

Alexander Kolodin (SBN 030826)
Veronica Lucero (SBN 030292)
Roger Strassburg (SBN 016314)
Arno Naeckel (SBN 026158)
Michael Kielsky (SBN 021864)

Alan Dershowitz (*Pro hac vice* to be submitted)
1575 Massachusetts Avenue
Cambridge, MA 02138
adersh@gmail.com

Proposed Additional Counsel Pro Hac Vice

Davillier Law Group, LLC
akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
rstrassburg@davillierlawgroup.com
anaeckel@davillierlawgroup.com
mkielsky@davillierlawgroup.com
phxadmin@davillierlawgroup.com (file copies)
4105 North 20th Street Suite 110
Phoenix, AZ 85016
Telephone: (602) 730-2985
Facsimile: (602) 801-2539
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

ARIZONA REPUBLICAN PARTY; et al.;

Plaintiffs,

v.

KATIE HOBBS; et al.;

Defendants.

No. S8015CV202200594

**MOTION FOR PRELIMINARY
INJUNCTION**

(Oral Argument Requested)

Plaintiffs hereby move for a preliminary injunction pursuant to Arizona Rules of Civil Procedure 7.1(a) and 65(a); the Arizona Uniform Declaratory Judgments Act; A.R.S. §§ 12-122, 1801, and 2022(B);¹ and the Verified Complaint, which is incorporated herein. They ask that Defendants be preliminarily enjoined from conducting Arizona's 2022 General Election, set for November 8, 2022, under the post-1991 system of no-excuse mail-in voting and instead be ordered to conduct it under the pre-1991 system in place before S.B. 1320 was enacted in 1991. **Exhibit A**, attached hereto, is a redlined version of the 1991 changes to the prior law.

¹ As well as any other applicable law.

MEMORANDUM OF POINTS AND AUTHORITIES²

The Arizona Constitution guarantees that the results of our elections will be the product of each voter's independent decision made alone and in secret at the polls—free of the danger of outside influences from employers, unions, families, spouses, or anyone else. This guarantee is safeguarded by the Constitution's requirements that ballots be distributed directly to voters by election officers at the polling place, where they can ensure that the vote is cast in secret.³

Through 1990, Arizona voters were required to vote in this manner unless physical disability, age, distance, religious beliefs, or travel prevented them from doing so. Even for voters entitled to vote absentee, the Arizona Legislature took pains to preserve these constitutional prerequisites. Until 1991, A.R.S. § 16-541 provided that (a) absentee ballots were to be supplied to the voter in person by an election official who witnessed the voter's signature on the application for the ballot and verified his identity, and (b) the voter was then to "Display ballot unmarked before the officer in his presence," vote the ballot in "such a manner that [the official] cannot see your vote," and seal the ballot in the ballot envelope. *See* 1991 Ariz. Sess. Laws ch. 51 (1st Spec. Sess.). This system increased, not decreased, the protections afforded to Arizona's most vulnerable voters, the sick and elderly, while facilitating their participation in elections. *See* Commission on Federal Election Reform, *Building Confidence in U.S. Elections* 46 (Sept. 2005) ("Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation."). The relief Plaintiffs seek would restore it.

In contrast, after 1991, all voters may request an absentee ballot by mail, vote in the presence and subject to the influence of anyone, and return those ballots by mail; as a consequence, elections are now conducted almost entirely by mail. This post-1991 system of "no-excuse mail-in voting" violates the Arizona Constitution.

² Emphasis added and internal citations and quotations omitted for most citations herein. This motion refers to the Arizona Constitution as the "Constitution," despite the convention that only the U.S. Constitution is capitalized.

³ This motion does not challenge voting under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Ch. 203.

STANDARD FOR PRELIMINARY INJUNCTIVE RELIEF IN CASE ALLEGING THE UNLAWFUL CONDUCT OF ELECTIONS

When public officials seek to exceed their legal authority in the means by which they conduct an election, the typical multi-factor standard for preliminary injunctive relief need not be satisfied. Rather, plaintiffs in cases such as these are entitled to preliminary injunctive relief by showing that they are likely to prevail on their claim that Defendants have acted unlawfully. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 64 ¶ 26 (2020) (“Because Plaintiffs have shown that the Recorder has acted unlawfully and exceeded his constitutional and statutory authority, they need not satisfy the standard for injunctive relief.”). Thus, if Plaintiff establishes the likelihood of success on the merits (as is the case here), then irreparable harm, balance of hardships, and public policy in the movant’s favor are presumed, and the requisite injury is shown by demonstrating that the movant is “beneficially interested” in compelling the public officials to perform their legal duty. *Id.* at 64 ¶¶ 26–27. All Arizona citizens and voters are “beneficially interested” in the enforcement of Arizona constitutional and statutory provisions related to election law. *Id.* at 62 ¶¶ 11–12.⁴ Just as in *Fontes*, where the defendant sought to conduct early voting unlawfully by promulgating illegal instructions to early voters, here, Defendants seek to employ an unlawful system of no-excuse mail-in voting. Thus, relief is warranted here for the reasons set out below.⁵

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS BECAUSE NO-EXCUSE MAIL-IN VOTING IS UNCONSTITUTIONAL.

Arizona’s no-excuse mail-in voting system is unconstitutional both facially and as applied. The applicable rule of construction is the plain meaning rule: “[I]f the Constitutional language is clear, judicial construction is neither required nor proper.”

⁴ Plaintiff Ward is an Arizona citizen and registered voter. Verified Compl. ¶ 30. Plaintiff Arizona Republican Party (“AZGOP”) is beneficially interested. *Id.* ¶¶ 39–45.

⁵ Typically, a party seeking a preliminary injunction is obligated to establish: (a) a strong likelihood of success on the merits; (b) the possibility of irreparable injury; (c) the balance of hardships favors the movant; and (d) public policy favors the injunction.” *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). However, the movant may show either probable success on the merits and the possibility of irreparable injury or the presence of serious questions and that the balance of hardships tips sharply in the movant’s favor to obtain relief. *Id.*

Perini Land & Dev. Co. v. Pima Cty., 170 Ariz. 380, 383 (1992). Only if the text is unclear should “we...examine the original public meaning of the words as understood by the drafters and people at the time of adoption.” Clint Bolick, *Principles of State Constitutional Interpretation*, 23 Federalist Soc’y Rev. 1, 15 (March 24, 2022). Also, “the dominant judicial philosophy at the time of Arizona’s statehood was originalism[;] thus, our framers would have assumed that the provisions they drafted would be interpreted in accordance with original meaning.” *Id.* at 18; *State ex rel. Brnovich v. City of Tucson*, 251 Ariz. 45, 56 (2021) (original meaning). Either way, today’s system of no-excuse mail-in voting cannot stand.

A. Article 7, section 1 of the Arizona Constitution requires secrecy in voting to protect voter autonomous choice and election outcomes from undue influences.

Article 7, section 1 allows the legislature to enact only those laws regulating the conduct of elections that do not dispense with “secrecy in voting.” Whatever this term may mean to modern readers, the framers understood it as requiring voters to make their selections at the polls, on election day, in the presence of election officials whose task it was to make it impossible for anyone to see how they were voting. Whether our current system is sufficient to satisfy some contemporary notion of secrecy is irrelevant.

The constitutional requirement of secrecy in voting originated with the “Australian Ballot” reforms of the late 19th century, a reaction across the country to the plague of crooked elections. “[A]fter the 1888 presidential election, which was widely regarded as...plagued by fraud, many States moved to the ‘Australian ballot system.’ Under that system, an official ballot, containing the names of all the candidates legally nominated by all the parties, was printed at public expense and distributed by public officials at polling places.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). See also John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J. L. Reform 483, 488 (2003) (essential components of Australian Ballot are: (a) ballots printed and distributed at public expense; (b) ballots with the names of all candidates duly nominated by law (“blanket ballot”); (c) ballots distributed

“only by election officers at the polling place”; and (d) detailed provisions for “physical arrangements to ensure secrecy in casting the vote.”).

In 1891, the Arizona territorial legislature adopted the Australian Ballot to ensure popular sovereignty by honest elections as a check on the malignant influence on voting of corporations and political machines. It passed a law expressly defining secrecy in voting to mean that ballots were to be provided to voters only at the polls, where citizens would make their selections in a private voting booth. John D. Leshy, *The Making of the Arizona Constitution*, 20 Ariz. St. L. J. 1, 68 (1988) (citing 1891 Ariz. Terr. Sess. Laws No. 64, §§ 2, 26, 32 at 71, 73) (hereinafter, “Leshy, *Making*”). The law was entitled “AN ACT: To Promote Purity of Elections, Secure Secrecy of the Ballot and to Provide for the Printing and Distribution of Ballots at Public Expense.” 1891 Ariz. Terr. Sess. Laws no. 64⁷ (hereinafter, the “1891 Law”). It was the Australian Ballot System on all fours, and its provisions were incorporated by reference into the 1912 Constitution.

The framers of Arizona’s 1912 Constitution adopted the 1891 Law’s secrecy safeguards into the state’s fundamental law to stop corporate interests or political machines from corrupting future legislatures to depart from them. Thus, to the language of article 10, section 4 of the prior 1891 Constitution,⁸ they added the key qualifier “Provided, that secrecy in voting shall be preserved.” Ariz. Const. art. 7, § 1; John D. Leshy, *The Arizona State Constitution* 16 (2d ed. 2013) (hereinafter, “Leshy”) (“The [constitutional] convention included the Australian import, the secret ballot, that had been adopted by the territorial legislature nineteen years earlier” in article 7, section 1.). In other words, the 1912 Constitution constrains the legislature’s ability to deviate from the 1891 Law.

The term “secrecy in voting” is not limited to *privacy* in voting; rather, it means that voting by “secret ballot” is intended “to protect individual voters from coercion.” *See, e.g., McLaughlin v. Bennett*, 225 Ariz. 351, 354 ¶ 11 (2010) (Prop. 108 violated single amendment rule because “Secrecy of voting in public elections is already protected in

⁷ Available at <https://azmemory.azlibrary.gov/digital/collection/lawsession/id/2667>.

⁸ Congress failed to ratify the 1891 Constitution.

Article 7, Section 1 of the Arizona Constitution” but if approved would add a new section guaranteeing secrecy in union elections resulting in two sections “that **both ensure secrecy in public elections.**”).⁹ In addition, secrecy protects not just individual voters from undue influence but also the process itself—which is why the right to cast a secret ballot is also an obligation. *See Hunt v. Campbell*, 19 Ariz. 254, 282–3 (1917) (“If the voter is not held to a substantial compliance [with prohibition on obtaining assistance marking the ballot], the spirit of the Australian ballot system is ignored. We might as well return to the old system of haphazard voting in vogue before this innovation, and to remedy the many evils of which, the new system was inaugurated.”).

“Secrecy” is the primary means of safeguarding the Constitution’s guarantee that voting is individual, independent, and free of external coercion or influence. However, current mail-in voting—allowing votes to be cast anywhere from a kitchen table to an employer’s cafeteria table and in the presence of bosses, activists, family, friends, and others—fails constitutional muster.

1. Preservation of secrecy in voting implies that it pre-existed the 1912 Constitution.

By requiring that “secrecy in voting” be “preserved,” the 1912 Constitution (still in effect today) was safeguarding the 1891 Law, which had adopted secrecy in voting along with the other reforms of the “Australian Ballot,” from future legislatures. The 1891 Law required secret voting in privacy at a polling place protected by election authorities:

On receiving his ballot the voter shall forthwith and **without leaving the polling place or going outside** of said guard rail, **retire alone** to one of the booths or compartments **not occupied by any other person**, and prepare his ballot.... Before leaving the booth or compartment, the voter **shall fold his ballot...in such a way that the contents of the ballot shall be concealed....**

Id. § 26. It required that all ballots “shall be printed and distributed at public expense.” *Id.*

§ 2. It also penalized disclosure of how the voter intended to vote and the breaking of

⁹ The constitution was subsequently amended on November 2, 2010, to include article 2, section 37, which guaranteed a secret ballot in employee representation elections: “The right to vote by secret ballot for employee representation is fundamental.” *Id.* at 353 n.1. Since the right to vote by secret ballot is fundamental for employees voting in union representation elections, so much more so must be the right to vote by secret ballot in public elections.

1 secrecy after voting. *Id.* §§ 32, 36. Electioneering at the polls was also not allowed. *Id.* See
2 also Leshy, *Making, supra* 68. The 1912 Constitution thus raised the provisions of the 1891
3 Law mandating secrecy in voting to the status of the fundamental law of our state, where
4 they remain today.

5 **2. The secrecy in voting provision in the 1912 Constitution prohibits the**
6 **legislature from repealing the Australian Ballot enacted by the 1891 Law.**

7 The phrase “[p]rovided, that secrecy in voting shall be preserved” limits the
8 legislature’s power to enact laws that deviate from the essential provisions of the 1891
9 Law. See *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 823 (2015)
10 (“Core aspects of the electoral process regulated by state constitutions include voting by
11 ‘ballot’ or ‘secret ballot’.... [T]he States’ legislatures had no hand in making these laws
12 and may not alter or amend them.”); *City of Phoenix v. Yates*, 69 Ariz. 68, 72 (1949) (“Each
13 word, phrase, and sentence must be given meaning so that no part will be [void], inert,
14 redundant, or trivial.”). Thus, any statute that fails to preserve secrecy in voting
15 substantially as it existed in 1912, when the Constitution was ratified, is beyond
16 legislature’s power to enact and is unconstitutional.

17 **3. The phrase “such other method as may be prescribed by law” does not**
18 **authorize the legislature to stop preserving secrecy.**

19 The phrase “such other method as may be prescribed by law” is not a broad and
20 general grant of authority allowing the legislature to deviate from the Australian Ballot and
21 its requirements of secrecy. Rather, the framers meant to allow the legislature to authorize
22 voting machines *in lieu of* paper ballots. See *McLaughlin*, 225 Ariz. at 355 (“Arizona’s
23 framers....fashioned Article 7, Section 1 to preserve the state’s ability to adopt voting
24 machines.”). See also *In re Contested Election*, 281 Pa. 131, 137–38 (1924) (stating that
25 Pennsylvania’s parallel constitutional provision was included “to enable the substitution of
26 voting machines, if found practicable”); *People ex rel. Deister v. Wintermute*, 194 N.Y. 99
27 (1909) (same). The framers thus included the phrase to clarify that voting machines, if
28 used, must adhere to the four principles of the Australian Ballot. See *McLaughlin*, 225

Ariz. at 356. But, though the legislature has now authorized the use of “electronic voting systems”, even current statutory law makes clear that they only provide for secrecy in voting when voters vote at the polls. *See* A.R.S. § 16-446 (“An electronic voting system shall: 1. Provide for voting in secrecy **when used with voting booths.**”).

Indeed, a Pennsylvania appellate court recently struck down Pennsylvania’s “no-excuse mail-in voting” system, which “created the opportunity for all Pennsylvania electors to vote by mail without secrecy or having to demonstrate a valid reason for absence from their polling place on Election Day, *i.e.*, a reason provided in the Pennsylvania Constitution.” *McLinko v. Commonwealth*, 2022 Pa. Commw. Lexis 12, at *4 (Pa. Commw. Ct. 2022) (review pending). That court explained that the secrecy provision, adopted in 1901, derives from the Australian Ballot reforms, noting that the “1901 amendment guaranteed the secrecy of the ballot, **both in its casting and in counting.** “[T]he cornerstone of honest elections is secrecy in voting. A citizen in secret is a free man; otherwise, he is subject to pressure and, perhaps, control.” *Id.* at *21. Noteworthy is the fact that, unlike Arizona, Pennsylvania has already amended its constitution several times to expressly allow for some forms of mail-in voting.

Current statutes regulating in-person voting on election day preserve the 1891 Law. In language largely unchanged from section 26 of the 1891 Law, A.R.S. §16-580(B) still requires secrecy for in-person voting: “On receiving a ballot the voter shall promptly and without leaving the voting area retire alone...to one of the voting booths that is not occupied, prepare the ballot in secret and vote.” In language extending the secrecy provisions of the 1891 Law to account for modern technology, the legislature has even criminalized photographing one’s own ballot if cast at the polls. A.R.S. § 16-515(G).

4. The history of the Arizona Constitution shows that secrecy in voting was the primary reason for adoption of the “Australian Ballot” reform.

The Arizona Constitution was a product of its time and should be interpreted in light of its history and purpose. “Constitutions, meant to endure, must be interpreted with an eye to syntax, **history, initial principle,** and **extension of fundamental purpose.**” *Saban*

1 *Rent-a-Car LLC v. Ariz. Dep't of Revenue*, 246 Ariz. 89, 95 ¶ 21 (2019). *See also Chavez*
2 *v. Brewer*, 222 Ariz. 309, 319 ¶ 32 (App. 2009).

3 Historically, voting in the U.S. lacked secrecy and integrity in results. In *Burson v.*
4 *Freeman*, 504 U.S. 191, 206 (1992), the Supreme Court described voter privacy through
5 secrecy as the means adopted historically to prevent voter fraud and undue coercion:

6 [T]he history of election regulation in this country **reveals a persistent**
7 **battle against two evils: voter intimidation and election fraud.** After an
8 unsuccessful experiment with an unofficial ballot system, all 50 States,
9 together with numerous other Western democracies, settled on the same
10 solution: a **secret ballot secured in part by a restricted zone around the**
11 **voting compartments.**

12 By 1896, almost all the states in the U.S. had adopted the Australian Ballot. *See Doe v.*
13 *Reed*, 561 U.S. 186 (2010) (Scalia, J. concurring) (“It was precisely **discontent over the**
14 **non-secret nature of ballot voting**, and the abuses that produced, which led to the States’
15 adoption of the Australian secret ballot. New York and Massachusetts began that
16 movement in 1888, and almost 90 percent of the States had followed suit by 1896.”).

17 Arizona, too, was caught up in the progressive political movement that swept the
18 country in the early 1900s when the 1912 Constitution was drafted. Popular sovereignty
19 through the electoral process has been described as the “most constant thread running
20 through the Arizona Constitution” with its “emphasis on democracy—**popular control**
21 **through the electoral process.**” Leshy, *Making supra* 59. Accordingly, the Arizona
22 Constitutional Convention adopted the “best known” of the progressive innovations:
23 initiative, referendum, and recall, all intended to strengthen popular sovereignty. All these
24 innovations depended on free elections. *See Hunt*, 19 Ariz. at 283 (Australian Ballot
25 “designed to purify elections by securing to the voter the prerogative of **freely and**
26 **privately** selecting the candidates of his own choice”); Fortier & Ornstein, *supra* 512
27 (Australian Ballot came about in part because of a concern that, if constitutional safeguards
28 were not put in place requiring voters to **cast their ballot in secret**, employers or “party
machines” might require voters to show their ballots to ensure they voted correctly.)

1 In addition, the Arizona framers were deeply concerned with limiting the political
2 influence of corporations and political machines over the democratic process. *See Ariz.*
3 *Corp. Comm'n v. Ariz. ex rel. Woods*, 171 Ariz. 286, 290–92 (1992). *See also* Ariz. Const.
4 art. 15 (establishing Arizona Corporations Commission); Leshy, *supra* 356 (Arizona
5 Constitution reflects a “pronounced, progressive-era concern with regulating corporations,
6 a concern enhanced by the perceived dominance of large railroad and mining companies
7 during the territorial era.”). Accordingly, the framers included a provision “broadly
8 proscribing corporate influence on ‘any election or official action.’” Leshy, *Making supra*
9 91 (citing Ariz. Const. art. 15, § 18). They also enshrined direct primary elections into the
10 Constitution to limit the influence of political machines. *Id.* at 62. Again, most critically,
11 these provisions depended upon free elections, and the integrity of those elections
12 depended on the secrecy of the Australian Ballot.

13 ***B. The term “Official Ballot” means a ballot that is distributed and voted at the polls***
14 ***in secret under the watchful eyes of election officials; thus, article 4, section 1 of***
15 ***the Arizona Constitution precludes any other ballot.***

16 Since the framers understood “secrecy in voting” to mean, among other things, that
17 voting was only to take place at the polls, this is naturally reflected in other portions of the
18 Constitution. For example, article 4 is a constitutional mandate to the Secretary of State
19 regarding the form and manner of delivery of “official ballots.”

20 **“Official ballot.** When any initiative or referendum...shall be filed...with the
21 secretary of state, **he** shall cause to be printed on the official ballot **at** the next
22 regular general election the title and number of said measure, together with
the words ‘yes’ and ‘no’ in such manner that the **electors may express at**
the polls their approval or disapproval of the measure.”

23 Ariz. Const. art. 4, § 1(10). The constitutional requirement that votes are cast “at the polls”
24 appears in three other places in article 4, section 1. *See id.* at (1) (reserving to people the
25 “power to propose laws and amendments to the Constitution and to enact or reject such
26 laws and amendments **at the polls**...and they also reserve...the power to approve or reject
27 **at the polls** any” legislative act); *id.* at (3) (“Legislature, or five per cent of the qualified
28 electors, may order the submission to the people **at the polls** of any measure...enacted by

1 the Legislature.”); *id.* at (15) (“Nothing in this section shall be construed to deprive or limit
2 the Legislature of the right to order the submission to the people at the polls of any
3 measure, item, section, or part of any measure.”).

4 It was obvious to our Supreme Court, the year after our Constitution was ratified,
5 that this meant voters needed to go to the polls to cast their ballots. *See Allen v. State*, 14
6 Ariz. 458, 460–62 (1913) (“That the votes of the electors were cast at the ‘polls’ in the
7 manner provided by [article 4, section 1] is unquestioned.... [T]he electors...went to the
8 polls and voted.”).

9 The 1891 Law adopting the Australian Ballot—just as the Arizona Constitution
10 would do later—had also prescribed an official ballot to be used at the polls. Leshy, *Making*
11 *supra* 68. Official ballots were to be prepared and distributed at public expense and
12 obtainable by voters only at polling places and only from election officers. 1891 Law §§
13 1, 15, 21, 25, 36. The 1912 Constitution’s article 7, section 1 (requiring secrecy in voting
14 be preserved) meant that the provisions of the 1891 Law were constitutionally required,
15 and voting at the polls was an integral part of those requirements. Leshy, *Making supra* 68.

16 Even today, the plain meaning of “at the polls” in Arizona’s election statutes
17 signifies a place provided by election officials where votes are cast in booths screened from
18 view of others and within the 75-foot circle in which electioneering is prohibited. *See, e.g.,*
19 A.R.S. § 16-411(B) (polling places designated by county boards of supervisors); *id.* at (J)
20 (Secretary shall “provide for a method to reduce voter wait time at the polls”); A.R.S. §
21 16-404 (polling places have “sufficient number of voting booths on which voters may
22 conveniently mark their ballots screened from the observation of others”); A.R.S. § 16-
23 515(A) (no electioneering “inside the seventy-five foot limit while the polls are open”).

24 In contrast to “at the polls,” the actual casting of a mail-in ballot does not occur at
25 the polls—a specific place provided by county boards or a place with a sufficient number
26 of private voting booths and within a 75-foot “no-go” zone. Rather, mail-in votes can be
27 cast from anywhere a voter can fill out a ballot with no protection for the voter from the
28 influences of others—the kitchen table with an activist present, the cafeteria table at work

surrounded by employees and shop stewards, or anywhere else. Because a mail-in vote is not cast at the polls, it is unconstitutional under the Constitution's plain meaning.

Although the "at the polls" provisions appear in article 4 (addressing the legislative department and reserving certain law-making powers to the people) rather than in article 7 (addressing suffrage and elections), that language is not limited to elections on referenda and initiatives for the simple reason that **referenda and initiatives are always decided "at the next regular general election."** Ariz. Const. art. 4, § 1(10). Moreover, these referenda provisions were adopted contemporaneously with the provisions in article 7. *See The Records of the Arizona Constitutional Convention of 1910*, 1402–05 & 1416–17 (John S. Goff ed., 1990) (documenting Constitution as originally adopted in 1910). Thus, the framers intended all voting to occur at the polls. It is also worth noting that other foundational provisions relating to elections are not found in article 7. *See e.g.*, art. 2, § 21 ("Free and Equal" clause). In addition, the voting provisions of articles 4 and 7 are "*in pari materia*—those of the same subject or general purpose—[and] should be read together and harmonized when possible." *David C. v. Alexis S.*, 240 Ariz. 53, 55 ¶ 9 (2016). Also worth noting is that, having defined the term "official ballot" in article 4 as a ballot distributed "at the polls," the Constitution then goes on to use the term in several other places. Article 7, for example, provides that such "official ballots" are to be used for "any election or primary." Ariz. Const. art. 7, § 14. Such "official ballots" were also to be used for, among other things, elections for federal officers and recall elections. Ariz. Const. art. 6 § 38; art. 7 §§ 9, 14, 38; art. 8 §§ 3, 4, 6.

C. Construing article 7, § 1, and article 4, § 1 as meaning something other than that ballots must be provided and filled out "at the polls" renders other portions of the Arizona Constitution meaningless.

An alternative construction would render several other constitutional provisions meaningless. For example, Article 7, section 4 provides: "Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their **attendance** at any election, and in **going thereto** and **returning therefrom**." The plain meaning of

1 “attendance” is “[p]hysical presence plus freedom to perform the duties of an attendant.”
2 *Attendance*, Ballentine’s Law Dictionary (3rd ed. 2010). That meaning should govern here.
3 *Fann v. State*, 493 P.3d 246, 255 ¶ 25 (Ariz. 2021) (courts interpret language in view of
4 the entire text and consider the context in which it was used). Also, “Each word, phrase,
5 and sentence must be given meaning so that no part will be [void], inert, redundant, or
6 trivial.” *Yates*, 69 Ariz. at 72. Arizona’s present early voting laws allow electors to fill out
7 their ballots anywhere and do not require physical presence at any election on a specific
8 day. Thus, it is impossible for “[e]lectors...in all cases...[to] be privileged from arrest
9 during their attendance at any election, and in going thereto and returning therefrom,”
10 Ariz. Const. art. 7, § 4 (emphasis added).

11 In addition, Article 7, section 11 would be meaningless. It provides: “There shall be
12 a general election of Representatives in Congress, and of State, county, and precinct
13 officers on the first Tuesday after the first Monday in November of the first even
14 numbered year after the year in which Arizona is admitted to Statehood and biennially
15 thereafter.” As with article 7, section 5, this provision plainly mandates that the general
16 election must take place on a specific day. See *Sherman v. City of Tempe*, 202 Ariz. 339,
17 343–44 ¶¶ 14–20 (2002). In *Sherman*, the court held that “the Arizona Constitution and
18 Arizona’s election statutes employ the word ‘election’ to refer to a particular day” and
19 explained that the Constitution “states that ‘there shall be a *general election*...on the first
20 Tuesday after the first Monday in November.” Thus, the court held, “according to the
21 Constitution and Arizona election statutes, elections occur on one particular date and the
22 term ‘election’ refers to that date.” *Id.* at 344 ¶ 19. In contrast to the Constitution’s
23 requirements, Arizona’s no-excuse mail-in voting statutes allow electors to cast their
24 ballots up to 27 days before election day. A.R.S. § 16-542(C). Why stop at 27 days? Does
25 “day” in the Constitution stretch to 37, 47, or more days without limit? The simple answer
26 is that early voting, in its present form, violates the Arizona Constitution.

27 By way of further example, article 7, section 5 provides: “No elector shall be obliged
28 to perform military duty on the day of an election, except in time of war or public danger.”

Ariz. Const. art. 7, § 5. “[O]n the day of an election” plainly refers to an election that occurs on a particular day, not a month-long period during which voters can mail in ballots. If the Constitution provided for mail-in voting, article 7, section 5 too would be irrelevant.

II. THOUGH NOT REQUIRED, THE OTHER ELEMENTS TYPICALLY REQUIRED FOR PRELIMINARY INJUNCTIVE RELIEF ARE PRESENT.

A. *Though not required, Plaintiffs will experience irreparable injury if Defendants violate their constitutional right to participate in a general election safeguarded against undue influence.*

Here, irreparable injury should be presumed because Plaintiffs have shown a likelihood of success on the merits of their constitutional claims. *Fontes*, 250 Ariz. at 64 ¶ 26. *See also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”); *Nelson v. NASA*, 530 F.3d 865, 882 (9th Cir. 2008), *rev’d on other grounds*, 562 U.S. 134 (2011) (“[C]onstitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm.”).

Nevertheless, Plaintiffs also satisfy the irreparable harm element. “A person who is denied the right to vote suffers irreparable injury.” *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073 (N.D. Fla. 2004). “[T]he right to vote” is not merely the right to cast a ballot and have that ballot counted but also “the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system.” *Fontes*, 250 Ariz. at 61 ¶ 4 (citing *Burdick v. Takushi*, 504 U.S. 428, 441 (1992)).

As *Shoen* provides, the party seeking an injunction must show only **a possibility** of irreparable injury not remediable by damages. 167 Ariz. at 63. Here, Plaintiff Ward is an individual voter in her county of residence. Absent an injunction, she will be deprived of the right to cast her vote in an election conducted under constitutional principles that safeguard against the possibility of undue influence. Plaintiff AZGOP’s members and candidates will be deprived of the right to participate in an election conducted under constitutional principles. Absent an injunction, Plaintiff AZGOP will also have to employ more resources to monitor early voting against improprieties instead of using them for

other election-related purposes. *See, e.g.,* A.R.S. 16-552 (C) & (H); *League of Women Voters of Ariz. v. Reagan*, No. CV-18-02620-PHX-JAT, 2018 U.S. Dist. LEXIS 159302, at *22 (D. Ariz. Sep. 18, 2018) (irreparable harm to defendant with “mandate to enforce Arizona’s election laws” where a court fails to enforce a law facilitating the discharge of that duty); *IB Prop. Holdings, LLC v. Rancho Del Mar Apts. Ltd. P’ship*, 228 Ariz. 61 (App. 2011) (where loss uncertain or difficult to quantify, Arizona courts find irreparable harm warranting injunctive relief). Once it takes place, the election cannot be re-run. Thus, absent an injunction, these harms are irreparable.

B. Though not required, the balance of hardships favors Plaintiffs.

Here, a balance of hardships favoring Plaintiffs should be presumed because they have shown a likelihood of success on the merits. *Fontes*, 250 Ariz. at 64 ¶ 26. Nevertheless, the balance of hardships tips in favor of Plaintiffs because they will be irreparably damaged if the court fails to enjoin the state and its officials from implementing an unconstitutional voting system. Future relief (e.g., issuance of a permanent injunction) cannot undo the harm Plaintiffs will experience if the 2022 general election proceeds in an unconstitutional manner.

Defendants will not be impermissibly burdened if the injunction is granted. *See* 250 Ariz. at 64 ¶¶ 28–29 (even if court was to reach balance of hardships, it cannot favor election officials who are exceeding their authority when it is possible to grant the relief requested). The deadline for voter registration is October 11, 2022, early voting begins October 12, 2022, and the deadline to request a mail-in ballot is October 28, 2022.¹¹ Thus, there is sufficient time to conduct the election by constitutionally permissible means.¹² Further, mail-in voting is not the exclusive or necessary way to count a large number of votes. In the 2022 election for president of France, 32,077,401 ballots were reportedly voted and counted using paper ballots in paper envelopes with no absentee or early voting

¹¹ Arizona Secretary of State, *Elections Calendar & Upcoming Events*, <https://azsos.gov/elections/elections-calendar-upcoming-events> (last visited May 19, 2022).

¹² On the other hand, there is no time for an equally “plain speedy and adequate” remedy unless a preliminary injunction is appropriate on grounds other than mandamus. *See* 250 Ariz. at 64 ¶ 27 (preliminary injunctive relief appropriate in mandamus actions).

with the results reported within hours.¹³ Arizona itself used the pre-1991 system for decades.

In addition, other members of the public will not suffer a cognizable harm if the relief Plaintiffs seek is granted. Voters are expected to tolerate the “usual burdens of voting.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2338 (2021). “Having to identify one’s own polling place and then travel there to vote does not exceed the ‘usual burdens of voting.’” *Id.* at 2344.

C. Though not required, public policy favors preliminarily enjoining Defendants from conducting another unconstitutional general election.

As the Arizona Supreme Court has recognized, “[e]lection laws play an important role in protecting the integrity of the electoral process.” *Fontes*, 250 Ariz. at 61 ¶ 4. Thus, as a matter of law, “public policy” and the “public interest” are served by enjoining the unlawful acts of elections officials. *Id.* at 64 ¶ 27. Arizona’s current system of no-excuse mail-in voting is unlawful because it does not preserve secrecy in voting. Remarkably, even after 131 years, Arizona’s statutory provisions regarding the conduct of **in-person** voting at the polls, on election day preserve “secrecy in voting” every bit as strictly as they did in 1891—in some ways even more so. For example, it remains a crime for voters to remove their own ballot from the polls, and is now a crime for them even to photograph it, lest it be shown to others. A.R.S. §§ 16-515 (A) &(G) and 16-1018 (1), (3), & (9). Whereas in 1891 it was a crime to try to influence a voter within the polling place itself, it is now a crime to attempt to do so even within 75 feet of the polling place. A.R.S. § 16-515 (A), (F), & (I).¹⁴

Yet these restrictions are now frustrated by Arizona’s repeated expansion of no-excuse mail-in voting. Approximately 89% of ballots cast in the 2020 election were early ballots.¹⁵ It is simply absurd to prohibit electioneering within 75 feet of a polling place

¹³ *Explainer: How France’s old-school voting system works*, AP News (Apr. 24, 2022), <https://apnews.com/article/covid-health-business-elections-france-e06fab5cde84f23d682013e1661caf35>.

¹⁴ A fuller, but by no means exclusive, list of side-by-side comparisons between the 1891 Law and current laws regarding both traditional in-person voting and no-excuse mail-in voting is attached as **Exhibit B**.

¹⁵ Data Orbital, *General Election Early Vote Tracker*, <https://www.dataorbital.com/2020-general-election-early-vote-tracker> (last visited May 11, 2022); Citizens Clean Elections Commission, *Vote by Mail*, <https://www.azcleanelections.gov/how-to-vote/early-voting/vote-by-mail> (last visited May 11, 2022).

while allowing it at the door of an early voter's home; to prevent voters from removing their own ballots from the polls while permitting them to fill out their ballots at a political rally; and to throw a voter in jail for photographing their own ballot in a voting booth while expressly permitting early voters to photograph their ballots and post them on the internet. A.R.S. § 16-1018(4). Though strictly enforced by election officials **at the polls**, these prohibitions do little work to secure the voting process against undue influence **when the vast majority of voting takes place outside of the presence of elections officials**.

Undue influence over voter choices is a real problem today. *See Building Confidence supra* 46. Early ballot return envelopes include a voter's name and address. Also available for purchase from the counties themselves is real-time data on who has returned their early ballots.¹⁶ Anyone with money to spend may purchase access to highly detailed voter databases. Computerized cross-referencing of these databases with a voter's name and address can readily yield much more than party affiliation but, in addition, can allow access to almost 30 "basic demographic variables" ("blue collar," "white collar," etc.) about that voter and predict which messaging is most likely to change their opinion on any given issue.¹⁷ Not a problem for voters who vote in person on election day—their ballot is never attached to any identifying information. But for voters who vote early, all this information and more might as well be stapled to their ballot as it sits in their mailbox and passes through hand after hand, none of which belong to election officials, on the way to the counting center. That hardly comports with a modern layperson's notion of secrecy in voting, much less what the framers had in mind. In sum, remarking to a neighbor in the parking lot of a polling place how he or she should vote is criminalized to safeguard the election system against undue influence. A.R.S. § 16-515(I). Yet anyone may purchase early ballot return data, identify voters with an early ballot sitting in their mailboxes, show up at their doors (or nursing homes or homeless shelters) with a message, incentive, or

¹⁶ See, e.g., Maricopa County Recorder, *Public Record Request for Voter Information*, <https://recorder.maricopa.gov/pdf/voterpublicdatarecordrequest.pdf> (last visited May 14, 2022).

¹⁷ Esri, *Was geography a factor in the 2016 election?*, <https://desktop.arcgis.com/en/analytics/case-studies/election-analysis-intro.htm> (last visited May 14, 2022).

1 threat tailored to that particular voter, and stand there until they fill out their ballots and
2 drop them in the mailbox. This is exactly the sort thing the framers intended to prevent -
3 exacerbated by modern technology.

4 Absent the Australian Ballot System, corruption flourishes. For example, in 2004,
5 supporters of a candidate were caught “assisting” voters in filling out the absentee ballots
6 they had been persuaded to request by those same supporters who were prowling polling
7 places to deflect voters—especially those who were poor, infirm, or spoke little English—
8 from voting in person. *See Pabey v. Pastrick*, 816 N.E.2d 1138, 1151 (Ind. 2004). The U.S.
9 Supreme Court remarked that this case demonstrated that “not only is the risk of voter
10 fraud real but that it could affect the outcome of a close election.” *Crawford v. Marion Cty.*
11 *Election Bd.*, 553 U.S. 181, 195–96 (2008). Soon after Arizona abandoned the Australian
12 Ballot System, this was made clear enough. *See e.g., Miller v. Picacho Elementary Sch.*
13 *Dist. No. 33*, 179 Ariz. 178, 180 (1994) (Despite statutory prohibition, “District employees
14 with a pecuniary interest in the override’s passage delivered [absentee] ballots to electors
15 whom they knew. Although these electors did not ask for ballots, school employees urged
16 them to vote and even encouraged them to vote for the override. District employees went
17 to the homes of the electors and stood beside them as they voted.”).

18 Plaintiffs are entitled to the protection the Constitution affords. *See Brnovich v.*
19 *Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2329 (2021) (“[A] State may take action to
20 prevent election fraud without waiting for it to occur within its own borders.”); *Burdick*,
21 504 U.S. at 441 (“[T]he right to vote is the right to participate in an electoral process that
22 is necessarily structured to maintain the integrity of the democratic system.”).

23 CONCLUSION

24 Defendants are required by law to conduct Arizona’s elections according to the
25 principles of the constitutionally mandated Australian Ballot System. Because Arizona’s
26 post-1991 system of no-excuse mail-in voting is unconstitutional both on its face and as
27 applied, Plaintiffs ask that Defendants be preliminary enjoined from utilizing it in the 2022
28 general election.

1 RESPECTFULLY SUBMITTED, this 20th day of May 2022

2
3 By /s/Roger Strassburg

4 Alexander Kolodin
5 Veronica Lucero
6 Roger Strassburg
7 Amo Naeckel
8 Michael Kielsky

9 **Davillier Law Group, LLC**
4105 North 20th Street Suite 110
Phoenix, AZ 85016

10 *Attorneys for Plaintiffs*

11 Alan Dershowitz (*Pro hac vice* to be submitted)
12 1575 Massachusetts Avenue
13 Cambridge, MA 02138

14 *Proposed Additional Counsel Pro Hac Vice*

15 I CERTIFY that a copy of the forgoing has been served upon the other parties to this
16 action in conformity with the applicable rules of procedure.

17 By /s/Yuka Bacchus

18 **Davillier Law Group, LLC**
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Exhibit A

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Sec. 2. Repeal

Title 41, chapter 7, article 2, Arizona Revised Statutes, is repealed.

Approved by the Governor, April 27, 1991.

Filed in the Office of the Secretary of State, April 29, 1991.

ADMINISTRATIVE PROCEDURE ACT—EXEMPTIONS**CHAPTER 50**

S.B. 1021

AN ACT AMENDING SECTION 41-1055, ARIZONA REVISED STATUTES; RELATING TO THE ADMINISTRATIVE PROCEDURE ACT.

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

Section 1. Section 41-1055, Arizona Revised Statutes, is amended to read:

§ 41-1055. Exemptions

In addition to the exemptions stated in section 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.

2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.

3. The state board of directors for community colleges.

4. The state board of education.

5. The industrial commission of Arizona when adopting by reference the federal occupational safety and health standards as published in 29 code of federal regulations parts 1910, 1926 and 1928.

6. The Arizona state lottery if adopting rules that relate only to the design, operation or prize structure of a lottery game.

Approved by the Governor, April 30, 1991.

Filed in the Office of the Secretary of State, April 30, 1991.

ELECTIONS—ABSENTEE VOTING**CHAPTER 51**

S.B. 1320

AN ACT AMENDING SECTIONS 16-541, 16-544, 16-547, 16-548, 16-552 AND 16-594, ARIZONA REVISED STATUTES; RELATING TO ABSENTEE VOTING.

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

Section 1. Section 16-541, Arizona Revised Statutes, is amended to read:

§ 16-541. Voting absentee; qualifications

A. Any election called pursuant to the laws of this state shall provide for absentee voting. Any qualified elector may vote by absentee ballot. ~~who meets the criteria established by this section shall be permitted to vote absentee at such election.~~

B. ~~A person shall be permitted to vote absentee for any one of the following reasons:~~

- ~~1. The elector expects to be absent from his precinct at the time of holding the election.~~
- ~~2. The elector is physically unable to go to the polls.~~
- ~~3. The elector is sixty five years of age or older.~~
- ~~4. The elector's place of residence is more than fifteen road miles from the polling place for his precinct.~~
- ~~5. The elector cannot attend the polls on the day of the election because of the tenets of his religion.~~
- ~~6. The elector has a visual defect within the scope of those defined by section 41-1973, subsection C.~~

Sec. 2. Section 16-544, Arizona Revised Statutes, is amended to read:

§ 16-544. Form of application

A. Application for an absentee ballot shall be made in duplicate upon blanks furnished by the county recorder, or other officer in charge of elections of the political subdivision in which the election is to be held, and shall be in substantially the following form:

"Application for Absentee Ballot"

State of Arizona

County of _____

Other political subdivision (if applicable) _____

I, _____, do solemnly swear that I am the identical person whose name is signed to this application and that such name and signature are my true name and signature (or, if I did not personally sign, it was because of physical disability, viz: _____ and that I requested ~~the attesting officer~~ another person to sign); that I am an elector of the state of Arizona and the county of _____; that I am registered in _____ precinct in said county and reside at _____, where I resided at the date of my registration; and that I have not voted and will not vote in this election in any other state during the calendar year of this application. ~~Because I expect to be absent from my precinct, or other place of voting in an election of any other political subdivision, on the day of holding the next election or because of physical disability, or because I am sixty five years of age or older, or because my place of residence is more than fifteen road miles from the polling place in my precinct, or because I am legally blind, or because of the tenets of my religion, I will not be able to go to the polls on the day of the next election and I hereby make application to the county recorder of _____ county, Arizona, or other officer in charge of elections of _____ (name of political subdivision) for an absentee ballot. (Strike out any clause not applicable.)~~ I understand that knowingly voting more than once in any election is a class 5 felony. For the purpose of identification, I declare that I am more than eighteen years of age and that my post office address is _____ (address to which ballot is to be mailed). I am confined at _____, Arizona (hospital, residence or other place of confinement, if

applicable). If a challenge is filed against my absentee ballot, I understand that a copy of the challenge will be sent to me by first class mail and that I may have as little as forty-eight hours notice of an opportunity to appear. For purposes of notifying me of a ballot challenge between the time I return my ballot and a few days after election day, please use the following address: _____. (If no address is provided, notice will be mailed to the mailing address listed on the registration rolls.)

Elector

Subscribed and sworn to before me this _____ day of _____, 19____

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

Title or designation of officer

B. The county recorder or other officer in charge of elections shall supply printed instructions to absentee voters, worded substantially as follows:

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

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

3. ~~Subscribe to Sign~~ the oath on the back of the white envelope marked "for absentee ballot only".

4. Place both copies of this application for ballot, complete with signature and ~~acknowledgement~~, together with the white envelope containing your ballot, in the enclosed self-addressed envelope. Check to see that the application is not enclosed in the envelope marked "for absentee ballot only" and mail.

5. The ballot and application must be in the office of the recorder or other officer in charge of elections before seven o'clock p.m. on election day.

Name _____ (printed)

County recorder or other officer in charge of elections

C. Instructions to absentee voters who are overseas citizens, qualified electors absent from the United States or in the United States service, or the spouse or dependents of such a person, shall include information substantially as follows: If you are an overseas citizen, qualified elector absent from the United States or in the United States service, or the spouse or dependent of such a person, you may ~~subscribe to sign~~ the application and ballot affidavit. ~~before and obtain the signature and military identification number, or passport number if available, of any United States citizen eighteen years of age or older.~~

Sec. 3. Section 16-547, Arizona Revised Statutes, is amended to read:

§ 16-547. Ballot affidavit; form

A. The absentee ballot may be combined with the application form prescribed in section 16-544 and shall be accompanied by an envelope bearing upon the front the name, official title and post office address of the recorder or other officer in charge of elections and upon the other side a printed affidavit in substantially the following form:

State of Arizona

County of _____

I, _____, do solemnly swear that I am a qualified elector of the _____ precinct of the county of _____, state of Arizona. I further swear that I personally voted the enclosed ballot (or that it was marked according to my instructions because I was unable to do so).

Signature of elector

Subscribed and sworn to before me this _____ day of _____, 19____

~~I further certify that the affiant exhibited the enclosed ballot to me unmarked. Then, in my presence, the affiant personally and privately marked such ballot in such a manner that neither I, nor any other person, was able to see the affiant vote (or it was marked by me according to the affiant's instructions) and enclosed and sealed it in this envelope. The affiant was not solicited or advised by any person to vote for or against any candidate or measure.~~

Signature and title of officer

B. ~~There shall be printed across~~ The face of each envelope in which a ballot is sent to a federal postcard applicant or in which a ballot is returned by such applicant to the recorder or other officer in charge of elections, ~~two parallel horizontal red bars, each one fourth inch wide, extending from one side of the envelope to the other side, with an intervening space of one fourth inch. The top bar shall be one and one fourth inches from the top of the envelope and the words "Official election balloting material via air mail" or other similar language shall be printed between the bars. There shall also be printed in the upper right hand corner of each such envelope, in a box, the words "Free of U.S. postage, including air mail". All printing on the face of each such envelope shall be in red, and there shall be printed in the upper left hand corner of each ballot envelope an appropriate inscription or blanks for the return address of the sender, shall be in the form prescribed in accordance with the uniformed and overseas citizens absentee voting act of 1986 (42 USC 1973 ff, P.L. 99-410).~~ Otherwise, the envelopes shall be the same as those used to send ballots to, or receive ballots from, other absentee voters.

Sec. 4. Section 16-548, Arizona Revised Statutes, is amended to read:

§ 16-548. Preparation and transmission of ballot

A. ~~Except as provided in subsection B, The absentee voter shall make and subscribe to sign the application and ballot affidavit. before an officer authorized by law to administer oaths. In the presence of the officer, but no other person,~~ The absentee voter shall then mark his ballot in such a manner that his vote cannot be seen. The absentee voter shall fold the ballot, if a paper ballot, so as to conceal the vote then deposit the voted ballot in the envelope provided for that

purpose, which shall be securely sealed, ~~signed by the officer~~ and, together with the application, delivered or mailed to the county recorder or other officer in charge of elections of the political subdivision in which the elector is registered.

B. If the absentee voter is an overseas citizen, a qualified elector absent from the United States or in the United States service, or a spouse or dependent residing with the absentee voter, the absentee voter may subscribe to the application and ballot affidavit before and obtain the signature and military identification number or passport number, if available, of any person who is a United States citizen eighteen years of age or older.

Sec. 5. Section 16-552, Arizona Revised Statutes, is amended to read:

§ 16-552. Casting absentee ballot

A. The absentee election board, immediately upon receipt of the absentee ballots, shall, as provided by this section, cast separately for each precinct the absentee ballots which have been received.

B. The board shall check the voter's application and his affidavit on the envelope containing the absentee ballot. If these are found to be sufficient, the board shall check the voter's name on the precinct register. If the board then finds that the applicant is a duly qualified elector of the voting precinct, the vote shall be allowed. If the application or the affidavit is insufficient, or if the applicant is not a duly qualified elector of the voting precinct, the vote shall not be allowed.

C. The county chairman of each political party represented on the ballot may, by written appointment addressed to the absentee election board, designate party representatives and alternates to act as absentee ballot challengers for the party. No party may have more than the number of such representatives or alternates which were mutually agreed upon by each political party to be present at one time. If such agreement cannot be reached, the number of representatives shall be limited to one for each political party.

D. ~~An absentee ballot may be challenged on any grounds set forth in section 16-591 for challenging electors or for suspected fraudulent use of the absentee ballot or any other reasonable grounds. All challenges shall be made in writing with a brief statement of the grounds prior to the absentee ballot being placed in the ballot box. A record of all challenges and resulting proceedings shall be kept in substantially the same manner as provided in section 16-594. If an absentee ballot is challenged, it shall be set aside and retained in the possession of the absentee election board or other officer in charge of absentee ballot processing until all the remaining absentee ballots for that precinct have been properly processed a time that the absentee election board sets for determination of the challenge, subject to the procedure in subsection E of this section, at which time the absentee election board shall hear the grounds for the challenge and shall decide what disposition shall be made of the absentee ballot by majority vote. If the absentee ballot is not allowed, it shall be handled pursuant to subsection F G of this section. In the event a challenge is made in writing prior to the time such ballot is processed, the absentee election board shall give notice of the consideration of the challenge to the county chairman of each political party represented on the ballot prior to such hearing.~~

E. Within twenty-four hours of receipt of a challenge, the absentee election board or other officer in charge of absentee ballot processing shall mail, by first class mail, a notice of the challenge including a copy of the written challenge, and also including the time and place at which the voter may appear to defend the challenge, to the voter at the mailing address shown on the request for absentee ballot or, if none was provided, to the mailing address shown on the registration rolls. Notice shall also be mailed to the challenger at the address listed on the

written challenge and provided to the county chairman of each political party represented on the ballot. The board shall meet to determine the challenge at the time specified by the notice but, in any event, not earlier than ninety-six hours after the notice is mailed, or forty-eight hours if the notifying party chooses to deliver the notice by overnight or hand delivery, and not later than five o'clock p.m. on the Monday following the election. The board shall provide the voter with an informal opportunity to make, or to submit, brief statements regarding the challenge. The board may decline to permit comments, either in person or in writing, by anyone other than the voter, the challenger and the party representatives. The burden of proof is on the challenger to show why the voter should not be permitted to vote. The fact that the voter fails to appear shall not be deemed to be an admission of the validity of the challenge. The absentee elections board or other officer in charge of absentee ballot processing, is not required to provide the notices described in this subsection if the written challenge fails to set forth at least one of the grounds listed in section 16-591 as a basis for the challenge. In that event, the challenge will be summarily rejected at the meeting of the board. Except for election contests pursuant to section 16-672, the board's decision is final and may not be appealed.

E. F. If the vote is allowed, the board shall open the envelope containing the ballot in such a manner that the affidavit thereon is not destroyed, take out the ballot without unfolding it or permitting it to be opened or examined, endorse the stub in the same manner that the other ballots are endorsed, deposit the ballot and the write-in envelope in which it was enclosed in the ballot box, and show by the records of the election that the elector has voted.

F. G. If the vote is not allowed, the affidavit envelope containing the absentee ballot shall not be opened and the board shall mark across the face of such envelope the grounds for rejection. The affidavit envelope and its contents shall then be deposited with the opened affidavit envelopes and shall be preserved with official returns. If the voter does not enter an appearance, the board shall send the voter a notice stating whether the absentee ballot was disallowed and, if disallowed, providing the grounds for the determination. The notice shall be mailed, by first class mail, to the voter's mailing address as shown on the registration rolls within three days after the board's determination.

G. H. The processing of absentee ballots deposited in the ballot box by the absentee boards shall be as provided for regular precincts.

H. I. Party representatives and alternates may be appointed as provided in subsection C of this section to be present and to challenge the verification of questioned ballots pursuant to section 16-584 on any grounds permitted by this section. Questioned ballots which are challenged shall be presented to the absentee election board for decision under the provisions of this section.

Sec. 6. Section 16-594, Arizona Revised Statutes, is amended to read:

§ 16-594. List of challenges, grounds and rulings

The board shall require one of the clerks to keep a list of the names of all persons challenged, the grounds of the challenge and the determination of the board upon the challenge. Copies of the list shall be kept in the office of the county recorder or other officer in charge of absentee ballot processing as a public record. Affidavits of challenged voters, decisions of election officials and challenge lists shall be a part of the official returns and shall be delivered to the board of supervisors.

Approved by the Governor, April 30, 1991.

Filed in the Office of the Secretary of State, April 30, 1991.

Exhibit B

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Comparison of the 1891 Law and of in-person and mail-in voting under the current Arizona Revised Statutes.

The 1891 Law ¹	A.R.S. In-person Voting	A.R.S. Early (Mail-in) Voting
<p>"All ballots cast in elections for public office...shall be printed and distributed at public expense." 1891 Laws No. 64, § 2.</p> <p><i>Ballots printed and distributed at public expense.</i></p>	<p>"B. All ballots cast in elections for public office within the state, and the cards of instruction to voters, shall be printed, delivered and distributed at public expense and shall be a county charge...." A.R.S. § 16-503. <i>See also</i> A.R.S. § 16-407.1 (prohibiting private monies for election expenses).</p> <p><i>Ballots printed and distributed at public expense.</i></p>	<p>"B. All ballots cast in elections for public office within the state, and the cards of instruction to voters, shall be printed, delivered and distributed at public expense and shall be a county charge...." A.R.S. § 16-503. <i>See also</i> A.R.S. § 16-407.1 (prohibiting private monies for election expenses).</p> <p><i>Ballots printed and distributed at public expense.</i></p>
<p>Ballots and voting instructions to be delivered to clerks and election officers and charged to counties. <i>Id.</i></p> <p><i>Ballots printed and distributed at public expense.</i></p>	<p>"The board of supervisors may provide for the payment of the cost of vote tabulating equipment in such manner and by such method as it may deem for the best local interests...." A.R.S. § 16-451.</p> <p><i>Ballots printed and distributed at public expense.</i></p>	<p>"The officer charged by law with the duty of preparing ballots at any election shall:</p> <ol style="list-style-type: none"> 1. Prepare the official early ballot and deliver a sufficient number to the recorder or other officer in charge of elections...." A.R.S. § 16-545. <p><i>Ballots printed and distributed at public expense.</i></p>
<p>Election officials responsible for preparing and providing "ballots</p>	<p>"A. The board of supervisors... shall prepare and provide ballots containing the names</p>	<p>"A. The early ballot shall be one prepared for use in the precinct in which the applicant</p>

¹ AN ACT To Promote Purity of Elections, Secure Secrecy of the Ballot and to Provide for the Printing and Distribution of Ballots at Public Expense.

The provisions of the 1891 Law correspond to the four essential components of the Australian Ballot System: (a) ballots ***printed and distributed at public expense***; (b) ballots containing the names of ***all the candidates duly nominated by law*** (a "blanket ballot"); (c) ballots distributed ***"only by election officers at the polling place"***; and (d) detailed provisions for physical arrangements to ***ensure secrecy in casting the vote.***" John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J. L. Reform 483, 488 (2003) (emphasis added).

<p>printed on white paper” and “ready for inspection by the candidates and their agents, at least ten days before a general election”; at “each polling place one challenger for each respective political party shall be allowed to be present and act” but “shall not be permitted to enter any of the booths.” <i>Id.</i> § 15.</p> <p><i>Ballots printed and distributed at public expense.</i></p> <p><i>Ballots containing the names of all the candidates duly nominated by law.</i></p> <p><i>Ballots distributed “only by election officers at the polling place.”</i></p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>of all persons whose certificates of nomination have been filed with them. The ballots shall be printed and ready for inspection by the candidates and their agents at least ten days before a general election and at least five days before a city or town election.” A.R.S. § 16-503.</p> <p>“B. At each voting place, one challenger for each political party may be present and act, but no challenger may enter a voting booth except to mark his ballot.” A.R.S. § 16-590.</p> <p><i>Ballots printed and distributed at public expense.</i></p> <p><i>Ballots containing the names of all the candidates duly nominated by law.</i></p> <p><i>Ballots distributed “only by election officers at the polling place.”</i></p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>resides and, if a partisan primary election, of the political party with which the applicant is affiliated as shown by the affidavit of registration. The ballot shall be identical with the regular official ballots, except that it shall have printed or stamped on it ‘early.’” A.R.S. § 16-545</p> <p><i>Ballots printed and distributed at public expense.</i></p> <p><i>Ballots containing the names of all the candidates duly nominated by law.</i></p> <p><i>BALLOTS MAILED TO VOTERS, NOT HANDED TO VOTERS BY ELECTION OFFICERS.</i></p> <p><i>NO PROVISIONS FOR PHYSICAL ARRANGEMENTS TO SAFEGUARD SECRECY IN VOTING</i></p> <p><i>POLITICAL PARTY CHALLENGERS CANNOT WATCH OVER ABSENTEE VOTING TO ENSURE SECRECY IN VOTING.</i></p>
<p>“At least five sample ballots, for each polling place, printed on tinted paper, but in all other respects the same as official ballots, shall be</p>	<p>“B. The board of supervisors shall print and distribute, for the information of voters at each polling place, a number of sample ballots as it deems necessary.” A.R.S. § 16-510.</p>	<p>“C. The board of supervisors shall have printed mailer-type sample ballots for a general election and shall mail at least eleven days before the election one such sample</p>

provided...and shall be delivered to the election officers together with the cards of instruction. <i>Id.</i> § 16.	<i>See also</i> A.R.S. § 16-510 (Posting sample ballots, instruction cards and notice to voters before opening polls).	ballot to each household in the county containing a registered voter unless that registered voter is on the active early voting list established pursuant to section 16-544." A.R.S. § 16-510.
Sample ballots N/A.	Sample ballots N/A.	Sample ballots N/A.
Official ballot requirements described. "Each ballot shall be endorsed by the words 'official ballot.'" <i>Id.</i> § 17. Official ballot	A.R.S. § 16-502 (Form and contents of ballot). Official ballot	"A. The early ballot shall be one prepared for use in the precinct in which the applicant resides and, if a partisan primary election, of the political party with which the applicant is affiliated as shown by the affidavit of registration. The ballot shall be identical with the regular official ballots, except that it shall have printed or stamped on it 'early.'" A.R.S. § 16-545. SUPPOSEDLY "IDENTICAL" TO OFFICIAL BALLOT EXCEPT THAT MARKED "EARLY" BUT DOES NOT COMPLY WITH ART. 4, § 1 IN-PERSON REQUIREMENTS FOR "OFFICIAL BALLOT."
Ballots "shall be printed for and furnished to each polling place at which an election is to be held." <i>Id.</i> § 19.	"The board of supervisors... shall deliver, by mail or other reliable method, to each voting precinct or to the inspector of each election board as determined by the officer in charge of elections one package containing the required number of ballots, at least forty-eight hours before the hour for opening the polls on election day.... The official ballots shall be sent in sealed packages with marks on the	"The county recorder or other officer in charge of elections shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector...." A.R.S. § 16-542.

	outside of the package clearly designating the polling place for which they are intended and the number of ballots enclosed. Upon delivery of the package to him, the inspector shall return receipts therefor to the person from whom received." A.R.S. § 16-509.	
<i>Ballots distributed "only by election officers at the polling place."</i>	<i>Ballots distributed "only by election officers at the polling place."</i>	<i>BALLOTS MAILED TO VOTER AND THUS NOT DISTRIBUTED ONLY BY ELECTION OFFICERS AT THE POLLS.</i>
Ballots to be delivered "by mail or other reliable method" to presiding officer "at least forty-eight hours before the hour for opening the polls on election day" in "sealed packages with marks on the outside...clearly designating the polling place for which they are intended," and officer shall provide "return receipts therefore." <i>Id.</i> § 21.	"The board of supervisors, city or town clerk or governing body of a special district shall deliver, by mail or other reliable method, to each voting precinct or to the inspector of each election board as determined by the officer in charge of elections one package containing the required number of ballots, at least forty-eight hours before the hour for opening the polls on election day.... The official ballots shall be sent in sealed packages with marks on the outside of the package clearly designating the polling place for which they are intended and the number of ballots enclosed. Upon delivery of the package to him, the inspector shall return receipts therefor to the person from whom received." A.R.S. § 16-509.	"A. Within ninety-three days before any election called pursuant to the laws of this state, an elector may make a verbal or signed request to the county recorder, or other officer in charge of elections for the applicable political subdivision of this state in whose jurisdiction the elector is registered to vote, for an official early ballot." A.R.S. § 16-542. "C. The county recorder or other officer in charge of elections shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector...." A.R.S. § 16-542.
<i>Ballots distributed "only by election officers at the polling place."</i>	<i>Ballots distributed "only by election officers at the polling place."</i>	<i>BALLOTS MAILED TO VOTER AND THUS NOT DISTRIBUTED ONLY BY ELECTION OFFICERS AT THE POLLS.</i>
"On the opening of the polls at each polling place,	"A. On opening the polls, the inspector shall produce the	"C. The county recorder or other officer in charge of

<p>the presiding officer shall produce the sealed package of official ballots and publicly open it....” <i>Id.</i> § 22.</p> <p><i>Ballots distributed “only by election officers at the polling place.”</i></p>	<p>sealed package of official ballots and publicly open it and deliver one book or block of ballots therein contained to the judges....</p> <p>B. One of the judges of election shall keep the ballots within the polling place in plain view of the public and deliver them only to qualified voters.</p> <p>C. A person shall not take or remove a ballot from the polling place before the polls are closed.” A.R.S. § 16-572.</p> <p><i>Ballots distributed “only by election officers at the polling place.”</i></p>	<p>elections shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector....” A.R.S. § 16-542.</p> <p><i>BALLOTS MAILED TO VOTER AND THUS NOT DISTRIBUTED ONLY BY ELECTION OFFICERS AT THE POLLS.</i></p> <p><i>NO STATUTORY PROVISION FOR VOTERS TO CONFIRM “OFFICIAL BALLOT” RECEIVED.</i></p>
<p>“[O]fficers whose duty it is...to designate the polling places shall determine the number and situation of the polling places in each district...and shall appoint ...ballot clerks for each polling place.... An equal number of such clerks to be appointed from the two opposing political parties casting the highest number of votes at the last preceding election. The clerks so appointed shall have charge of the ballots at such election and furnish them to voters as hereinafter provided.” <i>Id.</i> § 23.</p> <p><i>Ballots distributed “only by election officers at the polling place.”</i></p>	<p>A.R.S. 16-411 (Designation of election precincts and polling places; voting centers; electioneering; wait times); A.R.S. § 16-446 (Specifications of electronic voting system).</p> <p><i>Ballots distributed “only by election officers at the polling place.”</i></p>	<p>A.R.S. § 16-542 (ballots mailed to early voters).</p> <p>“A. Any election called pursuant to the laws of this state shall provide for early voting. Any qualified elector may vote by early ballot.” A.R.S. § 16-541.</p> <p><i>BALLOTS MAILED TO VOTER AND THUS NOT DISTRIBUTED ONLY BY ELECTION OFFICERS AT THE POLLS.</i></p>

<p>Election officers to provide “a sufficient number of voting booths...with convenient shelves on which voters may conveniently mark their ballots...screened from the observation of others,” and no “person other than the election officers and voters...shall be permitted” within six feet of the locked “ballot boxes of such voting booths.” <i>Id.</i> § 24.</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>“B. An electronic voting system shall: 1. Provide for voting in secrecy when used with voting booths.” A.R.S. § 16-446 (emphasis added).</p> <p>“A. The arrangement of the polling place shall be such that neither the ballot boxes nor the voting booths are hidden from the view of persons immediately outside the voting area. B. No person other than the election officers, voters, party representatives and challengers shall be permitted within six feet of the ballot boxes or voting booths except by authority of the election officers for the purpose of keeping order and enforcing the law.” A.R.S. § 16-562.</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote for in-person voters.</i></p>	<p>A.R.S. § 16-542 (Only the elector [early voter] may be in possession of that elector’s unvoted early ballot.)</p> <p>“The early voter shall make and sign the affidavit and shall then mark his ballot in such a manner that his vote cannot be seen. The early voter shall fold the ballot, if a paper ballot, so as to conceal the vote and deposit the voted ballot in the envelope provided for that purpose, which shall be securely sealed and, together with the affidavit, delivered or mailed to the county recorder or other officer in charge of elections of the political subdivision in which the elector is registered or deposited by the voter or the voter’s agent at any polling place in the county.” A.R.S. § 16-548. <i>But see</i> A.R.S. § 16-1018(4) (early voters can post pictures of ballot on internet).</p> <p><i>NO ELECTION OFFICIALS PRESENT WITH MAIL-IN VOTERS TO ENSURE SECRECY IS ENFORCED; THUS, NO DETAILED PROVISIONS FOR PHYSICAL ARRANGEMENTS TO ENSURE SECRECY IN CASTING THE VOTE. AND MAIL-IN VOTERS CAN POST PICTURES OF THEIR BALLOTS ON THE INTERNET!</i></p>
<p>Ballot clerks shall be under supervision at all times, “keep the ballots within the polling place and in plain view of the public and deliver them only to</p>	<p>“A. One election official shall attend the voting machine, and the other officers shall attend the pollbooks and perform the duties of election officials as provided by law.</p>	<p>“G. The county recorder or other officer in charge of early balloting shall provide an alphabetized list of all voters in the precinct who have requested and have been sent</p>

<p>qualified voters” and is responsible for checking off voters. <i>Id.</i> § 25.</p> <p><i>Ballots distributed “only by election officers at the polling place” to qualified electors. Enforced by election officials.</i></p>	<p>B. The voting machine shall be so placed and protected that it is accessible to only one voter at a time and is in full view of all election officers and observers at the polling place....” A.R.S. § 16-570.</p> <p><i>Ballots distributed “only by election officers at the polling place” to qualified electors. Enforced by election officials.</i></p>	<p>an early ballot to the election board of the precinct in which the voter is registered not later than the day before the election.” A.R.S. § 16-542.</p> <p><i>NO BALLOT CLERKS OR ELECTION OFFICIALS TO ENSURE BALLOTS DISTRIBUTED “ONLY BY ELECTION OFFICERS AT THE POLLING PLACE” TO QUALIFIED ELECTORS.</i></p>
<p>“On receiving his ballot the voter shall forthwith and without leaving the polling place or going outside of said guard rail, retire alone to one of the booths...not occupied by any other person, and prepare his ballot,” and “shall fold his ballot...in such a way that the contents...shall be concealed...until he has delivered the same to the election officers.” <i>Id.</i> § 26.</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>“B. On receiving a ballot the voter shall promptly and without leaving the voting area retire alone, except as provided in subsection E of this section, to one of the voting booths that is not occupied, prepare the ballot in secret and vote in the manner and substantial form as required by the instruction to voters.</p> <p>C. The voter shall deposit the ballot in the ballot box, or if the voter so requests, hand the ballot to the election board official and permit the election board official to deposit the ballot in the ballot box.” A.R.S. § 16-580.</p> <p>Voter can be arrested if they take pictures of their own ballot. A.R.S. §§ 16-515 (A), (G); 16-1018 (1), (3), (9).</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>“A. The early voter shall make and sign the affidavit and shall then mark his ballot in such a manner that his vote cannot be seen. The early voter shall fold the ballot, if a paper ballot, so as to conceal the vote and deposit the voted ballot in the envelope provided for that purpose, which shall be securely sealed and, together with the affidavit, delivered or mailed to the county recorder or other officer in charge of elections of the political subdivision in which the elector is registered or deposited by the voter or the voter’s agent at any polling place in the county.” A.R.S. § 16-548. <i>But see</i> A.R.S. § 16-1018(4) (early voters can post pictures of ballot on internet).</p> <p><i>NO REQUIREMENT THAT VOTER BE ALONE WHEN THEY FILL OUT THEIR BALLOT.</i></p> <p><i>EARLY VOTERS CAN POST PICTURES OF THEIR BALLOT ON THE INTERNET.</i></p>

		<p>EARLY VOTERS CAN GIVE BALLOT TO THEIR "AGENT" OR A MAILMAN, NOT AN ELECTIONS OFFICIAL, TAKE THEIR BALLOT.</p> <p>NO ELECTION OFFICIALS PRESENT WITH MAIL-IN VOTERS TO ENSURE SECRECY IS ENFORCED; THUS, NO DETAILED PROVISIONS FOR PHYSICAL ARRANGEMENTS TO ENSURE SECRECY IN CASTING THE VOTE.</p>
Only official ballots to be counted. <i>Id.</i> § 29.	Same	EARLY BALLOTS ARE NOT OFFICIAL BALLOTS. SEE ART. 4, § 1.
<p>"A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any other person with intention of letting it be known how he is about to vote, or who shall make a false statement as to his inability to mark his ballot, or any person who shall interfere with any voter inside of said enclosed space, or who shall endeavor to induce any voter to vote for any particular candidate...shall be punished by a fine of fifty dollars, or fifty days in...jail." <i>Id.</i> § 32.</p> <p>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</p>	<p>"A voter who knowingly commits any of the following acts is guilty of a class 2 misdemeanor:</p> <ol style="list-style-type: none"> 1. Makes a false statement as to the voter's inability to mark a ballot. 2. Interferes with a voter within the seventy-five foot limit of the polling place as posted by the election marshal or within seventy-five feet of the main outside entrance to an on-site early voting location established by a county recorder pursuant to section 16-542, subsection A. 3. Endeavors while within the seventy-five foot limit for a polling place or on-site early voting location to induce a voter to vote for or against a particular candidate or issue." <p>A.R.S. § 16-1017.</p> <p>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</p> 	<p>NO RESTRICTION ON TRYING TO INDUCE VOTERS TO VOTE A CERTAIN WAY BEYOND SEVENTY-FIVE FEET FROM THE POLLS.</p> <p>THESE PROVISIONS CANNOT BE ENFORCED ANYWHERE OTHER THAN AT THE POLLS BY ELECTION OFFICIALS; THUS, MAIL-IN VOTING DOES NOT PROVIDE DETAILED PROVISIONS FOR PHYSICAL ARRANGEMENTS TO ENSURE SECRECY IN CASTING THE VOTE.</p>

<p>“Any person who shall...wilfully hinder the voting of others” shall be punished by a fifty-dollar fine or fifty days in jail. <i>Id.</i> § 33.</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>“A voter who knowingly commits any of the following acts is guilty of a class 2 misdemeanor: ... 6. Hinders the voting of others.” <i>Id.</i> See also A.R.S. § 16-1017.</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p><i>THESE PROVISIONS CANNOT BE ENFORCED ANYWHERE OTHER THAN AT THE POLLS BY ELECTION OFFICIALS; THUS, MAIL-IN VOTING DOES NOT PROVIDE DETAILED PROVISIONS FOR PHYSICAL ARRANGEMENTS TO ENSURE SECRECY IN CASTING THE VOTE.</i></p>
<p>“Any public officer upon whom a duty is imposed by this Act, who wilfully neglects to perform such duty, or who shall wilfully perform it in such way as to hinder the objects of this Act, shall be punished by a fine of two hundred dollars, or two hundred days in the county jail.” <i>Id.</i> § 34.</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>“A public officer upon whom a duty is imposed by this title, who knowingly fails or refuses to perform that duty in the manner prescribed by law, is guilty of a class 3 misdemeanor.” A.R.S. § 16-1009.</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p><i>THESE PROVISIONS CANNOT BE ENFORCED ANYWHERE OTHER THAN AT THE POLLS BY ELECTION OFFICIALS; THUS, MAIL-IN VOTING DOES NOT PROVIDE DETAILED PROVISIONS FOR PHYSICAL ARRANGEMENTS TO ENSURE SECRECY IN CASTING THE VOTE.</i></p>
<p>No electioneering “on election day within any polling place, or...within one hundred and fifty feet of any pooling place”; no removal of official ballots before polls close; no person shall reveal his ballots or solicit anyone to do so; no one shall receive a voted ballot except an inspector of election; no voter shall receive an official ballot other than</p>	<p>“A person who commits any of the following acts is guilty of a class 2 misdemeanor: 1. Knowingly electioneers on election day within a polling place or in a public manner within seventy-five feet of the main outside entrance of a polling place or on-site early voting location established by a county recorder pursuant to section 16-542, subsection A. 2. Intentionally disables or removes from the polling</p>	

<p>from a ballot clerk; no one other than ballot clerk may deliver ballot to voter; voter cannot mark ballot in a way that reveals his identity; violations of this section result in a misdemeanor and jail. <i>Id.</i> § 36.</p>	<p>place, on-site early voting location or custody of an election official a voting machine or a voting record.</p> <p>3. Knowingly removes an official ballot from a polling place before closing the polls.</p> <p>4. Shows another voter's ballot to any person after it is prepared for voting in such a manner as to reveal the contents, except to an authorized person lawfully assisting the voter. A voter who makes available an image of the voter's own ballot by posting on the internet or in some other electronic medium is deemed to have consented to retransmittal of that image and that retransmittal does not constitute a violation of this section.</p> <p>5. Knowingly solicits a voter to show the voter's ballot, or receives from a voter a ballot prepared for voting, unless the person is an election official or unless otherwise authorized by law.</p> <p>6. Knowingly receives an official ballot from a person other than an election official having charge of the ballots.</p> <p>7. Knowingly delivers an official ballot to a voter, unless the voter is an election official.</p> <p>8. Except for a completed ballot transmitted by an elector by fax or other electronic format pursuant to section 16-543, knowingly places a mark on the voter's ballot by which it can be</p>	
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<p><i>No removal of ballots from polls.</i></p> <p><i>Ballots containing the names of all the candidates duly nominated by law.</i></p> <p><i>Ballots distributed “only by election officers at the polling place.”</i></p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>identified as the one voted by the voter.</p> <p>9. After having received a ballot as a voter, knowingly fails to return the ballot to the election official before leaving the polling place or on-site early voting location.” A.R.S. § 16-1018.</p> <p><i>No removal of ballots from polls.</i></p> <p><i>Ballots containing the names of all the candidates duly nominated by law.</i></p> <p><i>Ballots distributed “only by election officers at the polling place.”</i></p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p><i>EARLY BALLOTS ARE ALWAYS OUTSIDE OF THE POLLS.</i></p> <p><i>PERFECTLY FINE TO ELECTIONEER TO EARLY VOTERS EVEN WITH BALLOT IN HAND.</i></p> <p><i>MOST OF THESE PROVISIONS CANNOT OR DO NOT APPLY TO MAIL-IN VOTING.</i></p>
<p>“Any person entitled to vote at a general election...on the day of such election...entitled to absent himself from any service or employment ...for two hours between the time of opening and the time of closing the polls.” <i>Id.</i> § 37.</p>	<p>“A. A person entitled to vote at a primary or general election held within this state may, on the day of election, absent himself for the purpose of voting from the service or employment at which he is employed if there are less than three consecutive hours between the opening of the polls and the beginning of his regular workshift or between the end of his regular workshift and the closing of the polls....” A.R.S. § 16-402.</p>	<p>A.R.S. § 16-541 <i>et seq.</i> (allows anyone to vote by mail, i.e., absentee).</p> <p><i>BALLOTS DISTRIBUTED BY THE MAILMAN.</i></p>

<p><i>Ballots distributed “only by election officers at the polling place.”</i></p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p><i>Ballots distributed “only by election officers at the polling place.”</i></p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p><i>ALLOWS VOTERS TO MAIL IN THEIR BALLOTS RATHER THAN BE EXCUSED TO PERFORM THEIR OBLIGATION TO VOTE SECRETLY AND SECURELY IN PERSON.</i></p>
<p>N/A No electronic voting systems in 1891.</p>	<p>A.R.S. § 16-446 (“An electronic voting system shall: 1. Provide for voting in secrecy when used with voting booths.”).</p> <p><i>Detailed provisions for physical arrangements to ensure secrecy in casting the vote.</i></p>	<p>A.R.S. § 16-446 (“An electronic voting system shall: 1. Provide for voting in secrecy when used with voting booths.”).</p> <p><i>Acknowledgement that when votes cast away from the polls, secrecy is not ensured.</i></p>