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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

16 Mi Familia Vota, et al.,
17 Plaintiffs,
18 and
19 DSCC and DCCC,
20 Plaintiff-Intervenors,
21 vs.
22 Katie Hobbs, in her official capacity as
23 Arizona Secretary of State, et al.,
24 Defendants,
25 and
26 RNC and NRSC,
27 Defendant-Intervenors.

Case No: 2:21-cv-01423-DWL

**AMICUS CURIAE BRIEF FOR
THE STATES OF TEXAS, ALABAMA,
ALASKA, ARKANSAS, IDAHO,
INDIANA, KENTUCKY, LOUISIANA,
MONTANA, MISSISSIPPI, MISSOURI,
OKLAHOMA, SOUTH CAROLINA, AND
UTAH IN SUPPORT OF CORRECTED
ATTORNEY GENERAL'S
CONSOLIDATED MOTION TO DISMISS
PLAINTIFFS' AND INTERVENOR
PLAINTIFFS' COMPLAINTS UNDER
RULES 12(B)(1) AND 12(B)(6)**

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INTEREST OF AMICI CURIAE

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2 Amici curiae are the States of Texas, Alabama, Alaska, Arkansas, Idaho, Indiana,
3 Kentucky, Louisiana, Mississippi, Missouri, Montana, Oklahoma, South Carolina, and
4 Utah. States have “broad powers to determine the conditions under which the right of
5 suffrage may be exercised.” *Carrington v. Rash*, 380 U.S. 89, 91 (1965) (internal quotation
6 marks omitted). Amici States have exercised those powers to enact election laws to ensure
7 that voting is both open to all who are eligible and secure against those who are not. Yet
8 States often face litigation, like Arizona here, over claims that their legislatures had an
9 improper purpose when enacting any law regulating elections. *See, e.g., Brnovich v.*
10 *Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2348-50 (2021); *Greater Birmingham*
11 *Ministries v. Sec’y of State for State of Ala.*, 992 F.3d 1299, 1328 (11th Cir. 2021); *Fusilier*
12 *v. Landry*, 963 F.3d 447, 463-67 (5th Cir. 2020); *Brown v. Detzner*, 895 F. Supp. 2d 1236,
13 1245-49 (M.D. Fla. 2012).

14 Amici States therefore have an interest in the proper application of Rules 8 and
15 12(b)(6) of the Federal Rules of Civil Procedure to claims that election laws were enacted
16 with a discriminatory purpose in violation of the Constitution and Voting Rights Act. *See*
17 U.S. Const. amends. XIV, XV; 52 U.S.C. § 10301. Because of the costs of litigation and
18 the disruption to state governments caused by these claims, Amici States seek to ensure
19 that only plausible claims are permitted to survive motions to dismiss.

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ARGUMENT

I. Discriminatory-Purpose Claims Require Allegations That Plausibly Overcome the Presumption of Legislative Good Faith.

To survive a Rule 12(b)(6) motion, plaintiffs must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). But despite their length, plaintiffs’ complaints¹ do not contain a “short and plain statement of the claim showing that [they are] entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[W]here the well-pleaded facts do not permit the court to infer more than the mere *possibility* of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (emphasis added) (quoting Fed. R. Civ. P. 8(a)(2)). Because the allegations in plaintiffs’ pleadings are entirely consistent with the conclusion that the Arizona Legislature acted in a race-neutral manner, plaintiffs have not shown that their claims are plausible. Consequently, their lawsuit should be dismissed.²

Plaintiffs have asserted that the Arizona Legislature enacted the Signature Requirement (2021 Ariz. Legis. Serv. ch. 343 § 2 (amending Ariz. Rev. Stat. § 16-550(A))) and the Early Voting List (EVL) Periodic Voting Requirement (2021 Ariz. Legis. Serv. ch. 359 § 6 (amending Ariz. Rev. Stat. § 16-544))) with a discriminatory purpose in violation of the Fourteenth and Fifteenth Amendments, as well as section 2 of the Voting Rights Act (VRA). Compl. ¶¶ 136-45; Intervenor Compl. ¶¶ 132-41. But they have not alleged that either law creates disparate results, which would independently violate the

¹ Unless necessary to distinguish, this brief will refer to plaintiffs and plaintiff-intervenors as “plaintiffs.”

² This brief focuses on plaintiffs’ discriminatory-purpose claims. Compl. ¶¶ 136-45 (bringing discriminatory-purpose claims under the Fourteenth and Fifteenth Amendments as well as section 2 of the Voting Rights Act, 52 U.S.C. § 10301); *see also* Intervenor Compl. ¶¶ 132-41. Amici States also believe the undue-burden-on-voting claim should be dismissed, Compl. ¶¶ 127-35; Intervenor Compl. ¶¶ 122-31; *see Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179 (9th Cir. 2021).

1 VRA. 52 U.S.C. § 10301. As explained in *Brnovich*, a results claim asks whether the
2 election process is “equally open” to all, regardless of race. 141 S. Ct. at 2338. Presumably
3 unable to demonstrate that the minimal regulations imposed by the laws challenged here
4 render voting in Arizona not “equally open” to all, plaintiffs have brought a discriminatory-
5 purpose claim instead.

6 But simply replacing “results” with “purpose” does not make surviving a 12(b)(6)
7 motion any easier—it makes it harder. And it should be. Accusations that a legislative body
8 actively discriminated on the basis of race should not be lightly made and require proof
9 that overcomes the presumption of legislative good faith. Opening the door to voluminous
10 discovery based on insufficient allegations disrupts other branches of government and
11 wastes the taxpayers’ money. The Court should hold plaintiffs to their burden of pleading
12 a plausible discriminatory-purpose claim, conclude their pleadings are insufficient, and
13 dismiss plaintiffs’ lawsuit.

14 **A. Proving a discriminatory-purpose claim is more difficult than proving a**
15 **results claim.**

16 Plaintiffs bear the ultimate burden of proof in this case—showing that the Signature
17 Requirement and EVL Periodic Voting Requirement were enacted with a discriminatory
18 purpose. *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (“Whenever a challenger claims
19 that a state law was enacted with discriminatory intent, the burden of proof lies with the
20 challenger, not the State.” (citing *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 481 (1997))).
21 Plaintiffs thus have the burden of (1) “overcoming the presumption of good faith,” and (2)
22 “proving discriminatory intent.” *Id.* at 2325. Accordingly, their complaint must contain
23 factual allegations that, if true, would make it plausible, not just possible, that the Arizona
24 Legislature chose to enact the challenged laws—which still permit more opportunities for
25 mail-in voting than many other States, Mot. to Dismiss at 1—because legislators wanted
26 to make it harder for minorities to vote.

27 Proving a claim of purposeful or intentional race discrimination is more difficult than
28 proving a results claim under section 2 of the VRA (52 U.S.C. § 10301), as demonstrated

1 by the history of that provision. In 1980, a plurality of the Supreme Court held that the
2 then-existing version of section 2 was coextensive with the Fifteenth Amendment,
3 requiring proof of purposeful discrimination. *City of Mobile v. Bolden*, 446 U.S. 55, 61-62
4 (1980) (plurality op.). As a consequence, Congress amended section 2 to permit claims
5 based on results, prohibiting States from enacting laws that “result[] in a denial or
6 abridgement of the right of any citizen of the United States to vote on account of race or
7 color.” 52 U.S.C. § 10301(a).

8 Describing the reason for the amendment, the Senate Report explained that the “intent
9 test places an unacceptably difficult burden on plaintiffs.” S. Rep. No. 97-417, at 16 (1982).
10 The Senate Report went on to quote the testimony of Dr. Arthur S. Flemming, Chairman
11 of the United States Commission on Civil Rights regarding the difficulty of proving
12 discriminatory intent:

13 (L)itigators representing excluded minorities will have to explore the
14 motivations of individual council members, mayors, and other citizens. The
15 question would be whether their decisions were motivated by invidious racial
16 considerations. Such inquiries can only be divisive, threatening to destroy
17 any existing racial progress in a community. It is the intent test, not the results
18 test, that would make it necessary to brand individuals as racist in order to
19 obtain judicial relief.

20 *Id.* at 36 (footnotes omitted).

21 As the Supreme Court subsequently summarized, “[t]he intent test was repudiated for
22 three principal reasons—it is ‘unnecessarily divisive because it involves charges of racism
23 on the part of individual officials or entire communities,’ it places an ‘inordinately difficult’
24 burden of proof on plaintiffs, and it ‘asks the wrong question.’” *Thornburg v. Gingles*, 478
25 U.S. 30, 44 (1986). In other words, proving that a legislative body enacted a law because
26 members wished to suppress voters of a disfavored race is an “inordinately difficult”
27 burden—which is why Congress created the less burdensome results test. Plaintiffs’
28 decision to forego a results claim and focus on purposeful discrimination thus increases
their burden and demands significant allegations to meet that standard.

1 **B. Plaintiffs must overcome the presumption of legislative good faith.**

2 A primary reason that proving a discriminatory purpose is difficult in the legislative
3 context is that courts are to presume that legislatures act in good faith. *Abbott*, 138 S. Ct.
4 at 2325 (referring to plaintiffs’ burden to “overcome the presumption of legislative good
5 faith”). Thus, “until a claimant makes a showing sufficient to support that allegation [of
6 purposeful discrimination,] the good faith of a state legislature must be presumed.” *Miller*
7 *v. Johnson*, 515 U.S. 900, 915 (1995); *see also Fusilier*, 963 F.3d at 464 (“[T]he Supreme
8 Court has long cautioned against the quick attribution of improper motives, which would
9 interfere with the legislature’s rightful independence and ability to function.”).

10 Purposeful discrimination requires more than “intent as volition or intent as awareness
11 of consequences.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Instead, “[i]t
12 implies that the decisionmaker, in this case a state legislature, selected or reaffirmed a
13 particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse
14 effects upon an identifiable group.” *Id.* Thus, a discriminatory purpose is not shown merely
15 because a law “may affect a greater proportion of one race than of another.” *Washington*
16 *v. Davis*, 426 U.S. 229, 242 (1976). The United States is simply wrong to assert in its
17 statement of interest that, because it is an “inherently fact-based question,” the presumption
18 of good faith plays no role at the motion-to-dismiss stage. U.S. Stmt. of Interest at 14-15.
19 Whether someone possessed a discriminatory motive is always a fact-dependent inquiry,
20 but that has not stopped the Supreme Court from holding that there must still be sufficient
21 pleadings to make such claims plausible. *See Iqbal*, 556 U.S. at 687 (concluding that
22 plaintiff failed to state a claim for “purposeful and unlawful discrimination”).

23 Courts should “exercise extraordinary caution in adjudicating claims that a State has
24 [acted] on the basis of race.” *Miller*, 515 U.S. at 916. Thus, while this case has not reached
25 the stage where plaintiffs must produce evidence of their claims, their pleadings must
26 demonstrate plausible grounds for a judgment in their favor—facts that show that the
27 Arizona Legislature did not act in good faith but with the intent to discriminate. *See Iqbal*,
28 556 U.S. at 678. As demonstrated below, plaintiffs’ pleadings do not meet that standard,

1 as none of the facts they allege would, if true, make it plausible that the Arizona Legislature
2 was motivated by race when it enacted the Signature Requirement and the EVL Periodic
3 Voting Requirement. The Court should dismiss the case now, before additional court and
4 state resources are spent on claims destined to fail.

5 **II. Holding Plaintiffs to Their Pleading Burden Reduces the Significant Cost of** 6 **Discovery in Election-Law Cases.**

7 A. One consequence of failing to hold plaintiffs to the proper pleading standard is
8 that States and other governmental entities will have to endure significant costs of
9 discovery. While the pleading standard of Rule 8 was a “notable and generous departure
10 from the hypertechnical, code-pleading regime of a prior era,” “it does not unlock the doors
11 of discovery for a plaintiff armed with nothing more than conclusions.” *Id.* at 678-79.
12 Instead, district courts retain “the power to insist upon some specificity in pleading before
13 allowing a potentially massive factual controversy to proceed.” *Associated Gen.*
14 *Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 528 n.17
15 (1983). As the Ninth Circuit has explained, “the factual allegations that are taken as true
16 must plausibly suggest an entitlement to relief, such that it is not unfair to require the
17 opposing party to be subjected to the expense of discovery and continued litigation.” *Starr*
18 *v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011); *see also Car Carriers, Inc. v. Ford Motor*
19 *Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984) (noting that the costs of certain litigation and
20 increasing federal caseloads “counsel against sending the parties into discovery when there
21 is no reasonable likelihood that the plaintiffs can construct a claim from the events related
22 in the complaint”).

23 The Supreme Court has rejected the argument that claims that are “just shy of a
24 plausible entitlement to relief can, if groundless, be weeded out early in the discovery
25 process through ‘careful case management,’” citing that “common lament that the success
26 of judicial supervision in checking discovery abuse has been on the modest side.” *Twombly*,
27 550 U.S. at 559. The need to avoid burdensome discovery is especially important in the
28 context of election-law litigation where the other branches of government face disruption

1 if the case moves forward. The Ninth Circuit has acknowledged this principle, noting that
2 “state and local officials undoubtedly share an interest in minimizing the ‘distraction’ of
3 ‘divert[ing] their time, energy, and attention from their legislative tasks to defend the
4 litigation.’” *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018); *see also Vill.*
5 *of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 n.18 (1977) (noting
6 that “judicial inquiries into legislative or executive motivation represent a substantial
7 intrusion into the workings of other branches of government”).

8 For example, the Supreme Court has indicated that a legislators should be forced to
9 testify only in extraordinary circumstances, *Arlington Heights*, 429 U.S. at 268, and “the
10 claim of an unworthy purpose does not destroy [legislative] privilege,” *Tenney v.*
11 *Brandhove*, 341 U.S. 367, 377 (1951). The Ninth Circuit has recognized the importance of
12 legislative immunity and that it is not overcome merely by alleging discriminatory intent.
13 *Lee*, 908 F.3d at 1187-88; *see also Arlington Heights*, 429 U.S. at 268 (indicating testimony
14 from legislators “frequently will be barred by privilege”).³ But that has not stopped
15 plaintiffs from seeking legislator depositions to try and discern allegedly hidden
16 discriminatory motives, leading to additional efforts to quash those subpoenas and
17 discovery requests. *See, e.g., League of Women Voters of Fla., Inc. v. Lee*, No. 4:21-CV-
18 186-MW/MAF, 2021 WL 5283949, at *5 (N.D. Fla. Nov. 4, 2021). It is, therefore,
19 important for courts to weed out meritless claims early in the litigation to ensure that States
20 are not subjected to unnecessary discovery requests that impact the functioning of their
21 governments.

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24 ³ Other courts have not always given legislative privilege its due. *See, e.g., Veasey*
25 *v. Abbott*, 830 F.3d 216, 288 (5th Cir. 2016) (Jones, J., concurring in part and dissenting in
26 part) (noting that, in Texas’s voter-identification litigation, “the plaintiffs took weeks of
27 seven-hour-long depositions from over two dozen witnesses, including: eleven legislators
28 and members of their staff and over a dozen individuals from state agencies such as the
Department of Public Safety, the Office of the Secretary of State, the Office of the Attorney
General, and the Department of State Health Services”).

1 **B.** Recent and pending election-law litigation demonstrates that discovery can create
2 significant burdens on the State and its taxpayers.

3 **Texas:** As indicated above, Texas’s voter-identification litigation involved numerous
4 depositions of state legislators and agency officials. *Veasey*, 830 F.3d at 288 (Jones, J.,
5 concurring in part and dissenting in part). It also included “twenty-nine depositions of
6 legislators, their staff, and state agency officials that were taken in . . . preclearance
7 litigation,” including sixteen depositions of legislators. *Id.* at 288. And yet, no smoking gun
8 was found. *Id.*

9 Texas is also currently facing numerous lawsuits (from private parties and the United
10 States) about the changes to election law made by the 2021 Legislature. Order, *La Union*
11 *del Pueblo Entero v. Abbott*, No. 5:21-CV-0844-XR (W.D. Tex. Sept. 30, 2021)
12 (consolidating five lawsuits challenging Texas election law). In that consolidated case, the
13 plaintiffs have identified 260 witnesses in their initial disclosures and have proposed 35
14 depositions per side. Joint Fed. R. Civ. P. 26 Report at 13-14, *La Union del Pueblo Entero*,
15 No. 5:21-CV-0844-XR (W.D. Tex. Nov. 11, 2021). They also intend to seek discovery on
16 the broad topic of “the history of race discrimination in Texas and its impact on elections
17 and voting rights.” *Id.* at 12. Joining that litigation, the United States has demanded access
18 to Texas’s Election Administration database, driver license and personal identification card
19 database, and election identification certificate database, which contain the personal
20 information of millions of Texans. Joint Fed. R. Civ. P. 26 Report Between the U.S. and
21 Defs. at 4, *La Union del Pueblo Entero*, No. 5:21-CV-0844-XR (W.D. Tex. Nov. 15, 2021).
22 Thus, Texas faces the prospect of upwards of 70 depositions while having to turn over
23 massive databases to the federal government full of private information of its citizens.

24 **Florida:** In election-law litigation in Florida, the plaintiffs identified over 100
25 potential witnesses, including numerous state legislators. Plfs. Rule 26(a)(1) Initial Discl.,
26 at 3-45, *Fla. State Conf. of Branches & Youth Units of the NAACP v. Lee*, No. 4:21-cv-
27 00187-MW-MAF (N.D. Fla. July 26, 2021). And as noted above, Florida has had to move
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1 to quash the subpoenas of numerous legislators and their staff. *League of Women Voters of*
2 *Fla.*, 2021 WL 5283949, at *5.

3 **Arizona:** The district court in the *Brnovich* case heard the testimony of seven expert
4 witnesses, thirty-three lay witnesses, and an additional eleven witnesses by deposition in a
5 ten-day bench trial. *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 833-38 (D.
6 Ariz. 2018). And none of that was enough to prove that the ballot-collection law was
7 enacted with a racial purpose. *Brnovich*, 141 S. Ct. at 2348-50.

8 And in this case, as indicated by the Rule 26(f) joint report, plaintiffs intend to seek
9 discovery of, among other things, “Arizona’s history of discrimination, the ongoing effects
10 of that history, and the linkage between that history and its ongoing effects and the disparate
11 burdens imposed by” the challenged laws. Rule 26(f) Joint Case Mgmt. Rep. at 8. Such a
12 broad and wide-ranging scope of potential discovery, when plaintiffs have sought to make
13 relevant high school graduation rates, home ownership, health status, and prison population
14 (Compl. ¶¶ 112-20), should not be permitted on the basis of such flimsy allegations.

15 **III. Plaintiffs Have Not Plausibly Alleged Purposeful Race Discrimination.**

16 As the Supreme Court has noted, “Arizona law generally makes it very easy to vote.”
17 *Brnovich*, 141 S. Ct. at 2330; *see also Ariz. Democratic Party*, 18 F.4th at 1196 (holding
18 that the Signature Requirement is not an undue burden on voting). Yet plaintiffs in this
19 case contend the minimal regulations adopted in the Signature Requirement and EVL
20 Periodic Voting Requirement are purposeful race discrimination. Compl. ¶¶ 136-45;
21 Intervenor Compl. ¶¶ 132-41. But the facts they allege, even if true, fall far short of
22 establishing such a serious claim.

23 To be plausible and survive a 12(b)(6) motion, a complaint must contain “factual
24 content that allows the court to draw the reasonable inference that the defendant is liable
25 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “Where a complaint pleads facts that
26 are merely consistent with a defendant’s liability, it stops short of the line between
27 possibility and plausibility of entitlement to relief.” *Id.* (internal quotation marks omitted).
28 Plaintiffs’ allegations here stop short of that line, as the facts pleaded in their complaints

1 establish nothing more than the “sheer possibility that [Arizona] has acted unlawfully,”
2 which is insufficient to survive Rule 12(b)(6). *Id.*

3 **History:** Plaintiffs (but not intervenors) include allegations regarding historical
4 discrimination in voting in Arizona, but their examples are decades old—some more than
5 a century ago. Compl. ¶¶ 100-111 (discussing alleged discrimination in 1909, 1928, 1964,
6 and 1970, with a vague comment about the 1980s and 1990s).⁴ But as the Supreme Court
7 held in *Shelby County v. Holder*, it would be “irrational” to base a law on “40-year-old
8 data, when today’s statistics tell an entirely different story.” 570 U.S. 529, 556 (2013). It
9 would be similarly irrational to hold the Arizona Legislature liable today for actions taken
10 decades ago, some well before any legislator was even born. *See id.* at 542 (noting that
11 Arizona had no successful section 2 suits reported in a recent twenty-four-year period),
12 “The [Fifteenth] Amendment is not designed to punish for the past; its purpose is to ensure
13 a better future.” *Id.* at 553.

14 Regardless, “[t]he allocation of the burden of proof and the presumption of legislative
15 good faith are not changed by a finding of past discrimination.” *Abbott*, 138 S. Ct. at 2324.
16 As the Supreme Court has explained, “[p]ast discrimination cannot, in the manner of
17 original sin, condemn governmental action that is not itself unlawful.” *Id.* (citing *Mobile*,
18 446 U.S. at 74 (plurality opinion)). The “ultimate question remains whether a
19 discriminatory intent has been proved in a given case.” *Id.* at 2324-25. Thus, while a history
20 of discrimination is one factor a court may look to in determining whether current
21 discrimination exists, *Arlington Heights*, 429 U.S. at 267, it is not determinative, does not
22 overcome the presumption of legislative good faith, and has not been sufficiently pleaded
23 here.

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26 ⁴ Plaintiffs also refer to recent long lines to vote in a handful of counties and several
27 errors in information given out by a county. Compl. ¶¶ 109-11. But those (1) are not
28 attributable to the Arizona Legislature, and (2) do not demonstrate that anyone, much less
the Legislature, had an invidious racial purpose.

1 **Disparate results:** Plaintiffs provide very little in the way of demonstrating that the
2 challenged laws will have a disparate impact on minorities. They do not allege that
3 minorities are uniquely likely to fail to sign the affidavit accompanying their ballots.
4 Instead, plaintiffs cobble together allegations that the mail is slow in some communities,
5 minorities might have difficulty traveling to an election office to provide a signature, and
6 some might have language barriers. Compl. ¶¶ 91-93. Their allegations regarding the EVL
7 Periodic Voting Requirement fare no better. The percentages by race of those who would
8 no longer automatically receive mail-in ballots match the population in general. *Compare*
9 Compl. ¶ 50 (general population is 30.7% Latino and 6.2% black) *with* ¶ 77 (population
10 impacted by law is 33% Latino and 5% black). Thus, plaintiffs make similar allegations
11 about lack of mail service, difficulty in traveling, and language barriers. Compl. ¶¶ 79-83.
12 But that string of inferences is not enough to make a discriminatory purpose plausible, as
13 opposed to merely possible.

14 As described above, *supra* p.5, even if there were allegations of a more significant
15 impact on minorities, that would not demonstrate an invidious purpose on the part of the
16 Arizona Legislature. *Feeney*, 442 U.S. at 279. The Supreme Court has noted that
17 “differences in employment, wealth, and education may make it virtually impossible for a
18 State to devise rules that do not have some disparate impact.” *Brnovich*, 141 S. Ct. at 2343.
19 It is an unreasonable stretch to conclude that the Arizona Legislature purposefully
20 discriminated on the basis of race when it is unclear that the challenged laws will even have
21 any impact on the ability of minorities to vote. Plaintiffs’ allegations would not establish a
22 results claim under section 2—they certainly cannot make a purpose claim plausible.

23 **Legislator statement:** Finally, plaintiffs cite a statement from a single state
24 representative as support for their claim that a majority of Arizona legislators acted with
25 racial intent. But that statement, which refers to the “quality of votes,” Compl. ¶ 67, is not
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1 an obvious reference to race, much less proof that the Arizona Legislature was motivated
2 by race.⁵

3 Even so, the idea that the lone statement of a legislator could be sufficient to prove
4 that a legislative body acted with racial intent was rejected by the Supreme Court in
5 *Brnovich*. There, the Ninth Circuit had ruled that the actions of two individuals—a state
6 senator and a county party chair—who allegedly acted with racial motives could be
7 attributed to the rest of the legislature under a “cat’s paw” theory. *Democratic Nat’l Comm.*
8 *v. Hobbs*, 948 F.3d 989, 1040-41 (9th Cir. 2020) (en banc). Reversing the Ninth Circuit’s
9 judgment, the Supreme Court held that the cat’s paw theory has no application to legislative
10 bodies. *Brnovich*, 141 S. Ct. at 2350. Legislators are not agents of a bill’s sponsor or
11 supporters, but instead exercise independent judgment to represent their constituents. *Id.*
12 Suggesting otherwise, the Court said, was “insulting.” *Id.*

13 The same holds here. Plaintiffs have access to all public statements of legislators, and
14 this lone statement was the best they could find. But a single vague statement cannot open
15 the door to discovery of whether the Arizona Legislature was motivated by race.

16 * * *

17 In sum, nothing in plaintiffs’ complaints makes it plausible that the Arizona
18 Legislature had an invidious discriminatory purpose when it enacted race-neutral laws
19 regarding mail-in voting—laws that still leave Arizona at the forefront in ease of voting by
20 mail. Plaintiffs’ attempts to piece together a discriminatory purpose through decades old
21 history, little-to-no disparate impact, and a single vague statement by a legislator should be
22 rejected, and the presumption that the Arizona Legislature acted in good faith remains
23 intact. The Court should grant the motion to dismiss.

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27 ⁵ The intervenors’ complaint adds nothing to this argument, as the only additional
28 statement identified was one condemning those who suggested that members of the
Arizona Legislature had racial motives. Intervenors’ Compl. ¶ 114.

1 **CONCLUSION**

2 For the foregoing reasons, the Court should grant the Arizona Attorney General's
3 motion to dismiss the complaints.

4 Date: January 25, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2022, 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.

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