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19 **UNITED STATES DISTRICT COURT**
20 **DISTRICT OF ARIZONA**

21 Mi Familia Vota, Arizona Coalition for
22 Change, Living United for Change in Arizona,
23 and League of Conservation Voters, Inc. d/b/a
24 Chispa AZ,

25 Plaintiffs,

26 and

27 DSCC, and DCCC,

28 [Proposed] Plaintiff-
Intervenors,

Case No. 21-CV-01423-DWL

DSCC'S AND DCCC'S
[PROPOSED] COMPLAINT IN
INTERVENTION

1 v.

2 Katie Hobbs, in her official capacity as
 3 Arizona Secretary of State, Mark Brnovich,
 4 in his official capacity as Arizona Attorney
 5 General, and the County Recorder Defendants,
 6 Apache County Recorder Larry Noble,
 7 Cochise County Recorder David W. Stevens,
 8 Coconino County Recorder Patty Hansen, Gila
 9 County Recorder Sadie Jo Bingham, Graham
 10 County Recorder Wendy John, Greenlee
 11 County Recorder Sharie Milheiro, La Paz
 12 County Recorder Richard Garcia, Maricopa
 13 County Recorder Stephen Richer, Mohave
 14 County Recorder Kristi Blair; Navajo County
 15 Recorder Michael Sample, Pima County
 16 Recorder Gabriella Cázares-Kelly, Pinal
 17 County Recorder Virginia Ross, Santa Cruz
 18 County Recorder Suzanne Sainz, Yavapai
 19 County Recorder Leslie M. Hoffman, and
 20 Yuma County Recorder Robyn S. Pouquette,
 21 in their official capacities,

22 Defendants.

23 Plaintiffs, DSCC and DCCC, by and through their undersigned attorneys, file this
 24 Complaint for Injunctive and Declaratory Relief against Defendant Katie Hobbs, in her
 25 official capacity as the Secretary of State of Arizona, and the above captioned County
 26 Recorder Defendants, each named in their official capacities. In support, DSCC and DCCC
 27 allege the following:

28 **NATURE OF THE CASE**

1. This is an action brought under the U.S. Constitution and the Voting Rights
 Act of 1965 to vindicate and safeguard the fundamental right to vote. “No right is more
 precious in a free country than that of having a voice in the election of those who make the
 laws under which, as good citizens, we must live. Other rights, even the most basic, are

1 illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). In
2 this action, Plaintiffs challenge two of the newest efforts to undermine that most precious
3 right: Arizona’s recently enacted S.B. 1003 and S.B. 1485—both enacted with
4 discriminatory purpose in violation of the Voting Rights Act and the Fourteenth and
5 Fifteenth Amendments, and which severely burden the right to vote and threaten to
6 disenfranchise countless eligible, lawful voters in violation of the First and Fourteenth
7 Amendments.

8 2. The new challenged laws impose burdensome and unjustifiable restrictions
9 on early mail voting in Arizona that can only be rationally explained as a retributory and
10 discriminatory response to record turnout, particularly among voters of color, and their
11 support for Democratic candidates, in 2020. Arizona has long induced its voters to exercise
12 their right to vote using the state’s early voting by mail system, reducing in-person voting
13 opportunities as more voters were convinced to participate in the franchise using a mail
14 ballot, including in particular by signing up for the state’s permanent early voting list
15 (“PEVL”). There have been no serious or credible allegations that Arizona’s election
16 system resulted in anything but secure, accurate, and reliable results. State officials and
17 courts have repeatedly rejected baseless claims to the contrary. However, as Arizona’s
18 electorate has become more diverse, and more Latinx and Native American voters in
19 particular have sought to exercise their right to the franchise, there has been a marked effort
20 by Republicans in Arizona to restrict the franchise and impose unjustifiable impediments
21 to the right to vote.

22 3. In 2020, a record 3.4 million voters, or 80 percent of the state’s registered
23 voters, cast a ballot in the general election. In comparison, in both 2012 and 2016, about
24 74 percent voted. Turnout in 2020 increased most greatly in areas heavily populated by the
25 state’s communities of color. For example, while turnout statewide increased by a little
26 over 5 percentage points compared to 2016 and 2012, several precincts in South Phoenix,
27 home to large numbers of Black and Latinx residents, saw increases in turnout of about 10
28 percent, and large precincts on the state’s Native American reservations saw increases of

1 about 12-13 percent. Even with these increases, though, turnout among the state's minority
2 voters remains significantly suppressed; for example, turnout on reservations in 2020 was
3 around 65 percent, compared to nearly 80 percent statewide.

4 4. This progress in increasing turnout was facilitated by the state's early voting
5 by mail system. Since 1991, Arizonans have had a right to vote by mail, and voters may
6 sign up to receive a mail ballot for any reason. *See* A.R.S. § 16-541. Since 2007, voters
7 have also been able to sign up for the PEVL, through which they can automatically receive
8 a mail ballot in every election without having to make repetitive requests. *Id.* § 16-544(A).
9 In 2020, 88 percent of voters used Arizona's early voting system to cast their ballots, a
10 record. But, even before the pandemic, early voting had grown to be the most common
11 form of voting in the state. In 2016, over 2 million—or about 75 percent of voters—used
12 early voting. Even in 2008, more than a million voters, or close to half, used early voting.
13 As more voters have turned to early voting by mail, Arizona's in-person voting facilities
14 and opportunities have decreased.

15 5. In other words, even before the pandemic, Arizona's voting system was
16 oriented toward supporting and facilitating early mail voters. It was well-tested and well-
17 established. Governor Doug Ducey and Secretary Hobbs have each repeatedly assured the
18 public and the nation that Arizona's 2020 election was secure and fraud-free, and that the
19 results should be trusted. As Governor Ducey explained, in dismissing attacks on the
20 integrity of the 2020 election: "We've been doing early voting since 1992," and claims
21 about problems with the system or the election were unfounded. Despite these assurances,
22 multiple lawsuits and contests brought by the Republican Party, former President Donald
23 Trump's campaign, and their supporters have sought to cast doubt on the outcome of the
24 election. Arizona's state and federal courts responded by rejecting those suits and
25 repudiated their champions for their striking lack of evidence. For example, in a case
26 brought by the state Republican Party to challenge the legitimacy of Maricopa County's
27 audit, the Superior Court ordered the party to pay attorney's fees to the Secretary of State
28 under A.R.S. § 12-349 because the lawsuit was "groundless," brought in "bad faith," and

1 served only to “cast false shadows on the election’s legitimacy.” *Arizona Republican Party*
2 *v. Fontes*, No. CV-2021014553, Order (Mar. 12, 2021).

3 6. The Republican majority in the Legislature responded by doubling down.
4 Rather than celebrating the historic turnout in 2020, or working to ensure that all of
5 Arizona’s voters (including the Latinx and Native American voters who turned out in
6 record numbers in 2020) retained full and fair access to the franchise, the Legislature
7 weaponized conspiracy theories and baseless claims of fraud (often dressed up in a vague
8 and bald claim that election “integrity” was at stake), through needless and restrictive
9 election legislation designed to suppress voting. After several election bills that would have
10 made it harder to vote were introduced during the spring, the majority in May finally
11 coalesced around two proposals, S.B. 1003 and S.B. 1485, which target access to the state’s
12 immensely popular early voting by mail system.

13 7. S.B. 1003, signed by the Governor on May 7, prohibits voters whose mail
14 ballots are flagged for rejection based on a missing signature from curing that deficiency
15 after 7 p.m. on Election Day (the “Cure Period Law”), denying them the same opportunity
16 to cure an identity-related deficiency that is granted to Arizona voters whose ballots are
17 flagged for a mismatched signature, or who forget to bring an acceptable form of voter
18 identification with them to the polls when they vote in person. Both of the latter groups are
19 entitled to a five-day post-election cure period. *See* A.R.S. §§ 16-550(A), 16-579(A). In
20 passing S.B. 1003, the Legislature explicitly approved and codified a mismatched cure
21 period previously imposed by the Arizona Attorney General, which a federal district court
22 judge had found unconstitutional.

23 8. S.B. 1485, signed by the Governor on May 11, does away with the state’s
24 immensely popular PEVL—which the new legislation rebrands as the Active Early Voting
25 List (“AEVL”)— by requiring election officials to purge from the list any voter who has
26 not voted an early ballot “for two consecutive election cycles” (the “Voter Purge Law”).
27 The law requires only that the counties mail a notice to such voters, and if they do not
28 respond in writing within 90 days, they will no longer receive a mail ballot before future

1 elections. The law applies to a voter who has not cast such a ballot even if the voter has
2 voted in person on election day within the two-cycle period.

3 9. Republicans forced the Cure Period Law and Voter Purge Law (together, the
4 “Challenged Provisions”) through the Legislature over intense opposition from the public,
5 whose pleas about the devastating impact the laws will have—in particular, on
6 communities of color in the state—were ignored.

7 10. As manifested by state officials’ full-throated defense of Arizona’s election
8 system in the immediate aftermath of the November 2020 election, as well as multiple court
9 decisions related to the same, there are no state interests, much less compelling ones, to
10 justify the new imposition of these unjustifiable and disparate burdens, which embody
11 purposeful discrimination against voters of color in the state. For these reasons and those
12 detailed below, Plaintiffs respectfully request a declaration that the Voter Purge Law and
13 the Cure Period Law are each unconstitutional and an order enjoining their enforcement.

14 JURISDICTION AND VENUE

15 11. Plaintiffs bring this action pursuant to 42 U.S.C. §§ 1983 and 1988 to redress
16 the deprivation of rights under the color of state law of their rights under the First,
17 Fourteenth, and Fifteenth Amendments to the U.S. Constitution, and the Voting Rights Act
18 of 1965.

19 12. This Court has subject matter jurisdiction to hear Plaintiffs’ claims pursuant
20 to 28 U.S.C. §§ 1331, 1343, and 1357.

21 13. This Court has jurisdiction over the Secretary of State, as she is sued in her
22 official capacity as an elected official in Arizona. Further, the Secretary works and resides
23 in the State of Arizona.

24 14. This Court has jurisdiction over the Attorney General, as he is sued in his
25 official capacity as an elected official in Arizona. Further, the Attorney General works and
26 resides in the State of Arizona.

27 15. This Court has jurisdiction over the County Recorder Defendants, as they are
28 sued in their official capacities as elected officials in Arizona, and they work or reside in

1 Arizona.

2 16. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the
3 events or omissions giving rise to the claims occurred in this judicial district and in this
4 division.

5 17. This Court has the authority to grant declaratory and injunctive relief
6 pursuant to 28 U.S.C. §§ 2201 and 2202. Further, this Court has the authority to enter a
7 declaratory judgment and to provide preliminary and permanent injunctive relief pursuant
8 to Rules 57 and 65 of the Federal Rules of Civil Procedure.

9 **PARTIES**

10 18. Plaintiff DSCC, or Democratic Senatorial Campaign Committee, is the
11 national senatorial committee of the Democratic Party, as defined by 52 U.S.C. §
12 30101(14). Its mission is to elect Democratic candidates to the U.S. Senate, including in
13 Arizona. DSCC works to accomplish its mission by, among other things, making
14 expenditures for, and contributions to, Democratic candidates for U.S. Senate, including in
15 Arizona. It also assists state parties, including in Arizona, by providing financial support
16 to support coordinated campaign activities that further shared interest in electing
17 Democratic candidates for U.S. Senate. In 2020, DSCC made contributions and
18 expenditures in the tens of millions of dollars to mobilize and persuade voters to support
19 Democratic Senate candidates, including in Arizona. DSCC intends to do the same in future
20 elections in the state. DSCC brings this claim on its own behalf, as well on behalf of its
21 members and constituents.

22 19. Plaintiff DCCC, or Democratic Congressional Campaign Committee, is the
23 national congressional committee of the Democratic Party, as defined by 52 U.S.C. §
24 30101(14). Its mission is to elect Democratic candidates to the U.S. House of
25 Representatives from across the United States, including from Arizona's nine
26 congressional districts. DCCC works to accomplish its mission by, among other things,
27 assisting state parties throughout the country, including in Arizona. In 2020, DCCC made
28 contributions and expenditures in the millions of dollars to persuade and mobilize voters

1 to support Democratic congressional candidates, including in Arizona. DCCC intends to
2 do the same in future elections in the state. DCCC brings this claim on its own behalf, as
3 well as on behalf of its member and constituents.

4 20. The Voter Purge Law directly harms DSCC and DCCC. It is inevitable that
5 Democrats and those who would vote for Democrats, including the members and
6 constituents of DSCC and DCCC, will be removed from the PEVL through the operation
7 of the Voter Purge Law: In 2020 alone, nearly 75 percent of the 3.4 million votes submitted
8 were ballots from voters on the PEVL. Moreover, voters who are removed from PEVL
9 under the new law are more likely to be Latinx, Native American, or Black, and such voters
10 are more likely to support Democratic candidates in Arizona. To combat the burdens
11 imposed by the law on their members and constituents, DSCC and DCCC will each have
12 to expend and divert significant funds and resources they would otherwise devote to
13 locating, contacting, persuading, and mobilizing voters in Arizona and elsewhere. As a
14 result, the Voter Purge Law frustrates each of DSCC's and DCCC's missions of electing
15 Democratic candidates to the U.S. Senate and U.S. House in Arizona and across the United
16 States.

17 21. DSCC and DCCC are further directly harmed by the Voter Purge Law
18 because it threatens their competitive interests in Arizona elections. Voters removed from
19 the PEVL by the Voter Purge Law are more likely to be Democratic voters, and their
20 removal and inability to vote without additional burden will make it harder for DSCC,
21 DCCC, and candidates supported by both committees to compete in elections in Arizona.

22 22. DSCC's and DCCC's members and constituents are directly harmed by the
23 Voter Purge Law. Given that Democratic Party voters make up a third of the registered
24 voters in Arizona, and that more than three-quarters of registered voters in the state rely on
25 the PEVL to receive their ballots, it is virtually certain that some number of DSCC's and
26 DCCC's members and constituents are to be purged from the list simply for not voting
27 early for two cycles.

28 23. DSCC's and DCCC's members were further harmed because the Arizona

1 State Legislature acted with the discriminatory purpose in eliminating the PEVL and
2 replacing it with a system it knew would severely and disproportionately affect voters of
3 color—including Latinx, Native American, and Black voters. Voters in these groups are
4 each substantially more likely to be members of or support DSCC and DCCC candidates
5 than they are any other political party. For example, in the 2020 election, nearly 60 percent
6 of voters of color in Arizona voted for President Joe Biden and Vice President Kamala
7 Harris. Among Native Americans, support for Democrats was over twenty points higher,
8 and included a turnout surge that exceeded the President’s margin of victory in Arizona.

9 24. The Cure Period Law also directly harms DSCC and DCCC. It is inevitable
10 that Democrats or those who would support Democratic candidates will not have their vote
11 counted as a result of the law’s burdensome and inconsistent restriction precluding voters
12 submitting mail in ballots missing signatures from utilizing the same five-day post-election
13 period to “cure” that deficiency as provided other voters with perceived identity defects
14 related to their ballots. Not only is this disparate treatment “unreasonable,” as a court in
15 this district found after careful consideration of the Attorney General’s arguments in favor
16 of it in a lawsuit in 2020, it guarantees that some voters whose ballots are not received by
17 elections officials until close to or on Election Day (often due to no fault of the voter) are
18 provided no cure opportunity at all. If this unjustifiable restriction were to survive, DSCC
19 and DCCC each would have to expend and divert additional funds and resources on efforts
20 to educate voters and assist voters whose ballots are missing a signature in curing the ballot
21 (assuming their ballot is received and flagged for rejection in time to do so) and avoiding
22 disenfranchisement before the truncated deadline. These are resources DSCC and DCCC
23 each would expend on other programs or activities in Arizona and elsewhere. This
24 frustrates DSCC’s and DCCC’s mission of, and efforts in, electing Democratic candidates
25 to the U.S. Senate and U.S. House in Arizona and nationwide.

26 25. DSCC and DCCC are further directly harmed by the Cure Period Law
27 because it harms their competitive interests in Arizona elections. It is inevitable that DSCC
28 and DCCC will be unable to assist some voters who they otherwise could have helped to

1 cure their ballots, and the disenfranchisement of their voters will make it harder for DSCC,
2 DCCC, and candidates supported by both committees to compete in elections in Arizona.

3 26. DSCC's and DCCC's members and constituents are directly harmed by the
4 Cure Period Law. Given that Democratic Party voters make up nearly a third of the
5 registered voters in Arizona and nearly 40 percent of the state's mail voters, and given that
6 thousands of Arizonans' mail ballots were rejected in recent elections due to a missing
7 signature, including in 2020, it is certain that some of DSCC's and DCCC's members and
8 constituents have been harmed by the failure to provide a cure period and that more are
9 poised to be in future elections. DSCC's and DCCC's members and constituents therefore
10 continue to face a threat of having their vote denied due to the Cure Period Law.

11 27. Defendant Katie Hobbs is the Secretary of State for the State of Arizona and
12 is the Chief Elections Officer for Arizona. A.R.S. § 16-142. As Arizona's Chief Elections
13 Officer, the Secretary is responsible for carrying out the state's election laws and
14 overseeing the voting process—and is empowered with broad authority to carry out that
15 responsibility. She is also responsible for prescribing rules related to procedures for, among
16 other things, mail ballots, which are set forth in the Arizona Election Procedures Manual
17 ("EPM"). A.R.S. § 16-452. The Secretary is sued in her official capacity for actions taken
18 under color of state law.

19 28. Defendant Mark Brnovich is the Attorney General of Arizona and
20 the state's chief legal officer. A.R.S. § 41-192. The Attorney General is authorized to
21 enforce Arizona's election laws in "any election for state office, members of the legislature,
22 justices of the supreme court, judges of the court of appeals or statewide initiative or
23 referendum . . . through civil and criminal actions." A.R.S. § 16-1021. The
24 Attorney General is sued in his official capacity for actions taken under color of state law.

25 29. Defendant Larry Noble is the Apache County Recorder and is named as a
26 defendant in this action solely in his official capacity.

27 30. Defendant David W. Stevens is the Cochise County Recorder and is named
28 as a defendant in this action solely in his official capacity.

31. Defendant Patty Hansen is the Coconino County Recorder and is named as a defendant in this action solely in her official capacity.

32. Defendant Sadie Jo Bingham is the Gila County Recorder and is named as a defendant in this action solely in her official capacity.

33. Defendant Wendy John is the Graham County Recorder and is named as a defendant in this action solely in her official capacity.

34. Defendant Sharie Milheiro is the Greenlee County Recorder and is named as a defendant in this action solely in her official capacity.

35. Defendant Richard Garcia is the La Paz County Recorder and is named as a defendant in this action solely in his official capacity.

36. Defendant Stephen Richer is the Maricopa County Recorder and is named as a defendant in this action solely in his official capacity.

37. Defendant Kristi Blair is the Mohave County Recorder and is named as a defendant in this action solely in her official capacity.

38. Defendant Michael Sample is the Navajo County Recorder and is named as a defendant in this action solely in his official capacity.

39. Defendant Gabriella Cázares-Kelly is the Pima County Recorder and is named as a defendant in this action solely in her official capacity.

40. Defendant Virginia Ross is the Pinal County Recorder and is named as a defendant in this action solely in her official capacity.

41. Defendant Suzanne Sainz is the Santa Cruz County Recorder and is named as a defendant in this action solely in her official capacity.

42. Defendant Leslie M. Hoffman is the Yavapai County Recorder and is named as a defendant in this action solely in her official capacity.

43. Defendant Robyn S. Pouquette is the Yuma County Recorder and is named as a defendant in this action solely in her official capacity.

STATEMENT OF FACTS

A. Arizona voters rely on the state’s early voting system.

1 44. Early mail voting is immensely popular in Arizona, and for years, the vast
2 majority of voters have relied on it to cast their ballot. Eligible voters in Arizona since 1991
3 have been able to vote early by mail without a reason or “excuse” for doing so. *See* A.R.S.
4 § 16-541. Reliance on early mail voting has steadily grown ever since. In 2008, over one
5 million, or around half of registered voters, used early mail voting. In 2016, over 2 million
6 voters, or about 75 percent of voters who participated in the election, used early mail
7 voting. And in 2020, nearly three million voters, or about 88 percent, used early mail
8 voting.

9 45. In 2007, Arizona established the PEVL to ensure that voters who rely on
10 early mail voting receive their ballot without having to repeatedly request it for each
11 election. If a voter is not on the PEVL and wishes to vote early by mail, the voter must
12 request a ballot before the election. *See* A.R.S. § 16-542(E). Voters who join the PEVL are
13 automatically sent an early mail ballot no later than the first day of the 27-day early voting
14 period. *Id.* § 16-544.

15 46. To maintain the PEVL, Arizona law has long required the counties to follow
16 certain procedures to regularly verify voters’ addresses and desire to remain on the list, and
17 to ensure that voters whose registrations are moved to “inactive” status are removed. *See*
18 A.R.S. §16-544. In fact, prior to each election, county recorders must mail a notice to all
19 voters on the PEVL. “The notice shall include the dates of the elections that are the subject
20 of the notice, the dates that the voter’s ballot is expected to be mailed and the address where
21 the ballot will be mailed,” and provide the voter a means to update their address and the
22 opportunity to decline to receive a mail ballot for the upcoming election. *Id.* § 16-544(D).
23 If the notice is returned undeliverable, the county recorder must send a follow up notice,
24 and if the voter “does not complete and return a new registration form with current
25 information to the county recorder or make changes to the elector’s voter registration
26 information that is maintained online within thirty-five days, the elector’s registration
27 status shall be changed from active to inactive.” *Id.* §§ 16-544(E), 16-166(A). If at any
28 point a voter’s registration becomes inactive or is cancelled, or if the voter asks to be

1 removed, the voter is removed from the PEVL. *Id.* § 16-544(H).

2 47. The vast majority of Arizona voters rely on the PEVL system to exercise
3 their right to vote. According to the Secretary of State, in 2020, around 80 percent of
4 Arizona voters who participated in that election used the PEVL to vote, and at least 75
5 percent of all registered voters are on the list. Nationally, the share of voters who cast their
6 ballot by mail is around 21 percent.

7 48. The ever-increasing reliance on early voting by mail in Arizona has led to a
8 corresponding decrease in the availability of in-person voting options. In fact, one study
9 found that the state has had the “most widespread reduction” in polling places of any state
10 over the last decade; the state now has 320 fewer polling places than it did in 2012. While
11 Arizona’s inducement of voters to use early voting by mail has helped to make voting more
12 accessible in the state generally and has helped counties preserve resources, fewer polling
13 places translates to more difficulties for those who must vote in person. This is especially
14 true in rural places and on the state’s tribal lands, where voters must travel long distances
15 to their polling place and where public transportation is not available.¹

16 49. Arizona imposes certain procedures that are meant to enable elections
17 officials to verify the identification of the voter casting the ballot; that is, to confirm that
18 the ballot is cast by the voter to whom it was sent. Maricopa and Pima counties—the state’s
19 two largest counties—imprint each mail-in ballot envelope with an Intelligent Mail
20 Barcode linked to a specific voter, a system which allows the counties to confirm that the
21 person voting is the same person who requested the mail-in ballot envelope. Additionally,
22 the state has implemented a tracking system in which voters can determine if and when
23 their mail ballot was been sent, received, and counted by the county recorder.²

24 50. When mail ballots are returned to elections officials, the signature on an

25 ¹ Democracy Diverted: Polling Place Closures and the Right to Vote (Sept. 2019),
26 civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf.

27 ² Arizona Voter Information Portal, Ariz. Sec’y of State (last visited Sept. 17, 2021),
28 <https://my.arizona.vote/AbsenteeTracker.aspx>.

1 affidavit that must be submitted with the ballot is reviewed by the “county recorder or other
2 officer in charge of elections” who “shall compare the signatures thereon with the signature
3 of the elector on the elector’s registration record.” A.R.S. § 16-550(A).

4 51. In 2019, A.R.S. § 16-550 was amended to explicitly establish a cure period
5 when a voter’s ballot was flagged for rejection due to a perceived mismatch between the
6 signature on the ballot and the signature on file for the voter. The statute provides that, “[i]f
7 the signature is inconsistent with the elector’s signature on the elector’s registration record,
8 the county recorder or other officer in charge of elections shall make reasonable efforts to
9 contact the voter, advise the voter of the inconsistent signature, and allow the voter to
10 correct or the county to confirm the inconsistent signature.” *Id.* Of particular relevance to
11 this litigation, the law also affirmatively provided for a five-day post election cure period
12 for voters whose ballots were deemed to have a mismatched signature: “The county
13 recorder or other officer in charge of elections shall allow signatures to be corrected not
14 later than the fifth business day after a primary, general or special election that includes a
15 federal office or the third business day after any other election.” *Id.*

16 52. This is the same timeframe permitted voters who vote in person but fail to
17 provide an acceptable form of identification to cure that identity-related deficiency and
18 have their ballot counted. Under both A.R.S. § 16-579(A)(2) and the EPM, when a voter
19 does not provide an ID at the polls, they must be issued a conditional provisional ballot,
20 which are counted if the voter presents “an acceptable form of identification to the County
21 Recorder by 5:00 p.m. on the 5th business day following a primary, general, or special
22 election that includes an election for a federal office, or by 5:00 p.m. on the 3rd business
23 day following any other election.”³

24 53. The 2019 law was silent as to whether ballots flagged for rejection because
25 of a *missing* signature were subject to the same post-election cure period. To ensure

26 ³ 2019 Election Procedures Manual, Ariz. Sec’y of State (Dec. 2019),
27 [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_AP](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
28 [PROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).

1 uniformity in the treatment ballots flagged for rejection due to an identity-related
2 deficiency, to avoid disenfranchisement of otherwise eligible voters, and to avoid
3 confusion among voters and elections officials as to what ballots could be cured and in
4 what timeframe, the Secretary in 2019 drafted the EPM to include a provision that would
5 bring the cure period for missing signature ballots into line with that for mismatched
6 signatures and no-ID in-person voters. The county recorders largely agreed with this
7 approach.

8 54. However, the Attorney General objected to the Secretary's guidance, and
9 because the EPM requires the Attorney General's approval to go into effect, A.R.S. 16-
10 452(B), the Secretary ultimately issued a version of the EPM that provided that, when a
11 ballot without a signature is received, the County Recorder need only make a "reasonable
12 and meaningful attempt to contact the voter" and explain that the missing signature can be
13 cured "before 7:00pm on Election Day."⁴

14 55. Arizona is the only state in the country that imposes an inconsistent cure
15 period for voters, allowing mismatched and no-ID voters to cure for a period post-election,
16 but forbidding the same of missing-signature voters. Florida used to provide inconsistent
17 cure periods for missing and mismatched signatures, but that statute was enjoined as
18 unconstitutional in 2016, *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS,
19 2016 WL 6090943, at *1 (N.D. Fla. Oct. 16, 2016), and the Florida legislature subsequently
20 amended the law.

21 56. Concerned about the disenfranchisement that would result if lawful voters
22 were denied the same opportunity to cure guaranteed these other voters, DSCC, along with
23 the Arizona Democratic Party ("ADP"), filed an action in this Court in June 2020
24 challenging the mismatched cure process for voters with identity-related deficiencies.

25 57. That case alleged that the process imposed an undue burden on the right to
26 vote in violation of the First and Fourteenth Amendments, and separately violated the

27 ⁴ *Id.*

1 procedural due process guarantees of the Fourteenth Amendment. *See* Compl., *ADP v.*
2 *Hobbs*, No. 20-cv-1143-DLR, Dkt. No. 1 (D. Ariz. June 10, 2020).

3 58. The matter was assigned to Judge Douglas L. Rayes who, after careful
4 consideration of the evidence and arguments presented to him, issued a permanent
5 injunction forbidding the Secretary and county recorder defendants from rejecting missing
6 signature ballots without similarly allowing them a five-day post-election opportunity to
7 cure their ballots. *ADP v. Hobbs*, 485 F. Supp. 3d 1073, 1081 (D. Ariz. 2020).

8 59. The Attorney General, Republican National Committee (“RNC”), and
9 Arizona Republican Party all sought and were granted intervention as defendants in that
10 case. Those intervenors appealed Judge Rayes’ decision to the Ninth Circuit where, in the
11 weeks before the November election, a motions panel granted a stay of the order pending
12 resolution of the appeal, relying in large part on jurisprudence that cautions federal courts
13 against issuing rulings that change elections procedures on the eve of an election. *ADP v.*
14 *Hobbs*, 976 F.3d 1081, 1085 (9th Cir. 2020). That appeal has since been submitted on the
15 merits and remains pending awaiting a decision.

16 **B. The 2020 election in Arizona was secure and accurate.**

17 60. Despite the significant challenges presented by the COVID-19 pandemic,
18 Arizona voters turned out in record-setting numbers in 2020. More than 3.4 million of the
19 state’s 4.3 million voters, or 79.9 percent, cast a ballot. This compares to 74 percent in
20 2016, 74.2 percent in 2012, 74.3 percent in 2008, and 77.7 percent in 2004, and 71.8 percent
21 in 2000.⁵

22 61. The security and accuracy of the 2020 election results have been confirmed
23 and re-confirmed by county and state election officials, as well as the courts.

24 62. County election officials have confirmed and scrutinized the results. For
25 example, after the election, pursuant to A.R.S. § 16-602, ten of the state’s fifteen counties

26
27 ⁵ Voter Registration and Historical Election Data, Ariz. Sec’y of State (last visited Sept.
28 13, 2021), <https://azsos.gov/elections/voter-registration-historical-election-data>.

1 performed a hand count of sample ballots to test the equipment, each confirming the
2 election's initial results.

3 63. Clint Hickman, the chair of the Maricopa County Board of Supervisors,
4 confirmed that "there is no evidence of fraud or misconduct or malfunction" in a letter that
5 was sent to all Maricopa County voters.⁶

6 64. In February 2021, the Maricopa County Elections Department further
7 confirmed its results, hiring two auditing firms to conduct audits of the county's tabulation
8 system and equipment, which found no evidence of inaccuracies or improprieties.⁷

9 65. State officials have likewise confirmed the results and publicly and
10 definitively declared their accuracy. Arizona law requires the Secretary, in the Governor's
11 presence, to certify the statewide canvass. *See* A.R.S. § 16-648. On November 30, 2020,
12 Secretary of State Katie Hobbs, in the presence of Governor Ducey, did so. The Governor
13 himself further confirmed and defended the accuracy of the results through his social media
14 accounts and in a meeting at the White House with former President Trump.

15 66. Additionally, multiple lawsuits that were filed in the aftermath of the election
16 seeking to overturn its results only served to further confirm that the election was secure.
17 For example, in *Bowyer v. Ducey*, various Republican officials filed a lawsuit seeking
18 decertification of the election based on, among other things, allegations of improprieties in
19 signature matching. The court dismissed the suit on multiple grounds, including a lack of
20 any evidence. 506 F. Supp. 3d 699, 722 (D. Ariz. Dec. 9, 2020).

21 67. Similarly, in *Ward v. Jackson*, the Arizona Supreme Court concluded that
22 the Republican challenger failed to "establish any degree of fraud or a sufficient error rate
23 that would undermine the certainty of the election results." No. CV-20-0343-AP/EL, 2020

24 ⁶ Clint Hickman, Letter to Maricopa County Voters, Maricopa Cty Bd. of Supervisors
25 (Nov. 17, 2020), <https://www.maricopa.gov/DocumentCenter/View/64676/PR69-11-17-20-Letter-to-Voters>.

26 ⁷ Auditing Elections Equipment in Maricopa County, Maricopa County Government
27 (Feb. 23, 2021), <https://maricopacountyaz.medium.com/auditing-elections-equipment-in-maricopa-county-3955445c1712>.

1 WL 8617817, at *2 (Ariz. Dec. 8, 2020), *cert. denied*, No. 20-809, 2021 WL 666437 (U.S.
2 Feb. 22, 2021).

3 68. Nevertheless, fact-free conspiracy theories have continued to percolate and
4 efforts to undermine confidence in the elections process have continued to brew. In
5 particular, these same baseless and repeatedly disproven “concerns” have continued to
6 animate claims of fraud pushed by many Republican officials in the state.

7 69. Of particular note is an unprecedented effort to discredit the 2020 election
8 results and locate *some* evidence of fraud, that was launched by Republican Senators in the
9 Spring of 2021, who insisted on conducting another third-party “audit” of the 2020
10 election.

11 70. The Senate passed over experienced election auditors in favor of engaging a
12 corporation based in Florida called “Cyber Ninjas,” which has no experience in the field.

13 71. To make matters worse, Cyber Ninjas’ founder and the leader of the audit,
14 Doug Logan, has propagated false allegations and demonstrably false conspiracy theories
15 about how former President Trump in fact won the election.

16 72. Even some Republican officials and legislators who initially supported the
17 effort have since come to recognize that the audit itself is a “sham,” a “con,” “ridiculous,”
18 and lacks “integrity.”⁸

19 73. Most recently, the current Maricopa County Auditor Stephen Richer, a
20 Republican who delivered the Republican Party one of its few wins in Arizona in 2020
21 when he unseated a Democratic incumbent, released a heavily footnoted letter that sums it
22 up quite succinctly.

23 74. Richer wrote: Arizona’s 2020 election wasn’t “stolen.” “Governor Doug
24 Ducey agrees. Former Republican Jan Brewer agrees. Republican Arizona Attorney
25 General Mark Brnovich agrees, and his office has an election integrity unit that presumably

26 ⁸ John Bowden, *GOP-Led Maricopa County Board Decries Election Recount as a*
27 *‘Sham’*, Hill (May 17, 2021), <https://thehill.com/homenews/state-watch/554016-gop-led-maricopa-county-board-decries-election-recount-at-sham>.
28

1 receives all evidence of widespread fraud. Former Republican Recorder Helen Purcell
 2 agrees. Election directors in every other Arizona county agree. Former President Trump's
 3 Department of Justice agrees, including former U.S. Attorney General Bill Barr and former
 4 acting Attorney General Jeff Rosen. Trump's former director of the Cybersecurity and
 5 Infrastructure Agency, Chris Krebs, agrees. The attorney for the Trump campaign in
 6 Arizona agrees; it was he who responsibly said in court, 'we are not alleging fraud.' Even
 7 Sidney Powell herself—progenitor of so much of the Stop the Steal movement—now says
 8 that 'no reasonable person' should believe the election was stolen." And that's not it: also
 9 in agreement that the election was not stolen or impeded by fraud are "the 14 courts who
 10 heard eight (8!) complaints" all of which failed.⁹

11 75. In sum, after 10 months of repeated (and repeatedly fruitless) efforts to
 12 identify any evidence that Arizona's system is prone to cheating, or that the 2020 election
 13 was tainted with impropriety, there remains no evidence of significant or widespread voter
 14 fraud in Arizona.

15 76. Nevertheless, the same free-floating and repeatedly debunked contentions
 16 that Arizona's elections are insecure, plagued by fraud, or somehow lacking "integrity"
 17 lives on, and laid the foundation for the new voting restrictions that the Legislature has
 18 enacted into Arizona law.

19 **C. Arizona enacted the burdensome Cure Period and Voter Purge laws without**
 20 **any justification; they are pretexts for suppressing minority voting strength.**

21 77. When the 2021 legislative session began, Republicans in the Legislature
 22 moved quickly to introduce several bills to severely restrict access to the franchise in
 23 Arizona.

24 78. After introducing more than two dozen election bills that would have made
 25 it harder to vote throughout the spring, the Republican majority in May finally coalesced

26 ⁹ Stephen Richer, *Dear Arizona Republicans: Let's Do This Right* (Aug. 19, 2021),
 27 https://recorder.maricopa.gov/pdf/Dear%20Arizona%20Republicans_August%202021.pdf.
 28

1 around the two bills at issue here, both of which target access to the immensely popular
2 early voting by mail system.

3 79. **The Cure Period Law.** S.B. 1003 modifies a provision of the early voting
4 cure period law, which as noted above, was revised in 2019 to explicitly provide a post-
5 election cure period for ballots with mismatched signatures.

6 80. Over the objection of the Secretary and county elections officials, the
7 Arizona Attorney General had insisted that the same post-election cure period be denied to
8 voters whose ballots are flagged for rejection because the affidavit is missing a signature.

9 81. S.B. 1003 makes this differential treatment of voters a provision in Arizona
10 statutory law, such that A.R.S. § 16-550(A) now provides:

11 If the signature is inconsistent with the elector's signature on the elector's
12 registration record, the county recorder . . . shall allow signatures to be
13 corrected not later than the fifth business day after a primary, general or
14 special election that includes a federal office or the third business day after
15 any other election. *If the signature is missing, the county recorder . . . shall .*
. . . allow the elector to add the elector's signature not later than 7:00 p.m. on
election day.

16 82. This law will directly result in disenfranchisement. Indeed, in recent general
17 elections a significant number of mail ballots have been rejected for missing signatures.
18 From 2008 to 2020, for example, at least 20,347 ballots were rejected due to a missing
19 signature.¹⁰

20 83. Moreover, election officials may receive ballots up to the same deadline as
21 the missing signature cure deadline—7 p.m. on election day—so voters whose ballots
22 arrive in the final days of the election, in full compliance of Arizona law, are denied a cure
23 period altogether if their ballot is flagged for rejection due to a missing signature. History
24 shows that, every election, lawful voters' ballots are among this number, often due to mail
25 delays entirely outside their control.

26
27 ¹⁰ See U.S. Election Assistance Commission, Surveys and Data (last visited Sept. 13, 2021),
28 <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

1 84. The lack of an adequate cure period for missing signature voters stands in
2 stark contrast to the process available not just to voters whose ballots are flagged for
3 rejection due to a supposed signature “mismatch,” but also to voters who neglect to bring
4 acceptable identification with them to the polls when they vote in person, even on election
5 day. Those voters are given the same five-day post-election cure period as voters whose
6 ballots are flagged for rejection due to a perceived mis-matched signature. A.R.S. §§ 16-
7 550(A), 16-579(A).

8 85. Additionally, the law does not specify what “reasonable efforts” to “contact
9 the elector” means, or how the voters must be contacted, creating further and disparate
10 burdens throughout the state and likely disenfranchisement for voters who are given less
11 or no notice of their missing signature.

12 86. As Judge Rayes found, after careful consideration of the evidence presented
13 to him in *ADP v. Hobbs*, this system is unconstitutional; indeed, the Attorney General failed
14 to prove that it reasonably served any of the state interests that he claimed justified it. *ADP*,
15 485 F. Supp. 3d at 1091.

16 87. To the contrary, Judge Rayes found that the mismatched cure period actually
17 undermined the state’s interests in the orderly administration of elections and promoting
18 voter participation in elections. *Id.* at 1090-92.

19 88. The Republican-controlled Legislature ignored these findings and enacted
20 legislation that would codify the practice struck down in *ADP v. Hobbs*. It is no coincidence
21 that it did so in the aftermath of the 2020 election, in which record turnout among minority
22 voters in particular propelled the Democratic presidential and senate candidates to victory.

23 89. **The Voter Purge Law**. As noted above, prior to S.B. 1485, voters on the
24 PEVL received a ballot no later than the first day of the early voting period without having
25 to request a ballot for each individual election.

26 90. The new law, which redesignates the list with the misnomer the “active”
27 early voting list (“AEVL”), to be codified at A.R.S. § 16-544(K)-(M), provides that county
28 recorders “shall remove” voters from the AEVL if they fail “to vote using an early ballot”

1 for two consecutive election cycles (a four-year period) and do not respond within 90 days
2 in writing to a notice prescribed by the law, which county recorders must now send to all
3 voters who did not vote using an early ballot during that period.

4 91. To avoid removal under S.B. 1485, voters “shall do both of the following”:
5 (1) “confirm in writing the voter’s desire to remain on the active early voting list,” and (2)
6 “return the completed notice to the county recorder or other officer in charge of elections
7 within ninety days after the notice is sent to the voter. The notice shall be signed by the
8 voter and shall contain the voter’s address and date of birth.”

9 92. Under the law, a voter will be removed from the AEVL *even if they vote in*
10 *person on election day* during the two-cycle period. As such, the list requires the purging
11 from the active voter list of active voters.

12 93. Indeed, a voter could face removal from the list even if they consistently
13 voted in each of the elections over the prior two cycles, simply because in those elections
14 they opted to do so in person. And the onus is on the voter to be on the lookout for and
15 respond to inquiries by elections officials in order to safeguard that right, despite their
16 continued active engagement in Arizona’s elections.

17 94. The Voter Purge Law does little more than create more needless
18 correspondence between the county recorders and voters. As discussed above, Arizona
19 already requires the counties to perpetually mail notices to voters to determine whether
20 their registration status should remain active and whether voters who are on the PEVL
21 would like to remain on the list. *See* A.R.S. § 16-544(E)-(H). Any time a voter’s registration
22 is moved to inactive, or if the voter would like to be removed, they are taken off of the list.
23 *Id.* There is no evidence that these maintenance protocols left the PEVL overinflated or
24 created other problems. Yet, under S.B. 1485, voters who opted to vote to in person or did
25 not vote in two cycles will be subject to yet another round of notices. Some voters,
26 especially those who have responded to a previous notice to update their address or provide
27 other information, will inevitably disregard the PEVL purge notice and will be caught off
28 guard when they fail to receive their ballot for the next election.

1 95. It is by now well known that purges of voter lists are prone to
2 disproportionately improperly removing lawful and qualified minority voters from the
3 voting rolls. There is no reason to anticipate that this law will be any different. To the
4 contrary, as reflected in early assessments reported by Mi Familia Vota, the same will be
5 true here.

6 96. Other voters from vulnerable populations, such as low-income voters and
7 voters experiencing poverty, are also more likely to be removed because they are more
8 likely to vote intermittently.

9 97. The Voter Purge Law also particularly threatens harm to voters who live on
10 the state's tribal lands. Such a voter who discovers that they were purged from the AEVL
11 too late in the election cycle to address the problem and timely receive an early ballot is
12 likely to face substantial and often insurmountable hurdles in attempting to vote in person,
13 including but not limited to transportation accessibility issues, and extraordinarily long
14 distances to travel.

15 98. Young voters are also particularly at risk as a result of the Voter Purge Law.
16 Younger individuals, such as college students, tend to move around more often and vote
17 less consistently, putting them at greater risk of being removed under the provision—and
18 not receiving any notice that may be issued. They are also more likely to be outside of the
19 county in which they would be permitted to vote in person by the time they realize that
20 they will not be receiving a mail ballot and thus less likely to be able to exercise their right
21 to vote by appearing in person to cast their ballot.

22 99. For these voters and many others, the requirement that county recorders send
23 a notice requirement does not ameliorate the inevitable and unjustifiable burdens of the
24 Voter Purge Law. For example, voters from low-income backgrounds who are already at
25 greater risk of being removed often lack stable housing and are unable to receive their mail
26 on a consistent basis. Others, such as those on the state's tribal reservations, who lack
27 residential mail service and often have to drive long distances to pick up their mail (a trip
28 that many do not make regularly) may find it challenging to receive and respond to the

1 notice within the statutory period.

2 100. Moreover, the Voter Purge Law is to take effect even as opportunities to vote
3 in person diminish in Arizona. As explained above, the state's successful efforts to induce
4 voters to rely on the permanent early voting system has directly led to a decrease in the
5 number of and availability of polling place locations throughout the state. As a result,
6 voters who must vote in person because the state purges them from the AEVL will face an
7 even harder time exercising their right to vote.

8 101. **State Interests.** The two new restrictive measures were passed with no
9 colorable explanation, let alone justification.

10 102. In fact, no legislator identified a single instance of voter fraud or impropriety
11 in Arizona related to mail-in early voting ballots that would precipitate the need for the
12 changes at issue.

13 103. Nor can the Voter Purge Law or the Cure Period Law be credibly justified as
14 a cost-saving measure.

15 104. The Voter Purge Law requires counties to implement a new system to track
16 and mail additional notices, which will impose further and new costs upon the counties.

17 105. And, with respect to the Cure Period Law, it would impose little to no
18 administrative burden to extend the same cure period that already exists for mismatched
19 signatures and missing voter identification for in-person voters to voters who submit a
20 ballot affidavit with a missing signature. Indeed, this was the testimony of state and county
21 elections officials in *ADP v. Hobbs*.

22 106. In other words, both revisions to the law impose additional burdens on
23 elections officials, rather than relieve them.

24 107. Contemporary statements by legislative leaders further demonstrate the
25 pretextual nature of the proffered "justifications" for the restrictive measures challenged
26 here.

27 108. For example, the President Pro Tempore of the Arizona Senate Vince Leach
28 stated that the bill does not remove "voters" but just removes people who have "elected not

1 to participate” or are “dead.” But this was at the time—and remains—demonstrably false:
 2 voters whose registrations go inactive are already removed from PEVL in its prior iteration.

3 109. As described, the only “activity” that the new law recognizes is early voting;
 4 as designed, it will purge even undeniably active voters, who simply change their method
 5 of voting to in-person voting for two election cycles.

6 110. In fact, analysis shows that and nearly *130,000 Arizonans*, if not more, who
 7 *voted* in 2020 would have been removed from the early voting list if the Voter Purge Bill
 8 had become law prior to that election.

9 111. Several additional facts surrounding the enactment of the Voter Purge Law
 10 and the Cure Period Law supply ample context of the discriminatory motivations at play.

11 112. At various points throughout final consideration of the bills, Republican
 12 legislators failed entirely to rebut arguments about the racially discriminatory effects of the
 13 bills.

14 113. Instead, when concerns were raised about the discriminatory impacts of the
 15 bills, Republican legislators tried to *silence* discussion about those discriminatory impacts
 16 altogether, using procedural measures to attempt to prevent other members of the
 17 Legislature from even referring to race or racially based motives.

18 114. For example, after Reginald Bolding, a Black State Representative and
 19 minority leader of the House, said in a speech on the House floor that it would be harder
 20 for “independent voters, seniors, Native Americans, Black, brown and low income people
 21 to vote” under the Voter Purge Law, Republican Representative Travis Grantham, called a
 22 point-of-order, stating, “I feel personally that motives were [attributed to] members,
 23 including myself with regards to colored people, Black people, whatever people this
 24 individual wants to single out and their ability to vote . . . I think he should be sat down
 25 and he shouldn’t be allowed to speak.”¹¹

26 ¹¹ Sanya Mansoor, *Arizona Just Became the Latest State to Approve Mail Voting*
 27 *Restrictions. Here’s What to Know*, Time (May 11, 2021),
 28 <https://time.com/6047696/arizona-mail-voting-restrictions/>.

115. Legislators and other supporters of the new measures have also consistently used pretextual language that has historically been associated with intentionally racially discriminatory voting and election measures.

116. For example, Representative John Kavanagh, the chairman of the Government and Elections Committee in the House, revealed the true intent of the laws – i.e., to keep certain Arizonans from voting – when he declared that, “everybody shouldn’t be voting.” He added: “Quantity is important, but we have to look at the quality of votes, as well.”¹²

117. The broader context of these “reforms” and the doubts and conspiracy theories that animated them cannot be ignored. The legislature expressed a need to ensure a better “quality” of voters immediately after a historic election in which voters of color were able to elect their favored candidates to statewide office.

118. Voters in Arizona continue to face discrimination on a daily basis, including during the voting process. As State Senator Martin Quezada has stated, many voters used PEVL precisely because when they vote in person, they face “flat out discrimination at the polling place.”¹³

119. Arizona lawmakers also passed the new laws despite the devastating impact they knew the legislation would have on voters who live on the state’s Native American reservations and in other extremely remote areas.

120. As explained, the laws will cause more voters to have to present in person, either to cast a ballot in lieu of a PEVL ballot that they never received, or to cure a missing

¹² Timothy Bella, *A GOP Lawmaker Says the ‘Quality’ of a Vote Matters. Critics Say That’s ‘Straight Out of Jim Crow.’*, Wash. Post (Mar. 13, 2021), <https://www.washingtonpost.com/politics/2021/03/13/arizona-quality-votes-kavanagh/>.

¹³ Andrew Oxford, *Republicans in Arizona Legislature Advance Bill to Remove Some From Early Voter List*, Ariz. Repub. (Jan. 21, 2021), <https://www.azcentral.com/story/news/politics/legislature/2021/01/21/bill-remove-some-permanent-early-voting-list-arizona-advances/6665628002/>.

signature by election day. Yet, just to get to their polling place, voters who live on reservations must travel long distances in some of the “most remote, challenging, and sparsely populated terrain in the country.”¹⁴ The population density on the Navajo Nation is 6.3 individuals per square mile, compared to the statewide population density of 56.3.¹⁵ No public transportation exists on the state’s reservations and in other remote areas, creating significant obstacles for these voters to exercise their right to vote; many, each year, are unfortunately disenfranchised.¹⁶

121. Additional factors stemming from Arizona’s long history of discrimination against Native Americans make access to voting in person even more difficult for those who live on the state’s reservations. For example, extreme poverty on the state’s reservations and other socioeconomic factors exacerbate the difficulty obtaining reliable transportation to far off polling locations. One-third of people on the Navajo Nation live in poverty, and only four percent have a college degree.¹⁷ Despite the Native American community’s repeated efforts to achieve change through the political process, these suppressive realities remain for precisely the Arizonans who are most harshly targeted and impacted by the challenged provisions.

CLAIMS FOR RELIEF

COUNT ONE

(Unjustifiable Burden on the Right to Vote in Violation of the

¹⁴ *Addressing the Urgent Needs of our Tribal Communities: Hearing Before the Comm. on Energy and Commerce*, 116th Cong. (2020) (testimony of Jonathan Nez, Navajo Nation President).

¹⁵ Navajo Div. of Health, *Navajo Population Profile* (Dec. 2013), <https://www.nec.navajonnsn.gov/Portals/0/Reports/NN2010PopulationProfile.pdf>.

¹⁶ Sydney Page, *Getting To the Polls Can Be Hard in Navajo Nation. This Woman Is Leading Voters on Horseback*, Wash. Post (Nov. 2, 2020), <https://www.washingtonpost.com/lifestyle/2020/11/02/navajo-nation-horse-vote-polls-election/>.

¹⁷ Arizona Rural Policy Institute, *Demographic Analysis of the Navajo Nation Using 2010 Census and 2010 American Community Survey Estimates* 25 tbl. 10 (2010), https://gotr.azgovernor.gov/sites/default/files/navajo_nation_0.pdf.

First and Fourteenth Amendments)

122. Plaintiffs reallege and incorporate by reference all prior paragraphs, as if fully set forth herein.

123. A court considering a challenge to a state election law must carefully balance the character and magnitude of injury to the First and Fourteenth Amendment rights that the Plaintiff seeks to vindicate against the justifications put forward by the state for the burdens imposed by the rule. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

124. “However slight th[e] burden may appear, . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling op.) (quotations marks omitted).

125. The Voter Purge Law imposes a disparate and unjustifiable burden on the right to vote. Under the Voter Purge Law, voters who simply fail to vote or decide not to vote using an early mail in ballot in two elections, will be removed from the system upon which they rely to receive their ballot. Voters of color in Arizona will disproportionately be purged from that system and are more likely to face more significant barriers in attempting to remedy improper removal, including by responding to notices of removal in time, and successfully locating and accessing a location for in-person voting to exercise their right to vote.

126. There is no state interest, much less one that can justify the burdens imposed on voters by this discriminatory and burdensome system of removals. Every ballot submitted and counted in every election is checked by election officials and confirmed in subsequent verification measures. Moreover, the existing PEVL system already had an effective mechanism for removing inactive voters from its ambit. Under that system, the state already mailed notices to every PEVL voter in advance to ensure that their address remains accurate, and voters were immediately removed any time their registration status

1 goes inactive. There is simply no evidence to suggest the discriminatory new purge
2 provisions are necessary.

3 127. The Voter Purge Law's true objective is to add hurdles for lawful voters;
4 hurdles that will be disproportionately placed before Arizona's voters of color, thereby
5 severely and disparately burdening their ability to participate in Arizona elections.

6 128. The Cure Period Law also imposes a disparate and unjustifiable burden—
7 disenfranchisement—on the right to vote. Although voters who submit a mail ballot with
8 a missing signature or fail to present identification while voting in person have five days
9 after the election to cure that identity-related deficiency and save their ballot from rejection,
10 voters who leave off a signature are disenfranchised by the Law at 7 p.m. on election day.

11 129. There is no state interest supporting the Cure Period Law, much less one that
12 can justify this discriminatory and burdensome system and its injuries to lawful Arizona
13 voters.

14 130. Indeed, the Secretary and county election officials almost uniformly
15 advocated for and support a consistent cure period that gives missing signature voters the
16 same opportunities to cure as other voters whose ballots are flagged for rejection due to
17 identity-verification related deficiencies.

18 131. The mismatched and inconsistent cure period undermines the integrity of the
19 state's elections; it does not promote it. To the extent any interest exists, it certainly cannot
20 justify disenfranchisement.

21 **COUNT TWO**

22 **(Intentional Racial Discrimination in Violation of 23 Section 2 of the Voting Rights Act, 51 U.S.C. § 10301, *et seq.*)**

24 132. Plaintiffs reallege and incorporate by reference all prior paragraphs, as if
25 fully set forth herein.

26 133. Section 2 of the Voting Rights Act prohibits vote denial: the use of voting
27 laws, policies, or practices, such as mail ballot procedures or qualifications, that deny,
28 abridge or otherwise limit voters access or increase their burden to exercise the right to

1 vote. 52 U.S.C. 10301.

2 134. Section 2 is violated where the election law or practice being challenged has
3 either a discriminatory purpose or a discriminatory effect. *See Thornburg v. Gingles*, 478
4 U.S. 30, 35 (1986).

5 135. Discriminatory purpose may be established by proof that the defendants used
6 race as a motivating factor in their decisions. *Vill. Of Arlington Heights v. Metro. Hous.*
7 *Dev. Corp.*, 429 U.S. 252, 265 (1977). Even where challenged legislation appears neutral
8 on its face, discriminatory intent may be inferred by analyzing the context in which the
9 challenged provisions were enacted, and by reviewing the challenged provisions'
10 disproportionate racial impact. *See id.* at 266-68.

11 136. Here, the evidence shows a discriminatory purpose in the passage of the
12 Voter Purge Law and the Cure Period Law. Contemporary statements during the legislative
13 session and during consideration of the bills demonstrate racial pretext. Discrimination in
14 voting persists to this day, and the state's minority population turnout remains
15 comparatively suppressed. And the bills were passed after the 2020 election demonstrated
16 record turnout among the state's minority population, and in the face of clear evidence the
17 bills disproportionately harm and disenfranchise precisely those groups.

18 **COUNT THREE**

19 **(Discriminatory Purpose in Violation of the** 20 **Fourteenth and Fifteenth Amendments)**

21 137. Plaintiffs reallege and incorporate by reference all prior paragraphs, as if
22 fully set forth herein.

23 138. The Fourteenth Amendment provides that no state "shall make or enforce
24 any law which shall abridge the privileges or immunities of citizens of the United States;
25 no shall any state deprive any person of life, liberty, or property, without due process of
26 law; nor deny to any person within its jurisdiction equal protection of the laws."

27 139. The Fifteenth Amendment provides that the "right of citizens of the United
28 States to vote shall not be denied or abridged by the United States or by any State on

1 account of race, color, or previous condition of servitude.”

2 140. Discriminatory intent may be established by proof that the defendants used
3 race as a motivating factor in their decisions. *Vill. Of Arlington Heights v. Metro. Hous.*
4 *Dev. Corp.*, 429 U.S. 252, 265 (1977). Even where challenged legislation appears neutral
5 on its face, discriminatory intent may be inferred by analyzing the context in which the
6 challenged provisions were enacted, and by reviewing the challenged provisions’
7 disproportionate racial impact. *See id.* at 266-68.

8 141. All of the relevant indicia demonstrate discriminatory purpose in the passage
9 of the Voter Purge Law and the Cure Period Law. Contemporary statements during the
10 legislative session and during consideration of the bills demonstrate racial pretext.
11 Discrimination in voting persists to this day, and the state’s minority population turnout
12 remains comparatively suppressed. And the bills were passed after the 2020 election
13 demonstrated record turnout among the state’s minority population, and in the face of clear
14 evidence the bills disproportionately harm and disenfranchise precisely those groups.

15 PRAYER FOR RELIEF

16 Plaintiffs respectfully request that this Court enter the following judgment:

- 17 A. Declare that the Voter Purge Law (S.B. 1485) violates the First, Fourteenth, and
- 18 Fifteenth Amendments, as well as Section 2 of the Voting Rights Act;
- 19 B. Declare that the Cure Period Law (S.B. 1003) violates the First, Fourteenth, and
- 20 Fifteenth Amendments, as well as Section 2 of the Voting Rights Act;
- 21 C. Enjoin Defendants, along with their respective agents, officers, employees, and
- 22 successors from enforcing the Voter Purge Law;
- 23 D. Enjoin Defendants, along with their respective agents, officers, employees, and
- 24 successors from enforcing the Cure Period Law;
- 25 E. Award Plaintiffs their costs, expenses, and reasonable attorneys fees, pursuant
- 26 to 42 U.S.C. 1988, and any other applicable law;
- 27 F. Grant such other and further relief as the Court deems just and proper.

Dated: September 24, 2021

Respectfully Submitted,

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**Pro Hac Vice Applications to be filed*