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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Leslie Feldman, et al.,

Plaintiffs,

v.

Arizona Secretary of State's Office, et al.,

Defendants.

No. CV-16-01065-PHX-DLR

PLAINTIFFS' JOINT REPLY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION OF H.B. 2023

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INTRODUCTION

Plaintiffs' opening brief and the evidence upon which it relies establish that HB2023 severely burdens the rights to vote and to associate; burdens minority voters disproportionately for reasons linked to the ongoing effects of Arizona's lengthy history of discrimination; does not further any legitimate state interest; and was enacted for the purpose of suppressing turnout among Democratic voters. The evidence Defendants have supplied in response does not seriously call into question any of these dispositive facts. Plaintiffs' motion for a preliminary injunction of HB2023 should be granted.

I. Defendants Have Failed to Rebut Plaintiffs' Showing of Likely Success

A. HB2023 Violates Section 2 of the VRA

Defendants do not dispute that a Section 2 claim turns on whether a plaintiff can establish two elements: (1) the challenged election practice imposes a discriminatory burden on members of a protected class, and (2) that burden is in part caused by or linked to social and historical conditions that have or currently produce discrimination against members of the protected class. Doc. 152 ("ARP Br.") 4; Doc. 153 ("State Br.") 4; *see Veasey v. Abbott*, No. 14-41127, 2016 WL 3923868, at *17 (5th Cir. July 20, 2016) (en banc). Plaintiffs have established that they are likely to meet their burden on each element.

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1. HB2023's Racially Disparate Burdens

Plaintiffs have cited abundant evidence that minority voters have heavily and disproportionately relied on ballot collection and delivery—the precise activity that HB2023 now makes a felony—to vote in recent elections. Doc. 85 ("Pls. Br.") 1-5, 10; *see also* Doc. 101-1 ("Berman Rpt.") 20; Doc. 139-1 ("Lichtman Rpt.") 52-53.[1] And the strength of the evidence regarding HB2023's disparate burden has increased since Plaintiffs' opening brief was filed. Although couched in inflammatory language,

[1] ARP's evidentiary objections to Plaintiffs' declarations, ARP Br. 16 n.22, are misplaced. *See, e.g.*, *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits"); *Ross-Whitney Corp. v. Smith Kline & French Labs.*, 207 F.2d 190, 198 (9th Cir. 1953).

declarations submitted *by Defendants* confirm that minorities have been benefited most from ballot collection. *See* Doc. 152-12 ("Dang Decl.") ¶¶ 8, 13 (ballot collection used in minority communities); Doc. 152-20 ("Johnson Decl.") ¶ 12 ("ballot harvesters often target minority communities"); Doc. 152-7 ("Arellano Decl.") ¶¶ 5, 10 (many people "target[ed]" by groups that collect ballots "do not speak English"; "ballot harvesters have taken a special interest in minority communities"); Doc. 152-19 ("Begay Decl.") ¶ 5.

Evidence from the file for the preclearance submission for SB1412—a predecessor bill to HB2023—also shows that the elimination of ballot collection disparately burdens minority voters.[2] As that file documents, Arizona's then-Elections Director Amy Bjelland, who worked with other members of the Secretary of State's staff and Senator Shooter in drafting SB1412, informed the Justice Department ("DOJ") that SB1412 "*was targeted at voting practices in predominantly Hispanic areas in the southern portion of the state near the Arizona border*" and that "[m]any in the Secretary of State's office were worried about the Section 5 review of S.B. 1412." Ex. 3 at 39-40 (emphasis added); *see also id.* (although FBI and Secretary of State found no wrongdoing in San Luis, Bjelland thinks there is a problem that "may result 'from the different way that Mexicans do their elections'"). In addition, an employee of the Yuma County Recorder's Office informed DOJ that while "the county does not experience a great deal of traffic from persons returning large numbers of vote by mail ballots," the exception was in Marin—a city near the border with Mexico where "almost everyone is Hispanic"—"where people do tend to

[2] Senator Shooter states in his declaration that SB1412 was withdrawn from the preclearance process "for specific reasons unbeknownst to" him and that he believes it "would have been cleared." Doc. 152-5 ("Shooter Decl.") ¶ 14. However, DOJ informed the State that it did not interpose any objection with respect to some changes in SB1412 but that, "[w]ith regard to the enactment of A.R.S. § 16-1005(D)"—a photo ID requirement for individuals who delivered more than ten early ballots—"our analysis indicates that the information sent is insufficient to enable us to determine that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group"; asked for detailed information regarding that provision; and explained that "if no response is received within sixty days of this request, the Attorney General may object to the proposed changes." Ex. 3 at 25-27 (unless stated otherwise, citations to "Ex. X" refer to exhibits to the Declaration of Sarah R. Gonski in Support of Plaintiffs' Reply in Support of Joint Motion for Preliminary Injunction of H.B. 2023, filed concurrently).

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1 bring up vote by mail ballots in groups." *Id.* at 32.

2 Representative Ruben Gallego informed DOJ that "[t]he percentage of Latinos who
3 vote by mail exploded" in 2010 because "municipalities in Maricopa County … reduced
4 their number of polling places and physical early voting locations." *Id.* at 28. "This
5 sudden increase in the Hispanic community's use of the vote by mail process caused
6 Republicans to raise accusations of voter fraud," particularly in Yuma County, even
7 though "[t]he Yuma County Recorder later publicly stated that the claims were baseless."
8 *Id.* at 29. SB1412 was thus "meant to target Hispanic voters who are less familiar with the
9 vote by mail process and are more easily intimidated due to the anti-Latino climate in the
10 state." *Id.* at 28. Indeed, Rep. Gallego explained that "the atmosphere in Arizona is scary,
11 particularly for minorities," as "[a]nti-immigrant and anti-Latino sentiment is stronger
12 than ever"; "since Hispanics have come to voting by mail later [than] other groups, they
13 are less comfortable with the process and more likely to be dissuaded from using it than
14 others"; and "[g]iven that Latinos often do not have as easy access to transportation
15 compared to others, minority voters who are negatively affected by this law will not be
16 able to mitigate its effects as easily [as] others." *Id.* at 28-29. Rep. Gallego also pointed
17 out that SB1412 "could have a retrogressive effect on the ability of Native American
18 voters to participate in the electoral process" in part "due to the isolated nature of
19 reservations and their oftentimes communal living structure." *Id.* at 29.

20 Defendants have not attempted to rebut the overwhelming evidence that HB2023
21 imposes a racially disparate burden. Indeed, there is not a shred of evidence indicating that
22 white voters were more likely than minority voters, or even *as likely* as minority voters, to
23 submit ballots that were collected and delivered by others. *See generally Frank v. Walker*,
24 773 F.3d 783, 797 (7th Cir. 2014) (Posner, J., dissenting from denial of rehearing en banc
25 on behalf of half of the then-active judges of the Seventh Circuit) ("Unless conservatives
26 and liberals are masochists, promoting laws that hurt them, these laws must suppress
27 minority voting…."). Instead, Defendants incorrectly argue that the undisputed evidence
28 that HB2023 imposes a racially disparate burden is insufficient.

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To begin with, Defendants insist that a disparate impact can only be proven through *quantitative* evidence. ARP Br. 5; State Br. 5-7. Given that no such analysis can be conducted *because the State does not keep the necessary data*, *see, e.g.*, Ex. 1 ("Berman Reply") App. A, this is an audacious position for Defendants to take. Regardless, there is no rule—and Defendants cite no case—indicating that a disparate impact can only be established through quantitative (or any other specific type) of analysis.[3] Rather, the critical question is whether Plaintiffs have shown by a preponderance of the evidence that HB2023 imposes racially disparate burdens. *E.g.*, *Farrakhan v. Gregoire*, No. CV-96-076-RHW, 2006 WL 1889273, at *3 (E.D. Wash. July 7, 2006), *rev'd and remanded on other grounds*, 590 F.3d 989 (9th Cir. 2010).

Defendants' arguments that these disparate burdens should be discounted because they only impose an "*inconvenience*," because "*any* eligible adult may vote" through other means, or because "Plaintiffs refer [only] to 'thousands' of ballots being collected from minority voters," ARP Br. 6; State Br. 5-6, also fail. As a factual matter, these claims understate the burdens at issue: the evidence shows that there are a number of voters who would have been unable to vote in prior elections in the absence of ballot collection and delivery, *see infra* Section I.B, and there plainly will be such voters in future elections as well. As a legal matter, these arguments miss the point that the question under the VRA is not the *severity* of a burden but whether that burden applies *disparately*. "Section 2 applies to any 'standard, practice, or procedure' that makes it harder for an eligible voter to cast a ballot, not just those that actually prevent individuals from voting." *Ohio State Conf. of the NAACP v. Husted*, 768 F.3d 524, 552 (6th Cir. 2014) ("*NAACP*"), *vacated on*

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[3] *Gonzalez v. Arizona* does not suggest otherwise. There, the Ninth Circuit found that the district court did not clearly err in finding that Section 2 had not been violated where "Gonzalez alleged that Latinos … are less likely to possess the forms of identification required under Proposition 200 to … cast a ballot, but produced *no* evidence supporting this allegation." 677 F.3d 383, 407 (9th Cir. 2012) (emphasis added; internal quotation marks omitted), *aff'd sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247 (2013) (emphasis added); *accord Veasey*, 2016 WL 3923868, at *42 (Higginson, J., concurring) (discussing *Gonzalez*).

1 *other grounds by* 2014 WL 10384647 (6th Cir. Oct. 1, 2014).[4] "'If, for example, a county
2 permitted voter registration for only three hours one day a week, and that made it more
3 difficult for blacks to register than whites, blacks would have less opportunity 'to
4 participate in the political process' than whites, and [Section] 2 would therefore be
5 violated….'" *LWV*, 769 F.3d at 246 (quoting *Chisom v. Roemer*, 501 U.S. 380, 408 (1991)
6 (Scalia, J., dissenting)). A contrary understanding would be at odds with the goals of the
7 VRA, which "Congress enacted … for the broad remedial purpose of rid[ding] the country
8 of racial discrimination in voting" and in response "to the increasing sophistication with
9 which the states were denying racial minorities the right to vote." *Farrakhan v.*
10 *Washington*, 338 F.3d 1009, 1014 (9th Cir. 2003) (internal quotation marks omitted).[5]

11 The en banc Ninth Circuit's decision in *Gonzalez* is instructive. As Defendants do
12 here, the State argued that the provision at issue did not violate a federal statute (in that
13 case, the National Voter Registration Act ("NVRA")) because it "impose[d] little
14 additional burden on applicants" and was "not excessively burdensome under the standard
15 set forth in *Crawford*." 677 F.3d at 401. The Ninth Circuit held that "[t]his argument
16 misses the mark. The goal of the NVRA was to streamline the registration process for all
17 applicants; the fact that Proposition 200's registration provision only *partially* undermines
18 this goal does not make it harmonious with the NVRA." *Id.* Likewise here, the issue is not
19 *the extent* to which HB2023 undermines the purpose of the VRA but simply that it does.
20 *See also LWV*, 769 F.3d at 244 ("Setting aside the basic truth that even one
21 disenfranchised voter—let alone several thousand—is too many, what matters for
22

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23 [4] *See also Veasey*, 2016 WL 3923868, at *24 ("If the State had its way, the Fifteenth Amendment and Section 2 would only prohibit outright *denial* of the right to
24 vote and overtly purposeful discrimination. Yet, both the Fifteenth Amendment and Section 2 also expressly prohibit *abridgement* of the right to vote.") (citation omitted); *id.*
25 at *29; *League of Women Voters of N. Car. v. North Carolina* ("*LWV*"), 769 F.3d 224, 243 (4th Cir. 2014) ("[N]othing in Section 2 requires a showing that voters cannot register
26 or vote under any circumstance.").

27 [5] *See also Chisom*, 501 U.S. at 403 ("[T]he Act should be interpreted in a manner that provides the broadest possible scope in combating racial discrimination.") (internal
28 quotation marks omitted); *LWV*, 769 F.3d at 238 ("Section 2 prohibits all forms of voting discrimination that lessen opportunity for minority voters.") (citation omitted).

purposes of Section 2 is not how many minority voters are being denied equal electoral opportunities but simply that 'any' minority voter is being denied equal electoral opportunities.") (citation omitted). Plaintiffs are thus likely to establish a disparate burden.

2. Causation

Defendants have also failed to rebut Plaintiffs' showing that this disparate burden is in part caused by or linked to the ongoing effects of discrimination. As previously discussed, the effects of Arizona's lengthy history of discrimination extend into every area of social, political, and economic life, as reflected by racially disparate levels of poverty, unemployment, education, and access to transportation, among other things. Doc. 73 ("A&P Br.") 19-21; *see also Gonzalez*, 677 F.3d at 406. Defendants' experts do not dispute the existence of these disparities. Doc. 152-15 ("Trende Rpt.") ¶ 125; *see also* Doc. 152-17 ("Critchlow Rpt.") 48. *But see* State Br. 7-8. And, because of these disparities, minorities are more likely than whites to fall into one of the groups—those who live in communities without secure mailboxes; lack reliable transportation; or have economic or personal circumstances that make ballot collection important to their ability to vote—that benefit most from ballot collection and delivery. Pls. Br. 2-3.

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In addition to this direct causal link between the ongoing effects of discrimination and HB2023's disparate burdens, Arizona's ongoing socioeconomic disparities generally make participation in elections more burdensome for minorities. Pls. Br. 3, 9; A&P Br. 14 n.5 (minority voters generally more susceptible to costs of voting); *see also* Critchlow Rpt. 48 (noting "general lack of outreach to less wealthy, minority communities" and that "[t]he higher a person's income, the higher their propensity to vote"). Indeed, one defense expert "do[es] not dispute … that these socioeconomic factors could generally inhibit the ability of minorities to participate in the electoral process," Trende Rpt. ¶ 125, and another asserts that "[i]ncreased political involvement by citizens remains a largely a cultural and socio-economic issue," Critchlow Rpt. ¶ 16. *See generally Veasey*, 2016 WL 3923868, at *29 ("Importantly, the district court also found that [t]hese socioeconomic disparities have hindered the ability of African-Americans and Hispanics to effectively participate in the

political process.") (internal quotation marks omitted). And the strength of the evidence as to the Senate Factors confirms that HB2023's disparate burden is in part caused by or linked to the ongoing effects of discrimination. Pls. Br. 9-11.

Defendants' arguments to the contrary are unavailing. For instance, while they argue based on *Frank v. Walker*, 768 F.3d 744, 755 (7th Cir. 2014), that the relevant discrimination must be state-sponsored, ARP Br. 5-6, they ignore the Ninth Circuit's statement in *Gomez v. City of Watsonville*, 863 F.2d 1407 (9th Cir. 1988), that it was "troubled" by the district court's apparent belief that, in assessing Senate Factors 1 and 5, "it was required to consider only the existence and effects of discrimination committed *by the City of Watsonville itself*"; "[t]his conclusion is incorrect." *Id.* at 1418. Reading Senate Factor 1 to focus solely on "discrimination committed by the relevant political subdivision … would result in precisely the sort of mechanistic application of the Senate factors that the Senate Report emphatically rejects," the court explained, and "[t]here is no apparent reason why other forms of discrimination against Watsonville Hispanics may not be considered as factors that contribute to making" the voting scheme at issue "a device that impedes Hispanics' equal participation in the electoral process." *Id.* The court further explained that "the literal language of the fifth Senate factor does not even support the reading that only discrimination by Watsonville may be considered; the limiting language describes the people discriminated against, not the discriminator." *Id.*

Frank itself acknowledges that its focus on state-sponsored discrimination makes it an outlier. *See* 768 F.3d at 755. And this narrow focus is difficult to square "with Section 2's directive to address the 'totality of the circumstances,' and with the Supreme Court's admonitions to probe the interaction of the challenged practice 'with social and historical conditions' as well as consider 'the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process.'" *Veasey*, 2016 WL

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3923868, at *43 (Higginson, J., concurring) (quoting *Gingles*, 478 U.S. at 45, 47).[6] *Frank*'s position is also at odds with the principle that the VRA should be interpreted broadly. *See Farrakhan*, 338 F.3d at 1014; *Chisom*, 501 U.S. at 403. The Court should thus reject Defendants' argument that it may only consider state-sponsored discrimination.

Regardless, Plaintiffs' VRA claim would likely succeed on the merits even if *Frank*'s cramped reading applied. Arizona has a lengthy history of official discrimination. *E.g.*, Lichtman Rpt. 23-28; Critchlow Rpt. 19-20. That history has resulted in precisely the disparities—in access to a vehicle, educational attainment, constraining economic circumstances, propensity to live in communities without secure mailboxes, and familiarity with the voting process—that cause the elimination of ballot collection to burden minority voters disproportionately. *See, e.g.*, Lichtman Rpt. 52 ("Arizona has a long and ongoing history of official discrimination against minorities …. [that] has a substantial present-day manifestation in the much lower socio-economic standing of minorities relative to whites on an array of measures—including income, poverty, unemployment, education, English proficiency, home ownership, access to vehicles and telephones, and personal—that bear directly upon the ability to participate in the political process in Arizona."); *see also id.* 24, 37; Critchlow Rpt. 39 ("[e]nding de facto segregation of schools in Tucson and Phoenix has been difficult"). *See generally Veasey*, 2016 WL 3923868, at *20 ("Unlike in *Frank*, the district court in this case found both historical and contemporary examples of discrimination in both employment and education by the State of Texas, and it attributed SB 14's disparate impact, in part, to the lasting effects of that State-sponsored discrimination. Thus, even assuming this limitation from *Frank* applied, the evidence here meets that test.") (internal citation omitted).

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[6] *See also Solomon v. Liberty Cty.*, 899 F.2d 1012, 1032 (11th Cir. 1990) (en banc) (Tjoflat, C.J., specially concurring) ("Congress … revised section 2 to prohibit election practices that accommodate or amplify the effect that private discrimination has in the voting process.") (citation omitted); *United States v. Marengo Cty. Comm'n*, 731 F.2d 1546, 1567 n.36 (11th Cir. 1984) (Wisdom, J.) ("[U]nder the results standard of section 2, pervasive private discrimination should be considered, because such discrimination can contribute to the inability of [minorities] to assert their political influence and to participate equally in public life.").

1 The assertion that Arizona's discrimination is too remote, *see* ARP Br. 7, also fails.
2 Responding to a similar claim in a challenge to a voter ID law, the en banc Fifth Circuit
3 recently held that "[w]hile long-ago history of discrimination is of limited probative value
4 when considering whether the Legislature acted with discriminatory intent, it cannot be
5 ignored in the discriminatory effect analysis, because even these seemingly remote
6 instances of State-sponsored discrimination continue to produce socioeconomic conditions
7 that the district court found caused the racial disparities in possession of" voter ID.
8 *Veasey*, 2016 WL 3923868, at *27 n.53. The Supreme Court has likewise explained that
9 "Congress intended that the [VRA] eradicate inequalities in political opportunities that
10 exist due to the vestigial effects of past purposeful discrimination," and that "the purpose
11 of the [VRA] was 'not only to correct an active history of discrimination, … but also to
12 deal with the accumulation of discrimination.'" *Gingles*, 478 U.S. at 44 n.9, 69 (quoting S.
13 Rep. No. 97-417, at 5). Thus, "a § 2 analysis requires the district court to engage in a
14 searching practical evaluation of the past and present reality." *Gonzalez*, 677 F.3d at 406
15 (citation and internal quotation marks omitted).

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16 Moreover, Arizona's recent history is replete with discriminatory acts. In 1997,
17 Chandler police and federal immigration agents conducted a four-day "roundup" in which
18 hundreds of people, including some U.S.-born Hispanics, were taken into custody and
19 asked to prove their citizenship, leading to lawsuits and costing the city over $500,000.
20 Berman Rpt. 18. In 2004, Arizona enacted the nation's first documentary proof-of-
21 citizenship requirement for voter registration, which caused approximately 31,000 voter-
22 registration applications to be rejected before the law was invalidated under the NVRA.
23 Lichtman Rpt. 24; Berman Rpt. 19. In 2010, the State banned schools from having classes
24 "designed primarily for pupils of a particular ethnic group" to eliminate the Mexican
25 American Studies Program in Tucson. Lichtman Rpt. 25; Berman Rpt. 18. It also enacted
26 SB 1070, which made it a crime for an alien not to carry immigration documents, required
27 law enforcement to assess a person's immigration status during a lawful stop, detention,
28 or arrest if there was reasonable suspicion that the person was in the United States

illegally, and authorized warrantless arrests where there was probable cause to believe that an individual was in the country illegally. Lichtman Rpt. 26; *see also* Berman Rpt. 19.

Arizona has also long had requirements that candidates for public office be able to read, write, and speak English fluently, which, as recently as 2011, resulted in the removal of a city-council candidate in San Luis—a city that, as of 2010, was 98.7% Hispanic or Latino. Lichtman Rpt. 24-25; Doc 101-13. A decades-long effort to desegregate the Tucson schools continued until 2013, when the parties finally entered into a "a concrete plan to desegregate Tucson public schools." Lichtman Rpt. 26. That same year, a federal court found that Sheriff Joe Arpaio and his office had violated the constitutional rights of Hispanics by targeting them during raids and traffic stops; and Sheriff Arpaio and three of his aides were found in contempt of court just a few months ago for failing to abide by the court's order that they stop racially profiling. *Id.*; Berman Rpt. 18-19. In short, the claim that discrimination is ancient history in Arizona is indefensible.

Defendants' other arguments regarding the Senate Factors fare no better. They repeatedly attempt to compare Arizona to other states or suggest that such a comparison should have been made. *E.g.*, ARP Br. 7; State Br. 2, 9 n.11. But "a district court's examination in [a Section 2] case is intensely fact-based and localized." *Gonzalez*, 677 F.3d at 406 (citation and internal quotation marks omitted); *LWV*, 769 F.3d at 244.

ARP also asserts that there are "positive trends in minority voting turnout and [was] consideration of minority interests in the 2011 redistricting process." ARP Br. 7. The evidence shows, however, that this trend occurred in part *because of ballot collection*. *See, e.g.*, Doc. 92 ("Danley Decl.") ¶¶ 4, 6 (One Arizona has knocked on "over a million doors" since beginning voter outreach in 2010 and "deliver[s] several thousand[s] [of] ballots" on behalf of Latino voters in a typical election); Doc. 90 ("Parraz Decl.") ¶¶ 3, 5 (Citizens for a Better Arizona "focused its get-out-the-vote efforts on helping low-income Latino voters" and delivered thousands of ballots per election—nine thousand in a 2012 Sheriff's election alone). This fact therefore *supports* a finding that HB2023 violates the VRA. That aside, the questions whether there are positive trends in minority turnout or

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1 was consideration of minority interests in a single redistricting process are of limited
2 relevance because they do little to illuminate the central inquiry: whether HB2303
3 interacts with the ongoing effects of discrimination to burden minority voters disparately.
4 ARP also states that "Plaintiffs' analysis of the extent voting is racially polarized
5 (second factor) is far too narrow, with no attempt to correlate party affiliation or assess
6 statewide results and ignoring elections not involving a Hispanic candidate." ARP Br. 7.
7 But "correlat[ing] party affiliation" with racially polarized voting data would lead to
8 highly misleading results given the powerful link between race and party affiliation in
9 Arizona (and American) politics. *E.g.*, Ex. 2 ("Lichtman Reply") 9. Further, ARP's expert
10 "would not dispute that there is some degree of racially polarized voting in Arizona" and
11 admits that "[t]he 2012 election results suggest that, at least among Hispanics, the
12 immigration fights may have led to a *higher* degree of polarization." Trende Rpt. ¶¶ 92,
13 104 (emphasis added); *see also Gonzalez*, 677 F.3d at 406 (district court found that
14 "Arizona continues to have some degree of racially polarized voting"). And, ARP's
15 position finds little support in the case law. *See Old Person v. Cooney*, 230 F.3d 1113,
16 1129 (9th Cir. 2000); *Solomon*, 899 F.2d at 1013; *id.* at 1020-21 (Kravitch, J., specially
17 concurring); *id.* at 1037 (Tjoflat, C.J., specially concurring).
18 Defendants also undervalue the force of much of the evidence at issue. For
19 instance, ARP's claim that "[s]elective examples … hallmark Plaintiffs' assertions as to
20 the 'history of voting practices that tend to enhance the opportunity for discrimination
21 against minority groups' (third factor)," ARP Br. 7, fails to acknowledge the forceful
22 evidence presented as to this factor. *See* A&P Br. 18-19 (discussing, among other things,
23 formal exclusion of Native Americans from voting until 1948; the use of a literacy test
24 until 1972; DOJ's refusal to preclear four separate redistricting plans; and the 2004
25 documentary proof-of-citizenship requirement). ARP's characterization of the racial
26 appeals Plaintiffs have identified as "weak," ARP Br. 7, is similarly difficult to
27 understand. The examples provided from Raul Castro's race for governor are obvious
28 racial appeals, and Plaintiffs have pointed to three separate racial appeals *since 2010*.

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A&P Br. 21.[7] Tellingly, defense expert Mr. Trende's response to the point that Republican presidential nominee Donald Trump made negative statements about Hispanics at a recent Arizona rally, *id.*, is that "Donald Trump does not seem to target his incendiary comments to any particular state." Trende Rpt. ¶ 126; *see also* Arizona Primary Results, N.Y. Times (Trump handily won primary), *available at* www.nytimes.com/elections/results/arizona.

With respect to Senate Factor 7—the extent to which members of the minority group have been elected to public office—ARP criticizes Plaintiffs' evidence not on the grounds that it does not show disparities but because Plaintiffs did not consider *different* issues, including how many minorities have run for office and the efforts of Arizona's redistricting commission to ensure competitive districts for minority candidates. ARP Br. 8. ARP also asserts that Plaintiffs should not have relied on data regarding judges because they are subject only to retention elections, ARP Br. 8 n.9; but ARP does not explain why this evidence of minority representation in public office should not be considered. The State, for its part, points to "rough minority proportionality in the state house and significant representation in the state senate" in suggesting that Senate Factor 7 is not present. State Br. 9. However, the State ignores the critical point that statewide elections have had markedly racially disproportionate results and that, although the disproportionality is much less extreme in the state legislature, minorities are nonetheless underrepresented. A&P Br. at 22; *see also Veasey*, 2016 WL 3923868, at *30. The State also ignores that defense expert Mr. Trende does not "deny that minorities are disproportionately underrepresented in government." Trende Rpt. ¶ 129.

As to Senate Factor 8, while ARP points to *some* issues on which the State has been responsive to the needs of minority communities, ARP Br. 8, the fact remains that the State has been unresponsive much more than it has been responsive. The recent examples of discrimination and the extreme socioeconomic disparities by race discussed above confirm this conclusion, as does the passage of HB2023 itself, given, as explained

[7] The State's assertion that the examples supplied were disconnected from actual campaigning, State Br. 9 & n.10, is simply wrong as factual matter. *See* A&P Br. 21.

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1 elsewhere, that the State knew this law would burden minorities and likely would not have
2 survived preclearance review and yet took no steps to ameliorate the law's disparate
3 impacts. *Accord Veasey*, 2016 WL 3923868, at *30-31 ("[t]he evidence supports the
4 district court's finding that 'the legislature knew that minorities would be most affected by
5 the voter ID law'"; the author of some of the provisions at issue warned that the law was
6 unlikely to obtain preclearance; ameliorative amendments were defeated; and "[w]hile this
7 does not necessarily prove improper intent on the part of those legislators, it nonetheless
8 supports a conclusion of lack of responsiveness"). Indeed, Rep. Ugenti-Rita said it was
9 not her "problem" if voters could not vote without ballot collection. Pls. Br. 5.

10 Regarding the last Senate Factor, ARP asserts that HB2023 is not tenuous because
11 it furthers the goal of preventing fraud. ARP Br. 8. "Yet, the articulation of a legitimate
12 interest is not a magic incantation a state can utter to avoid a finding of disparate impact.
13 Even under the least searching standard of review [that courts] employ for these types of
14 challenges, there cannot be a total disconnect between the State's announced interests and
15 the statute enacted." *Veasey*, 2016 WL 3923868, at *31. Here, advocates of HB2023 could
16 not identify any credible evidence that ballot collection led to fraud or HB2023 would
17 prevent it, and Rep. Ugenti-Rita admitted that HB2023 did not target fraud but rather "an
18 activity that could potentially lead to" fraud. Pls. Br. 6-7; *see also Veasey*, 2016 WL
19 3923868, at *32 (explaining in tenuousness finding that "[a]t least one Representative
20 who voted for SB 14 conceded that he had no evidence to substantiate his fear of
21 undocumented immigrants voting") (citation omitted). HB2023 is tenuous—at best.

22 Finally, Defendants inaccurately assert that "Plaintiffs do not connect their analysis
23 of the Senate factors to HB2023." State Br. 7. To begin, Defendants' quarrel here is not
24 with Plaintiffs but with Congress and the Supreme Court, which have identified the Senate
25 Factors as pertinent to the causation inquiry. *See generally Veasey*, 2016 WL 3923868, at
26 *18 ("As did the Fourth and Sixth Circuits, we conclude that the *Gingles* factors should be
27 used to help determine whether there is a sufficient causal link between the disparate
28 burden imposed and social and historical conditions produced by discrimination.").

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In any event, the link between the Senate Factors and HB2023's racially disparate impact is clear. The connection between socioeconomic disparities (Factor 5) and HB2023's disparate burden is discussed at length above, as is the role that voting-related discrimination and the use of practices that enhance the opportunity for voting discrimination (Factors 1 and 3) play in creating those disparities. Arizona's history of voting-related discrimination is also linked to HB2023's disparate impact because that history shows that the passage of legislation burdening minority voters is not a *sui generis* event but rather part of a pattern, and because it has caused members of minority groups to have less of a history of participation in the electoral process than other voters and thus to be more greatly burdened by changes to a voting mechanism on which they have relied. *See also Gonzalez*, 677 F.3d at 406 (district court "found that Latinos had suffered a history of discrimination in Arizona that hindered their ability to participate in the political process fully"). The existence of racially polarized voting and racial appeals (Factors 2 and 6) are significant because they show that race remains a salient factor in elections and that minorities have not achieved equal opportunity to elect representatives of their choice. *See also* Critchlow Rpt. 47-48 (candidates for office do not make effort to visit Native American voters, leading to their disillusionment with and nonparticipation in the political process; minority voters may feel more engaged in the political process when members of the community are candidates). And a lack of responsiveness to minority needs and HB2023's tenuousness (Factors 8 and 9) "bolster[] the conclusion that minorities are not able to equally participate in the political process" because, "[o]therwise, elected officials would be more responsive regarding the disparate impact of a law, and a law not meaningfully related to its expressed purpose would be abandoned or ameliorated to avoid imposing a disparate impact." *Veasey*, 2016 WL 3923868, at *31. Put simply, the evidence overwhelmingly shows that HB2023 interacts with the ongoing effects of discrimination in Arizona to burden minority voters disparately.

B. HB2023 Unconstitutionally Burdens the Right to Vote

Defendants have also failed to rebut Plaintiffs' showing that they are likely to

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establish that HB2023 unduly burdens the right to vote. Initially, ARP suggests that the governing legal standard—the *Anderson-Burdick* test—is a binary test that cleanly divides election laws into those subject to strict scrutiny and those that need only pass rational-basis review. *See* ARP Br. 10. That is incorrect. The *Anderson-Burdick* test is a "flexible" sliding-scale test in which "the rigorousness of [the court's] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens [voting rights]." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *accord* State Br. 11. Under this framework, courts must not "apply[] any 'litmus test' that would neatly separate valid from invalid restrictions" and instead must "make the 'hard judgment' that our adversary system demands." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190 (2008) (controlling op.). Most cases are thus "subject to ad hoc balancing," and "a regulation which imposes only moderate burdens could well fail the *Anderson* balancing test when the interests that it serves are minor, notwithstanding that the regulation is rational." *McLaughlin v. N.C. Bd. of Elections.*, 65 F.3d 1215, 1221 & n.6 (4th Cir. 1995); *see also Crawford*, 553 U.S. at 191 (controlling op.) ("However slight [a] burden [on voting] may appear, … it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.") (citation and internal quotation marks omitted).

Plaintiffs have demonstrated that HB2023 severely burdens the right to vote of Arizonans who have difficulty returning their early ballots in time for them to be counted, and these burdens fall with particular force on low-income and minority voters. Pls. Br. 12; *supra* Section I.A.1. The evidence is clear, moreover, that many voters would have been unable to vote in previous elections if ballot collection had not been available. *See* Doc. 87 ("Anderson Decl.") ¶¶ 5, 9, 11-14 (members of Alliance of Retired Americans "would … not have been able to vote without our assistance"); Doc. 88 ("Pstross Decl.") ¶¶ 6, 9 (collected ballots for voters who would not have been able to vote without her assistance); Doc. 93 ("Larios Decl.") ¶ 9 (collected ballots from voters who "would not otherwise have been able to ensure their ballot was returned in time"); Danley Decl. ¶ 7 (many would "not have voted without our help"); Arias Decl. ¶¶ 4, 6-7 (would not have

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been able to vote in past elections without help from ballot collectors); Doc. 91 ("Gillespie Decl.") ¶¶ 8, 10; Doc. 94 ("Chapman Decl.") ¶¶ 8, 11. It follows that HB2023 will prevent eligible voters from having their votes counted. *See also Veasey*, 2016 WL 3923868, at *32 ("[I]ncreasing the cost of voting decreases voter turnout—particularly among low-income individuals, as they are the most cost sensitive.").

ARP's claim that HB2023's burden cannot be severe because the law relates to early voting, which is not a fundamental right, ARP Br. 10, also lacks merit. Indeed, the Sixth Circuit rejected a similar argument in *Obama for Am. v. Husted*, 697 F.3d 423 (6th Cir. 2012) ("*OFA*"). In that case, the defendants cited *McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 810-11 (1969)—a case also cited by ARP here, ARP Br. 10 n.15—in support of the assertion that rational-basis review should apply to Ohio's elimination of the last three days of early voting for nonmilitary voters because there is no right to an absentee ballot. *OFA*, 697 F.3d at 430-31.[8] In finding that argument insufficient, the Sixth Circuit explained that "[t]he *McDonald* plaintiffs failed to make out a claim for heightened scrutiny because they had presented no evidence to support their allegation that they were being prevented from voting" and added that the *OFA* plaintiffs "did not need to show that they were legally prohibited from voting, but only that burdened voters have few alternate means of access to the ballot." *Id.* at 431 (citation and internal quotation marks omitted). The *OFA* plaintiffs met that burden by presenting evidence (as have Plaintiffs here) that voters who were "disproportionately 'women, older, and of lower income and education attainment' … represent[ed] a large percentage of those who participated in early voting in past elections." *Id.* (citation and internal quotation marks omitted); *cf. Florida v. United States*, 885 F. Supp. 2d 299, 328-29 (D.D.C. 2012) (in

[8] The other cases cited by ARP are inapposite. *Brown v. Detzner* considered whether there was intentional discrimination. 895 F. Supp. 2d 1236, 1255-56 (M.D. Fla. 2012). *Raetzel v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1356-58 (D. Ariz. 1990), focused on procedural due process. And *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004), involved a claim that Illinois should *adopt* universal early voting—a situation entirely different from one in which, as here, voters have come to rely on a voting mechanism that is then taken away.

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Section 5 case, cut in early voting caused a "materially increased burden on African-American voters' effective exercise of the electoral franchise" that "would impose a sufficiently material burden to cause some reasonable minority voters not to vote").

ARP's position also runs counter to the principle that courts must not "apply[] any 'litmus test' that would neatly separate valid from invalid restrictions" and instead must "make the 'hard judgment' that our adversary system demands." *Crawford*, 553 U.S. at 190 (controlling op.). And it ignores the fact that, in Arizona, early voting has been a statutory right since 1997. A.R.S. § 16-541. For these reasons, the Court should reject ARP's suggestion that restrictions on early voting be treated differently from other restrictions on voting, find that HB2023 severely burdens the right to vote,[9] and apply strict scrutiny to the State's justifications for HB2023.

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Even under less exacting scrutiny, however, HB2023 must be struck down because the State has failed to present a rationale for HB2023 that even plausibly could justify its burdens. While "Plaintiffs do not dispute that the State has a legitimate interest in election integrity and fraud prevention," ARP Br. 11, "[t]his does not mean … that the State can, by merely asserting an interest in preventing voter fraud, establish that that interest outweighs a significant burden on voters." *NAACP*, 768 F.3d at 547. Instead, "the state must articulate specific, rather than abstract state interests, and explain why the particular restriction imposed is actually necessary, meaning it actually addresses, the interest put forth." *Id.* at 545; *see also OFA*, 697 F.3d at 434 (restriction likely unconstitutional where state provided "no evidence" to support its "vague" justifications).

Here, Defendants effectively concede that, to the extent that HB2023 is aimed at fraud, the statute is addressing a problem that does not exist. *See* Pls. Br. 6-7; ARP Br. 2

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[9] The claim that Arizona is a leader in ballot access, State Br. 2, ignores that it was subject to preclearance for decades and, since being freed therefrom, has begun rolling back access to the franchise; the State's heavy emphasis on early voting in recent years is precisely the reason that the criminalization of ballot collection will have such a broad impact; just a few months ago Arizona made national headlines for its wait times for voting; and the State leads the nation by a considerable margin in the rejection of provisional ballots. A&P 1-2, 6; Pls. Br. 1.

1 ("the State enacted H.B. 2023 to deter future fraud"); *id.* at 3 (measure is "prophylactic");
2 Doc. 152-3 ("Ugenti-Rita Decl.") ¶ 43 (HB2023 "does not directly address voter fraud");
3 *id.* ¶ 46 ("It does not and should not matter whether fraud has already occurred here as a
4 result of ballot harvesting."). ARP's Rule 30(b)(6) representative could not identify a
5 single case of fraud related to ballot collection. Defendants are thus left to attempt to
6 justify HB2023 as a fraud-prevention measure through wild—and generally inaccurate—
7 speculation.[10] Similarly, there is no evidence of any widespread public perception that
8 ballot collection led to fraud or that its elimination has increased public confidence in
9 elections. *See* ARP Br. 11-12. On the contrary, the fact that the State repealed a precursor
10 bill before voters had a chance to put it to a referendum, Pls. Br. 4-5, shows that the public
11 *supports* ballot collection and does not regard it as a practice that led to fraud.

12 Defendants' claim that HB2023 "make[s] the early voting laws consistent with in-
13 person voting laws," ARP Br. 1, makes no sense. Early voting by mail is wholly different
14 from in-person voting. As ARP notes, Arizona law bars "electioneering within 75 feet of a
15 polling place" and generally permits "only one person per voting booth at a time." *Id.* at 2.
16 But HB2023 prevents neither electioneering near voters filling out early ballots nor
17 multiple voters from filling out their early ballots together. HB2023 plainly was not part
18 of any attempt to make early voting laws consistent with in-person voting laws.

19 This absence of any plausible link between a material state interest and HB2023 is
20 more than sufficient to doom that law under the *Anderson-Burdick* test. *See, e.g.*, *NAACP*,

21

22 [10] Defendants have submitted declarations asserting that "there is no way for the voter to know whether" a collected ballot "is properly cast and counted," Doc. 152-9
23 ("Bowen Decl.") ¶ 11, that "[w]ithout H.B. 2023, there is no mechanism in place to protect a ballot's chain of custody," Shooter Decl. ¶ 19, and that "[n]othing stops anyone
24 from holding the ballot to a light source and discarding it if they do not agree with my vote," Arellano Decl. ¶ 8. Those statements are all inaccurate. Voters can determine
25 whether their ballots were counted by checking their Recorder's website or the Secretary of State's website. Pls. Br. 6. The mechanisms in place to protect a ballot's chain of
26 custody included the statutory requirement that ballots be tamper-evident, a requirement that the ballot arrive sealed, and a signature affidavit on the outside of the ballot envelope
27 that is matched to the voter's registration documents before it is counted. A.R.S. § 16-548; Doc. 101-8 at 59. And tampering with or mishandling a ballot was already illegal under
28 Arizona law. Pls. Br. 2.

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768 F.3d at 547 ("[T]he specific concern Defendants expressed regarding voter fraud … was not logically linked" to concerns with an aspect of the provision at issue.). Making matters worse, Defendants assert in their briefing that HB2023 was necessary due to large-scale ballot collection. ARP Br. 3, 12. Of course, HB2023 does not target large-scale ballot collection; it criminalizes *all* ballot collection. And it does so even though the legislature was presented with several amendments that would have reduced the burdens that HB2023 imposes on the right to vote, *see* Pls. Br. 7-8, and had previously passed legislation that did not ban ballot collection but rather capped the number of ballots that an individual could collect, Lichtman Rpt. 5. *But see* ARP Br. 3 (claiming that HB2023 is "narrowly tailored").[11] HB2023 therefore also fails the *Anderson-Burdick* test because "the interests identified by the State can … be served through other means, making it unnecessary to burden the right to vote." *Common Cause Ind. v. Individual Members of the Ind. Election Comm'n*, 800 F.3d 913, 928 (7th Cir. 2015); *accord Burdick*, 504 U.S. at 434 (balancing must "tak[e] into consideration the extent to which those interests make it necessary to burden the plaintiff's rights") (citation and internal quotation marks omitted).

C. HB2023 Violates the First Amendment Right to Associate

Defendants' only response to Plaintiffs' arguments in support of their First Amendment claim is to assert that ballot collection is not expressive activity. ARP Br. 13; State Br. 13. As Plaintiffs explained before, however, courts have found that restrictions on voter registration efforts violate the First Amendment, and the criminalization of ballot collection should be treated similarly. Pls. Br. 13-14. ARP argues that these situations are distinguishable; yet it does so not on the grounds that one activity is more expressive than the other, but on the grounds that "[v]oter registration forms and *completed* ballots raise different election integrity concerns." ARP Br. 14. Defendants have thus failed to respond directly to Plaintiffs' showing that ballot collection is expressive activity protected by the First Amendment. Moreover, the only basis Defendants have provided for HB2023's

[11] While the State asserts that HB2023 "only limits who may return a ballot," State Br. 3, the statute in fact broadly prohibits the *possession* of early ballots.

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infringement on Arizonans' First Amendment rights is that ballot collection raises election integrity concerns—a state interest that is entitled to minimal, if any, weight, as explained above. Accordingly, Plaintiffs are likely to succeed on the merits of this claim.

D. HB2023 Violates the Constitution's Prohibition of Partisan Fencing

Defendants' efforts to respond to Plaintiffs' partisan fencing claim, *see* Pls. Br. 14-16, are unpersuasive as well. Defendants assert that enactment of a law with the intent to "burden or deny the right of citizens to vote on the basis of their political viewpoint or affiliation does not give rise to an independent claim. ARP Br. 14; State Br. 14. Justice Kennedy has explained, however, that the First Amendment proscribes laws that burden[] or penaliz[e] citizens because of their participation in the electoral process, their voting history, their association with a political party, or their expression of political views," *Vieth v. Jubelirer*, 541 U.S. 267, 314 (2004) (Kennedy, J., concurring),[12] and the Supreme Court has noted that this view is "uncontradicted by the majority in any of [its] cases," *Shapiro v. McManus*, 136 S. Ct. 450, 456 (2015). *See also Carrington v. Rash*, 380 U.S. 89, 94 (1965). A district court recently explained that "the general import of these cases is that the First Amendment protects against voting procedures that make it harder for a person to vote simply because of his or her political views." *One Wis. Inst., Inc. v. Nichol*, No. 15-cv-324-jdp, 2016 WL 2757454, at *12 (W.D. Wis. May 12, 2016). Intentional partisan discrimination in voting thus gives rise to a cognizable claim.

Defendants also dispute that the evidence shows that HB2023 was enacted in order to suppress Democratic voting. ARP Br. 14-16; State Br. 14-15. As summarized in Plaintiffs' opening brief and set forth in Dr. Lichtman's reply report,[13] however, the

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[12] ARP's suggestion that *Vieth* held that political gerrymander claims are nonjusticiable political questions, ARP Br. 14, is inaccurate. While that was the view of four Justices, the fifth Justice concurring in the result—Justice Kennedy—explained that he "would not foreclose all possibility of judicial relief." 541 U.S. at 306.

[13] The State's footnoted motion to strike Dr. Lichtman's testimony regarding partisan fencing is baseless. State Br. 14 n.15. As Dr. Lichtman's reports explain, he is a highly credentialed historian, and his reports reflect the application of his expertise. Lichtman Rpt. 3, xi-xxv. Moreover, he has provided his expert opinion as to discriminatory intent in several cases. *Id.* at xxi.

evidence overwhelmingly establishes that partisan gain was the central motivation for HB2023. Indeed, ARP appears to agree that HB2023 will harm Democrats (and thus benefit Republicans). *See* ARP Br. 16-17 ("Plaintiffs' real issue with H.B. 2023 is that they believe Democrats will lose a partisan advantage"; Plaintiffs seek to strike down the law "for partisan reasons"). Because there is no concrete evidence whatsoever that ballot collection has resulted in fraud, this line of reasoning only makes sense if—as Plaintiffs have demonstrated—HB2023 will disproportionately deter Democrats from voting.

E. Defense Experts

While the discussion above establishes that Plaintiffs are likely to succeed, this conclusion is bolstered by the weakness of Defendants' expert evidence. A district court recently found that "Dr. Hood's testimony and report … reflected methodological errors that undermine his conclusions" and noted that "[o]ther courts have found likewise." *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-CV-896, 2016 WL 3166251, at *24 & n.11 (S.D. Ohio June 7, 2016) (citing *Veasey v. Perry*, 71 F. Supp. 3d 627, 663 (S.D. Tex. 2014); *Frank v. Walker*, 17 F. Supp. 3d 837, 881-84 (E.D. Wis. 2014), *rev'd on other grounds*, 768 F.3d 744 (7th Cir. 2014); *Florida*, 885 F. Supp. 2d at 324; *Common Cause/Ga. v. Billups*, No. 4:05-cv-0201, 2007 WL 7600409, at *14 (N.D. Ga. Sept. 6, 2007)). Another defense expert, Dr. Critchlow, holds a number of extreme views. *See* Ex. 5 at 5 (the "agenda" of "the radical new progressives … is basically that Americans are too rich, that we're using too many resources, we're living too well. And what their agenda is to control … how we live"); *id.* 2:22-3:3, 11:8 (referring to President Obama's "very frightening agenda" and stating that Obama's election signified "the radical left" taking over the Democratic Party and promoting an "agenda that is unprecedented in America threatening our individual liberties and constitutional principles"). The third defense expert, Mr. Trende, who responds to Dr. Lichtman's report, is not a historian but rather a lawyer with a Master's Degree in Political Science who has taken two semesters of graduate-level statistics and will soon *begin* doctoral coursework. Trende Rpt. 1-2. A court recently wrote that "Trende's lack of peer-reviewed articles in political science or

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elections and the fact that he ha[d] not previously examined the specific issues in th[at] case d[id] not disqualify him as an expert," but it "emphasize[d] … that … these considerations … factor[ed] heavily into [its] consideration of the … weight to afford his opinions." Ex. 4 at 18. The defense experts' opinions are entitled to little weight.

II. Defendants Have Failed to Rebut the Showing that the Equities Favor Relief

Absent an injunction, Plaintiffs, their members and constituents, and thousands of other Arizonans will have their rights burdened, abridged, and in some cases denied. These are all irreparable harms that demonstrate that the balance of the equities favors the issuance of an injunction. Pls. Br. 16-17; A&P Br. 28-30.[14] Defendants do not dispute—nor could they—that unlawful burdens on, or abridgement or denial of, the rights to vote and associate constitute irreparable harms that are contrary to the public interest. *E.g.*, *Ariz. Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2016) ("The public interest and the balance of the equities favor prevent[ing] the violation of a party's constitutional rights.") (alteration in original) (citation and internal quotation marks omitted). Instead, Defendants rely on essentially the same arguments they make with respect to the merits in asserting that the balance of the equities weighs against an injunction. *See* State Br. 15-16; ARP Br. 16-17. Because these arguments fail for the reasons set forth above, the Court should hold that the balance of the equities supports the issuance of an injunction.

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CONCLUSION

Plaintiffs respectfully request that HB2023 be preliminarily enjoined.

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[14] These harms to Plaintiffs and their supporters refute ARP's standing challenge. *See also* Supp. Healy Decl. ¶ 11 (discussing diversion of resources, undermining of communication with supporters, making it harder for supporters to vote, and harm to electoral efforts). *See generally Crawford*, 553 U.S. at 189 n.7 (controlling op.) ("We also agree with the unanimous view of [the Seventh Circuit decision] that the Democrats have standing to challenge the validity of" Indiana's voter ID law), *aff'g* 472 F.3d at 951 (political party had standing because of its diversion of resources "to getting to the polls those of its supporters who would otherwise be discouraged by the new law from bothering to vote"). In addition, the State's claim that "Plaintiffs named incorrect defendants for their Section 2 claim" because the Secretary of State "does not enforce criminal laws," State Br. 4 n.2, overlooks the fact that Arizona's chief law enforcement officer—Attorney General Mark Brnovich—is a defendant in this case in his official capacity. *See* Doc 12 ¶ 38.

Dated: July 26, 2016

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*Admitted *pro hac vice*

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and a Notice of Electronic Filing was transmitted to counsel of record.

s/Daniel R. Graziano

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