim-dispositive deficiencies. This Court should accordingly deny Plaintiffs’ request for a preliminary injunction and dismiss their Complaint.

Plaintiffs’ suit is based on the faulty premise that Arizona makes it comparatively difficult to vote. Not so. Arizona is indisputably a leader amongst states in making it *easier* to vote, and has systematically removed *multiple* barriers to voting that numerous other states continue to maintain (many without *any* suits by Plaintiffs). From (1) allowing online registration, (2) to eliminating any excuse requirement for voting by mail, (3) to providing easy access to permanent mail-in balloting, (4) to pre-paying postage, (5) to continuing to maintain in-person polling locations despite widespread vote-by-mail utilization, and (6) disavowing any notarization or witness requirements for mail-in ballots, the State has made voting considerably easier in ways that go *far* beyond what the U.S. Constitution requires. Atkeson Report ¶¶9-24. But once again, “no good deed goes unpunished.” *Winter v. NRDC*, 555 U.S. 7, 31 (2008). Arizona’s extensive efforts to make voting less burdensome have been rewarded by yet another suit by DNC and its allies.

Rather than focusing on the truly minimal burden of simply signing a document on time where prominently indicated—when given *nearly a month* to do so—Plaintiffs’ claims about completely-absent signatures is based on an extended analogy to signature-mismatch determinations. As explained below, that analogy is fundamentally unsound. In particular, unlike signature mismatches (1) the risk of error for no-signature determinations is extremely low, (2) the resulting disqualification is typically the exclusive fault of the voter, not the government, and (3) the risk of fraud is greater for non-signatures. But even if the analogy were sound, Plaintiffs would fare no better: the Ninth Circuit has

1 squarely rejected the proposition that the Constitution requires an opportunity to cure a
2 signature mismatch in a binding precedent that Plaintiffs tellingly ignore.

3 Ultimately, Plaintiffs' claims are flawed from top to bottom. Not only do Plaintiffs
4 lack Article III standing, they fail to satisfy their burden on even *one* of the four *Winter*
5 requirements for obtaining preliminary injunctive relief.

6 ***Standing.*** As an initial matter, Plaintiffs lack Article III standing. Unlike most of
7 the cases upon which Plaintiffs rely, Plaintiffs did not join any voters who previously had
8 their ballots rejected, or indeed join any voters *at all*. Instead, Plaintiffs' Complaint relies
9 on bare probabilities that some of their members—identities unknown and unspecified—
10 will be affected. *See* Complaint ¶¶18, 22, 25, 55, 67. But the Supreme Court has
11 repeatedly “required plaintiff-organizations to make specific allegations establishing that
12 *at least one identified member* had suffered or would suffer harm.” *Summers v. Earth*
13 *Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added). But Plaintiffs do not identify *any*
14 of their members, affected or otherwise. These omissions are particularly astonishing as
15 Plaintiffs DNC and DSCC just lost a case on this *precise* basis in the Eleventh Circuit. *See*
16 *Jacobson v. Fla. Sec’y of State*, 957 F.3d 1193, 1204-05 (11th Cir. April 29, 2020). And,
17 shortly after this suit was filed, in this Court too, *see Mecinas v. Hobbs*, ___ F. Supp. 3d ___,
18 2020 WL 3472552 at *8-12 (D. Ariz. June 25, 2020) (citing *Summers* and *Jacobson*)—
19 with the Ninth Circuit denying DNC an injunction pending appeal in *Mecinas* on July 22.

20 Moreover, even if Plaintiffs' Complaint adequately *alleged* Article III standing,
21 Plaintiffs have not provided any *record evidence* that could *prove* their standing. Indeed,
22 the entirety of their record evidence to date consists of a single attorney declaration, which
23 plainly fails to establish Plaintiffs' Article III standing.

24 ***Due Process Claim.*** Even if Plaintiffs have standing, their claims lack merit. Their
25 due process claim fails first because *all* constitutional challenges to electoral regulations
26 are analyzed under “a single analytic framework”—*i.e.*, the *Anderson-Burdick* framework.
27 *Dudum v. Arntz*, 640 F.3d 1098, 1106 n.15 (9th Cir. 2011). Plaintiffs' attempt to bring a
28 freestanding due process claim outside of the *Anderson-Burdick* thus necessarily fails.

1 Plaintiffs’ independent due process claim further fails for several additional
2 reasons. Plaintiffs’ claim is actually *substantive* in nature—*i.e.*, the “right” to have a vote
3 counted notwithstanding violation of legal requirements. And Plaintiffs cannot satisfy—
4 indeed do not even attempt to satisfy—the standard for a substantive due process claim.

5 For similar reasons, Plaintiffs have no cognizable liberty interest. While they might
6 have a liberty interest in voting generally, they have no protectable interest in casting a
7 vote despite flouting easily satisfied requirements. And even if Plaintiffs had a cognizable
8 liberty interest, there is no meaningful value in additional *procedures*—*i.e.*, hearings on
9 whether election officials correctly disqualified a ballot for lacking a signature—since the
10 likelihood of initial error in a no-signature determination is exceedingly low.

11 ***Anderson-Burdick Claim.*** Plaintiffs’ *Anderson-Burdick* claim fails because the
12 statutes and regulations that they challenge (collectively, the “Acts”) do not impose a
13 “severe burden” on voting rights and Plaintiffs offer no meaningful argument that they can
14 prevail if strict scrutiny does not apply (*i.e.*, if the burden is not “severe”).

15 Arizona law makes it extremely easy to vote. In essence, the State eliminates all
16 barriers to voting by mail except for two exceptionally *unburdensome* requirements:
17 (1) signing the absentee affidavit and (2) return it by poll-close time. That is the *bare*
18 *minimum* necessary to conduct an orderly and secure election. And neither requirement is
19 remotely burdensome, let alone “severely” so. Indeed, Plaintiffs do not dispute the State’s
20 right to insist upon signatures generally. They simply quibble with the timing of signing.

21 Plaintiffs’ argument conflates the actual *burden* imposed by Arizona law with the
22 *remedies* for non-compliance. It is not even a modest burden for most voters to sign their
23 ballots. The remedy for non-compliance—*if* paired with returning the ballot with
24 insufficient time to cure the deficiency before polls close—might be a vote not counting.
25 But the same is true for showing up to a polling place at 8pm on election day, and the
26 State’s poll closing time has never been deemed a “severe” burden. *All* deadlines have an
27 inherent level of arbitrariness. But *no* election can be held successfully without them.

28 Nor does the burden question arise on an empty slate. Notably, the Ninth Circuit

1 has considered an *Anderson-Burdick* challenge to election laws that (unlike here) *entirely*
2 denied an opportunity to cure signature deficiencies (there mismatches) in *Lemons v.*
3 *Bradbury*, 538 F.3d 1098 (9th Cir. 2008). That court explicitly rejected the challenge. Its
4 holding was neither equivocal nor gentle: expressly holding that the burden at issue was
5 “*minimal*,” and repeating that “minimal” characterization a remarkable *five times*. *Lemons*
6 thus explained, for example, that “the absence of notice and an opportunity to rehabilitate
7 rejected signatures imposes only a *minimal burden* on plaintiffs’ rights,” and further that
8 “the state’s important interests *justify the minimal burden* on plaintiffs’ rights.” *Id.* at 1102,
9 1104 (emphasis added). And that case notably dealt with signature mismatches, where the
10 constitutional claims are stronger. The same result should obtain here *a fortiori*.

11 Given *Lemons* obvious relevance, Plaintiffs’ failure to acknowledge *Lemons* is
12 inexplicable—if they had any good answer to it. And Plaintiffs could hardly have been
13 unaware of it: their own case law cites *Lemons* extensively. *Infra* at 23 & n.9.

14 In addition, even if Plaintiffs could establish that the Acts violate the Constitution
15 in *some* instances, their claim is necessarily a facial claim. And Plaintiffs cannot establish
16 that “no set of circumstances exists under which the Act[s] would be valid.” *United States*
17 *v. Salerno*, 481 U.S. 739, 745 (1987). Indeed, they do not even try.

18 ***Irreparable Harm.*** Plaintiffs have also failed to demonstrate that *they*—rather than
19 non-parties—are “*likely* to suffer irreparable harm in the absence of preliminary relief.”
20 *Winter*, 555 U.S. at 20 (emphasis added). Plaintiffs are not individual voters and do not
21 suffer any direct harm from disqualified votes not affecting electoral outcomes. Indeed, if
22 more Republican votes are disqualified, Plaintiffs would *benefit*.

23 Plaintiffs would thus only suffer irreparable harm if their relief were *likely* to swing
24 an election in their favor—a proposition for which there is no evidence, or *even allegation*.
25 That victory-specific interest is underscored by the fact that Plaintiffs have not sought
26 injunctive relief specifically for the upcoming August primary, where any disqualified
27 votes will only affect distributions *amongst* Democratic candidates. This confirms the
28 obvious: Plaintiffs’ interests are in winning elections against other parties, not “counting

1 every vote”—whether material or not, and whether Democratic or not. Plaintiffs are
2 perfectly fine with “unconstitutionally disenfranchis[ing]” (Mot. at 2) *their own voters* as
3 long as candidates of other parties do not benefit in the process.

4 ***Balance of Harms and Public Interest.*** The remaining *Winter* factors further do
5 not support Plaintiffs’ requested relief. The State has numerous interests that would be
6 directly harmed by the injunction Plaintiffs seek. More generally, “a state suffers
7 irreparable injury whenever an enactment of its people or their representatives is enjoined.”
8 *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997).

9 The State’s potential harms dwarf Plaintiffs’ alleged harms, which are substantially
10 undercut by their epic procrastination. Since World War I—*i.e.*, for 102 years—Arizona
11 has both (1) allowed votes to be cast by *signed* absentee ballots *and* (2) declined to provide
12 a process for curing non-signatures *after* polls close. 1918 Ariz. Session Laws Ch. 11,
13 §§6-7. Plaintiffs have slept on their putative rights *for over a century* until now. That
14 immense delay properly “implies a lack of urgency and irreparable harm.” *Oakland*
15 *Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985). Indeed, the
16 Ninth Circuit recently faulted plaintiffs for delay between “the enactment of the
17 [challenged Arizona law] in 2014 to filing suit in July 2019.” *Miracle v. Hobbs*, 808 F.
18 App’x 470, 473 (9th Cir. 2020). But the delay here is more than *twenty times as great*.

19 Plaintiffs’ delay also implicates the public interest, as it is not merely *too long*, but
20 also *too close* to the 2020 general election. It is well established that “[c]ourt orders
21 affecting elections, especially conflicting orders, can themselves result in voter confusion”
22 with the risk increasing “[a]s an election draws closer.” *Purcell v Gonzalez*, 549 U.S. 1,
23 4-5 (2006). That risk is manifest here due to Plaintiffs’ dilatory conduct. Moreover,
24 Plaintiffs’ post-election cure period is actually likely to *increase*—not decrease—the
25 number of disqualified votes, which is not in the public interest.

26 For all of these reasons, Plaintiffs request for a preliminary injunction should be
27 denied and their Complaint dismissed.

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LEGAL STANDARD

“A preliminary injunction is an extraordinary remedy never awarded as of right,” but instead “upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22, 24. To obtain such relief, Plaintiffs “must establish that [(1) they are] likely to succeed on the merits, that [(2) they are] likely to suffer irreparable harm in the absence of preliminary relief, that [(3)] the balance of equities tips in [their] favor, and that [(4)] an injunction is in the public interest.” *Id.* at 20.

“Because ‘Rules 12(b)(6) and 12(c) are substantially identical,’ a motion for judgment on the pleadings is assessed under the standard applicable to a motion to dismiss for failure to state a claim upon which relief may be granted under Rule 12(b)(6).” *Mendez v. Freeport-McMoRan, Inc.*, No. 16- 00548, 2016 WL 6577064, at *1 (D. Ariz. Nov. 7, 2016) (citations omitted). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

BACKGROUND

Voting in Arizona. As Professor Atkeson explains in greater detail, Arizona is a leader among states in making it easy for its citizens to cast votes. Atkeson Report ¶¶9-24. Arizona does so through a variety of means, including (1) online registration, (2) not requiring any excuse to obtain an absentee/mail-in ballot, (3) making it easy to sign up for permanent mail-in balloting, (4) pre-paying postage, (5) maintaining polling places despite high vote-by-mail usage, (6) placing voting drop boxes in areas with limited mail service, and (7) requiring nothing more than a timely signature to vote by mail (unlike other states that require witnesses or notarization). *Id.* That last requirement is directly at issue here.

Absentee/Mail-In Balloting. For most of its history as a state (all but 1912-17) Arizona has permitted absentee balloting. *Supra* at 5. During the entirety of that time, *i.e.*, 1918-2020, Arizona has (1) always required a signature to cast a vote by mail/absentee and (2) never permitted “curing” of non-signatures after election day. This suit tests the constitutionality of that unbroken 102 years of history.

1 1204-05; *Mecinas*, 2020 WL 3472552 at *8-10. And the Ninth Circuit has further denied
2 a DNC-sought injunction pending appeal in *Mecinas* on July 22.

3 Plaintiffs could not have been unaware of the dispositive deficiencies that plague
4 their standing proffers here and elsewhere. The Eleventh Circuit attempted to educate
5 them, and did so at length. *Jacobson*, 957 F.3d at 1204-07. Plaintiffs were similarly—
6 and amply—aware of the same standing objections from *Mecinas*, which were successful
7 in obtaining dismissal there too. But Plaintiffs refused to make any ameliorative
8 adjustments. Instead, their standing efforts are *even more perfunctory here*—unlike either
9 *Jacobson* or *Mecinas*, they do not even bother to join individual voters.

10 Although, as the venerable adage goes, “there is no education in the second kick of
11 a mule” (or here third), Article III nonetheless compels its deliverance. Again.

12 Moreover, even if the Complaint adequately *alleged* standing, Plaintiffs have
13 submitted no record evidence to *prove* it. And their reply brief would be too late to do so.
14 Section I.A. thus explains why Plaintiffs’ Complaint should be dismissed on standing
15 grounds under Rule 12(c), and I.B. explains why a preliminary injunction is precluded.

16 **A. Plaintiffs’ Complaint Fails To Adequately Allege Standing**

17 **1. Plaintiffs Lack Associational Standing**

18 Plaintiffs’ associational standing theory flouts the Supreme Court’s decision in
19 *Summers*. Nor could Plaintiffs have been unaware of what *Summers* requires: DNC lost
20 unanimously in the Eleventh Circuit on *Summers* grounds a few weeks before filing this
21 suit. Plaintiffs again lack associational/representational standing for two reasons.

22 *First*, Plaintiffs have failed to identify any specific members that would be
23 harmed—thereby directly contravening *Summers*. The Supreme Court has repeatedly
24 “required plaintiff-organizations to make specific allegations establishing that *at least one*
25 *identified member* had suffered or would suffer harm.” *Summers*, 555 U.S. at 498
26 (emphasis added). “This requirement of naming the affected members has *never been*
27 *dispensed with in light of statistical probabilities*, but only where *all* the members of the
28 organization are affected by the challenged activity.” *Id.* at 498-99 (first emphasis added).

1 The Eleventh Circuit applied this rule specifically to hold that Plaintiff DNC lacked
 2 associational standing because “it failed to identify any of its members, much less one who
 3 will be injured.” *Jacobson*, 957 F.3d at 1204. And DSCC lacked standing because it
 4 “failed to even allege, much less prove, that they have any members.” *Id.*

5 DNC and DSCC have either failed to internalize *Jacobson* or are simply ignoring
 6 it. Plaintiffs’ Complaint fails to identify *any* affected members. None of the Plaintiffs
 7 ever (1) “make specific allegations establishing that at least one identified member had
 8 suffered or would suffer harm,” *Summers*, 555 U.S. at 498, or (2) “identify any of its
 9 members, much less one who will be injured by the [Acts].” *Jacobson*, 957 F.3d at 1204.

10 Indeed, it is impossible to glean from the Complaint even a single member of any
 11 Plaintiff, let alone one likely to be affected. And Plaintiffs have admitted that they cannot
 12 identify a single member likely affected. Napolitano Decl. Ex. B-D (interrogatory 3
 13 response). Instead, Plaintiffs allege only that “it is virtually certain that at least some [of
 14 their] members will mail a ballot without a signature in 2020,” Complaint ¶18; *accord id*
 15 ¶¶22, 25, 55, 67—*i.e.*, precisely the sort of “statistical probabilities” that *Summers* found
 16 wanting. Indeed, it “would make a mockery of [the Court’s] prior cases” to find that
 17 Plaintiffs have standing here. 555 U.S. at 498; *Mecinas*, 2020 WL 3472552 at *8-10.

18 *Second*, Plaintiffs could only establish associational standing if their “members
 19 would otherwise have standing to sue in their own right.” *Hunt v. Washington State Apple*
 20 *Advert. Comm’n*, 432 U.S. 333, 343 (1977). But it is well-established that self-inflicted
 21 harm does not suffice. Such harm “does not amount to an ‘injury’ cognizable under Article
 22 III.”¹ To avoid *all* relevant injury here, Plaintiffs’ members simply need to sign their
 23 ballots when they return them. Plaintiffs’ members thus have the *absolute ability* to avoid
 24 *all* of the harms complained of here. Their failure to do so is classic self-inflicted injury.²

26 ¹ *National Family Planning and Reprod. Health Ass’n, Inc. v. Gonzales*, 468 F.3d 826,
 27 831 (D.C. Cir. 2006); *accord Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 418 (2013)
 28 (rejecting standing based upon “self-inflicted injuries”); *Mendia v. Garcia*, 768 F.3d 1009,
 1013 n.1 (9th Cir. 2014).

² The standing analysis might be different for retrospective injury, where the harm is an
 accomplished fact and no longer preventable. But Plaintiffs do not allege any such injury

2. Plaintiffs Lack Organizational Standing

1 Plaintiffs alternatively may try to establish organizational standing. But such
2 standing is lacking here for three reasons.

3
4 *First*, it is well-established that organizational standing cannot be premised on
5 “simply a setback to the organization’s abstract social interests.” *Havens Realty Corp. v.*
6 *Coleman*, 455 U.S. 363, 379 (1982). Instead, injury in fact must be “concrete and
7 particularized.” *Summers*, 555 U.S. at 493.

8 Here, however, Plaintiffs merely allege that the Acts “decreasing the overall
9 likelihood that ADP will be successful in its mission to help elect Democratic candidates.”
10 Complaint ¶16; *accord id.* ¶¶20, 24. That is merely an “abstract social interest,” which is
11 unlike a voter’s concrete interest in having his/her vote count. Indeed, “[a]n organization’s
12 general interest in its preferred candidates winning as many elections as possible is still a
13 ‘generalized partisan preference’ that federal courts are ‘not responsible for vindicating.’”
14 *Jacobson*, 957 F.3d at 1207 (cleaned up) (quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1933
15 (2018)). Moreover, that allegation is not even plausible under *Twombly* without any
16 allegation that more Democratic votes would be disqualified than Republican ones—
17 which the Complaint tellingly does not make, and Plaintiffs further admit that they do not
18 contend “that voters who fail to sign mail-in ballot affidavits have been categorically more
19 likely to vote for Democratic candidates than Republican candidates.” Napolitano Decl.
20 Ex. B-D (interrogatory 20 response).

21 *Second*, Plaintiffs fail to allege resource diversion sufficiently. Cognizable
22 resource-diversion-based injury is lacking where—as here—Plaintiffs do not “explain[]
23 what activities [they] would divert resources away from in order to spend additional
24 resources on combatting the [challenged harms].” *Jacobson*, 957 F.3d at 1206. Here, the
25 activities that Plaintiffs allege resources would be diverted from are so unspecific that they
26 are not remotely “particularized.” *Summers*, 555 U.S. at 493

27 ADP, for example, only alleges that the Acts divert “resources that it would

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here, and have not joined or named any affected voter. Instead, the sole question is whether
Plaintiffs’ members have the power to avoid prospective injury. They unequivocally do.

1 otherwise spend on other efforts to accomplish its mission in Arizona.” Complaint ¶17.
 2 But ADP only operates in Arizona, so that does not provide *any* factual information about
 3 the desired activities that the Acts are purportedly shortchanging. Similarly, DNC alleges
 4 only diversion of resources that it would “otherwise spend on efforts to accomplish its
 5 mission in Arizona,” *id.* ¶21, and DSCC alleges only diversion from “voter persuasion
 6 efforts and other activities in Arizona,” *id.* ¶24. That is *far* too lacking in detail to suffice.

7 *Third*, Plaintiffs admission that they do not contend that the Acts disqualify more
 8 Democratic than Republican votes precludes organizational standing. An organization
 9 cannot “manufacture the injury by ... simply choosing to spend money fixing a problem
 10 that otherwise would not affect the organization at all.” *La Asociacion de Trabajadores*
 11 *de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). And here
 12 Plaintiffs’ Complaint fails to establish that the Acts are not *benefiting* Democratic
 13 candidates on a relative basis. And if Plaintiffs are expending resources on attempting to
 14 enhance a benefit conferred by the Acts, that would not be cognizable injury.³

15 **B. Plaintiffs Have Not Submitted Evidence That Could Support Standing**

16 Moreover, even if Plaintiffs’ Complaint adequately *alleged* standing, they have
 17 failed to *prove* their Article III standing with record evidence. Because the preliminary
 18 injunction has been consolidated with the merits, Plaintiffs must at least “‘set forth’ by
 19 affidavit or other evidence ‘specific facts,’” demonstrating standing. *Lujan v. Defs. of*
 20 *Wildlife*, 504 U.S. 555, 561 (1992).

21 Plaintiffs, however, have failed to provide even *one* affidavit establishing their
 22 standing and the entirety of their submissions to date (standing or otherwise) consist of a
 23 single attorney declaration attaching various documents—none of which name Plaintiffs’
 24 specific affected members or establish what activities Plaintiffs’ resources have allegedly
 25 been diverted away from. That plainly is insufficient.

26 The State anticipates that Plaintiffs may attempt to supply standing evidence with

27
 28 ³ Plaintiffs may also attempt to rely on competitive standing. But that would be inapposite
 as it only applies to “challenge[s] to the inclusion of a candidate on the ballot.” *Townley*
v. Miller, 722 F.3d 1128, 1136 (9th Cir. 2013).

1 their reply brief. That, however, would be too late. “As the Ninth Circuit has consistently
 2 held, evidence submitted for the first time in a reply brief may be stricken.” *Alonzo v. Akal*
 3 *Sec., Inc.*, No. 17-00836, 2017 WL 5598227, at *3 n.3 (D. Ariz. Nov. 21, 2017). And “[i]t
 4 would be unfair, and reversible error, for a district court to consider new evidence offered
 5 in reply without affording the non-moving party an opportunity to respond.” *Sunburst*
 6 *Minerals, LLC v. Emerald Copper Corp.*, 300 F. Supp. 3d 1056, 1060 (D. Ariz. 2018)
 7 (citing *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996)).

8 Here, there is no reason why Plaintiffs could not have submitted evidence
 9 supporting their standing—an issue on which they have the burden of proof, *Lujan*, 504
 10 U.S. at 561—earlier (*i.e.*, with their preliminary injunction motion). And the calendar here
 11 simply will not permit delay to allow the State to respond to new evidence submitted for
 12 the first time in reply. Indeed, this case is already too close to the November general
 13 election to permit relief. *See infra* Section IV. Thus, this Court should simply strike any
 14 new standing evidence submitted in reply.

15 In addition, Plaintiffs also cannot use evidence submitted in reply to “effectively
 16 amend [their] Complaint by raising a new theory of standing.” *Lake Forest*, 624 F.3d at
 17 1088-89. Their reply brief “‘is not a procedural second chance to flesh out inadequate
 18 pleadings.’” *Id.* (citation omitted). Thus, even if Plaintiffs produce actual evidence of
 19 standing, this suit must be dismissed due to the Complaint’s failure to allege it adequately.

20 **II. PLAINTIFFS’ DUE PROCESS CLAIM FAILS**

21 Plaintiffs’ due process claim fails for multiple reasons, including that (1) it wrongly
 22 asserts a constitutional challenge outside of the *Anderson-Burdick* framework, (2) it
 23 actually seeks a new *substantive* right without meeting the applicable standard,
 24 (3) Plaintiffs have no cognizable liberty interest, and (4) the *Mathews* balancing favors the
 25 State in any event. Each of these deficiencies requires dismissal of Count Two.

26 **A. Plaintiffs Cannot Bring A Freestanding Due Process Claim Outside Of**
 27 **The *Anderson-Burdick* Framework**

28 Plaintiffs’ due process claim (Count Two) fails as a threshold matter because the

1 Ninth Circuit has repeatedly refused to permit freestanding constitutional challenges to
 2 electoral regulations outside of the *Anderson-Burdick* framework. Instead, that court has
 3 continually held that *all* constitutional challenges to election regulations are governed by
 4 “a single analytic framework”—*i.e.*, the *Anderson-Burdick* framework. *Dudum*, 640 F.3d
 5 at 1106 n.15. That includes “First Amendment, Due Process, [and] Equal Protection
 6 claims.” *Id.*; accord *LaRouche v. Fowler*, 152 F.3d 974, 987-88 (D.C. Cir. 1998). All
 7 such claims are “folded into the *Anderson/Burdick* inquiry.” *Soltysik v. Padilla*, 910 F.3d
 8 438, 449 n.7 (9th Cir. 2018); accord *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 729
 9 n.7 (9th Cir. 2015); *Ariz. Libertarian Party v. Hobbs*, 925 F.3d 1085,1090 (9th Cir. 2019).

10 Because Plaintiffs’ Count Two attempts to plead a freestanding due process claim
 11 outside of *Anderson-Burdick*, it necessarily fails.

12 **B. Plaintiffs’ Due Process Claim Is *Substantive* In Character—And Fails**
 13 **As A Substantive Due Process Claim**

14 Plaintiffs’ due process claim also fails because it is miscast: while styled as a
 15 procedural due process claim, Complaint ¶¶65-69, it actually seeks a new right that is
 16 *substantive* in nature. Specifically, Plaintiffs do not seek any new *procedures*, such as an
 17 administrative or judicial hearing as to whether Defendants’ no-signature determinations
 18 were actually correct. Instead, Plaintiffs seek a new substantive right to have votes counted
 19 notwithstanding their violations of state law (here signing by the election deadline).⁴

20 Plaintiffs’ Count Two readily fails under the substantive due process standard,
 21 which requires the asserted right to be “‘deeply rooted in this Nation’s history and tradition
 22

23 ⁴ Notably, the right recognized in Plaintiffs’ case law regarding signature mismatches is
 24 the right to present extrinsic evidence to challenge the initial mismatch determination—
 25 not an independent right to (1) violate the law pre-election and then (2) belatedly comply
 26 post-election. For example, in *Saucedo*, plaintiffs sought only “[a]dditional procedures
 27 would simply allow for more probative extrinsic evidence to be considered.” *Saucedo v.*
 28 *Gardner*, 335 F. Supp. 3d 202, 220 (D.N.H. 2018). They did not seek the right to flout the
 signature requirement by, say, signing ballots “Mickey Mouse” or “Trump Sucks” and
 “cure” it by signing their real names later (and after knowing whether their protest vote is
 likely to make a difference). Similarly, if Plaintiffs were claiming a right to vote
 notwithstanding failing to register by the deadline—*e.g.*, through a new post-registration-
 deadline “cure” period—Plaintiffs would plainly be seeking a *substantive* right, not a
 procedural one. So too here.

1 and implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702,
2 720-21 (1997) (cleaned up) (citations omitted). But it is well-established that “there is no
3 constitutional right to an absentee ballot” at all, *Mays v. LaRose*, 951 F.3d 775, 792 (6th
4 Cir. 2020), and Plaintiffs’ theory runs contrary to 102 years of Arizona history.

5 **C. Plaintiffs Do Not Have A Cognizable Liberty Interest**

6 Plaintiffs claim also fails because they have not established that they have a
7 cognizable liberty interest that the Due Process Clause protects. Plaintiffs rely largely (at
8 10) on *Raetzel v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1357 (D.
9 Ariz. 1990) for the existence of a protectable liberty interest (and all of their other cited
10 cases in turn are premised on *Raetzel*). The entirety of *Raetzel*’s reasoning on this issue is
11 this single sentence: “Because voting is a fundamental right, the right to vote is a ‘liberty’
12 interest which may not be confiscated without due process.” *Id.*

13 Respectfully, this is plainly wrong. The right to equal governmental treatment is
14 undoubtedly a “fundamental right” under the Equal Protection Clause. But that does not
15 make that right a “liberty interest” under the Fourteenth Amendment, rather than a distinct
16 right. This is, in many ways, a good thing. The government cannot strip citizens of their
17 right to equal protection no matter how much process is provided. (In contrast,
18 governments can deprive citizens of their liberty interests by criminal convictions after
19 providing the requisite process). For the same reasons, the right to vote is a *distinct* and
20 *independent* constitutional right—not merely a subsidiary facet of the Due Process Clause.

21 More generally, “A liberty interest may arise from either of two sources: the due
22 process clause itself or state law.” *Carver v. Lehman*, 558 F.3d 869, 872 (9th Cir. 2009).
23 Here, no such interest can arise under state law: Plaintiffs concede state law precludes any
24 post-election-day cure. Complaint ¶¶48-50. Nor, given the lack of a “constitutional right
25 to an absentee ballot” *at all*, *Mays*, 951 F.3d at 792, is there any reason that the Due Process
26 Clause itself would protect a subsidiary interest to cure a defective absentee ballot to which
27 the clause supplies no right in the first instance.

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D. Mathews Balancing Does Not Require A Post-Election Cure Period

Even if Plaintiffs had a protectable liberty interest and the other claim-dispositive barriers did not apply, that would only get Plaintiffs to the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Mathews* requires consideration of three factors:

[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”

Brittain v. Hansen, 451 F.3d 982, 1000 (9th Cir. 2006) (quoting *Mathews*, 424 U.S. at 334-35) (cited by Plaintiffs at 10). Under this test, Plaintiffs’ claim fails.

1. Private Interest

Here the affected private interest is weak. True, at the highest level of generality—*i.e.*, the right of a citizen to vote—the private interest is profound. But due process claims are analyzed with particularity. Thus, in *Mathews* the relevant private interest was not in the disability benefits generally, but “the uninterrupted receipt of this source of income pending final administrative decision” *specifically*. 424 U.S. at 340.

Here there is no right to cast an absentee ballot *at all*, let alone one that flouts applicable legal requirements. The private interest in having a *noncompliant* vote count is, at best, weak. And that is particularly true as the State will permit voters to cure an absent signature pre-election. Atkeson Report ¶¶36-39. The private interest here is thus the “right” to have a vote count despite (1) contravening an exceedingly easy-to-comply requirement, and (2) doing so with insufficient time to permit a pre-election cure. To the extent that such a private interest is cognizable at all, its weight is extraordinarily faint.

This weakness in the private interest stands in notable contrast to signature-mismatch cases. Citizens’ interest in not having their votes disqualified through circumstances typically *not their fault at all* is undoubtedly stronger than here. The same is not true where votes not counting will typically be the *exclusive fault of the voters* in

1 failing to meet simple requirements for which there is ample notice and time to comply.⁵

2 Moreover, even where private interests are strong, they do not permit flouting of
3 applicable deadlines. Suits in federal court, for example, often seek to vindicate
4 constitutional rights of enormous importance. But if a litigant files a notice of appeal just
5 one day late in such a suit, procedural due process provides no escape hatch from the lack
6 of appellate jurisdiction—even if that means complete extinguishment of the right at issue.

7 **2. Risk Of Error**

8 The risk of error here is exceedingly low. Notably, only 0.10% of total ballots were
9 disqualified for lacking signatures in the 2018 election. Atkeson Report ¶57. Even
10 assuming *all* of those no-signature determinations were incorrect (which is exceedingly
11 doubtful), that shows a maximum 0.1% total error rate of wrongly disqualifying ballots.⁶
12 The Ninth Circuit has found a risk of potential error *40 times as high* to be “low.” *Veterans*
13 *for Common Sense v. Shinseki*, 678 F.3d 1013, 1035-36 (9th Cir. 2012) (agreeing that “the
14 risk of error was low” where “only 4% of veterans who file benefits claims are affected”).

15 But given the exceptional simplicity of “is it signed or not?” determinations, the
16 true error rate is likely far lower than 0.1%. Atkeson Report ¶¶39, 62. Indeed, Plaintiffs
17 do not even attempt to quantify the rate, and instead bizarrely contend that “[t]he ‘error
18 rate’ of ‘non-signature determinations’ ... has minimal, if any, probative worth,”
19 Napolitano Decl. Ex. B-D (interrogatory 16 response)—despite that being the second
20 *Mathews* factor. Plaintiffs’ true disagreement is thus with the Supreme Court’s standard.

21 Notably, “procedural due process rules are shaped by the risk of error inherent in
22 the truth-finding process as applied to the generality of cases, not the rare
23 exceptions.” *Walters v. Nat’l Ass’n of Radiation Survivors*, 473 U.S. 305, 321 (1985).

24
25 ⁵ Indeed, Plaintiffs own case law only provides that “the State must provide adequate
26 process to ensure that voters’ ballots are fairly considered and, if eligible, counted.”
27 *Saucedo*, 355 F.Supp. 3d at 217. But here Plaintiffs do not even allege any deficiencies in
28 how poll workers evaluate whether a ballot is actually signed—*i.e.*, do not dispute ballots
are “fairly considered.” And *Saucedo* only requires votes be “counted” “*if eligible*.” *Id.*
(emphasis added). But an unsigned ballot is not “eligible” for counting under Arizona law.

⁶ Because 79% of voters cast their ballots by mail, the maximum possible error rate for
non-signature determinations for mail-in ballots specifically is about 0.127% (0.1%/0.79).

1 Plaintiffs do not offer any argument (let alone evidence) that the risk of wrongful no-
2 signature determinations is material in the “generality of cases.” *See also City of Los*
3 *Angeles v. David*, 538 U.S. 715, 718 (2003) (per curiam) (second *Mathews* factor did not
4 favor additional proceedings given “the straightforward nature of the issue”).

5 Instead, Plaintiffs focus almost exclusively on the “risk” that Arizona poll workers
6 will *correctly* follow Arizona law and disqualify unsigned ballots. Plaintiffs, for example,
7 contend (at 11) that “[i]t is virtually certain that some Democratic voters ... will
8 inadvertently fail to sign their mail ballots” and thus have their vote “rejected.” But those
9 speculated disqualifications are not “erroneous deprivation[s],” *Mathews*, 424 U.S. at
10 335—they are *correct* deprivations under Arizona’s signature requirement. Procedural
11 due process does not protect against the “risk” that a state will *correctly* apply its own law
12 to the facts at hand (which again underscores the *substantive* nature of the asserted right).

13 **3. Value Of Additional Process**

14 For similar reasons, the value of additional procedures is vanishingly small. As
15 Plaintiffs’ own case explains, where the correct result is straightforward the “value of
16 additional procedures and the risk of erroneous deprivation are *quite minimal*.” *Brittain*,
17 451 F.3d at 1001 (emphasis added). Plaintiffs do not seriously contend otherwise, but
18 instead again focus (at 12-13) on the “value” of reducing *accurate* disqualifications. But
19 “a primary function of legal process is to minimize the risk of *erroneous decisions*”—not
20 *correct* ones. *Mackey v. Montrym*, 443 U.S. 1, 13 (1979) (emphasis added).

21 At its base, Plaintiffs’ argument appears to be that if a voter *intended* to sign a ballot
22 affidavit but failed to do so, then it would be an “erroneous deprivation” not to count their
23 vote. *See* Mot. at 11-12. Plaintiffs thus argue (at 12) that a post-election cure period could
24 “add significant probative value,” presumably as to the voter’s intent. But Arizona law
25 turns on whether the ballot is *actually* signed, not whether the voter intended to do so.
26 A.R.S. § 16-552(B). And the risk of error must be considered in light of the underlying
27 law as to what is error. *Kaley v. United States*, 571 U.S. 320, 334 (2014).

28 The value of additional proceedings is further significantly attenuated by three other

1 factors that Plaintiffs ignore. *First*, Arizona voters receive *ample* notice of the signature
 2 requirement. In Maricopa County, home to about 3/5 of Arizona voters, notice is
 3 prominently given in (1) *large, red, bold, capital* letters on the back of the vote-by-mail
 4 envelope (*i.e.*, “**SIGNATURE REQUIRED**”) along with the consequence (*i.e.*,
 5 “**BALLOT WILL NOT BE COUNTED WITHOUT YOUR SIGNATURE**”) (Figure
 6 1), (2) listed as one of three simple requirements on the return envelope under *red, bold,*
 7 *underlined* text *i.e.*, “To ensure your ballot is valid and counted”) on the return envelope
 8 (Figure 2), and (3) specifically discussed in the instructions sent to voters (Figure 3).
 9 Atkeson Report at 18-21; *see also* Roads Decl. ¶5.

10 Plaintiffs do not appear to take issue with the sufficiency of this notice. And this
 11 notice also diminishes the value of any additional procedures: Plaintiffs never explain how
 12 a voter that overlooks the three pre-election notices will nonetheless respond to a *fourth*
 13 notice that a signature is deficient. Some undoubtedly may, but for many others the notice
 14 of signature deficiency would go exactly as heeded as the multiple pre-election notices:
 15 *i.e.*, completely disregarded.

16 *Second*, the existing Arizona cure procedures further reduce the value of the post-
 17 election cure period Plaintiffs seek. The Election Procedure Manual expressly requires
 18 county recorders to “make a reasonable and meaningful attempt to contact the voter ...
 19 and explain to the voter how they may cure the missing signature or cast a replacement
 20 ballot before 7:00pm on Election Day. Atkeson Report ¶¶22, 36-37. And County officials
 21 will expend (and have expended previously) *considerable* efforts to provide voters with
 22 an opportunity to remedy an absent signature *as long as* they do so by poll-close time. *Id.*
 23 ¶¶28-39; Roads Decl. ¶¶9-14; Napolitano Decl. Exs. F, H at 2-4.⁷ Alternatively, affected
 24 voters may vote in-person on election day instead. A.R.S. §16-579(B).

25 The post-election cure period would thus only provide assistance to those that
 26

27 ⁷ In addition, there are typically multiple individuals involved before any no-signature
 28 determination can be finalized and a ballot disqualified, further reducing the risk of error.
 See Napolitano Decl. Ex. I at 2; Roads Decl. ¶19.

1 (1) failed to sign a ballot despite *extensive* notice that they are required to do so on pain of
2 votes not counting and (2) either (a) failed to return their ballot with sufficient time to
3 allow a pre-election cure or (b) declined to cure the non-signature in the available time left
4 before polls close. Plaintiffs make no effort to quantify or even estimate how many voters
5 that may be. They thus have not met their burden of establishing material value in the
6 “generality of cases.” *Walters*, 473 U.S. at 321.⁸

7 *Third*, the recent experience in California’s 2020 primary underscores the lack of
8 marginal value for Plaintiffs’ proposed remedy. Even though California permits non-
9 signatures to be cured up to two days before results are certified, it still disqualified nearly
10 13,000 votes for lacking signatures—roughly 0.18%—materially *greater* than Arizona’s
11 0.1-0.12% rate. Napolitano Decl. Ex. K. It also disqualified over 70,000 ballots as late
12 even though California merely requires ballots to be post-marked, rather than received, by
13 election day. *Id.* This underscores that no matter how lenient the rules and cure
14 opportunities are, many voters will still fail to take advantage. And Plaintiffs simply offer
15 no evidence that many voters would actually use their post-election cure opportunity.

16 **4. Governmental Interests**

17 As set forth below, the governmental interests implicated here are strong. *See*
18 *infra* at 27-30. But given Plaintiffs’ weak showing on the first two *Mathews* factors, the
19 third need not be belabored here.

20 **E. Plaintiffs’ Reliance On Signature Mismatch Cases Is Unsound—And** 21 **Often Actually Supports The State**

22 Notably, Plaintiffs’ arguments seem to rest heavily on an extended analogy to cases
23 involving signature *mismatches*, rather than absent signatures. That foundational premise
24 is unsound for several reasons. *First*, given the inherent subjectivity in analyzing
25 signatures and a variety of factors that may cause both signatures and determinations to

26 _____
27 ⁸ Notably, if Maricopa County voters follow the instructions provided and mail their ballot
28 “no later than 6 days prior to the election date,” Atkeson Report at 19-20, it is very likely
that the voters will both receive notice of the deficiency and have an opportunity to cure it
before the polls close. Thus, the voters that would benefit from Plaintiffs’ relief would
largely be those who failed to follow *virtually all* of the directions provided on the ballot.

1 vary, courts have found the risk of error in signature matching to be material—thus
2 creating value for additional procedural protections. But the risk of error in ascertaining
3 that a ballot affidavit lacks a signature entirely is miniscule. *Second*, when votes are
4 disqualified for signature *mismatches*, the voter is often entirely blameless. But for
5 completely absent signatures, the disqualification will nearly always be the *exclusive fault*
6 of the affected voters—particularly given the clarity of the notice. *Supra* at 17-18.

7 Ironically, Plaintiffs’ *own cases* explain these distinctions quite well. For example,
8 *Democratic Exec. Comm. of Fla. v. Lee* (cited at 7), expressly contrasts mismatches/no-
9 signatures by explaining: “It is one thing to fault a voter if she fails to follow instructions
10 about how to execute an affidavit to make her vote count.” 915 F.3d 1312, 1324-25 (11th
11 Cir. 2019). But this case actually *is* that “one thing.” In contrast, “signature-match scheme
12 can result in the rejection ... *through no fault of the voter.*” *Id.* at 1316 (emphasis added).

13 Similarly, *Saucedo* (cited at 10, 12, & 14) explains that “handwriting analysis ... is
14 fraught with error” and that “Plaintiffs seek no more than to ... [allow] evidence from the
15 best source—the voter.” 335 F.Supp.3d at 219. But determining whether a ballot is signed
16 at all is *not* similarly “fraught with error” and Plaintiffs do not merely seek consideration
17 of new evidence here, but rather to supersede the undisputed evidence of non-signature.

18 *Northeastern Ohio Coalition for Homeless v. Husted* (“*Husted I*”), 696 F.3d 580
19 (6th Cir. 2012) (cited at 7) is even worse for Plaintiffs. It notably *reversed*, as an *abuse of*
20 *discretion*, an injunction regarding a “deficient-affirmation remedy,” such as “missing or
21 misplaced ... voter signature[s]”—*i.e.*, a strikingly similar claim to what is presented here.
22 *Id.* at 584, 587 (citation omitted). The Sixth Circuit there contrasted “right-place/wrong-
23 precinct ballots” which mostly “result ... from poll-worker error,” *id.* at 595 (cleaned up)
24 with “voters’ failure to follow the form’s rather simple instructions” to sign. *Id.* at 598-
25 99. As in *Husted I*, a preliminary injunction on that basis would be an abuse of discretion.

26 In addition, the potential risk of fraud is greater with non-signatures. Many would-
27 be cheaters may hesitate before signing hundreds of fraudulent ballots because doing so
28 would both provide extensive handwriting samples that could be traced back to the

1 fraudster. Atkeson Report ¶70; *see generally* Napolitano Decl. Exs. P-U. But submission
2 of unsigned ballots runs much less risk of being traced back to the perpetrator, given the
3 absence of evidence for investigators.

4 **III. PLAINTIFFS’ ANDERSON-BURDICK CLAIM FAILS**

5 Plaintiffs’ *Anderson-Burdick* claim fails because the challenged Acts do not impose
6 a “severe burden,” and Plaintiffs barely attempt to argue that they are invalid under “less
7 exacting review.” But even if strict scrutiny applies, the Acts satisfy it.

8 **A. Overview Of The *Anderson-Burdick* Framework**

9 As discussed above, all challenges to electoral statutes and regulations are governed
10 by *Anderson-Burdick* framework. That framework recognizes that “States may, and
11 inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce
12 election- and campaign-related disorder.” *Prete v. Bradbury*, 438 F.3d 949, 961 (9th Cir.
13 2006) (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)).

14 Under the *Anderson-Burdick* framework, “an election regulation that imposes a
15 severe burden is subject to strict scrutiny.” *Nader v. Brewer*, 531 F.3d 1028, 1035 (9th
16 Cir. 2008). In contrast, “*Lesser burdens* trigger less exacting review, and a State’s
17 important regulatory interests will usually be enough to justify reasonable,
18 nondiscriminatory restrictions.” *Angle v. Miller*, 673 F.3d 1122, 1132 (9th Cir. 2012)
19 (quoting *Prete*, 438 F.3d at 961) (cleaned up). Notably, “voting regulations are rarely
20 subjected to strict scrutiny.” *Dudum*, 640 F.3d at 1106. Moreover, “Elaborate, empirical
21 verification of weightiness is not required.” *Timmons*, 520 U.S. at 352.

22 **B. The Acts Do Not Impose A Severe Burden**

23 The severity of the burden here is controlled by the Ninth Circuit’s decision in
24 *Lemons* and the Supreme Court’s decision in *Rosario*. But even on a blank slate, the
25 burden here is manifestly not severe.

26 **1. *Lemons* and *Rosario* Control This Case**

27 The Ninth Circuit’s decision in *Lemons v. Bradbury* is squarely controlling here.
28 *Lemons* specifically considered an *Anderson-Burdick* challenge to election laws that

1 denied an opportunity to cure signature mismatches, 538 F.3d at 1100-01—which
2 Plaintiffs’ case is based on extended analogy to. In *Lemons*, there was *no* opportunity for
3 a voter to cure a signature mismatch *at all*—unlike here where there is merely an election-
4 day deadline to do so. Because *Lemons* involved mismatches, the constitutional concerns
5 were greater.

6 The Ninth Circuit’s assessment of the applicable burden under *Anderson-Burdick*—
7 where the constitutional claims were stronger—was resounding: it was manifestly
8 “minimal.” Indeed, lest there be any doubt, the court repeated its “minimal” burden
9 holding a total of *five times*. *Id.* at 1102, 1104. It is accordingly even more “minimal”
10 here. *Lemons* explains that “the absence of notice and an opportunity to rehabilitate
11 rejected signatures imposes only a minimal burden on plaintiffs’ rights” and further holds
12 that “the state’s important interests justify the minimal burden on plaintiffs’ rights.” *Id.* at
13 1102, 1104. And it further held that “[t]he value of additional procedural safeguards”—
14 *i.e.*, any opportunity to cure *at all*—“[wa]s *negligible* and the burden on plaintiffs’ interests
15 from the state’s failure to adopt their proposed [cure] procedures [wa]s *slight at most*.” *Id.*
16 at 1105 (emphasis added).

17 *Lemons* is thus dispositive of the applicable burden here.

18 The Supreme Court’s decision in *Rosario v. Rockefeller*, 410 U.S. 752 (1973) is
19 similarly controlling here. *Rosario* held that there is no constitutional violation where a
20 party simply fails to act “prior to the cutoff date,” (there registering as a member of a
21 party). *Id.* at 758. In those circumstances, “if [plaintiffs’] plight can be characterized as
22 disenfranchisement at all, it was not caused by [the challenged law], but by their own
23 failure to take timely steps.” *Id.* The same result should obtain here: any rejection of a
24 mail-in ballot will result from the voter’s “failure to take timely steps,” and Plaintiffs’
25 claims should fare no better than the *Rosario* plaintiffs.

26 2. Neither *Lemons* Nor *Rosario* Are Distinguishable

27 Plaintiffs’ failure to address *Lemons* is astonishing. Plaintiffs’ own case law cites
28

1 *Lemons* extensively, so they could not have been unaware of it.⁹ And it is binding
2 precedent for this Court and considers an *Anderson-Burdick* challenge to a signature
3 verification regime that did not permit any cure opportunity. True, it dealt with signature
4 mismatch rather than complete non-signatures. But Plaintiffs’ central claim is that the
5 Constitution demands that the two must be treated as equivalent.

6 Plaintiffs may try to distinguish *Lemons* in reply by arguing that it involved
7 qualifying initiatives for the ballot rather than the right to vote. *Lemons* itself answers any
8 such attempt: “regulations on the referendum process implicate the fundamental right to
9 vote.” 538 F.3d at 1102. To the extent that Plaintiffs might try to reverse course and
10 emphasize the differences between mismatches and absent signatures, their claim would
11 be even weaker. *Supra* at 15, 19-21. Similarly, if Plaintiffs attempt to rely upon the State’s
12 provision of cure period for signature mismatches, the State reasonably distinguishes
13 between mismatches and absent signatures for these same reasons. *Id.*

14 *Rosario*, while somewhat more general, is also indistinguishable. Its rule is simple:
15 where a party fails to satisfy an easy-to-comply-with deadline after ample notice, the
16 Constitution does not rescue voters from the consequences of their non-compliance.

17 **3. The Burden Imposed By The Acts Is Minimal**

18 Even if this Court were considering this case on a blank slate—*i.e.*, without the
19 benefit and precedential effect of *Lemons* and *Rosario*—the record readily demonstrates
20 that the burden imposed by the Acts is minimal for seven reasons.

21 *First*, the actual burden imposed by the State is truly minimal: a voter need only
22 sign once where prominently indicated sometime within a month. This contrasts with the
23 burden in *Crawford*—*i.e.*, “inconvenience of making a trip to the BMV, gathering the
24 required documents, and posing for a photograph”—which the Supreme Court explained
25 “surely does not qualify as a substantial burden on the right to vote.” *Crawford v. Marion*

26
27
28 ⁹ See *Saucedo*, 335 F. Supp. 3d at 216, 218; *Lee*, 915 F.3d at 1322; see also *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018) (suit filed by counsel by Plaintiffs shared here).

1 *Cty. Election Bd.*, 553 U.S. 181, 198 (2008) (emphasis added) (plurality opinion).¹⁰

2 *Second*, voters are given ample notice of both what is required of them *and* the
3 consequences for non-compliance. *Supra* at 17-18. Voters need simply read and heed that
4 notice to ensure their vote is not disqualified for failure to sign.

5 *Third*, the relevant burden must be evaluated in context and “considering all
6 available opportunities to vote.” *Mays*, 951 F.3d at 785. As explained above, Arizona is
7 a clear leader in *removing* burdens to voting. *Supra* at 1, 6.

8 *Fourth*, the Acts are completely neutral in character. The Ninth Circuit has
9 “repeatedly upheld as ‘not severe’ restrictions that are generally applicable, even-handed,
10 [and] politically neutral.” *Dudum*, 640 F.3d at 1106 (cleaned up). The Acts are just that:
11 they apply to *all* voters equally, regardless of race, sex, age, or party. To the extent that
12 they favor anyone, it simply is those that follow applicable rules/clear instructions—*i.e.*,
13 “favoritism” that no legal system can function without.

14 *Fifth*, county recorders affirmatively try to assist voters in curing deficiencies by
15 election day and provide opportunities for them to do so. *Supra* at 7. These opportunities
16 would only typically be insufficient if the voter either ignores them pre-election or fails to
17 follow instructions as to when to mail the ballot. *Supra* at 19 n.8.

18 *Sixth*, the number of voters affected is very small—only about 0.1%. *Supra* at 16.
19 And, of those, in the vast majority of cases the disqualification will be (1) a correct
20 application of state law and (2) resulting from voters’ failure to follow clear instructions.

21 *Seventh*, as Professor Atkeson explains, the availability of post-election cure
22 periods actually tends to *increase* the number of disqualified votes, rather than decrease it
23 (as voters, knowing the results, decline to avail themselves of the cure opportunities). *See*
24 Atkeson Report ¶¶51-61. And there is no reason to believe that disqualifying *fewer* votes

25
26 ¹⁰ *Accord id.* at 204 (Scalia, J., concurring joined by Thomas and Alito, JJ.) (“[T]he burden
27 at issue is minimal and justified”). Similarly, the Ninth Circuit has held that “[t]o the
28 extent that having to register to receive a mailed ballot could be viewed as a burden, *it is*
an extremely small one, and certainly not one that demands serious constitutional
scrutiny.” *Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018) (emphasis added). But the
burden of simply signing on time is *even smaller* than the “extremely small” burden of
filling out an absentee ballot request form.

1 is a severe burden on voting.

2 *Eighth*, a comparison with other states shows that Arizona is hardly unduly or
3 uniquely restrictive in its election-day cutoff for curing non-signatures. Of the 31 states
4 that rely upon signatures to validate absentee ballots, nearly half—15 states—do not
5 provide voters with *any* notice of a signature deficiency (mismatch or absence), let alone
6 an opportunity to cure, *ever*. *Id.* ¶51 & Table 1. And three (Georgia, Massachusetts, and
7 Michigan) limit the non-signature curing period to pre-poll close, just like Arizona. *Id.*
8 ¶52 & Table 1. Thus, under Plaintiffs’ theories a whopping 19/31 of relevant states—*more*
9 *than three-fifths*—are imposing unconstitutional severe burdens on their voters. But such
10 a holding would be unprecedented.

11 **4. Other Circuits Agree That The Burden Is Miniscule**

12 Precedents in other circuits—many strangely cited with putative favor by
13 Plaintiffs—support the conclusion that the burden here is minimal at most. For example,
14 Plaintiffs’ cite (at 7) *Husted I* for the proposition that “courts have found a severe burden
15 even where relatively small numbers of votes were not counted.” But as to the deficient
16 affidavit claims—which most closely resemble the claims here and also involved a low
17 number of affected voters—the Sixth Circuit held that the burden was “minimal” and
18 “unspecified.” 696 F.3d at 600. So too here.

19 Plaintiffs similarly rely (at 14) on *Obama for America v. Husted* (“*Husted II*”), 697
20 F.3d 423, 436 (6th Cir. 2012). But *Husted II* specifically held that the burden at issue was
21 “not severe” even where “approximately 100,000 Ohio voters” could be denied the ability
22 to vote. *Id.* at 431, 433. It defies reason that an effect at least a full order of magnitude
23 less than a “not severe” burden is somehow “severe” itself.¹¹

24 The Fourth Circuit has also upheld, as not severe, signature requirements far more

25
26 ¹¹ The Sixth Circuit has held that “[s]trict scrutiny is the standard for cases where ‘the
27 State totally denied the electoral franchise to a particular class of residents, and there was
28 no way in which the members of that class could have made themselves eligible to vote.’”
Mays, 951 F.3d at 786 (citing *Rosario*, 410 U.S. at 758). Nothing of the sort has occurred
here. There is no class denied the right to vote (save perhaps rule breakers, which is not
cognizable) and Arizona voters have an extremely easy way to make their vote count: sign
their name by election day.

1 stringent than here, such as notarization mandates. *Kendall v. Balcerzak*, 650 F.3d 515,
2 525-27 (4th Cir. 2011).

3 **5. Plaintiffs’ Arguments Conflate The Burden Of Compliance**
4 **With Remedy For Non-Compliance**

5 Fundamentally, Plaintiffs’ arguments are flawed because they conflate the burden
6 of the *actual requirement itself* with the *remedy* for non-compliance with the requirement.
7 But that conflation would render vast swaths of election law unconstitutional. For
8 example, if a voter shows up to the polls one day late, his/her vote will not count. But that
9 “disenfranchisement” (in Plaintiffs’ parlance) does not mean that the requirement of voting
10 by election day is severe. So too with registering to vote by deadlines or obtaining photo
11 identification. Or even with voting for a candidate and having second thoughts during the
12 same time span as Plaintiffs’-sought cure period. But none of these are “severe” burdens
13 on the right to vote.

14 The Supreme Court’s opinions in *Crawford* underscore this point. Of course, the
15 *remedy* for failing to have a photo identification would often be a vote not counting. But
16 the Supreme Court looked to the actual burden of obtaining an ID—not the remedy for
17 lacking one. *Supra* at 23-24 & n.10.

18 Here the burden is *trivially* low. Following minimal, simple directions and signing
19 one’s name is about as low as burdens go without being zero. Thus, as in *Lemons*,
20 “Plaintiffs’ argument ‘proceeds from the erroneous assumption that a law that imposes any
21 burden upon the right to vote must be subject to strict scrutiny.’ *This premise is flawed.*”
22 538 F.3d at 1103 (citation omitted) (emphasis added).

23 **C. The Acts Survive Exacting Scrutiny**

24 Because the Acts do not impose a “severe burden” under the *Anderson-Burdick*
25 framework, this Court’s inquiry into the constitutionality of the Act “is limited to whether
26 the chosen method is reasonably related to [an] important regulatory interest.” *Prete*, 438
27 F.3d at 971. The Acts easily satisfy these requirements. Indeed, Plaintiffs barely even
28 argue that their challenge can succeed if the Acts do not impose a “severe burden,” instead

1 placing virtually all of their eggs in the “severe burden” basket. *See* Mot. at 7-9.

2 **1. The Acts Serve Important State Interests**

3 The Acts here serve *multiple* important state interests, any one of which is sufficient
4 to sustain it against constitutional challenge. Four such interests are readily apparent.

5 *First*, the Ninth Circuit has recognized that states have an “important regulatory
6 interest in preventing fraud and its appearances in its electoral processes.” *Id.* at 969.
7 Indeed, that this interest is not merely important, but outright *compelling*. *See Purcell*, 549
8 U.S. at 4 (2006) (“A State indisputably has a compelling interest in preserving the
9 integrity of its election process.”). Requiring signatures furthers this compelling state
10 interest by providing a form of verification. And the recent fraud in North Carolina, New
11 Jersey and California underscores the importance of the State’s signature requirement in
12 preventing voter fraud. Atkeson Report ¶¶69-70; Napolitano Decl. Exs. K, P-U.

13 *Second*, the State has an interest in reducing the administrative burden on poll
14 workers at a time when they are supposed to be busy tabulating ballots. *See Ohio*
15 *Democratic Party v. Husted*, 834 F.3d 620, 635 (6th Cir. 2016) (recognizing that “easing
16 administrative burdens ... undoubtedly [furthers] ‘important regulatory interests’”)
17 (quoting *Crawford*, 553 U.S. at 194-96); *Lemons*, 538 F.3d at 1104-05 (recognizing
18 “administrative burden” as important interest). Because of the prevalent use of voting by
19 mail, Arizona election results already take significant time and effort to calculate. Atkeson
20 Report ¶¶73-76. But if poll workers and resources are diverted post-election to effectuate
21 Plaintiffs’ proposed remedy, election results will necessarily take *even longer* to process.
22 *See* Roads Decl. ¶¶18-19. Indeed, it could potentially even hamper Arizona’s ability to
23 satisfy the 35-post-election-day safe harbor for selecting electoral college electors. *See* 3
24 U.S.C. §5. In contrast, by limiting no-signature cure efforts to election day and the weeks
25 before it, the State prevents resource diversion away from tabulation.

26 *Third*, the State has an interest in “orderly administration” of elections, *Crawford*,
27 553 U.S. at 196, which is “weighty and undeniable,” *Lemons*, 538 F.3d 1104. And it is
28 manifestly impossible to have elections *at all* without deadlines. *See also infra* at 28-29.

1 A single cut-off for signing ballot affidavits (along with any necessary curing of non-
2 signatures), getting absentee ballots delivered, and voting in-person (1) reduces voter
3 confusion by reducing the number of relevant dates to know, (2) provides desirable finality
4 and certainty, and (3) provides clear delineations for poll workers (*i.e.*, pre-election day
5 and election day: focus on getting ballots in and validated/cured, and post-election day:
6 focus on getting ballots counted). But Plaintiffs’ aggressive second-guessing of every
7 election deadline would be the antithesis of “orderly administration.”

8 *Fourth*, the State has an interest in promoting voter participation/turnout. *See, e.g.*,
9 *Tedards v. Ducey*, 951 F.3d 1041, 1067 (9th Cir. 2020). And the availability of a post-
10 election cure period actually tends to *increase* the number of disqualified votes. Atkeson
11 Report ¶¶51-61. The State has an important interest in seeing that does not occur.

12 **2. The Acts Are “Reasonably Related” To These Interests**

13 The Acts easily satisfy the tailoring requirement of “less exacting” review. Because
14 the burdens at issue are not severe, this Court’s inquiry “is limited to whether the chosen
15 method is *reasonably related*” to these interests. *Prete*, 438 F.3d at 971 (emphasis added).
16 “[T]here is no requirement that the rule is the only or the best way to further the proffered
17 interests.” *Reagan*, 798 F.3d at 732 (citation omitted).

18 Plaintiffs notably do not dispute either that (1) the State may require a signature as
19 a condition of voting by mail or (2) that the State may insist upon some deadline for doing
20 so, either by initial compliance or cure. Plaintiffs simply contest that timing for the cure
21 period. But since the poll-close deadline need not be “the only or the best way to further
22 the” State’s interests, *id.*, Plaintiffs’ challenge necessarily fails. Poll-close is an eminently
23 reasonable time to demand a voter either sign a ballot initially or cure a failure to do so.
24 Indeed, three other states use the same election-day deadline and fifteen others provide no
25 cure period at all. *Supra* at 25. There is no reason to believe that all of these states are
26 acting beyond the bounds of constitutional reason.

27 More generally, Plaintiffs’ arguments fly in the face of the concept of deadlines.
28 As the Supreme Court has recognized, “‘deadlines are inherently arbitrary,’ while fixed

1 dates ‘are often essential to accomplish necessary results.’” *United States v. Locke*, 471
2 U.S. 84, 94 (1985) (citation omitted). In rejecting a shortly-after-the-deadline-should-be-
3 good-enough argument much like Plaintiffs’, the Court emphatically explained that “[t]he
4 notion that a filing deadline can be complied with by filing sometime after the deadline
5 falls due is, to say the least, a surprising notion, and it is a notion without limiting
6 principle.” *Id.* at 100-01. Indeed, “If 1-day late filings are acceptable, 10-day late filings
7 might be equally acceptable, and so on in a cascade of exceptions that would engulf the
8 rule....; yet regardless of where the cutoff line is set, some individuals will always fall just
9 on the other side of it.” *Id.* at 101. Plaintiffs’ argument that the Constitution demands a
10 five-business-day mulligan period should meet the same fate as in *Locke*.

11 Ultimately, the Acts’ deadlines are at least as tailored as the typical 30-day notice-
12 of-appeal deadline in federal court. Both require parties to take very simple actions in
13 about a month of time to preserve their rights. And unlike a notice of appeal, the Acts
14 require neither a filing fee nor substantive content of any sort. But the concept that denying
15 a “cure period” for late notices of appeal violates the Constitution is absurd.¹²

16 **D. The Acts Survive Even Strict Scrutiny**

17 For much the same reasons, the Acts would survive even if they did impose a
18 “severe” burden triggering strict scrutiny. Because Plaintiffs concede that the State can
19 require signatures by some deadline, they necessarily concede the existence of a
20 compelling state interest (which is plainly present in any event, *supra* at 27-28.

21 _____
22 ¹² Plaintiffs advance a cursory argument (at 9) that they can prevail under any “level of
23 scrutiny [that] applies.” That argument relies entirely on *Detzner*, which extended a cure
24 period for non-signatures to signature mismatches. Even assuming *Detzner* is correct, as
25 explained above constitutional claims for signature mismatches are substantially stronger
26 than those for non-signatures. *Supra* at 15, 19-21. Moreover, the Eleventh Circuit has
specifically distinguished between the two, *supra* at 20, thus necessarily overruling any
contrary reasoning of *Detzner*. Plaintiffs’ perfunctory attempt to force perfectly equal
treatment of the two thus fails—particularly as the phrase “equal protection” does not even
appear anywhere in Plaintiffs’ motion.

27 Moreover, *Detzner*’s reasoning that a distinction between mismatches and non-
28 signatures would “not even survive rational basis review,” 2016 WL 6090943, at *7,
merely demonstrates that court’s grave misconception of constitutional standards given
the obvious rational distinctions between the two. And aside from relying on *Detzner*,
Plaintiffs make no effort to explain how they could prevail under less exacting review.

1 Nor is there any reason to believe an election-day deadline for curing non-
2 signatures is not narrowly tailored. That is, after all, the bedrock rule for in-person voting:
3 do so by poll close or be “disenfranchised.” And that deadline is utterly uncontroversial
4 and certainly has never been found unconstitutional. The same should hold true for the
5 State’s non-signature cure deadline. That is particularly true as a contrary holding would
6 gravely imperil—and likely doom—the laws of 18 other states. *Supra* at 25.

7 **E. Plaintiffs Have Not Satisfied The Requirements For Facial Claims**

8 Plaintiffs’ challenge is *necessarily* facial in nature, since they do not challenge any
9 particular application of the Acts—or indeed join any voters at all. But facial challenges
10 “are disfavored for several reasons,” including that they “often rest on speculation,” “run
11 contrary to the fundamental principle of judicial restraint,” and “threaten to short circuit
12 the democratic process.” *Washington State Grange v. Washington State Republican Party*,
13 552 U.S. 442, 450-51 (2008). For that reason, facial challenges fail unless “no set of
14 circumstances exists under which the [Acts] would be valid.” *Salerno*, 481 U.S. at 745.

15 Here there are obvious circumstances where Plaintiffs’ theories fail even under their
16 own terms. For example, if a voter receives notice of an absent signature three weeks
17 before the election and opportunity to cure until election day, there is no reason to believe
18 the absence of a further five-business-day-post-election cure period imposes an
19 unconstitutional burden. Plaintiffs do not even allege as much. Indeed, even Plaintiffs
20 recognize that *some* duration of cure period is constitutionally sufficient. And should those
21 days occur pre-election, that provides constitutional applications of the Acts even if
22 Plaintiffs’ constitutional arguments otherwise had merit (and they don’t).

23 Notably, Plaintiffs’ Complaint and Motion are entirely silent as to the facial/as-
24 applied distinction and Plaintiffs do not even *allege* that there are “no set of circumstances”
25 under which the Acts would be constitutional. These omissions are fatal.

26 **IV. THE REMAINING WINTER FACTORS PRECLUDE RELIEF**

27 Even if Plaintiffs had Article III standing and were likely to succeed on the merits,
28 *but see supra* Sections I-III, their request for a preliminary injunction should still be denied

1 because Plaintiffs cannot satisfy any of the three other *Winter* factors.

2 **A. Plaintiffs Are Not Likely To Suffer Cognizable Irreparable Harm**

3 Plaintiffs notably did not join any voters and thus cannot claim any direct
4 “disenfranchisement.” Moreover, as explained above, Plaintiffs lack Article III standing
5 to assert the rights of their unknown and unspecified members and resource-diversion
6 injury. *Supra* at 7-12. And, as their litigation strategy belies (*supra* at 4-5), Plaintiffs’
7 organizational interests are not to “count every vote” but rather to count more Democratic
8 votes than the votes for candidates of other parties. Plaintiffs even backhandedly admit as
9 much, contending that “it is critical to the DNC’s mission that every *Democratic* vote be
10 counted.” Complaint ¶20 (emphasis added).

11 There’s nothing inherently wrong with that: that is, after all, is why political parties
12 exist. But it necessarily means that Plaintiffs would only suffer the requisite harm if they
13 proved that their sought post-election cure period was “likely” to swing the results of an
14 upcoming election. *Winter*, 555 U.S. at 20.

15 Plaintiffs have not remotely made such a showing. Indeed, they don’t even try: not
16 even alleging that non-signatures/lack of post-election cure opportunities affects more
17 Democratic than Republican voters. *Supra* at 10. And even if they had alleged that, the
18 arguments would fail because they are devoid of *any* evidential support and contrary to
19 Plaintiffs’ own admissions. *Id.*

20 Because Plaintiffs have failed to allege any cognizable irreparable harm that is
21 likely to occur absent a preliminary injunction, their motion should be denied.

22 **B. The Balance Of Equities Disfavors Plaintiffs’ Motion—Particularly**
23 **Because Of Their Monumental Delay**

24 Even if Plaintiffs could somehow clear the likely-irreparable-harm hurdle, their
25 harms are dwarfed by Defendants’/the State’s and the balance of equities therefore
26 precludes injunctive relief. *Winter*, 555 U.S. at 20. Even if Plaintiffs asserted harms were
27 actually cognizable, they are both minimal and minimally developed. In particular:
28 (1) non-signature issues affect only a tiny percentage of voters (~0.10%) and it virtually

1 always is non-cognizable, self-inflicted injury, *supra* at 9 & n.1, (2) Plaintiffs’ resource-
2 diversion arguments are skeletally developed and lacking in record support, *supra* at 10-
3 12, and (3) Plaintiffs have not even *alleged*—let alone proved—that their asserted harms
4 are likely to swing an election against a Democratic candidate.

5 The weight to be accorded Plaintiffs’ alleged harms is also rightly discounted
6 enormously or entirely due to Plaintiffs’ colossal delay in bringing this suit. As the Ninth
7 Circuit has repeatedly recognized, delay in bringing suit properly “implies a lack of
8 urgency and irreparable harm.” *Oakland Tribune*, 762 F.2d at 1377. And here the delay
9 is one for the record books: for 102 years Arizona has required absentee ballots to be signed
10 without giving an opportunity for post-election cure, *supra* at 5—without challenge by
11 Plaintiffs that entire time until this June. The Ninth Circuit recently faulted plaintiffs for
12 delay between “the enactment of the [challenged Arizona law] in 2014 to filing suit in July
13 2019.” *Miracle*, 808 F. App’x at 473. There is no reason why Plaintiffs’ twenty-times-
14 over delay should fare any better.

15 Against Plaintiffs’ insubstantial harms—which are further subject to massive
16 discounting on account of delay—Defendants’ harms are weighty and clearly cognizable.
17 The State “‘indisputably has a compelling interest in preserving the integrity of its election
18 process,’” *Purcell*, 549 U.S. at 4—which would be directly harmed by an injunction
19 directed at the State’s single election-integrity requirement for absentee ballots. Moreover,
20 “a state suffers irreparable injury whenever an enactment of its people or their
21 representatives is enjoined.” *Wilson*, 122 F.3d at 719.

22 Plaintiffs’ remedy would also divert scarce resources at a time when they are sorely
23 needed for tabulation. *Supra* at 27. As four Justices recently explained, the burden on
24 states is particularly great where “the county clerks must now also learn, under
25 extraordinary time pressures ... an entirely new system mandated by the District Court.”
26 *Little v. Reclaim Idaho*, __ U.S. __, 2020 WL 4360897, at *2 (U.S. July 30, 2020) (Roberts,
27 C.J., concurring in grant of stay, joined by Alito, Gorsuch, and Kavanaugh, JJ.). Here that
28 burden is particularly acute as Plaintiffs’ remedy would require county recorders to

1 conduct primary and general elections under two different procedures. Moreover, district
2 courts should give “weight to the State’s discretionary judgments about how to prioritize
3 limited state resources across the election system as a whole.” *Id.* Plaintiffs, however,
4 seek to substitute their judgment for those of the state and county officials.

5 All of the State’s harms thus greatly outweigh Plaintiffs’ belatedly asserted and
6 factually unsupported harms, thereby precluding injunctive relief.

7 **C. The Public Interest And *Purcell* Doctrine Preclude Plaintiffs’ Relief**

8 “The Supreme Court has repeatedly instructed courts to exhibit caution when faced
9 with ... requests” that “seek[] to enjoin the State’s election rules midway through the
10 election cycle.” *Arizonans for Fair Elections v. Hobbs*, __ F. Supp. 3d __ 2020 WL
11 1905747, at *15 (D. Ariz. Apr. 17, 2020). “Court orders affecting elections, especially
12 conflicting orders, can themselves result in voter confusion and consequent incentive to
13 remain away from the polls. *As an election draws closer, that risk will increase.*” *Purcell*,
14 549 U.S. at 4-5 (emphasis added).

15 Plaintiffs delay in filing is remarkable not only for its length (100+ years) but its
16 proximity to the November election—*i.e.*, filed less than five months before the election.
17 Because this case is not set for hearing until August 18—and only after breakneck pace of
18 briefing and discovery—any injunction could only be issued with less than three months
19 before the election. And it would be further subject to stay/reversal by the Ninth Circuit
20 or Supreme Court, thereby risking further conflicting orders and voter confusion.

21 The risk of confusion is particularly great here as Plaintiffs’ delay precludes any
22 possible relief for the August 4, 2020 primary. Thus, Plaintiffs’ proposed relief would
23 require conducting the primary and general elections under two different sets of procedures
24 and, for the general election, directly contrary to the procedures set forth in the Election
25 Procedures Manual, *supra* at 7—*i.e.*, an invitation to confusion and chaos that is entirely
26 avoidable. In addition, Plaintiffs’ proposed remedy is actually likely to *increase* the
27 number of disqualified votes, which is not in the public interest. *Supra* at 24-25.

28 *Purcell* doctrine and the public interest thus counsel strongly against issuing any

1 relief. And that is particularly true as Plaintiffs’ delay in bringing this suit so late in the
2 2020 election cycle is, to date, *entirely unexplained*. If Plaintiffs had any colorable excuse
3 for their monumental delay, they should have advanced it previously so that the State could
4 contest it in its brief. They haven’t, and a reply brief would be too late to do so.

5 **V. PLAINTIFFS HAVE NOT SATISFIED THE REQUIREMENTS FOR**
6 **MANDATORY INJUNCTIVE RELIEF**

7 Even if Plaintiffs could satisfy *Winter*’s requirements for issuance of *an* injunction,
8 they still are not entitled to the mandatory injunction they seek. Plaintiffs’ requested
9 injunction is necessarily “mandatory” in nature: seeking not just to prohibit ballot
10 disqualification but the affirmative creation of an entirely new cure procedure for non-
11 signatures. Plaintiffs’ request relief thus ““goes well beyond simply maintaining the status
12 quo *pendente lite* and is particularly disfavored.” *Stanley v. Univ. of S. Cal.*, 13 F.3d
13 1313, 1320 (9th Cir. 1994) (cleaned up). Plaintiffs seeking mandatory injunctions thus
14 must satisfy a heightened burden; indeed, district courts must “*deny such relief*, ‘unless
15 the facts and law *clearly favor* the moving party.’” *Id.* (emphasis added) (citation
16 omitted)). And restraint is particularly appropriate where, as here, the remedy sought is
17 “transformative and intrusive [in] nature,” *Little*, 2020 WL 4360897, at *2, which
18 upsetting a hundred-plus years of settled law surely would be here.

19 For all the same reasons that Plaintiffs’ arguments lack merit as explained above,
20 the “facts and law” do not favor Plaintiffs at all, let alone “clearly” so.

21 **CONCLUSION**

22 For the foregoing reasons, Plaintiffs’ motion for a preliminary injunction should be
23 denied and their Complaint dismissed.

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Respectfully submitted this 3rd day of August, 2020.

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APPENDIX

Table 1. 50 State Absentee Vote-By-Mail Policies

State	Drop Off at any Early Voting Location	Drop off at any Election Day Voting Location	Ballot Drop-boxes	On-line System to Track VBM ballots	Pays for Post-age	Election Day or Before VBM Receipt Deadline	Signature Matching Problem Cure Period (# of days)	No Signature Cure Period (# of days)
Alabama						✓	NA	NA
Alaska	✓	✓		✓			NA	NA
Arizona	✓	✓	✓	✓	✓	✓	5	ED
Arkansas						✓	NA	NA
California	✓	✓	✓	*	✓		2 days prior to certification	2 days prior to certification
Colorado	✓	✓	✓	✓		✓	8	8
Connecticut						✓	NA	NA
Delaware				✓	✓	✓	0	0
Florida				✓		✓	2	2
Georgia						✓	ED	ED
Hawaii	✓	✓			✓	✓	5	5
Idaho				✓	✓	✓	0	0
Illinois							14	14
Indiana					✓	✓	0	0
Iowa				✓	✓		NA	NA
Kansas	✓	✓	✓		✓		0	0
Kentucky						✓	0	0
Louisiana						✓	NA	NA
Maine						✓	0	0
Maryland				✓			NA	NA
Massachusetts				✓		✓	ED	ED
Michigan						✓	ED	ED
Minnesota				✓	✓	✓	NA	NA
Mississippi						✓	NA	NA
Missouri					✓	✓	NA	NA
Montana	✓	✓	✓	✓		✓	1	1
Nebraska			✓	✓		✓	0	0
Nevada					✓		7	7
New Hampshire						✓	NA	NA
New Jersey							0	0
New Mexico	✓	✓	✓		✓	✓	NA	NA
New York							0	0
North Carolina	✓	✓					NA	NA
North Dakota				✓			0	0
Ohio				✓			7	7
Oklahoma						✓	NA	NA
Oregon	✓	✓	✓	✓	✓	✓	14	14
Pennsylvania						✓	0	0
Rhode Island					✓	✓	7	7
South Carolina				✓		✓	NA	NA
South Dakota						✓	0	0
Tennessee						✓	0	0
Texas							0	0
Utah	✓	✓	✓	✓	✓		7-14	7-14

1	Vermont					✓	NA	NA	
	Virginia					✓	NA	NA	
2	Washington	✓	✓	✓	✓	✓	21	21	
	West Virginia				✓	✓	0	0	
3	Wisconsin					✓	NA	NA	
	Wyoming					✓	NA	NA	
4	Total State	12	12	10	19	18	34	NA	NA

5 Note: ED stands for Election Day, NA stands for Not Applicable, these states do not rely
 6 on signature verification or signature verification alone to verify ballot eligibility.

* Some counties have ballot tracking.

7 Source: Atkeson Expert Report, filed concurrently

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LOCAL RULE 12.1 CERTIFICATION

Pursuant to Local Rule 12.1, I certify that before filing the instant motion I contacted opposing counsel on July 29, and informed them of the State’s intention to file seek dismissal of the Complaint and the bases for it. Plaintiffs’ counsel indicated that they “don’t intend to amend our complaint prior to the August 18 hearing.”

s/ Drew C. Ensign
Attorney for Intervenor-Defendant State of Arizona

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August, 2020, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

s/ Drew C. Ensign

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16 UNITED STATES DISTRICT COURT
 17 DISTRICT OF ARIZONA

18 The Arizona Democratic Party, et al.,

19 Plaintiffs,

20 v.

21 Katie Hobbs, et al.,

22 Defendants,

23 and

24 State of Arizona, Republican National
 25 Committee, Arizona Republican Party, and
 26 Donald J. Trump for President, Inc.,

27 Intervenor-Defendants.

No. CV-20-1143-PHX-DLR

**PLAINTIFFS' REPLY IN
 SUPPORT OF MOTION FOR
 PRELIMINARY AND
 PERMANENT INJUNCTION**

Assigned to the Honorable
Douglas L. Rayes

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1 Plaintiffs respectfully submit that the Court should enjoin any requirement under
 2 Arizona law that election officials reject unsigned mail ballot envelopes without offering
 3 the voter the chance to correct the missing signature until five business days after election
 4 day (the “Inadequate Cure Period”). The Inadequate Cure Period unconstitutionally burdens
 5 Arizonans’ fundamental right to vote and provides constitutionally inadequate process for
 6 such voters. The State does not and cannot dispute that the Inadequate Cure Period has
 7 disenfranchised thousands of voters in past elections. Without the relief from this Court
 8 sought by Plaintiffs, thousands of Arizonans will be similarly disenfranchised in the
 9 upcoming 2020 general election (the “2020 General Election”).

10 **ARGUMENT**

11 **I. Plaintiffs Have Adequately Alleged and Will Prove Standing.**

12 The State is wrong to urge this Court to find that Plaintiffs have not adequately
 13 alleged standing. They have. “[A]t the pleading stage, general factual allegations of injury
 14 resulting from the defendant’s conduct” suffice to establish standing, because the Court
 15 “presume[s] that general allegations embrace those specific facts that are necessary to
 16 support the claim.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (quotations and
 17 citations omitted). It is well-settled that “in an injunctive case,” such as this, a court “need
 18 not address standing of each plaintiff if it concludes that one . . . has standing.” *Nat’l Ass’n*
 19 *of Optometrists & Opticians Lenscrafters, Inc. v. Brown*, 567 F.3d 521, 523 (9th Cir. 2009).
 20 ADP, DNC, and DSCC have adequately alleged standing on two distinct grounds: as (a)
 21 associations on behalf of their members and (b) as organizations.

22 **A. Plaintiffs Have Adequately Alleged Associational Standing.**

23 Plaintiffs have adequately alleged associational standing because their “members
 24 would otherwise have standing to sue in their own right, the interests at stake are germane
 25 to [each Plaintiff] organization’s purpose, and neither the claim asserted nor the relief
 26 requested requires the participation of individual members in the lawsuit.” *Friends of the*
 27 *Earth, Inc. v. Laidlaw Env’tl. Servs*, 528 U.S. 167, 181 (2000).

1 Each Plaintiff has alleged that its members or constituents who would otherwise have
 2 standing to sue in their own right are directly harmed by the Inadequate Cure Period.
 3 [Compl. ¶¶ 18, 22, 25] Because (a) Democratic Party voters represent nearly a third of all
 4 registered voters in Arizona, (b) millions of Arizonans vote by mail ballot, and (c) thousands
 5 of Arizonans did not sign mail ballots in recent elections, it is virtually certain that some
 6 Plaintiff members or constituents will mail a ballot without a signature in 2020. [*Id.*] These
 7 Plaintiff members or constituents face an imminent threat of having their vote denied in
 8 2020 due to the Inadequate Cure Period. [*Id.*] The Inadequate Cure Period is germane to
 9 Plaintiffs’ organizational purpose, and each Plaintiff alleges that it can obtain relief for its
 10 members or constituents without their individual participation. [*Id.*] Nothing more is
 11 required to establish associational standing.

12 The State (at 8–9) nonetheless challenges Plaintiffs’ associational standing in two
 13 respects: first, that Plaintiffs “have failed to identify any specific members that would be
 14 harmed,” and second, that Plaintiffs’ alleged injuries are “self-inflicted.” Both arguments
 15 misread the Complaint and controlling precedent.

16 *First*, it is “relatively clear, rather than merely speculative, that one or more members
 17 have been or will be adversely affected by” the Inadequate Cure Period, and the State “need
 18 not know the identity of a particular member to understand and respond to [Plaintiffs’] claim
 19 of injury.” *Nat’l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1039 (9th Cir. 2015). In
 20 such circumstances, there is “no purpose to be served by requiring an organization to
 21 identify by name the member or members injured.” *Id.*

22 Plaintiffs’ credible allegations of “virtually certain” harm are substantially more
 23 concrete and imminent than a “statistical probability,” as the State incorrectly asserts, citing
 24 *Jacobson v. Florida Secretary of State*, 957 F.3d 1193 (2020), and *Mecinas v. Hobbs*, __ F.
 25 Supp. 3d __, No. CV-19-05547, 2020 WL 3472552, at *9 (D. Ariz. June 25, 2020).
 26 *Jacobson* and *Mecinas* are therefore distinguishable, even assuming the standing decisions
 27
 28

1 in those cases are upheld on appellate review.¹ *Cegavske* provides the controlling standard
2 here, and Plaintiffs’ allegations far surpass the applicable “relatively clear” threshold.

3 Exactly whom among Plaintiffs’ membership will be disenfranchised due to the
4 Inadequate Cure Period cannot be known until the election and so cannot be identified in a
5 lawsuit seeking injunctive relief. The whole point is to prevent this harm in advance.
6 Recognizing these practical realities, federal courts routinely find associational standing
7 without identified members in similar cases. *See Fla. Democratic Party v. Detzner*, No.
8 4:16cv607, 2016 WL 6090943 at *4 (N.D. Fla. Oct. 16, 2016) (“Plaintiffs need not identify
9 specific voters [who] are registered as Democrats that will have their vote-by-mail ballot
10 rejected due to apparent mismatched signatures”); *Fla. Democratic Party v. Hood*, 342 F.
11 Supp. 2d 1073, 1079 (N.D. Fla. 2004) (similar holding and reasoning).

12 The State’s lengthy response amply shows its ability to (unconvincingly) respond to
13 Plaintiffs’ claim of injury without knowing the identity of specific members. For these
14 reasons, Plaintiffs need not identify specific members and have adequately alleged
15 associational standing. *Cegavske*, 800 F.3d at 1039.

16 *Second*, the State’s assertion that Plaintiffs’ alleged harms are “self-inflicted” is
17 unfounded and premised on a factual assumption Plaintiffs do not plead. Plaintiffs allege
18 (at 11) that their members who cast unsigned ballot affidavits will do so *inadvertently*. This
19 contrasts sharply with the cases the State cites, where plaintiffs unsuccessfully sought to
20 “manufacture standing merely by inflicting harm on themselves.” *See Clapper v. Amnesty*
21 *Int’l USA*, 568 U.S. 398, 416, 418 (2013); *Mendia v. Garcia*, 768 F.3d 1009, 1013 n.1 (9th
22 Cir. 2014). “An injury is ‘self-inflicted’ so as to defeat standing only if ‘the injury is so
23 completely due to the plaintiff’s own fault as to break the causal chain.’” *Backer ex rel.*

24
25 _____
26 ¹ In the former case, there is an outstanding petition for rehearing *en banc*, and in the
27 latter, merits briefing is later this year. Both, moreover are about the order in which
28 candidate names appear on the ballot, not about a state practice that disenfranchises
thousands of voters each election. Thus, neither case has bearing on the Court’s standing
and injury analysis in this case even if either did control, which they do not.

1 *Freedman v. Shah*, 788 F.3d 341, 344 (2d Cir. 2015) (quoting *St. Pierre v. Dyer*, 208 F.3d
2 394, 402 (2d Cir. 2000)). Here, Plaintiffs plausibly allege that at least some members will
3 inadvertently submit unsigned ballots that could be cured but for the Inadequate Cure
4 Period. Thus, the injury to Plaintiffs’ members is caused at least “in part by” the Inadequate
5 Cure Period. *Id.* This is more than enough to allege Article III standing. *See id.* (finding
6 standing where appellee caused her injury “in part”). The State’s speculation that some of
7 Plaintiffs’ members will purposefully disenfranchise themselves is not just unfounded, but
8 also contrary to Plaintiffs’ allegations.

9 **B. Plaintiffs Have Adequately Alleged Organizational Standing.**

10 Each Plaintiff has also adequately alleged that it has direct standing to sue, as an
11 organization, on the basis of two independent harms.

12 First, each Plaintiff has alleged “(1) frustration of its organizational mission; and (2)
13 diversion of its resources” to combat the effects of the Inadequate Cure Period. *Smith v.*
14 *Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004). All Plaintiffs allege that
15 they have had to—and will continue to have to—expend and divert additional funds and
16 resources that they would otherwise spend on efforts to accomplish their mission in Arizona
17 to combat the effects that the Inadequate Cure Period has on Democratic voters. [Compl.
18 ¶¶ 17, 21, 24] This will decrease the overall likelihood that they will be successful in their
19 missions: to elect Democratic candidates to office. [*Id.*]

20 Contrary to the State’s claims, the Ninth Circuit has held that “a diversion-of-
21 resources injury is sufficient to establish organizational standing at the pleading stage, even
22 when it is ‘broadly alleged.’” *Cegavske*, 800 F.3d at 1040 (9th Cir. 2015) (citing *Havens*
23 *Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). Plaintiffs’ allegations meet this
24 threshold. *Id.* (so holding where “complaint specifically alleges that Plaintiffs expended
25 additional resources that they would not otherwise have expended, and in ways that they
26 would not have expended them”). ADP, to illustrate, alleged (Compl. ¶ 17) that it
27 anticipates needing to focus additional educational resources on areas with low English
28

1 literacy rates to account for the Inadequate Cure Period. *See Lujan*, 504 U.S. at 560–61; *see*
2 *also Smith*, 358 F.3d at 1105–06 (allegations organization had “to divert scarce resources
3 from [its] other efforts” in response to a law sufficient at motion to dismiss stage).

4 Courts routinely find similar allegations more than enough to plead organizational
5 standing. The Supreme Court’s decision in *Crawford* is dispositive here. There, a state
6 Democratic Party challenged a law requiring voters to show ID at the polls. The Supreme
7 Court affirmed the lower court’s determination that “the Democrats had standing to bring a
8 facial challenge” because “the law may require the Democratic Party . . . to work harder to
9 get every last one of their supporters to the polls.” *Crawford v. Marion Cty. Election Bd.*,
10 553 U.S. 181, 188 (2008) (plurality) (quoting *Crawford v. Marion Cty. Election Bd.*, 472
11 F.3d 949, 952 (7th Cir. 2007)). The same is true here, and other cases are in accord.²

12 In addition to their diversion-of-resources harm, Plaintiffs allege that the Inadequate
13 Cure Period harms the “election prospects” of Democratic candidates because it is
14 inevitable that Democratic voters will not have their vote counted as a result of the
15 Inadequate Cure Period. [Compl. ¶¶ 16, 20, 24] Far from a mere “setback to the
16 organization’s abstract social interests,” as the State asserts (at 10), this is an independent
17 basis for standing, which has been recognized by the Ninth Circuit and at least seven other
18 Circuits. The entity Plaintiffs here are each official committees of the Democratic Party.

19 It is binding Ninth Circuit law that political parties have standing to challenge
20 election laws that harm their political prospects. *See Owen v. Mulligan*, 640 F.2d 1130,
21 1133 (9th Cir. 1981). The weight of outside authority is the same. *See Tex. Democratic*
22 *Party v. Benkiser*, 459 F.3d 582, 586–87 (5th Cir. 2006) (holding that a “basis for the [Texas
23

24 ² *League of Women Voters of Ariz. v. Reagan*, No. CV-18-02620, 2018 WL 4467891
25 at *4 (D. Ariz. Sept. 18, 2018) (finding standing where plaintiff “diverted resources to
26 register voters rather than spending time, staff, and money on other activities related to their
27 organizational missions” due to law); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1333–35 (N.D.
28 Ga. 2018), *appeal dismissed sub nom. Martin v. Sec’y of State of Ga.*, No. 18-14503, 2018
WL 7139247 (11th Cir. Dec. 11, 2018) (same, where plaintiff would have to divert
resources to warn voters about signature mismatch risks under law).

1 Democratic Party’s] direct standing is harm to its election prospects” and that “a political
 2 party’s interest in a candidate’s success is not merely an ideological interest”); *Schulz v.*
 3 *Williams*, 44 F.3d 48, 53 (2d Cir. 1994) (similar); *Smith v. Boyle*, 144 F.3d 1060, 1062 (7th
 4 Cir. 1998) (similar); *Schiaffo v. Helstoski*, 492 F.2d 413, 422 (3d Cir. 1974) (similar).
 5 Against all this, the State relies solely on the out-of-circuit *Jacobson*, which remains under
 6 appellate review and failed to even address this basis of standing. 957 F.3d at 1207; *see*
 7 *Pavek v. Simon*, No. 19-CV-3000 (SRN/DTS), 2020 WL 3183249 (D. Minn. June 15,
 8 2020), at *14 n.13 (observing *Jacobson* declined to address this form of injury).³

9 **C. At the Hearing, Plaintiffs Will Meet Their Burden to Prove Standing.**

10 Citing no relevant authority, the State incorrectly asserts (at 11–12) that Plaintiffs
 11 were required to prove their standing definitively when they *filed* their preliminary
 12 injunction motion, which was *before* the hearing on the motion was consolidated with the
 13 merits. This is flatly wrong. *See Lujan*, 504 U.S. at 560–61. Further, at the August 18, 2020
 14 hearing, or otherwise, Plaintiffs will prove the required elements for organizational and
 15 associational standing by a preponderance of the evidence. *See Haisten v. Grass Valley*
 16 *Med. Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986).

17 **II. Plaintiffs Are Entitled to An Injunction**

18 On the merits, Plaintiffs are entitled to an injunction under the factors detailed in
 19 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). Contrary to the
 20 State’s claim (at 34), Plaintiffs seek “a classic form of prohibitory injunction” because it
 21 would “prevent[] future constitutional violations.” *Hernandez v. Sessions*, 872 F.3d 976,
 22 998 (9th Cir. 2017). Even if the requested relief is characterized as a mandatory injunction,
 23 as the State asserts (at 34), it is still warranted because “the facts and law clearly favor the
 24

25 ³ Plaintiffs are not, as the State argues (at 11) choosing to “manufacture . . . injury
 26 by . . . choosing to spend money fixing a problem that otherwise would not affect” them.
 27 Why would they? Plaintiffs brought this lawsuit precisely because the lack of a post-election
 28 cure period deprives Democratic voters the chance to cure their ballots and, thus, deprives
 Plaintiffs from advancing their mission of electing Democrats by assisting more voters to
 cure ballot affidavits (instead of diverting from critical pre-election work to do the same).

1 moving party.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (quoting *Stanley*
2 *v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994)). Moreover, absent an injunction,
3 there is “a risk of extreme or very serious damage” to Plaintiffs’ and countless Arizonans’
4 right to vote. *Hernandez*, 872 F.3d at 999 (quotation omitted). “Mandatory injunctions are
5 most likely to be appropriate,” where, as here “the status quo . . . is exactly what will inflict
6 the irreparable injury upon complainant.” *Id.* (alteration in original) (citation omitted).

7 **A. Plaintiffs Are Likely to Succeed on Their First and Fourteenth**
8 **Amendment Undue Burden Claim.**⁴

9 The Inadequate Cure Period unconstitutionally burdens the fundamental right to vote
10 in violation of the First Amendment and Equal Protection Clause. *Wash. State Grange*, 552
11 U.S. at 451. The Supreme Court has laid out a “flexible standard” to resolve challenges to
12 state election laws that burden voting rights in violation of the Fourteenth Amendment (the
13 “*Anderson-Burdick* framework”). *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983);
14 *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Under that framework, a court (1) must
15 “consider the character and magnitude of the asserted injury to the rights . . . the plaintiff
16 seeks to vindicate; and (2) “must identify and evaluate the precise interests put forward by
17 the State as justifications for the burden imposed by its rule.” *Anderson*, 460 U.S. at 789.

18 Plaintiffs address the State’s specific arguments below. But the reason why Plaintiffs

19 ⁴ Plaintiffs’ claims are facial in nature, as the State correctly observes (at 30). But
20 the State mischaracterizes Plaintiffs’ claims as covering the *entire* statutory regime for
21 curing unsigned mail ballots, when the Complaint repeatedly states that Plaintiffs challenge
22 only the constitutionality of the post-election Inadequate Cure Period (*id.*; Compl. ¶¶ 62,
23 67), which has no “plainly legitimate sweep” and is unconstitutional on its face. *Wash. State*
24 *Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)). The State’s examples
25 of *pre*-election day cure opportunities are irrelevant, as is the State’s unfounded suggestion
26 (at 30) that Plaintiffs’ facial challenges should be “disfavored” because they require
27 “speculation” as to how the law would apply in practice. Not so. The “components of the
28 burden” that the Inadequate Cure Period “imposes are defined by its facial terms, not by
any anticipated exercise of discretion in its application.” *Libertarian Party of N.H. v.*
Gardner, 843 F.3d 20, 24–25 (1st Cir. 2016). Accordingly, this Court need not “speculate
about ‘hypothetical’ or ‘imaginary’ cases,” and “can readily ascertain” from Arizona law
“as written,” that the Inadequate Cure Period is unconstitutional. *Martin*, 341 F. Supp. 3d
at 1337 (quoting *Wash. State Grange*, 552 U.S. at 450).

1 are likely to prevail on the merits is simple. The State already provides the same requested
2 relief for signature mismatches and conditional provisional ballots. *See, e.g.*, A.R.S. § 16-
3 550. The State’s chief election officer—the Secretary—has submitted sworn testimony that
4 the State can and should adopt that same requested cure period. The State offers no colorable
5 reason why that same cure period should not be extended to missing signature ballots. There
6 is none.⁵ Multiple county recorders argue the same. *Anderson-Burdick* is a balancing test
7 and here the weight is on Plaintiffs’ side of the scales.

8 **1. The Inadequate Cure Period Imposes a Significant Burden on**
9 **the Right to Vote.**

10 Defendants will reject a number of mail ballots for lack of signed ballot affidavits in
11 the 2020 General Election without a five-day post-election cure period, as it does for other
12 ballots. This presents a severe (and certainly a significant) burden on the right to vote.

13 At this first step of the *Anderson-Burdick* framework, the relevant inquiry is whether
14 and to what extent a challenged law burdens the right to vote. *See Anderson*, 460 U.S. at
15 789; *see also Obama for Am. v. Husted (Husted II)*, 697 F.3d 423, 428–29 (6th Cir. 2012)
16 (“‘The scrutiny test depends on the [regulation’s] effect on [the plaintiff’s] rights.’”
17 (alterations in original) (quoting *Biener v. Calio*, 361 F.3d 206, 214 (3d Cir.2004)).

18 Much of the State’s briefing confuses rather than illuminates the inquiry. The State
19 urges the Court (*e.g.*, at 23–26) to examine the burdens imposed by the requirement that
20 mail ballots must be signed. But Plaintiffs do not challenge *that* requirement. When the
21 State doubts a person’s eligibility to vote at the polls, it lets them cast a conditional
22 provisional ballot and prove their identity post-election.⁶ When it doubts whether the same
23 person signed their mail ballot affidavit and their voter registration form, it lets them prove
24 their identity post-election. A.R.S. § 16-550. But when the State cannot verify the voter in

25 ⁵ *See* Declaration of Alexis Danneman in Supp. of Pls.’ Reply in Supp. of Mot. for
26 Prelim. Inj. and Perm. Injunction (“Danneman Decl.”) Ex. 8 at Interrog. 1 (for the
27 purposes of curing, “there is no meaningful difference between a ballot with a missing
signature and a ballot with a mismatched signature”).

⁶ *Id.* Ex. 1 at Ch. 9 § IV.

1 question mailed a ballot lacking a signed ballot envelope, it does *not* allow the voter to
2 prove they did post-election. *That* is what Plaintiffs challenge. Thus, the State’s arguments
3 about the minimal burdens imposed by the act of signing (at 23) and “read[ing] and
4 heed[ing] instructions” (at 24) are irrelevant to *Anderson-Burdick*’s burden inquiry.

5 Instead, the relevant inquiry is what burden, or effect, the Inadequate Cure Period—
6 the challenged law—has on the right to vote. And with that inquiry cast into focus, the
7 State’s attempt to divert the judicial eye makes sense: The undeniable effect of the
8 Inadequate Cure Period is that for each election thousands of ballots go uncounted because
9 they were cast without signatures on the ballot envelopes. For example, in the general
10 election in 2016, Maricopa County alone rejected 2,209 ballots for having a missing
11 signature. [Danneman Decl. Ex. 2 at Interrog. 1] The same pattern holds for other elections.
12 [See, e.g., *id.* (“2014 General Election: 3,749; 2012 General Election: 4,610; 2010 General
13 Election: 3,352; 2008 General Election: 2,644”)] Other counties reject a large number of
14 ballots. For example, Pima County rejected 120 in the 2016 general election. [Danneman
15 Decl. Ex. 3 at PLFS001491] The State cannot seriously dispute that—if not provided a post-
16 election cure period—a significant number of voters will be disenfranchised in the
17 upcoming election as a result of the Inadequate Cure Period.⁷

18 In similar cases, courts have held that this type of disenfranchisement severely
19 burdens the right to vote. See *Fla. Democratic Party v. Detzner*, No. 4:16-cv-607, 2016 WL
20 6090943, at *6 (N.D. Fla. Oct. 16, 2016) (“If disenfranchising thousands of eligible voters
21 does not amount to a severe burden on the right to vote, then this Court is at a loss as to
22 what does.”). At a minimum, courts routinely hold that disenfranchisement, or its risk,
23 constitutes “at least a serious” or “substantial” burden on the right to vote. *Democratic Exec.*

24 _____
25 ⁷ This can happen for a variety of reasons. For example, cure is sometimes conducted
26 by mail. [See, e.g., *id.* Ex. 4 at Interrog. 1; *id.* Ex. 5 at Interrog. 5] But ballots with missing
27 signatures inevitably arrive on or close to election day. [See, e.g., *id.* Ex. 6 at Interrog. 2]
28 Given the lag time of physical mail, these voters, for example, certainly would be afforded
no opportunity to cure. [See, e.g., *id.* Ex. 7 at Interrog. 2]

1 *Comm. of Fla. v. Lee*, 915 F.3d 1312, 1321 (11th Cir. 2019); *see also Ne. Ohio Coal. for*
2 *Homeless v. Husted (Husted I)*, 696 F.3d 580, 593 (6th Cir. 2012) (disqualifying provisional
3 ballots is a “substantial” burden on voters);⁸ *Husted II*, 697 F.3d at 433 (rejecting claim that
4 law eliminating early voting opportunities imposed only a “slight” burden).

5 This burden is not “minimal,” as the State claims (at 23), and its reliance on *Lemons*
6 *v. Bradbury*, 538 F.3d 1098 (9th Cir. 2008) is misplaced. In *Lemons*, the court evaluated an
7 inapposite issue—a challenge to the lack of opportunity to cure *referendum* signatures,
8 which was afforded to signers of *mail* ballots. There are immediate and important
9 differences between a voter signing a referendum petition—in which the voter is one of
10 many who must sign in order to show that the matter has sufficient broad public support to
11 access the ballot—and a voter signing an absentee ballot envelope, which contains the ballot
12 effecting the voter’s exercise of their right to vote. The law at issue here involves the latter,
13 and its consequence is *total disenfranchisement*, whereas invalidating a voter’s signature on
14 a referendum petition does not stop the voter from voting for that referendum if it qualifies
15 for the ballot. And even in the referendum signature-matching context, the *Lemons* court
16 emphasized (and explicitly relied upon) the existence of important procedural safeguards
17 that limited the risk of erroneous rejection of a signature, which “protect[ed] the rights of
18 petition signers and treat[ed] voters in different counties equally.” *Id.* at 1104.⁹ As a result,
19 “the verification process [was] weighted in favor of *accepting* questionable signatures,”
20 putting the thumb on the scale of the voter. In contrast, the Inadequate Cure Period flatly
21

22 ⁸ The State takes issue (at 25) with Plaintiffs’ reliance on *Husted I*. There, the court
23 considered multiple constitutional challenges to voting laws. In considering a law that
24 resulted in disenfranchisement, or votes not being counted, the court plainly held that the
25 burden was “substantial” (a fact the State ignores). 696 F.3d at 593. To be sure, in
26 considering a ballot affirmation requirement, the court found the burden “minimal,” and
27 “unspecified.” *Id.* at 600. But Plaintiffs do not challenge the ballot signature requirement.
28 So, *Husted I*’s discussion of the burden of ballot affirmation requirements is not relevant.

⁹ For example, the signature-match review process was multi-tiered; “higher county
elections authorities review[ed] all signatures that [we]re initially rejected.” *Id.*; *see also id.*
at 1105.

1 disenfranchises voters, particularly those who are not notified that their ballot is missing a
2 signature until election day. Indeed, it is the very *lack of procedural safeguards* that gives
3 rise to this claim; and the State can point to none (unlike in *Lemons*) that mitigate the clear
4 constitutional injury that follows as a result.¹⁰

5 The State likewise misreads *Rosario v. Rockefeller*, 410 U.S. 752 (1973). There,
6 plaintiffs failed to timely comply with a pre-election registration deadline. *Id.* at 757–58.
7 The Court held that the deadline was constitutional because voters had ample opportunity
8 to register and failed to do so. *Id.* at 758. That is not the case here. The Inadequate Cure
9 Period results in ballots cast *before* the relevant deadline going uncounted. The relevant
10 comparison is to the State’s inconsistent cure periods for signature mismatch mail ballots
11 and conditional provisional ballots. Regardless, *Rosario* held only that the failure to register
12 by the deadline was not a *severe* burden; not that *all* deadlines related to voting impose only
13 a “minimal” burden on voting. Nor could it. Courts have often recognized that deadlines
14 related to voting impose significant and impermissible burdens. *See Anderson*, 460 U.S. at
15 806 (deadline for filing nomination petitions imposed a substantial and unconstitutional
16 burden); *Nader v. Brewer*, 531 F.3d 1028, 1039 (9th Cir. 2008) (deadline burdensome).

17 The State’s remaining arguments (at 24–25) are unsupported by authority, contrary
18 to controlling law, or unpersuasive on their face. The State argues, for example that the
19 statute only affects a small number of voters, and because other states have potentially
20 similar or even less generous laws. The Supreme Court, however, has emphasized that when
21 assessing the severity of the burden, courts must consider the effects of the restriction on
22 those voters who are impacted by the law. *See, e.g., Crawford*, 553 U.S. at 198, 201
23 (controlling op.) (“[t]he burdens that are relevant to the issue before us are those imposed
24 on persons who are eligible to vote but do not possess a [photo ID],” not the burdens on all
25

26 ¹⁰ In addition, *Lemons* explicitly recognized the unique nature of referendum
27 petitions that warranted fewer safeguards—including that it is comparatively more difficult
28 to verify signatures on referendum petitions as compared to ballots. *Id.* at 1104.

1 voters). That some voters need not avail themselves of a cure period, or that other states
 2 similarly deny the opportunity to cure, is therefore of no importance to the determination
 3 that this Court must make here—*i.e.*, what is the burden on Arizona voters who *are*
 4 disenfranchised by the Inadequate Cure Period? And courts have been clear, as well, that
 5 states’ election laws are not fungible. For example, state voter ID laws are not universally
 6 constitutional or unconstitutional—individual assessment of each state’s law and the
 7 burdens it imposes is required. *See, e.g., Ohio State Conference of N.A.A.C.P. v. Husted*,
 8 768 F.3d 524, 547 n.7 (6th Cir. 2014), (“[W]e do not find that other states’ electoral laws
 9 and practices are relevant to our assessment of the constitutionality or legality” of Ohio
 10 law.), *vacated on other grounds*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014);
 11 *see also Anderson*, 460 U.S. at 789 (explaining challenges “cannot be resolved by any
 12 ‘litmus-paper’ test that will separate valid from invalid restrictions”).¹¹

13 Relatedly, the State argues (at 24) that the burden here is minimal because “Arizona
 14 is a clear leader in removing burdens to voting.” (Emphasis omitted). But the fact that some
 15 state voting laws are constitutional hardly means *all* are. And evaluation of the burden must
 16 be done from the perspective of the impacted voters, not the electorate as a whole.
 17 *Crawford*, 553 U.S. at 198, 201; *see also O’Brien v. Skinner*, 414 U.S. 524, 29–30 (1974).
 18 Here, the affected voters are those voters who cannot cure their unsigned ballots due to the
 19 Inadequate Cure Period. Some voters, for example, have no other “available opportunities
 20 to vote,” *Mays v. LaRose*, 951 F.3d 775, 785 (6th Cir. 2020), given the Inadequate Cure
 21 Period. These include voters who submit unsigned ballots on or close to election day.¹² *See*

22
 23 ¹¹ The State also argues (at 24 & n.10) that the burdens imposed by the Inadequate
 24 Cure Period are “minimal” because it is “generally applicable, even-handed, [and]
 25 politically neutral.” *Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011) (quoting *Rubin*
 26 *v. City of Santa Monica*, 308 F.3d 1008, 1014 (9th Cir. 2002)). But *Dudum* simply noted
 27 that the Ninth Circuit has held, in other circumstances, that laws that meet that description
 28 do not impose “severe” burdens. It nowhere held, or suggested, that such laws categorically
 impose “minimal” burdens. They do not in this case, for the reasons discussed above.

¹² For similar reasons, that there is a pre-election day cure period for missing
 signature ballots does not mean that the Inadequate Cure Period is a “minimal” burden, as
 the State argues citing no authority (at 24). It is of no use to some affected voters.

1 *supra* note 7 (some unsigned ballots submitted too close to election day to afford cure
2 opportunity). This burden does not extend to voters with mismatched signatures, as the State
3 allows these voters to cure their ballots after election day. A.R.S. § 16-550.

4 Finally, the State argues (at 24–25) that the burden of the Inadequate Cure Period is
5 “minimal” because some people might not take advantage of a post-election cure period, if
6 it were provided. This counterintuitive argument is (a) utterly inconsistent with the State’s
7 provision of a post-election cure period for signature mismatch and conditional provisional
8 ballots and (b) premised on what amounts to speculation about how some people may act if
9 they had time to cure a signature deficiency.¹³ More fundamentally, this reflects yet another
10 attempt by the State to avoid the relevant “burden” inquiry under *Anderson-Burdick*.
11 Neither the State (nor its expert) denies that some voters will be disenfranchised by the
12 Inadequate Cure Period. This is the definition of a “severe” (and certainly a significant)
13 burden on the affected voters. *See Lee*, 915 F.3d at 1321.

14 2. Defendants’ Interests Cannot Justify the Burdens Imposed on the 15 Right to Vote.

16 However characterized, the Defendants’ and State’s interests do not justify the
17 Inadequate Cure Period. The *Anderson-Burdick* framework “is a sliding scale test, where
18 the more severe the burden, the more compelling the state’s interest must be, such that ‘a
19 state may justify election regulations imposing a lesser burden by demonstrating the state

20 ¹³ To be admissible, an expert opinion must, among other things, be “based on
21 sufficient facts or data” and “the product of reliable principles and methods.” Fed. R. Evid.
22 702. That is not the case with the opinion of Professor Atkeson, whose opinion constitutes
23 speculation based on no described methodology and is not purported to be reached to any
24 degree of certainty. At most, the report says (Doc. 85-3 ¶ 59) that longer cure deadlines
25 “may” lead to fewer voters curing their ballots and (*id.* ¶ 60) that “it is not clear theoretically
26 that longer curing times will lead to more votes being counted.” In offering these opinions,
27 the expert relies on ballot-rejection (not cure) data from just six states, providing no
28 assessment of their statistical significance. It also does not consider details of the other
states’ cure periods, methods, geographies, or other variables that may influence cure rates.
Given this thin and incomplete analysis, it is unsurprising that there’s no apparent
relationship between the cure periods in the data. Why are relatively fewer no-signature
ballots not counted in Washington, with a 21-day cure period, as compared to Colorado,
with an 8-day cure period? Even to a lay reader, it is apparent that these “opinions” lack
foundation and are guesswork at best.

1 has important regulatory interests.” *Ariz. Green Party v. Reagan*, 838 F.3d 983, 988 (9th
 2 Cir. 2016) (quoting *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 729–30 (9th Cir.
 3 2015)). Under this “means-end fit framework,” “severe” restrictions are “subject to strict
 4 scrutiny.” *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 (9th Cir. 2016).
 5 Less severe burdens remain subject to balancing, and “[h]owever slight” the burden on the
 6 right to vote “may appear,” “it must be justified by relevant and legitimate state interests
 7 ‘sufficiently weighty to justify the limitation.’” *Crawford*, 553 U.S. at 191 (plurality)
 8 (quoting *Norman v. Reed*, 502 U.S. 279, 288–89 (1992)).

9 Even assuming the burden is less than severe, none of the justifications put forward
 10 by the state are “‘sufficiently weighty to justify the limitation’” of the Inadequate Cure
 11 Period. *Id.* The State argues (at 27–28) that four “interests” justify the Inadequate Cure
 12 Period. None do. *See Anderson*, 460 U.S. at 789 (examining “precise interests” offered).

13 *First*, the State argues that the Inadequate Cure Period is justified by concerns about
 14 preventing fraud. But the State’s only argument on this point (at 27) is that the ballot
 15 *signature* requirement prevents fraud. It makes no argument, and presents no evidence, that
 16 the lack of a post-election cure period prevents election fraud. Nor could it.¹⁴

17 *Second*, the State argues (at 27) that the Inadequate Cure Period is justified by the
 18 State’s “interest in reducing the administrative burden on poll workers.” But the State puts
 19 forth little evidence that a post-election cure period would be administratively burdensome.
 20 The only evidence the State proffers (at 27) is the use of staff time. [*See* Doc. 85-3 ¶ 75;
 21 Doc. 85-4 ¶ 19] Regardless, administrative burdens do not justify disenfranchisement.
 22 *Taylor v. Louisiana*, 419 U.S. 522, 535 (1975); *United States v. Berks County,*
 23 *Pennsylvania.*, 250 F. Supp. 2d 525, 541 (E.D. Pa. 2003) (“Although these reforms may
 24 result in some administrative expenses . . . , such expenses are likely to be minimal and are
 25 far outweighed by the fundamental right at issue.”).

26 _____
 27 ¹⁴ *See Detzner*, 2016 WL 6090943, at *7 (“[L]etting mismatched-signature voters
 28 cure their vote by proving their identity *further* prevents voter fraud[.]”).

1 The State also speculates (at 27) that if the post-election cure period is implemented
 2 “election results will . . . take *even longer* to process” and could prevent ballots from being
 3 counted under the statutory deadlines.¹⁵ But it fails to explain why this would be. Counties
 4 already have a five-day post-election cure period and process in place for signature
 5 mismatches and conditional provisional ballots. A.R.S. §§ 16-550, 16-579; Danneman
 6 Decl. Ex. 1 at Ch. 9 § IV. The State does not even attempt to explain why curing these
 7 ballots, but not the others, would delay final tabulation.

8 The Court need not take Plaintiffs’ word for it. The State’s made-for-litigation
 9 arguments are flatly contradicted by the State’s own Chief Election Officer—the
 10 Secretary—and multiple county recorders. The Secretary herself has stated that an identical
 11 cure period for missing signature ballots as for signature mismatch ballots “would not
 12 impose a significant burden on county election officials.”¹⁶ Specifically, “because the
 13 counties already were required to handle the ‘cure’ process for early ballots with
 14 mismatched signatures and conditional provisional ballots, the Secretary anticipated that
 15 the Additional Cure Period would not cause any significant increase in costs or resources.”¹⁷
 16 Indeed, “[t]he Secretary believed that county officials could feasibly implement the
 17 Additional Cure Period with existing resources.”¹⁸

18 Further, Apache County, Navajo County, and Coconino County officials all advocate
 19 for the additional cure period. [Doc. 90] The Coconino County Recorder states that she does
 20 “not think that the requested post-election cure period for unsigned ballots would be a
 21 burden.”¹⁹ Rather, the process would be straightforward. Her office would first “attempt to

22
 23 ¹⁵ The State gets its expert (Doc. 85-3 ¶ 74) to repeat the same claim, again citing
 nothing and relying on nothing in support.

24 ¹⁶ Danneman Decl. Ex. 8 at Interrog. 1.

25 ¹⁷ *Id.* at Interrog. 3.

26 ¹⁸ *Id.* at Interrog. 4. Although Professor Atkeson asserts in passing (Doc. 85-3 ¶ 76)
 that extending the cure period would “cost the state additional funding,” she provides no
 citation for this proposition. And, in its brief before this Court, the State does not argue an
 additional cure period would be so financially burdensome as to justify disenfranchisement.

27 ¹⁹ Danneman Decl. Ex. 12, ¶ 20.

1 reach the voter via phone,” which would take at most 2-3 minutes per voter.²⁰ She would
 2 then set up a process that “would either track the procedure for verifying provisional
 3 conditional ballots in-person, or could potentially be administered online.”²¹ Her
 4 expectation is that “the time from when a voter comes into the Verification Site to the time
 5 they sign the form cure affidavit to take no more than 2 minutes per voter.”²² Given this,
 6 and because Coconino County already has “staff on hand to call voters and notify them of
 7 signature mismatch issues for five days after an election” and “Post-Election ID
 8 Verification Sites set up and staffed for five business days after an election, [Coconino
 9 County] would not need to hire additional staff to administer” the post-election cure period
 10 Plaintiffs seek.²³ Instead, the proposed cure period “could be administered in tandem with
 11 and would use the same processes as the five business day signature match and provisional
 12 conditional ballot processes.”²⁴ Thus, the post-election cure period would have no
 13 significant impact on her office or to impact the timing of certification of election results.²⁵

14 *Third*, the State argues (at 27) that the Inadequate Cure Period is justified by the
 15 State’s interest in the “orderly administration” of elections. Specifically, the State argues
 16 (at 28) that having the same deadline (election day) for curing non-signature ballots, voting
 17 in person, and returning mail ballots is desirable because it (1) reduces the number of dates
 18 to know; (2) provides finality; and (3) sets a clear deadline for poll workers. But one of
 19 these things (curing non-signature ballots) is not like the others. What *would* be “orderly”
 20 and consistent is if the cure date for missing ballot signatures was set for five days after the
 21 election, *the same* as the cure dates for mismatched signature ballots and conditional
 22 provisional ballots. In fact, the Secretary wanted these three deadlines to be the same

24 ²⁰ *Id.* ¶ 15.
 25 ²¹ *Id.* ¶ 16.
 26 ²² *Id.*
 27 ²³ *Id.* ¶ 19.
 28 ²⁴ *Id.*
²⁵ *Id.* ¶¶ 19, 23.

1 precisely “to ensure uniformity, efficiency, and impartiality” and “reduc[e] voter confusion
2 and by ensuring that eligible voters are not excluded from the democratic process.”²⁶ It
3 strains credulity to believe that the deadline sought by the State’s chief elections officer,
4 and county recorders, would undermine election administration.²⁷ Indeed, the only reason
5 why those three deadlines are not the same is that the Attorney General objected.²⁸

6 *Finally*, the State argues (at 28) that the Inadequate Cure Period is justified by an
7 interest in promoting voter participation. (The State ironically proposes to “promot[e]”
8 voter participation by *rejecting* voters’ ballots and giving them *less time* to cure.) Again,
9 the Professor Atkeson does not actually conclude that fewer voters will cure their ballots if
10 Plaintiffs’ relief is granted. Instead, she concludes (Doc. 85-3 ¶¶ 59–60) that “it is not clear
11 theoretically that longer curing times will lead to more votes being counted” and it “may”
12 be that fewer votes are cured. This equivocal opinion is unsurprising given that the expert’s
13 opinion is untethered from data. *See supra* 13. In any event, Plaintiffs bring this lawsuit
14 precisely because they seek the opportunity to assist more voters in taking the steps required
15 to cure a ballot rejected because the voter neglected to sign the ballot they cast.

16 The Inadequate Cure Period cannot survive any level of scrutiny under *Anderson-*
17 *Burdick*. *See Detzner*, 2016 WL 6090943, at *7 (finding it is “illogical, irrational and
18 patently bizarre for the State . . . to withhold the opportunity to cure from mismatched-
19 signature voters while providing that same opportunity to no-signature voters”).

20 **3. Plaintiffs Are Likely to Succeed on the Merits of Their**
21 **Fourteenth Amendment Procedural Due Process Claim.**

22 Plaintiffs are also likely to succeed on the merits of their procedural due process

23 ²⁶ Danneman Decl. Ex. 8 at Interrog. 1. Likewise, in the Coconino County Recorder’s
24 view, “the requested post-election period for unsigned ballots would promote the orderly
administration of elections.” *Id.* Ex. 12 ¶ 21.

25 ²⁷ The State cites (at 28–29) *United States v. Locke*, 471 U.S. 84, 101 (1985) to argue
26 all Plaintiffs’ arguments “fly in the face of the concept of deadlines.” In *Locke*, the court
27 refused to hold that a party substantially complied with a missed deadline. *Id.* In this case,
though, Plaintiffs are not asking this Court to excuse compliance with a deadline but to
address the irrational burden on the right to vote imposed by the deadline in question.

²⁸ Danneman Decl. Ex. 9 at Req. for Admissions 1, 2.

1 claim. [See Doc. 2 at 9–14]

2 **a. Mathews—not Anderson-Burdick—Governs this Claim.**

3 Courts analyze procedural due process claims under a three-step process. See *Nozzi*
4 *v. Hous. Auth. of City of L.A.*, 806 F.3d 1178, 1192–93 (9th Cir. 2015) (quoting *Mathews v.*
5 *Eldridge*, 424 U.S. 319, 341, 343, 347 (1976)). The State wrongly argues (at 12–13) that
6 procedural due process claims are reviewed under the *Anderson-Burdick* framework. They
7 aren’t. See, e.g., *Schmitt v. LaRose*, 933 F.3d 628, 642 (6th Cir. 2019), *cert. denied*, No. 19-
8 974, 2020 WL 2621728 (U.S. May 26, 2020); *Saucedo v. Gardner*, 335 F. Supp. 3d 202,
9 214–17 (D.N.H. 2018). In this regard, the State relies on *Dudum v. Arntz*, 640 F.3d 1098,
10 1106 n.15 (9th Cir. 2011). But *Dudum* involved an appeal from a substantive due process
11 claim—not a procedural due process claim. See *Dudum v. City & County of San Francisco*,
12 No. C 10-00504, 2010 WL 3619709, at *6, *15 (N.D. Cal. Sept. 9, 2010). The two claims
13 are distinct: A procedural due process claim challenges the deprivation of a life, liberty, or
14 property interest “without due process of law[.]” whereas a substantive due process claim
15 challenges actions the government cannot take—no matter what process is in place.²⁹
16 *Zinermon v. Burch*, 494 U.S. 113, 125 (1990); see also *Oceanside Golf Inst., Inc. v. City of*
17 *Oceanside*, Nos. 88-5647, 88-6056, 1989 WL 61771, at *4 (9th Cir. June 1, 1989) (noting
18 that the procedural and substantive due process analyses differ). The State’s reliance (at 13)
19 on *Soltysik v. Padilla*, 910 F.3d 438, 449 n.7 (9th 2018) is also misplaced; that case
20 concerned a First Amendment violation. See *id.* at 443, 449 n.7.

21 **b. Plaintiffs Have Alleged a Constitutionally Protected**
22 **Liberty Interest That Arises Under State Law.**

23 The State argues (at 14) there cannot be a liberty interest so long as state law prohibits

24 _____
25 ²⁹ The State also erroneously argues (at 13–14) that Plaintiffs’ due process claim is
26 substantive. But Plaintiffs only request seek implementation of additional process to afford
27 an otherwise eligible Arizona voter 5 additional days to cure the ballot. [See Doc. 2 at 13]
28 Plaintiffs seek no new substantive right. Indeed, the right for Arizona voters to have their
mail ballots counted is well-established and undisputed. See, e.g., *Raetzel v.*
Parks/Bellemont Absentee Election Bd., 762 F. Supp. 1354, 1357 (D. Ariz. 1990).

1 a post-election day cure for unsigned mail ballot affidavits. But this conflates the liberty
2 interest at issue—access to mail voting—with the procedures Plaintiffs seek to protect such
3 interest—a post-election day cure period for unsigned mail ballots. Plaintiffs’ constituents
4 have a constitutional right to vote that is “entitled to substantial weight[.]” *Martin*, 341 F.
5 Supp. 3d at 1338. Once the State extended mail voting to Plaintiffs’ constituents, *see* A.R.S.
6 § 16-541, it cannot deprive them of having their ballots counted without adequate due
7 process. *See, e.g., Saucedo*, 335 F. Supp. 3d at 215 (“[A] voter has a sufficient liberty
8 interest once ‘the State permits voters to vote absentee.’”) (citing *Zessar v. Helander*, No.
9 05C1917, 2006 WL 642646, at *5 (N.D. Ill. Mar. 13, 2006)); *Raetzel*, 762 F. Supp. at 1357;
10 *United States v. Texas*, 252 F. Supp. 234, 250 (W.D. Tex. 1966), *aff’d*, 384 U.S. 155 (1996).

11 **c. The Inadequate Cure Period Denies Plaintiffs’ Rights**
12 **Without Adequate Process.**

13 **(i) The Interest Here Deserves Significant Weight.**

14 Rejecting an otherwise valid mail ballot due to a technicality that can easily be cured
15 after election day—as is the case for mail ballots with signature mismatches—is equivalent
16 to denying an eligible Arizona citizen the right to vote, which the State concedes (at 15) is
17 a “profound” private interest. *See Martin*, 341 F. Supp. 3d at 1338 (because “the private
18 interest at issue implicates the individual’s fundamental right to vote[, it] is therefore
19 entitled to substantial weight”). And, the degree of potential deprivation that may be created
20 by disenfranchising many voters is high. *Mathews*, 424 U.S. at 341; *see* Doc. 2 at 4, 7, 12
21 (Maricopa County alone has rejected thousands of unsigned mail ballots in recent years).
22 Indeed, courts in this district have held that mail voting is “such a privilege . . . deserving
23 of due process[.]” *Raetzel*, 762 F. Supp. at 1358, [h]aving induced voters to vote by mail
24 ballot, “the State must provide adequate process to ensure that voters’ ballots are fairly
25 considered and, if eligible, counted.” *Saucedo*, 335 F. Supp. 3d at 217.³⁰

26 ³⁰ The State misunderstands *Saucedo* (at 16 n.5). The eligibility of a voter is not
27 defined by whether a voter signs a mail ballot but rather as an initial matter whether the
28 voter is even qualified to cast a ballot. *See* 335 F. Supp. 3d at 217.

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(ii) The Risk of Erroneous Deprivation is Substantial.

The risk of erroneous deprivation is great. [See Doc. 2 at 11–13] The State argues (at 16) that the risk is minimal because the overall rate of rejection of mail ballots due to missing signatures was below 1% in the 2018 general election. But each discarded ballot represents a voter denied his or her constitutional right to vote. *See Saucedo*, 335 F. Supp. 3d at 217 (“[E]ven rates of rejection well under one percent translate to the disenfranchisement of dozens, if not hundreds, of otherwise qualified voters, election after election.”); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014) (“[E]ven one disenfranchised voter . . . is too many[.]”).

The State also takes a crabbed view of erroneous deprivation (at 17, 20), arguing it can deprive citizens of a right deserving of significant protection based on error. That is incorrect. *See, e.g., Zessar*, 2006 WL 642646, at *9 (finding “fact that . . . absentee voters may have been deprived of their vote through a good-faith error, rather than outright fraud, does not eliminate their due process interest in preserving their right to vote”). There is no reason to deny thousands of eligible voters their right to adequate procedures to have their vote counted. The State acknowledges the risk of deprivation—it provides a cure period for missing signature ballots. It does so precisely because it acknowledges that some voters—who after all went to the time and energy to obtain a mail ballot in the first instance—will neglect to sign and be deprived of their right to vote otherwise.

That the Inadequate Cure Period creates a risk of erroneous deprivation is clear. Plaintiffs’ constituents may not have their completed mail ballots delivered to county recorders well in advance of election day in order for county recorders to “make a *reasonable and meaningful* attempt to contact the voter via mail, phone, text message, and/or email[] to notify the voter the affidavit was not signed,” and for the voter to cure the missing signature before 7:00 p.m. on election day.³¹ For example, in Santa Cruz County in

³¹ Danneman Decl. Ex. 1 at 68-69.

1 2018, some of these mail ballots missing signatures arrived on November 5, the day before
 2 election day.³² The same year, in Mohave County, 13 mail ballots received without a
 3 signature were delivered within two days of the election, and the only means by which to
 4 contact the voters was by mail.³³ But, Mohave County “does not send letters by mail to the
 5 voter after the Friday before the election,” and therefore, these voters had no way to cure
 6 their ballots under the current regime.³⁴ Other counties, including La Paz, Yuma, and
 7 Yavapai also contact voters by mail, which extends the period of time by which voters are
 8 first informed of their missing signature. It also reduces the window for voters to either visit
 9 their local elections office to provide their signature, vote in person on election day, or, if
 10 they are even informed in time, receive and return a replacement ballot by mail.³⁵

11 These are the facts at the best of times. These are not the best of times. The United
 12 States Postal Service’s (“USPS”) mail delivery delays and operational difficulties are well-
 13 documented. USPS has struggled to keep up with the dramatic increase in mail voting in
 14 elections that have occurred during the COVID-19 pandemic, resulting in thousands of
 15 ballots not being delivered to election officials in time for a pre-election day cure period to
 16 even apply.³⁶ Indeed, a recent report by the Inspector General for the USPS confirmed that
 17 the USPS “cannot guarantee a specific delivery date or alter standards to comport with
 18 individual state election laws.”³⁷ USPS has announced “major operational changes” “that

19 ³² See *id.* Ex. 6 at Interrog. 2.

20 ³³ See *id.* Ex. 7 at Interrog. 2.

21 ³⁴ *Id.*

³⁵ See, e.g., *id.* Ex. 4 at Interrog. 1; *id.* Ex. 5 at Interrog. 5; *id.* Ex. 10 at Interrog. 1.

22 ³⁶ See, e.g., *Senators Johnson, Baldwin call for investigation of Wisconsin absentee*
 23 *ballots*, WBAY.com (Apr. 9, 2020, 6:49 PM),
[https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-](https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-Wisconsin-absentee-ballots-569521331.html)
 24 [https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-](https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-Wisconsin-absentee-ballots-569521331.html)
 25 [https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-](https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-Wisconsin-absentee-ballots-569521331.html)
 26 [https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-](https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-Wisconsin-absentee-ballots-569521331.html)
 27 [https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-](https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-Wisconsin-absentee-ballots-569521331.html)
 28 [https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-](https://www.wbay.com/content/news/Senators-Johnson-Baldwin-call-for-investigation-of-Wisconsin-absentee-ballots-569521331.html)
Wisconsin-absentee-ballots-569521331.html; Letter from Frank LaRose, Ohio Sec’y of
 State, to Ohio Congressional Delegation (Apr. 23, 2020),
<https://www.dispatch.com/assets/pdf/OH35713424.pdf>; Harri Leigh, *A record number of*
mail-in ballot applications, but will they arrive in time?, FOX43 (May 26, 2020),
[https://www.fox43.com/article/news/politics/elections/a-record-number-of-mail-in-ballot-](https://www.fox43.com/article/news/politics/elections/a-record-number-of-mail-in-ballot-applications-but-will-they-arrive-in-time/521-de6f5ff0-38eb-47a5-a935-313e6a6a1ee3)
[https://www.fox43.com/article/news/politics/elections/a-record-number-of-mail-in-ballot-</](https://www.fox43.com/article/news/politics/elections/a-record-number-of-mail-in-ballot-applications-but-will-they-arrive-in-time/521-de6f5ff0-38eb-47a5-a935-313e6a6a1ee3)

1 could slow down mail delivery” even more.³⁸ And, carriers are being directed to leave mail
2 behind at distribution centers if it would delay them instead of “making multiple delivery
3 trips to ensure timely distribution,” as they have historically done.³⁹ Since then, some
4 Americans have gone “upwards of three weeks without packages and letters.”⁴⁰

5 Accordingly, the risk is substantial, especially during the COVID-19 pandemic, that
6 through no fault of their own, Plaintiffs’ constituents will be disenfranchised without “some
7 form of post-deprivation notice . . . so that any defect in eligibility can be cured and the
8 individual is not . . . denied so fundamental a right” should their mail ballots arrive at county
9 recorders’ offices too close to, or on, election day. *Raetzl*, 762 F. Supp. at 1358.

10 Were the same cure period available for ballots with signature mismatches afforded
11 to unsigned their ballots, the risk of erroneous deprivation would greatly decline. The
12 county recorders agree that voters will, if given the chance, cure their ballots.⁴¹ Thus,
13 additional procedures are necessary to ensure that voters are advised of the missing
14 signature on their ballot affidavit and have the ability to cure a simple oversight. *See Martin*,
15 341 F. Supp. 3d at 1339, 1343 (granting injunction allowing for post-election day cure
16 period for ballots with signature mismatches because existing cure period, which was only
17 effective through election day, was inadequate in preventing disenfranchisement).

18 **(iii) Additional Process Furthers the State’s Interest in**
19 **Election Integrity and Imposes Minimal Burden.**

20 Finally, Plaintiffs have also shown that the limited and narrow relief that they are

21 election-officials-re-election-mail.pdf.

22 ³⁸ Jacob Bogage, *Postal Service memos detail ‘difficult’ changes, including slower*
23 *mail delivery*, Wash. Post (July 14, 2020),
<https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/>.

24 ³⁹ *Id.*

25 ⁴⁰ Ellie Rushing, *Mail delays are frustrating Philly residents, and a short-staffed*
Postal Service is struggling to keep up, Phila. Inquirer (Aug. 2, 2020),
<https://www.inquirer.com/news/philadelphia/usps-tracking-in-transit-late-mail-delivery-philadelphia-packages-postal-service-20200802.html>.

26 ⁴¹ *See* Danneman Decl. Ex. 6 at Interrog. 4 (noting that four voters remedied their
27 ballots in 2018); *id.* Ex. 7 at Interrog. 4 (40 voters remedied their ballots in 2018); *id.* Ex. 11
28 at PLFS001428 (noting that 33 voters remedied their ballots in 2018).

1 seeking would impose a negligible, if any, administrative burden on Defendants and would
2 further the State’s interest in election integrity. [See Doc. 2 at 13; see also *supra* 13–17]

3 *First*, as explained above (*supra* 13–17), applying the same cure period for ballots
4 with signature mismatches, see A.R.S. § 16-550(A), and conditional provisional ballots,
5 Danneman Decl. Ex. 1 at Ch. 9 § IV, to ballots with no signatures would create no
6 meaningful burden on the State.

7 *Second*, making the State’s post-election cure periods consistent would not increase
8 “fraud.” Counties already verify the identities of voters who submit conditional provisional
9 ballots and “mismatched” signature mail ballots post-election. Plaintiffs ask only that the
10 State do the same for voters who submit an unsigned mail ballot. This would “*further* the
11 State’s interest in preventing voter fraud while ensuring that qualified voters are not
12 wrongly disenfranchised.” *Saucedo*, 335 F. Supp. 3d at 220 (emphasis added); *Martin*, 341
13 F. Supp. 3d at 1340 (the “additional procedures would involve minimal administrative
14 burdens” while furthering State’s interests in election integrity).

15 **B. Plaintiffs Will Suffer Irreparable Harm Absent Relief.**

16 The State’s asserts (at 31) that because Plaintiffs did not join any voters, they cannot
17 claim any direct disenfranchisement, and thus no irreparable harm. This ignores Plaintiffs’
18 associational and organizational standing. The harms Plaintiffs face are, respectively, their
19 members’ disenfranchisement (*see supra* Section I.A) and, among other ills,⁴² harm to their
20 election prospects (*see supra* Section I.B). Harm to Plaintiffs’ election prospects necessarily
21 derives from their members’ disenfranchisement, and the State (at 31) implicitly concedes
22 that disenfranchisement is irreparable injury. [See Doc. 2 at 14–15]

23 Likewise, the State’s argument (at 31) that Plaintiffs would only suffer harm if their
24 requested relief would swing the results of an election in favor of Democrats cannot
25

26 ⁴² As discussed, *supra* Section I.B, Plaintiffs are also irreparably harmed because
27 they must divert resources that would otherwise be used as part of other campaign efforts—
28 and which cannot be retroactively applied to those efforts once the election is over.

1 withstand scrutiny. They cite *Winter*, 555 U.S. at 20, for that proposition, but *Winter*
2 concerns whether the Navy’s use of sonar harms marine mammals. In the election context,
3 it is beyond cavil that organizational plaintiffs can suffer irreparable harm when their voters
4 are disenfranchised, without needing to show that “more” of their voters are harmed by the
5 law at issue than the other side. *See, e.g., Crawford*, 553 U.S. at 188.

6 **C. The Balance of Equities Favors Relief.**

7 Finally, the balance of the equities tips in Plaintiffs’ favor. First, the State’s
8 suggestion (at 31–32) that the harm caused by disenfranchisement of “a tiny percentage of
9 voters” is “non-cognizable” is contrary to case law (and common sense). *See, e.g., Husted I*,
10 696 F.3d at 593. Second, the State argues (at 32) that it has required absentee voters to sign
11 envelopes for 102 years and so Plaintiffs should have filed this lawsuit before any of their
12 representatives or counsel were born. But the genesis of this lawsuit was not 102 years ago;
13 it was December 2019, when the Attorney General rejected the Secretary’s Draft Manual
14 adding a post-election cure period. [*See* Doc. 2 at 3, 9; Doc. 91 at 4–5]

15 In contrast to Plaintiffs’ substantial harms, the State faces little, if any, potential harm
16 from the requested relief. There is no reason to think that “the integrity of [Arizona’s]
17 election process” will be threatened by the requested relief (at 32) because it would verify
18 *more* voters’ identities, not fewer. Plaintiffs are *not* asking that unsigned ballots be counted.
19 Rather, Plaintiffs simply seek a cure period to allow election administrators to verify the
20 identity of voters who did not sign their otherwise lawfully cast ballot, during the same time
21 period for cure as already provided for other ballots. As a result, there is no need to “learn
22 . . . an entirely new system.” *Little v. Reclaim Idaho*, __ U.S. __, 2020 WL 4360897, at *2
23 (U.S. July 30, 2020) (Roberts, C.J., concurring)).

24 At the end of the day, the State tries to have it both ways. The State simultaneously
25 argues (at 31) that Plaintiffs’ harms are “minimal” because only “a tiny percentage” of votes
26 are at issue and at the same time (at 32–33) that it would suffer great administrative burden
27 to facilitate a cure period for missing signatures. Neither point is true. This is a case in which
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1 Plaintiffs seek only what one defendant (the Secretary) herself proposed, and which other
2 defendants Apache County, Navajo County, and Coconino County all support, Doc. 90, and
3 confirm they are fully capable of implementing within the existing five-day cure period.

4 **D. The Public Interest Favors Relief, Which *Purcell* Does Not Preclude.**

5 “[P]revent[ing] the violation of a party’s constitutional rights,” as Plaintiffs seek to
6 do, is decidedly in “[t]he public interest.” *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957,
7 978 (9th Cir. 2017). Instead of addressing this, the State pivots (at 33-34) to *Purcell v.*
8 *Gonzalez*, 549 U.S. 1, 5 (2006), to suggest that relief should be precluded here based on the
9 proximity of the election. Not so. With the hearing on the merits scheduled for next week—
10 months in advance of the general election—this is not a case in which there is “inadequate
11 time to resolve the factual disputes,” which is what the Court cautioned against in *Purcell*.
12 *Id.* at 5-6. Nor did *Purcell* establish a per se rule against enjoining voting laws in an election
13 year. Rather, *Purcell* urged courts to consider whether a last-minute change is likely to sow
14 widespread voter confusion, undermine confidence in the election, or create insurmountable
15 administrative burdens on election officials. *Id.*

16 There is no evidence of any of that here. The requested injunction would not change
17 the process for submitting a mail ballot or confuse voters to their detriment. The State would
18 implement the requested relief administratively on the back end of the voting process.
19 “*Purcell* is not a magic wand that defendants can wave to make any unconstitutional
20 election restriction disappear so long as an impending election exists.” *People First of Ala.*
21 *v. Sec’y of State for Ala.*, No. 20-12184, 2020 WL 3478093, at *8 (11th Cir. June 25, 2020).
22 Because the Inadequate Cure Period is unconstitutional, enjoining it would “almost by
23 definition” be in the public interest. *League of Women Voters of Fla. v. Browning*, 863 F.
24 Supp. 2d 1155, 1167 (N.D. Fla. 2012).

25 **Conclusion**

26 For these reasons, Plaintiffs respectfully request that this Court issue a permanent
27 injunction as set forth in the proposed order.

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Dated: August 10, 2020

By: /s/ Kevin Hamilton

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2020, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for filing and transmittal to all parties.

s/ Indy Fitzgerald

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Arizona Democratic Party, et al.,
Plaintiffs,
vs.
Katie Hobbs, et al.,
Defendants,
and
State of Arizona, et al.,
Intervenor-Defendant.

Case No: 2:20-cv-01143-DLR

DECLARATION OF ANTHONY R. NAPOLITANO IN SUPPORT OF STATE’S COMBINED (1) RESPONSE TO PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION AND (2) RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS

I, Anthony R. Napolitano, declare as follows:

1. I am an attorney licensed to practice law in Arizona. I am an Assistant Attorney General with the Arizona Office of the Attorney General, and counsel for the State of Arizona.

1918 Military Absentee Voting Act

2. Attached hereto as **Exhibit A** is a true and correct copy of 1918 Ariz. Session Laws Ch. 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.”

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Plaintiffs’ Discovery Responses

3. Attached hereto as **Exhibit B** are excerpts of “Plaintiff Arizona Democratic Party’s Responses and Objections to the State’s First Set of Interrogatories, Requests for Admission and Requests for Production” in this case, dated July 9, 2020.

4. Attached hereto as **Exhibit C** are excerpts of “Plaintiff Democratic National Committee’s Responses and Objections to the State’s First Set of Interrogatories, Requests for Admission and Requests for Production” in this case, dated July 9, 2020.

5. Attached hereto as **Exhibit D** are excerpts of “Plaintiff DSCC’s Responses and Objections to the State’s First Set of Interrogatories, Requests for Admission and Requests for Production” in this case, dated July 9, 2020.

Defendants’ Discovery Responses

6. Attached hereto as **Exhibit E** is a true and correct copy of “Defendant Arizona Secretary of State’s Response to Plaintiffs’ First Set of Interrogatories” in this case, dated July 9, 2020.

7. Attached hereto as **Exhibit F** is a true and correct copy of “Apache County Recorder, Edison Wauneka’s Response to the State’s First Set of Interrogatories and Request for Production” in this case, dated July 22, 2020.

8. Attached hereto as **Exhibit G** is a true and correct copy of a “Problem Ballot Control Sheet” which was provided to the State along with “Apache County Recorder, Edison Wauneka’s Response to the Plaintiff’s First Set of Interrogatories and Request for Production” in this case, received by the Arizona Attorney General’s Office on July 27, 2020.

9. Attached hereto as **Exhibit H** is a true and correct copy of “Defendant, Coconino County Recorder’s Response to State’s First Set of Interrogatories, Requests for Admission and Request for Production” in this case, dated July 9, 2020.

10. Attached hereto as **Exhibit I** is a true and correct copy of “Defendant Suzanne Sainz’ Answers to State’s First Set of Interrogatories, Request for Admission,

1 and Requests for Production to Suzanne Sainz, Santa Cruz County Recorder” in this case,
2 dated July 1, 2020.

3 11. Attached hereto as **Exhibit J** is a true and correct copy of “Defendant
4 Suzanne Sainz’ Verification of Answers to Plaintiffs’ First Set of Interrogatories Dated
5 7/1/2020” in this case, dated July 28, 2020.

6 **California Presidential Primary**

7 12. Attached hereto as **Exhibit K** is a true and correct copy of an article titled
8 “100,000 mail-in votes went uncounted in California’s primary,” written by Michael R.
9 Blood for the *Washington Post*. The article was published on July 13, 2020, and is
10 publicly available at [https://www.washingtonpost.com/health/100000-mail-in-votes-](https://www.washingtonpost.com/health/100000-mail-in-votes-went-uncounted-in-californias-primary/2020/07/13/038adf1e-c527-11ea-a825-8722004e4150_story.html)
11 [went-uncounted-in-californias-primary/2020/07/13/038adf1e-c527-11ea-a825-](https://www.washingtonpost.com/health/100000-mail-in-votes-went-uncounted-in-californias-primary/2020/07/13/038adf1e-c527-11ea-a825-8722004e4150_story.html)
12 [8722004e4150_story.html](https://www.washingtonpost.com/health/100000-mail-in-votes-went-uncounted-in-californias-primary/2020/07/13/038adf1e-c527-11ea-a825-8722004e4150_story.html).

13 13. Exhibit K reports that the “California secretary of state’s election data ...
14 showed 102,428 mail-in ballots were disqualified in the state’s 58 counties, about 1.5%
15 of the nearly 7 million mail-in ballots returned,” and “[t]he most common problem ...
16 was missing the deadline for the ballot to be mailed and arrive.”

17 **Georgia House District 28**

18 14. Attached hereto as **Exhibit L** is a true and correct copy of an article titled
19 “Georgia House election do-over separated by just two votes,” written by Greg Bluestein
20 for the *Atlanta Journal-Constitution*. The article was published on December 10, 2018,
21 and is publicly available at [https://www.ajc.com/blog/politics/georgia-house-election-](https://www.ajc.com/blog/politics/georgia-house-election-over-separated-just-two-votes/DKecF1f6dzulYMEWvXyjAK/)
22 [over-separated-just-two-votes/DKecF1f6dzulYMEWvXyjAK/](https://www.ajc.com/blog/politics/georgia-house-election-over-separated-just-two-votes/DKecF1f6dzulYMEWvXyjAK/).

23 15. Exhibit L quotes candidate Dan Gasaway saying “I hated we could not get
24 some kind of resolution with this board when they clearly had illegal votes being cast in
25 Habersham County,” as well as Gasaway’s attorney’s remarks that “Two votes is a small
26 margin and virtually any irregularity makes a material difference.”

27 16. Attached hereto as **Exhibit M** is a true and correct copy of the Order
28 Granting Petitioner Dan Gasaway’s Petition to Contest Election Results & Request for

1 New Election issued by Judge David R. Sweat in the Superior Court of Banks County,
2 Georgia. The order was issued on February 8, 2019 in the case *Dan Gasaway v.*
3 *Habersham County Board of Elections and Registration, et al.*, No. 18CV358.

4 17. The judgment of the court in Exhibit M holds that the “evidence showed a
5 sufficient number of illegal votes to change or cast in doubt the results of the December
6 4, 2018 Georgia House District 28 Special Election. Illegal votes were received and there
7 was irregularity by primary election officials. Three ineligible voters voted and one
8 eligible voter cast more than one ballot in the Special Election.”

9 18. Attached hereto as **Exhibit N** is a true and correct copy of an article titled
10 “Do-over déjà vu: Georgia Republicans face a third vote for House seat,” written by Greg
11 Bluestein for the *Atlanta Journal-Constitution*. The article was published on April 9,
12 2019, and is publicly available at [https://www.ajc.com/news/state--regional-govt--
13 politics/over-deja-georgia-republicans-face-third-vote-for-house-
14 seat/T9MkZ5qcbNMdRRwb8Iz0GO/](https://www.ajc.com/news/state--regional-govt--politics/over-deja-georgia-republicans-face-third-vote-for-house-seat/T9MkZ5qcbNMdRRwb8Iz0GO/).

15 19. Exhibit N quotes voters who after two court-invalidated elections “marred
16 by illegal votes” and “after tens of thousands of taxpayer dollars hav[ing] been spent,”
17 returned “a third time to cast yet another ballot.” The sentiments from multiple voters
18 include: “To say there’s voter fatigue—well, that’s an understatement,” “It’s bizarre. It’s
19 expensive ... And I’m upset,” and “This one is going to end it all. It better ... If not,
20 there’s going to be some serious consequences.”

21 20. Attached hereto as **Exhibit O** is a true and correct copy of an article titled
22 “Georgia House District 28 race yields same results for the third time,” written by the
23 Associated Press and published by *11 Alive*, WXIA-TV. The article was published on
24 April 9, 2019, and is publicly available at
25 [https://www.11alive.com/article/news/politics/elections/georgia-house-district-28-race-
26 yields-same-results-for-the-third-time/85-a17674a8-c2a3-477a-97d5-481c0dc1ec72](https://www.11alive.com/article/news/politics/elections/georgia-house-district-28-race-yields-same-results-for-the-third-time/85-a17674a8-c2a3-477a-97d5-481c0dc1ec72).

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1 to such an extent that they taint the results of the entire election and cast doubt on its
2 fairness,” and “It is, therefore, ORDERED: A new election shall be conducted in
3 Congressional District 9” as well as “a new general election for Bladen Soil and Water
4 Conservation District Supervisor and for Bladen County Commissioner, District 3....”

5 26. Attached hereto as **Exhibit R** is a true and correct copy of an indictment in
6 *State of North Carolina v. Leslie McCrae Dowless*, 19CRS001934, before the General
7 Court of Justice, Superior Court Division, County of Wake, North Carolina dated July 30,
8 2019.

9 27. In Exhibit R, the jurors “present that” Leslie McCrae Dowless did “obstruct
10 public and legal justice by submitting of causing to be submitted by mail absentee ballots
11 and container-return envelopes for those ballots to the Bladen County Board of Elections
12 in such a manner so as to make it appear that those ballots had been voted an executed in
13 compliance with [laws] ... pertaining to absentee ballots when they in fact had not been
14 so executed” and “defendant directed individuals to collect absentee ballots from voters,
15 at times instructed individuals to sign certificates indicating they had witnessed the voter
16 vote ... when they had not, and ... conceal[ed] the fact that the voter had not personally
17 mailed it himself.” And “[t]his act ... result[ed] in the counting of spoiled absentee
18 ballots that had not been executed in compliance with State law. It thereby served to
19 undermine the integrity of the absentee ballot process and the public’s confidence in the
20 outcome of the electoral process.”

21 **Paterson, New Jersey, Municipal Election**

22 28. Attached hereto as **Exhibit S** is a true and correct copy of an article titled
23 “Close Results In Paterson Vote Plagued By Fraud Claims; Over 3K Ballots Seemingly
24 Set Aside,” written by Jonathan Dienst and published by *NBC New York*. The article was
25 published on May 20, 2020, updated on May 21, 2020, and is publicly available at
26 [https://www.nbcnewyork.com/news/local/close-results-in-paterson-vote-plagued-by-](https://www.nbcnewyork.com/news/local/close-results-in-paterson-vote-plagued-by-fraud-claims-over-3k-ballots-seemingly-set-aside/2425813/11/)
27 [fraud-claims-over-3k-ballots-seemingly-set-aside/2425813/11/](https://www.nbcnewyork.com/news/local/close-results-in-paterson-vote-plagued-by-fraud-claims-over-3k-ballots-seemingly-set-aside/2425813/11/).

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1 29. Exhibit S reports that “thousands of ballots not counted would represent
2 nearly one in five of all votes cast, or 19 percent. The Board of Elections previously
3 announced about 800 votes would be set aside ... amid charges they were found
4 improperly bundled in mailboxes in Paterson,” and “the additional 2,390 disqualifications
5 were due to the election board comparing signatures on the ballots to those previously on
6 file for voters, and the new ones not matching up,” so “four wards had more votes go
7 uncounted than the winner’s margin of victory—meaning the uncounted ballots possibly
8 could have tipped the election in favor of one of the candidates.” The article quotes
9 “election law expert and ... [I]aw professor Rick Hansen” saying, ““There is a genuine
10 absentee ballot fraud scandal going on in Paterson.””

11 30. Attached hereto as **Exhibit T** is a true and correct copy of an article titled
12 “City councilman among 4 facing voter fraud charges in New Jersey,” written by Paul
13 LeBlanc and published by *CNN*. The article was published on June 25, 2020, and is
14 publicly available at [https://www.cnn.com/2020/06/25/politics/new-jersey-attorney-](https://www.cnn.com/2020/06/25/politics/new-jersey-attorney-general-announces-voting-fraud-charges/index.html)
15 [general-announces-voting-fraud-charges/index.html](https://www.cnn.com/2020/06/25/politics/new-jersey-attorney-general-announces-voting-fraud-charges/index.html).

16 31. Exhibit T states an “investigation began after the US Postal Inspection
17 Service found hundreds of mail-in ballots in a mailbox in Paterson. Numerous additional
18 ballots were found in another mailbox in nearby Haledon,” and now “four people [are]
19 charged with voting fraud,” including “Paterson City Councilman Michael Jackson” who
20 “allegedly violated state election laws as a candidate by approaching one or more
21 Paterson voters ... and collecting their mail-in ballots ... Jackson allegedly did not
22 identify himself as a bearer on the mail-in ballots that he delivered to the Passaic County
23 Board of Elections,” and “Councilman-Elect Alex Mendez” who “allegedly approached
24 one or more voters ... collected official mail-in ballots and delivered them ... without
25 identifying himself as the bearer” and “allegedly got and submitted one or more voter
26 registration applications that he knew were false, fictitious or fraudulent”

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California Cigarettes-for-Signatures

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2 32. Attached hereto as **Exhibit U** is a true and correct copy of an article titled
3 “4 sentenced for their role in voter fraud scheme that bribed people on Skid Row with
4 money, cigarettes,” written by Erika Martin and published by *KTLA5*. The article was
5 published on July 29, 2020, and is publicly available at [https://ktla.com/news/4-](https://ktla.com/news/4-sentenced-for-their-role-in-voter-fraud-scheme-that-bribed-people-on-skid-row-with-money-cigarettes/)
6 [sentenced-for-their-role-in-voter-fraud-scheme-that-bribed-people-on-skid-row-with-](https://ktla.com/news/4-sentenced-for-their-role-in-voter-fraud-scheme-that-bribed-people-on-skid-row-with-money-cigarettes/)
7 [money-cigarettes/](https://ktla.com/news/4-sentenced-for-their-role-in-voter-fraud-scheme-that-bribed-people-on-skid-row-with-money-cigarettes/).

8 33. Exhibit U reports that “Four more men were sentenced after admitting to
9 their involvement in a large-scale scheme to bribe homeless people on Skid Row in
10 exchange for forged signatures on ballot petitions and voter registration forms ... The
11 group allegedly gave homeless people \$1 each and cigarettes in exchanged for forgery.
12 They amassed hundreds of false signatures to help initiatives qualify in the 2016 and
13 2018 election cycles.”

Kleberg County, Texas, Justice of the Peace Election

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15 34. Attached hereto as **Exhibit V** is a true and correct copy of an article titled
16 “Judge tosses Kleberg County justice of the peace votes, orders new election,” written by
17 Tim Acosta and published by the *Caller Times*. The article was published on June 26,
18 2018, updated on December 5, 2018, and is publicly available at
19 [https://www.caller.com/story/news/local/2018/06/26/judge-tosses-kleberg-county-justice-](https://www.caller.com/story/news/local/2018/06/26/judge-tosses-kleberg-county-justice-peace-votes-orders-new-election/730354002/)
20 [peace-votes-orders-new-election/730354002/](https://www.caller.com/story/news/local/2018/06/26/judge-tosses-kleberg-county-justice-peace-votes-orders-new-election/730354002/).

21 35. Exhibit V reports that “a visiting judge tossed the results of a May runoff
22 election and ordered a new election,” “thr[owing] out seven votes” where “a recount
23 slightly lowered Gutierrez’s loss to just six votes (312 to 318)” and “there was ultimately
24 no way to prove for whom those individuals voted. Records are not kept on who a person
25 votes for”

26 36. Attached hereto as **Exhibit W** is a Memorandum Opinion issued by the
27 Court of Appeals of Texas, Corpus Christi-Edinburg, on October 25, 2018, in *De La Paz*
28 *v. Gutierrez*, 2018 WL 5289553 (No. 13-18-00377-CV).

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37. In Exhibit W, the “trial court’s judgment is affirmed” where “[i]n its final judgment, the trial court pronounced that by clear and convincing evidence seven individuals did not reside in Precinct 4 and thus their votes were illegal” and the “findings of fact signed by the trial court provide ... that the seven illegal votes changed the outcome of the election.”

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was issued on August 3, 2020, in Phoenix, Arizona.

s/ Anthony R. Napolitano
Anthony R. Napolitano

EXHIBIT F

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Attorney for Apache County Recorder, Edison J. Wauneka

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arizona Democratic Party, et al.,

Plaintiffs,

vs.

Katie Hobbs, et al.,

Defendant(s),

Case No: 2:20-CV-01143-PHX-DLR

**APACHE COUNTY RECORDER,
EDISON WAUNKA'S RESPONSE TO
THE STATE'S FIRST SET OF
INTERROGATORIES AND
REQUEST FOR PRODUCTION**

Defendant Apache County Recorder, Edison Wauneka, by and through the undersigned counsel, hereby responds to the State's First Set of Interrogatories and Requests for Production on the above referenced manner as follows:

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RESPONSE TO INTERROGATORIES

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INTERROGATORY 1:

Describe in detail the policies and procedures YOU will use, or the actions YOU will take, for the 2020 general election to address mail-in ballots missing the respective voter's signature.

RESPONSE TO INTERROGATORY 1:

Upon receiving a mail-in ballot with a missing signature, the following steps are taken:

1. Highlight the signature region of the back of the affidavit envelope. Place a big red sign here flag on the signature area.
2. Fill out control sheet with phone number and email address and letter sent date.
3. Attempt to call the voter to advise them that they did not sign the ballot affidavit and that the ballot will be sent back to them for signature. Also, inform them that the ballot must be back in our office or an Apache county polling place by 7 pm on election day. Always leave a message if possible. Make a note on the control sheet if you communicated with the voter.
4. Email the voter that they did not sign the ballot affidavit and that we will be sending the ballot back to them to sign. Also, advise them that the ballot must be back in our office or an Apache County polling location by 7 pm on election day. Make a note on the control sheet that you emailed voter on the control sheet.
5. Print out the label and send ballot back to the voter with the letter explaining that they must sign the ballot affidavit and that the ballot must be back in our office not later than 7 pm on election day or dropped off at any Apache County polling location. Make a note on control sheet the date you sent the letter.
6. Seven days before the election, we are unable to send ballots back to the voter. This is due to the mail time and the fact the voter will not receive the ballot in time to sign and to return. Call and email the voter each day to inform them that they must come in and sign their ballot.
7. Call voters once a week that have not returned a ballot. Make a note on control sheet that you attempted to call voter again.
8. Email voter once a week that has not returned ballot. Make a note on the control sheet that you emailed the voter again.
9. Pull control sheet for voters that have returned their ballot this way we know which voters to keep calling and emailing.

INTERROGATORY 2:

Describe in detail the voter assistance programs you have implemented or will implement for the 2020 general election, including for those voters with disabilities or language difficulties.

RESPONSE TO INTERROGATORY 2:

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1. Voters may be accompanied by a person of the voter’s choice during any part of the voting process.
2. Voters may request assistance from a third-party or from members of the election board (two members of opposite party). If a voter requests this assistance the following are the steps:
 - a. Jointly accompany the voter to the voting booth or accessible voting equipment.
 - b. Audibly read the candidates names for each office, including party designations and the number to elect.
 - c. Audibly read the information pertaining to any ballot measures.
 - d. Ask the voter what candidates and issues the voter desires to vote for.
 - e. If the voter requests, instruct the voter on how to operate the accessible voting equipment, including what to expect from the audio recorded instructions and what keys to use to maneuver through the screens.
 - i. Those assisting a voter, upon the voters request, may not attempt to influence a voter in their choice of candidates or issues, or suggest or recommend a vote for a candidate or issue
 - ii. Poll Workers should speak loud enough to assist the voter while maintaining the voter’s privacy as much as possible.
3. Translators are available for use by the voter.
4. The Accessible Voting equipment is available for use, which assists voters with disabilities or language difficulties. English, Spanish and Navajo Translations are available on the Accessible Voting equipment.
5. Curbside voting is available to voters with disabilities, senior citizens and any other voter that requests this assistance.

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RESPONSE TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 1:

Produce any DOCUMENTS, including written policies and procedures, YOU relied upon in answering the above Interrogatories.

RESPONSE REQUEST FOR PRODUCTION 1:

DOCUMENTS RELIED ON FOR INTERROGATORY 1:

- 1. 2019 Election Procedures Manual
- 2. Settlement Agreement between Navajo Nation and Apache County.

DOCUMENTS RELIED ON FOR INTERROGATORY 2:

- 1. 2019 Election Procedures Manual

These above listed documents are attached hereto.

RESPECTFULLY SUBMITTED this 22nd day of July, 2020.

Michael B. Whiting
Apache County Attorney

/s/ Joseph Young
Joseph D. Young
Chief Deputy County Attorney

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed and served through the CM/ECF system this 22nd day of July, 2020.

By: /s/ Joseph D. Young

EXHIBIT H

WILLIAM P. RING
COCONINO COUNTY ATTORNEY
110 E. CHERRY AVENUE
FLAGSTAFF, ARIZONA 86001-4627
(928) 679-8200

1 **WILLIAM P. RING**
COCONINO COUNTY ATTORNEY
2 State Bar No. 012860
Rose Winkeler
3 Deputy County Attorney
State Bar No. 025023
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Flagstaff, Arizona 86001
5 (928) 679-8200
rwinkeler@coconino.az.gov
6 *Attorney for Coconino County*

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 The Arizona Democratic Party, et al.,

No. CV-20-01143-PHX-DLR

10 Plaintiffs,

11 v.

**DEFENDANT, COCONINO COUNTY
RECORDER’S RESPONSE TO STATE’S
FIRST SET OF INTERROGATORIES,
REQUESTS FOR ADMISSION AND
REQUESTS FOR PRODUCTION**

12 Katie Hobbs, et al.,

13 Defendants.

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15
16 Defendant, Patty Hansen, in her official capacity as the Coconino County Recorder
17 (the “Coconino County Recorder”) responds to Defendant, the State of Arizona’s “First
18 Set of Interrogatories, Requests For Admission And Requests For Production.” Defendant,
19 Coconino County Recorder notes that the requests by the State of Arizona (the “State”)
20 only includes Interrogatories and Requests for Production. In accordance with Rule 33.1
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1 of the Local Rules of Practice and Procedure of the U.S. District Court for the District of
2 Arizona (“LRCiv”) and the Federal Rules of Civil Procedure (“FRCP”), Rules 33 and 34,
3 the Coconino County Recorder responds to the State’s First Set of Interrogatories and First
4 Set of Request for Production as follows:

5
6 **INTERROGATORIES**

7 **INTERROGATORY 1:**

8 Describe in detail the policies and procedures YOU will use, or the actions YOU
9 will take, for the 2020 general election to address mail-in ballots missing the respective
10 voter’s signature.

11 **RESPONSE TO INTERROGATORY 1:**

12 The Coconino County Recorder responds regarding policies and procedures that
13 will be used or actions she will take for the 2020 general election to address mail-in
14 ballots missing the respective voter’s signature as follows:

15 Staff who process early ballots are instructed to follow the below procedures up to
16 the day of the election as time allows: Early ballots that are unsigned will need follow up.
17 The ballot affidavit envelope must be signed before the ballot may be submitted for
18 counting.

19 Start with the ballots received earliest and process new unsigned ballots daily.

- 20 1) Pull up the voter’s record based on the information on the ballot envelope.

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- 2) Fill out a green problem sheet. If there is a phone number on the envelope, use that. Otherwise use the phone number or email on the voter record if there is one.
- 3) Fill out the unsigned ballot tracking spreadsheet.
- 4) If there is a phone number, call the voter.
 - a. Suggested script if speaking to or emailing the voter: “We are unable to process the early ballot you submitted for the *<date and name of the election>* because the ballot affidavit envelope was not signed. We need your signature before we can submit your ballot for counting. You may make an appointment to come in to our office at 110 East Cherry Avenue to sign your ballot affidavit, or we can mail you a replacement ballot.”
 - b. Suggested script if leaving a message: “This message is regarding the early ballot you submitted for the *<date and name of the election>*. Please call (your phone #) at your earliest convenience.”
- 5) Fill out the green problem sheet and ballot tracking spreadsheet with your actions.
- 6) Clip the green problem sheet to the ballot and keep them alphabetized for reference.
- 7) If a phone message is left, or the phone number is invalid or not provided, email the voter if there is an email address.
- 8) If the voter does not respond within one business day, send a letter.

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1 9) The issue is “resolved” once direct (phone, email, or in person) contact is made
2 with the voter, or a letter is sent.

3 ////

4 **INTERROGATORY 2:**

5 Describe in detail the voter assistance programs you have implemented or will
6 implement for the 2020 general election, including for those voters with disabilities or
7 language difficulties.

8 **RESPONSE TO INTERROGATORY 2:**

9 The Coconino County Recorder responds regarding the voter assistance programs
10 that have been implemented or will be implemented for the for the 2020 general election,
11 including for those voters with disabilities or language difficulties as follows:

- 12 1. We are utilizing our office’s website to provide voting assistance information.
13 Because of the current COVID 19 crisis we have stopped doing in-person
14 presentations. The Navajo Nation has discontinued their Chapter meetings so
15 we are unable to do Chapter meeting presentations.
- 16 2. We have been running radio ads to provide information in the Navajo language
17 to Navajo voters about important election deadlines and information. We are
18 also running English language radio ads about voting throughout the county.
- 19 3. We are purchasing a “Voting Within Reach” trailer that we will be taking to
20 several locations in our county. This trailer will be a mobile elections office.

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- We will be providing voter assistance at these locations. We are also providing curbside assistance at these locations so people do not need to get out of vehicles.
4. We are implementing door-to-door voting assistance in the Supai Village on the Havasupai Reservation because they are in a lock down situation because of COVID. We are in the process of hiring two members in the village and training them through Zoom. They will go door-to-door to assist people with voter registration and early voting. We have been working with the legal council to the tribe and the tribal council to implement these activities.
 5. The county recorder have done several voter information presentations for meetings and Facebook live events via Zoom. These include special district meetings, neighborhood watch meetings, Lantinx and Native American organizations events.
 6. The county recorder has also been having regular Zoom meetings with representatives from several voting advocacy organizations, which include disability rights and Native American rights organizations, to provide up-to-date voting information. They have been disseminating this information to their membership.
 7. We have been using Twitter to post voting information. We are also sending press releases to the media about election deadlines and information.

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REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 1:

6 Produce any DOCUMENTS, including written policies and procedures, YOU
7 relied upon in answering the above Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION 1:

9 Please see electronically produced documents attached hereto.

11 The executed Declaration of Coconino County Recorder, Patty Hansen in Lieu of
12 Verification, pursuant to 28 U.S.C. § 1746 is attached hereto and incorporated herein.

13 DATED: July 9, 2020

14 WILLIAM P. RING
15 Coconino County Attorney

16 /s/ Rose Winkeler
17 Rose Winkeler
18 Deputy County Attorney

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CERTIFICATE OF SERVICE

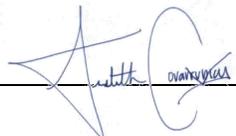
I hereby certify that on July 9, 2020, I caused the foregoing document to be electronically transmitted to counsel of record at the following email addresses (with a copy to Plaintiffs' Counsel):

<p>Joseph A. Kanefield Brunn ("Beau") W. Roysden III Drew C. Ensign Michael S. Catlett Jennifer J. Wright Robert J. Makar MARK BRNOVICH ATTORNEY GENERAL Drew.Ensign@azag.gov <i>Attorneys for Defendant State of Arizona</i></p>	<p>Alexis E. Danneman Joshua L. Boehm PERKINS COIE LLP Phoenix, AZ ADanneman@perkinscoie.com; JBoehm@perkinscoie.com; DocketPHX@perkinscoie.com</p> <p>Kevin J. Hamilton William B. Stafford Sarah Langberg Schirack Ariel Glickman PERKINS COIE LLP Washington, DC KHamilton@perkinscoie.com; WStafford@perkinscoie.com; SSchirack@perkinscoie.com; AGlickman@perkinscoie.com <i>Attorneys for Plaintiff</i></p>
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<p>Jefferson R. Dalton GILA COUNTY ATTORNEY'S OFFICE jdalton@gilacountyaz.gov <i>Attorneys for Apache County Recorder</i></p>	<p>Kenneth Andrew Angle GRAHAM COUNTY ATTORNEY'S OFFICE Kangle@graham.az.gov <i>Attorneys for Graham County Recorder</i></p>

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<p>Ryan Norton Dooley LA PAZ COUNTY ATTORNEY'S OFFICE rdooley@lapazcountyaz.org <i>Attorneys for La Paz County Recorder</i></p>	<p>Joseph James Branco Joseph Eugene LaRue MARICOPA COUNTY ATTORNEY'S OFFICE brancoj@mcao.maricopa.gov ca-civilmailbox@mcao.maricopa.gov <i>Attorneys for Maricopa County Recorder</i></p>
<p>Jeffrey Blane Haws MOHAVE COUNTY ATTORNEY'S OFFICE Jeff.haws@mohavecounty.us <i>Attorneys for Mohave County Recorder</i></p>	<p>Jason Stanley Moore NAVAJO COUNTY ATTORNEY'S OFFICE Jason.moore@navajocountyaz.gov <i>Attorneys for Navajo County Recorder</i></p>
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<p>Kimberly Janiece Hunley SANTA CRUZ COUNTY ATTORNEY'S OFFICE khunley@santacruzcountyaz.gov <i>Attorneys for Santa Cruz County Recorder</i></p>	<p>Thomas M. Stoxen YAVAPAI COUNTY ATTORNEY'S OFFICE thomas.stoxen@yavapai.us <i>Attorneys for Yavapai County Recorder</i></p>
<p>William J. Kerekes YUMA COUNTY ATTORNEY'S OFFICE YCAttyCivil@yumacountyaz.gov <i>Attorneys for Yuma County Recorder</i></p>	<p>Kory A Langhofer Thomas James Basile STATECRAFT PLLC kory@statecraftlaw.com; tom@statecraftlaw.com <i>Attorneys for Republican National Committee; Arizona Republican Party; and Donald J. Trump for President</i></p>

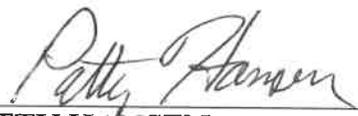
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DECLARATION OF PATTY HANSEN,
COCONINO COUNTY RECORDER
(In Lieu of Verification pursuant to 28 U.S.C. § 1746)

I, Patty Hansen, in my official capacity as the Coconino County Recorder hereby state that I am familiar with the above entitled action, and have prepared the foregoing COCONINO COUNTY RECORDER’S RESPONSE TO STATE’S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION and declare under penalty of perjury that the foregoing is true and correct.

Executed on: 7-9-2020



PATTY HANSEN
COCONINO COUNTY RECORDER

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arizona Democratic Party, et al.,

Plaintiffs,

v.

Katie Hobbs, et al.,

Defendants.

No. CV-20-01143-PHX-DLR

ORDER

At issue is the State’s motion to stay the Court’s September 10, 2020 injunction pending appeal. (Doc. 119.) Intervenor-Defendants the Republican National Committee, the Arizona Republican Party, and Donald J. Trump for President, Inc. support a stay. (Doc. 122.) No named Defendant has joined the State’s request, and Plaintiffs oppose it. (Doc. 123.) The parties are familiar with the facts, which are detailed in the Court’s September 10 order (Doc. 114) and will not be repeated here. When deciding whether to stay an order pending appeal, the Court considers whether (1) the movant is likely to succeed on the merits of the appeal; (2) the movant will be irreparably harmed absent a stay; (3) the stay will injure other parties interested in the proceeding; and (4) a stay would serve the public interest. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1006-07 (9th Cir. 2020). These factors are balanced on a sliding-scale, whereby a weaker showing on the merits may be offset by a stronger showing of harm. *Id.* at 1007. Here, these factors do not support a stay.

1 Though the Court rejected the State’s arguments when it ruled in Plaintiffs’ favor,
2 the issues in this case—particularly those of standing, application of *Anderson/Burdick* to
3 minimally burdensome election deadlines, and the applicability of ordinary procedural due
4 process principles to election regulation challenges—are difficult and fairly contestable.
5 But the State has not shown that it will be irreparably harmed if the Court’s injunction is
6 not stayed pending appeal. The Court’s injunction will not impose meaningful
7 administrative burdens on election officials or sow disorder.¹ Although a state “suffers a
8 form of irreparable injury” whenever it is enjoined from implementing its laws, *Maryland*
9 *v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers), that injury alone does not
10 support a stay when balanced against the harms a stay would impose on others.
11 Specifically, the Court’s injunction likely will result in more eligible voters having their
12 ballots counted. A stay of that injunction pending appeal likely will have the opposite
13 effect; some voters who would have cured a missing signature had they been provided a
14 post-election opportunity to do so will have their ballots discarded. This harm outweighs
15 any marginal administrative burden the Court’s injunction might impose on election
16 officials, as well as any abstract harm to the State’s interest in enforcing its laws. Nor
17 would a stay serve the public interest where, as here, the injunction is welcomed by the
18 State’s chief election officer, and when the changes would better achieve the orderly
19 administration of elections, likely result in more eligible voters having their ballots
20 counted, not meaningfully burden election officials, and replace arbitrary differential
21 treatment with uniformity. Accordingly,

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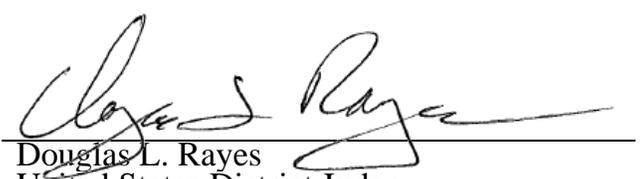
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26 ¹ In its reply brief, the State argues that, without a stay, “[c]ounty recorders will
27 need to hurriedly create and implement post-election procedures for curing unsigned
28 ballots.” (Doc. 124 at 6.) But counties already are required by law to have and implement
procedures for curing such ballots. The Court has not ordered counties to create new
procedures. It has ordered them to continue implementing their existing procedures for a
bit longer.

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IT IS ORDERED that the State’s motion for a stay pending appeal (Doc. 119) is **DENIED**.

Dated this 18th day of September, 2020.



Douglas L. Rayes
United States District Judge