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14
15 UNITED STATES DISTRICT COURT
16 DISTRICT OF ARIZONA

17 Arizona Alliance for Retired Americans;
18 Voto Latino; Priorities USA,
19 Plaintiffs,

No. CV-22-1374-PHX-GMS

20 v.

21 Katie Hobbs, in her official capacity as
Secretary of State for the State of
22 Arizona; Mark Brnovich, in his official
capacity as Attorney General for the State
23 of Arizona; Larry Noble, in his official
capacity as Apache County Recorder;
24 David Stevens, in his official capacity as
Cochise County Recorder; Patty Hansen,
25 in her official capacity as Coconino
County Recorder; Sadie Jo Bingham, in
26 her official capacity as Gila County
Recorder; Wendy John, in her official
27 capacity as Graham County Recorder;
Sharie Milheiro, in her official capacity

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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1 as Greenlee County Recorder; Richard
2 Garcia, in his official capacity as La Paz
3 County Recorder; Stephen Richer, in his
4 official capacity as Maricopa County
5 Recorder; Kristi Blair, in her official
6 capacity as Mohave County Recorder;
7 Michael Sample, in his official capacity
8 as Navajo County Recorder; Gabriella
9 Cázares-Kelly, in her official capacity as
10 Pima County Recorder; Dana Lewis, in
11 her official capacity as Pinal County
12 Recorder; Suzanne Sainz, in her official
13 capacity as Santa Cruz County Recorder;
14 Michelle Burchill, in her official capacity
15 as Yavapai County Recorder; and
16 Richard Colwell, in his official capacity
17 as Yuma County Recorder,

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Defendants.

Plaintiffs Arizona Alliance for Retired Americans, Voto Latino, and Priorities USA, by and through their undersigned counsel, for their Complaint for Declaratory and Injunctive Relief, allege as follows:

NATURE OF THE CASE

1. On June 6, 2022, Governor Ducey signed into law Senate Bill 1260 (“SB 1260”), which radically alters Arizona law to impose severe restrictions on entirely lawful voters, as well as organizations or individuals that would help them exercise their fundamental right to vote. Plaintiffs challenge four interrelated parts of SB 1260 that will amend Title 16 (“Elections and Electors”) of the Arizona Revised Statutes, effective September 24, 2022: A.R.S. § 16-1016(12) (the “Felony Provision”), A.R.S. § 16-165(A)(10) and (B) (the “Cancellation Provision”), A.R.S. § 16-544(Q)–(R) (the “Removal Provision”), and A.R.S. § 16-544(P) (the “Return Provision”), (collectively, the “Challenged Provisions”).¹

¹ References to the Arizona Revised Statutes reflect the codification that will take effect upon Senate Bill 1260’s effective date on September 24, 2022.

1 2. The first Challenged Provision—the Felony Provision—threatens criminal
2 penalties against anyone who knowingly “provides a mechanism for voting” to a person
3 who is registered to vote in another state, regardless of whether that person now lives in
4 Arizona, is eligible to vote in Arizona, and intends to vote only in Arizona. A.R.S. § 16-
5 1016(12). The term “mechanism for voting” is not defined, but the statute expressly
6 emphasizes that it is broad enough to include the mere act of “forwarding an early ballot”
7 addressed to the voter. *Id.*

8 3. Being registered to vote in more than one state or county is not prohibited, and for
9 good reason. People do not ordinarily think to affirmatively cancel their voter registration
10 when they move, and there often is no obvious or easy way to do so. Nor is there any
11 assurance that a jurisdiction will actually cancel a voter’s registration immediately upon
12 receiving a request.

13 4. The Felony Provision accordingly criminalizes vast swaths of constitutionally
14 protected activity, while simultaneously making it more difficult for entirely lawful Arizona
15 voters to cast a ballot. Certain groups of voters are likely to be more severely burdened,
16 including those who tend to be more residentially transient, such as younger voters, poorer
17 voters, and non-white voters, as well as older voters who move to Arizona to retire. The
18 Felony Provision will make it harder for these voters to exercise their fundamental right to
19 vote, while also threatening with criminal penalties those who would attempt to help them
20 exercise that right.

21 5. Consider, for example, groups like Plaintiffs that work to assist eligible Arizonans
22 in exercising their fundamental right to vote. If one of Plaintiffs’ employees, members, or
23 volunteers helps to register a voter in Arizona and that voter happens also to be registered
24 to vote in another state, then Plaintiffs’ employee, member, or volunteer could face criminal
25 penalties under the plain terms of the Felony Provision. Or consider an Arizona parent who
26 receives an early ballot in the mail for their child who just finished college out of state but
27 is eligible to vote in Arizona. That parent could face felony charges if they forward the
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1 student's early ballot to them if the student at some point registered to vote in their out-of-
2 state college town—even if the student has no intention to, and never actually does, vote in
3 two places.

4 6. The Felony Provision requires Plaintiffs and anyone else conducting voter
5 registration or mobilization activities in Arizona to take an additional step of confirming
6 that the voter they are assisting either has never previously registered to vote anywhere, or
7 has affirmatively canceled any prior registrations before assisting that voter. Otherwise,
8 Plaintiffs risk felony liability for providing such assistance. This risk will severely chill
9 voter registration and mobilization efforts in Arizona, resulting in an undue burden on
10 groups and individuals engaged in these efforts and voters who benefit from them.

11 7. The second and third Challenged Provisions—the Cancellation and Removal
12 Provisions—force county recorders to cancel a voter's registration and remove a voter from
13 the active early voting list if the voter is registered to vote in another Arizona county. The
14 Cancellation and Removal Provisions do not require county recorders to notify the voter or
15 ask for their consent before canceling their voter registration or removing them from the
16 active early voting list; in fact, they do not require county recorders to make *any* inquiry at
17 all of the voter, including to find out where the voter currently resides and intends to vote.
18 A.R.S. §§ 16-165(A)(10), 16-544(Q). The Removal Provision, moreover, will have a
19 significant impact on the right to vote because the overwhelming majority of Arizonans
20 vote early by mail.

21 8. The Cancellation and Removal Provisions thus place an undue burden of
22 affirmative cancellation on voters, particularly those who frequently move or change
23 residences, because voters must cancel their other voter registrations if they want to prevent
24 their current voter registration from being canceled or remain on the active early voting list.

25 9. The Cancellation and Removal Provisions also allow third parties to force county
26 recorders to cancel voter registrations and remove voters from the active early voting list
27 by allowing third parties to provide county recorders with “credible information that a
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1 person has registered to vote in a different county.” *Id.* §§ 16-165(B), 16-544(R). The
2 Cancellation and Removal Provisions do not define the term “credible information” or
3 require county recorders to investigate such information. As such, they would appear to
4 allow any person or organization to petition county recorders to cancel voter registrations
5 or remove people from the active early voting list *en masse* by providing “credible
6 information” that those voters have voter registrations in two counties—notwithstanding
7 that it is entirely lawful to be registered to vote in more than one location or that voters with
8 multiple registrations may be intending to legally vote using only one of those registrations.
9 The Cancellation and Removal Provisions thus provide a method for voter-suppressive
10 groups to target historically disenfranchised voters and have them purged from the
11 registration rolls and the early active voting list without any legal basis.

12 10. The fourth Challenged Provision—the Return Provision—requires anyone who
13 receives an early ballot belonging to a former resident to write “Not at this address” on the
14 ballot and return the ballot they received by placing it in the mail. *Id.* § 16-544(P). Assuming
15 that the mail is successfully returned to the county recorder, the county recorder, upon
16 receipt, is required either to “contact the voter at the voter’s new residence address in order
17 to update that voter’s address or to move the voter to inactive status,” which means the voter
18 would be removed from the active early voting list. *Id.* § 16-544(E). These requirements
19 essentially force Arizona residents to provide leads to the county recorder for removing
20 others from the active early voting list, without articulating any legal basis for doing so.

21 11. SB 1260 has no rational connection to any legitimate government purpose. It will
22 not improve election integrity or prevent election fraud. Instead, it will severely chill voter
23 registration and voter engagement efforts and disenfranchise eligible Arizona voters.

24 12. Each of the Challenged Provisions unduly burdens the right to vote in violation
25 of the First and Fourteenth Amendments. They also infringe upon the right to due process
26 under the Fourteenth Amendment.

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1 17. This Court has original jurisdiction over the subject matter of this action under
2 Article III, § 2, of the United States Constitution and 28 U.S.C. §§ 1331 and 1343, because
3 the matters in controversy arise under the Constitution and laws of the United States.

4 18. This Court has personal jurisdiction over Defendants, who are domiciled in the
5 State of Arizona and are sued only in their official capacities as Arizona's Secretary of
6 State, Arizona's Attorney General, and each Arizona County Recorder.

7 19. Venue is proper in this district and division under 28 U.S.C. § 1391(b)(1) and
8 LRCiv 5.1(a) because Defendants reside in Arizona. Venue is proper under 28 U.S.C.
9 § 1391(b)(2) because a substantial part of the events that give rise to Plaintiffs' claims
10 occurred in this judicial district and Defendants conduct business in this district in their
11 official capacities.

12 20. This Court has the authority to enter a declaratory judgment and to provide
13 injunctive relief under Rules 57 and 65 of the Federal Rules of Civil Procedure and pursuant
14 to 28 U.S.C. §§ 2201 and 2202.

15 **PARTIES**

16 21. Plaintiff Arizona Alliance for Retired Americans, Inc. (the "Arizona Alliance")
17 is a nonprofit corporation organized under section 501(c)(4) of the Internal Revenue Code.
18 The Arizona Alliance's membership includes approximately 50,000 retirees from public
19 and private sector unions, community organizations, and individual activists in every county
20 in Arizona. The Arizona Alliance is a chartered affiliate of the Alliance for Retired
21 Americans. Its mission is to ensure social and economic justice and full civil rights that
22 retirees have earned after a lifetime of work. The Arizona Alliance accomplishes this
23 mission by actively pursuing and promoting legislation and public policies regarding critical
24 issues facing older Americans and working families. The Arizona Alliance also
25 accomplishes its mission by ensuring that its members are able to register to vote and
26 meaningfully participate in Arizona's elections through voter registration activities such as
27 encouraging voter registration at member meetings and phone banking drives.
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1 22. The Challenged Provisions frustrate the Arizona Alliance’s mission because they
2 make it more difficult for the Arizona Alliance’s members to register to vote and to receive
3 and cast their ballots, thus making it more difficult for the Arizona Alliance and its members
4 to associate. Because of SB 1260, the Arizona Alliance will need to divert resources from
5 other mission-critical work to spending time educating its members and other voters about
6 SB 1260 and how they can remain registered to vote and remain on the correct active early
7 voting list despite the Removal and Cancellation Provisions. The Arizona Alliance will also
8 need to educate its members and other voters on the Return Provision’s requirement to
9 affirmatively mark and return early ballots intended for previous residents.

10 23. The Felony Provision will stifle the Arizona Alliance’s ability to engage with its
11 members and constituents. Until a voter’s prior registration is cancelled—a process that
12 could take months—the Arizona Alliance would need to refrain from registering that voter
13 or otherwise helping them to vote in order to ensure that its volunteers and employees would
14 not be subject to criminal liability. Even helping a voter update their address for their voter
15 registration could risk felony prosecution under the Felony Provision if that voter remains
16 registered in another state. The Felony Provision will make it more difficult for the Arizona
17 Alliance to recruit employees and volunteers to carry out its mission because of the risk of
18 criminal liability for engaging in its mission-achieving work. If the Arizona Alliance
19 proceeds with voter engagement activities despite the risks of doing so under SB 1260, then
20 its employees and volunteers will be required to divert resources from their typical activities
21 to focus on identifying members and constituents who are registered to vote in more than
22 one state or Arizona county. The Arizona Alliance will need to help those voters cancel
23 their non-active registrations to ensure that their active registrations are not cancelled or
24 that the voters are not removed from the early active voting list. The Felony Provision will
25 make it more costly and time-consuming for the Arizona Alliance to achieve its mission.

26 24. The Arizona Alliance also brings this action on behalf of its members. Most of
27 the Arizona Alliance’s members are between 55 and 90 years of age and many have
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1 disabilities. Many of its members vote early by mail in large numbers, and many are
2 members of the active early voting list. The Arizona Alliance also has many members that
3 have moved from other states or counties where they were previously registered to vote,
4 and who have not affirmatively canceled their previous voter registrations. The Arizona
5 Alliance's members are at risk of having their registrations cancelled and being removed
6 from the correct active early voting list as a result of SB 1260. They are also at risk of being
7 found guilty of a felony for engaging in voter registration and mobilization activities as
8 members of the Arizona Alliance.

9 25. Plaintiff Voto Latino is a nonprofit corporation organized under section
10 501(c)(4) of the Internal Revenue Code. Voto Latino is dedicated to growing political
11 engagement in historically underrepresented communities, specifically young and Latinx
12 voters. Voto Latino has made, and will continue to make, expenditures to educate, mobilize,
13 and turn out voters in Arizona. Voto Latino employees and volunteers engage in voter
14 registration drives and conduct email and social media advertising campaigns to remind
15 voters—particularly Voto Latino's core constituency, young and Latinx voters—to vote and
16 to keep their voter registrations up to date. Voto Latino also conducts get-out-the-vote
17 efforts, including text banking and advertising campaigns, to encourage voters to vote,
18 remind them to update their voter registrations, and inform them about available means of
19 voting, such as early in-person voting or voting by mail. Voto Latino frequently engages
20 with college students and new residents of Arizona during its voter education and
21 mobilization efforts. Because of SB 1260, Voto Latino will need to divert resources from
22 other mission-critical work to spending time educating its constituents about SB 1260, the
23 requirement to affirmatively mark and return early ballots intended for previous residents,
24 and the need to check whether a voter has multiple voter registrations or active early voting
25 list memberships.

26 26. The Felony Provision will stifle Voto Latino's ability to engage with its
27 constituents. The Felony Provision will make it more difficult for Voto Latino to recruit
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1 employees and volunteers to carry out its mission because of the risk of criminal liability
2 for providing assistance with voting. If Voto Latino proceeds with voter engagement
3 activities despite the risks of doing so under SB 1260, then its employees and volunteers
4 will be required to divert resources from their typical activities to focus on identifying
5 members and constituents who are registered to vote in more than one state or Arizona
6 county. Voto Latino anticipates that its constituents are more likely to be targeted by
7 coordinated efforts by third parties to purge Latinx voters and students from Arizona's voter
8 registration rolls and early voting lists, which SB 1260 permits with no notice to the affected
9 voter. To combat this activity, Voto Latino will need to help its constituents cancel their
10 non-active registrations. The Felony Provision will make it more costly and time-
11 consuming for Voto Latino to achieve its mission.

12 27. Plaintiff Priorities USA ("Priorities") is a nonprofit corporation organized under
13 section 501(c)(4) of the Internal Revenue Code. Priorities is a voter-centric progressive
14 advocacy and service organization. Its mission is to build a permanent infrastructure to
15 engage Americans by persuading, registering, and mobilizing citizens around issues and
16 elections that affect their lives. In furtherance of this purpose, Priorities works to help
17 educate, mobilize, register, and turn out voters across the country. Priorities has made and
18 will continue to make contributions and expenditures in the millions of dollars to educate,
19 register, mobilize, and turn out voters in upcoming state and federal elections around the
20 country. Priorities has committed to invest \$8.4 million in voter engagement efforts in
21 Arizona for the 2022 election cycle. In anticipation of the upcoming Arizona state and
22 federal elections, Priorities has already spent over \$4.8 million on advertising and voter
23 education, including efforts targeted at young voters and voters who have recently moved.

24 28. SB 1260 directly harms Priorities by frustrating its mission and its efforts to
25 educate, register, and turn out Arizona voters. Priorities is aware of SB 1260 and is planning
26 to expend and divert additional funds and resources in voter education efforts, as well as
27 registration, mobilization, and turnout activities, particularly through advertisements, in
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1 Arizona at the expense of its other efforts in order to combat the effects of SB 1260 on
2 individuals who have multiple voter registrations or who assist individuals who have
3 multiple voter registrations that have not been affirmatively cancelled. Priorities is
4 concerned that many of the Arizona voter engagement organizations it funds will be
5 deterred from engaging in robust operations because of the Felony Provision, making it
6 more difficult for Priorities to achieve its mission.

7 29. Defendant Katie Hobbs is the Secretary of State for the State of Arizona and is
8 named as a Defendant in her official capacity. In her official capacity, she is the Chief
9 Election Officer of the State of Arizona and is responsible for overseeing the voting process
10 in Arizona and is empowered with broad authority to carry out that responsibility. She is
11 also responsible for proscribing rules for, among other things, early voting and voter
12 registration, which are set forth in the Arizona Election Procedures Manual. A.R.S. § 16-
13 452. She is also responsible for the coordination of state responsibilities under the NVRA.
14 A.R.S. § 16-142(A).

15 30. Defendant Mark Brnovich is the Attorney General for the State of Arizona and
16 is named as a Defendant in his official capacity. In his official capacity, he serves as the
17 Chief Legal Officer of the State of Arizona and is responsible for prosecuting offenses under
18 Title 16 (“Elections and Electors”) of the Arizona Revised Statutes, which includes all of
19 the provisions of SB 1260. A.R.S. § 16-1021. He is also responsible for enforcing criminal
20 laws, such as the Felony Provision, by presenting evidence to the state grand jury and
21 prosecuting all indictments. *Id.* §§ 21-424; 21-427(B).

22 31. Defendant Larry Noble is the Apache County Recorder and is named as a
23 Defendant in his official capacity only. As County Recorder, he is responsible for
24 processing and maintaining voter registration records, including cancelling voter
25 registrations and maintaining the active early voting list. *Id.* §§ 16-165, 16-544.

26 32. Defendant David Stevens is the Cochise County Recorder and is named as a
27 Defendant in his official capacity only. As County Recorder, he is responsible for
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1 processing and maintaining voter registration records, including cancelling voter
2 registrations and maintaining the active early voting list. *Id.*

3 33. Defendant Patty Hansen is the Coconino County Recorder and is named as a
4 Defendant in her official capacity only. As County Recorder, she is responsible for
5 processing and maintaining voter registration records, including cancelling voter
6 registrations and maintaining the active early voting list. *Id.*

7 34. Defendant Sadie Jo Bingham is the Gila County Recorder and is named as a
8 Defendant in her official capacity only. As County Recorder, she is responsible for
9 processing and maintaining voter registration records, including cancelling voter
10 registrations and maintaining the active early voting list. *Id.*

11 35. Defendant Wendy John is the Graham County Recorder and is named as a
12 Defendant in her official capacity only. As County Recorder, she is responsible for
13 processing and maintaining voter registration records, including cancelling voter
14 registrations and maintaining the active early voting list. *Id.*

15 36. Defendant Sharie Milheiro is the Greenlee County Recorder and is named as a
16 Defendant in her official capacity only. As County Recorder, she is responsible for
17 processing and maintaining voter registration records, including cancelling voter
18 registrations and maintaining the active early voting list. *Id.*

19 37. Defendant Richard Garcia is the La Paz County Recorder and is named as a
20 Defendant in his official capacity only. As County Recorder, he is responsible for
21 processing and maintaining voter registration records, including cancelling voter
22 registrations and maintaining the active early voting list. *Id.*

23 38. Defendant Stephen Richer is the Maricopa County Recorder and is named as a
24 Defendant in his official capacity only. As County Recorder, he is responsible for
25 processing and maintaining voter registration records, including cancelling voter
26 registrations and maintaining the active early voting list. *Id.*

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1 39. Defendant Kristi Blair is the Mohave County Recorder and is named as a
2 Defendant in her official capacity only. As County Recorder, she is responsible for
3 processing and maintaining voter registration records, including cancelling voter
4 registrations and maintaining the active early voting list. *Id.*

5 40. Defendant Michael Sample is the Navajo County Recorder and is named as a
6 Defendant in his official capacity only. As County Recorder, he is responsible for
7 processing and maintaining voter registration records, including cancelling voter
8 registrations and maintaining the active early voting list. *Id.*

9 41. Defendant Gabriella Cázares-Kelly is the Pima County Recorder and is named
10 as a Defendant in her official capacity only. As County Recorder, she is responsible for
11 processing and maintaining voter registration records, including cancelling voter
12 registrations and maintaining the active early voting list. *Id.*

13 42. Defendant Dana Lewis is the Pinal County Recorder and is named as a Defendant
14 in her official capacity only. As County Recorder, she is responsible for processing and
15 maintaining voter registration records, including cancelling voter registrations and
16 maintaining the active early voting list. *Id.*

17 43. Defendant Suzanne Sainz is the Santa Cruz County Recorder and is named as a
18 Defendant in her official capacity only. As County Recorder, she is responsible for
19 processing and maintaining voter registration records, including cancelling voter
20 registrations and maintaining the active early voting list. *Id.*

21 44. Defendant Michelle Burchill is the Yavapai County Recorder and is named as a
22 Defendant in her official capacity only. As County Recorder, she is responsible for
23 processing and maintaining voter registration records, including cancelling voter
24 registrations and maintaining the active early voting list. *Id.*

25 45. Defendant Richard Colwell is the Yuma County Recorder and is named as a
26 Defendant in his official capacity only. As County Recorder, he is responsible for
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1 processing and maintaining voter registration records, including cancelling voter
2 registrations and maintaining the active early voting list. *Id.*

3 STATEMENT OF FACTS AND LAW

4 46. In 2021, Arizona was among the fastest-growing states in population growth,
5 fueled by domestic migration: over 93,000 people relocated to Arizona from elsewhere
6 within the United States. From July 2020 to July 2021, Maricopa County was the fastest-
7 growing county in the country, with a population growth of over 58,000 people. Between
8 2010 and 2019, the population of individuals who are 65 years of age and older in Arizona
9 increased by nearly 50%.

10 47. Early voting is very popular among Arizona voters. Because Arizona has no-
11 excuse early voting, any registered voter, including new residents of Arizona, can vote early
12 in any election. A.R.S. § 16-541. In addition, any Arizona voter may request to join the
13 active early voting list. All voters who are added to the active early voting list will receive
14 an early ballot by mail “automatically for any election” for which they are eligible to vote.
15 *Id.* § 16-544(A), (H).

16 48. Over the past decade, early voting in Arizona has grown at a consistent and rapid
17 rate. In the 2008 general election, for example, just over a million Arizona voters voted
18 early. By the 2016 general election, that number had doubled to over two million voters. In
19 2018, a lower-turnout midterm election, around 1.9 million voters voted early. In 2020,
20 around 2.4 million voters voted early. In the most recent election, over 1.2 million voters
21 voted early in the 2022 gubernatorial primary.

22 49. SB 1260 targets voters who are registered to vote in more than one place even
23 though having multiple registrations is legal and common, particularly among voters who
24 have moved their residence. SB 1260 threatens these voters with severe harm—including
25 disenfranchisement—because it requires county recorders to cancel a voter’s registration
26 and remove them from Arizona’s active early voting list solely because they are registered
27 to vote in another place and have not affirmatively cancelled their registration. There is no
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1 requirement that the county recorder give the voter *any* notice of the cancellation, or an
2 opportunity to avoid or contest it, much less that the recorder do so in accordance with
3 federal law. As a result, many voters will suffer disenfranchisement because they will think
4 that they are registered to vote and expect that they will be sent an early ballot by mail, only
5 to learn that their county recorder made changes to their registration status *after* the deadline
6 to register had already passed.

7 50. SB 1260 will have severe detrimental effects on Plaintiffs’ ability to effectively
8 engage with their members and constituents and assist them in exercising their right to vote.
9 Each Challenged Provision of SB 1260 is discussed, in turn, below.

10 **A. Felony Provision (A.R.S. § 16-1016(12))**

11 51. SB 1260 amends A.R.S. § 16-1016 to add subsection (12) (the “Felony
12 Provision”), which states that a person is guilty of a class 5 felony who:

13 Knowingly provides a mechanism for voting to another person
14 who is registered in another state, including by forwarding an
early ballot addressed to the other person.

15 52. A class 5 felony conviction in Arizona carries a penalty ranging from six months
16 to two years and six months’ imprisonment. A.R.S. § 13-702(D). A conviction for a felony
17 suspends the right to vote in Arizona. *Id.* § 13-904.

18 53. The Felony Provision does not define the operative phrase—providing a
19 “mechanism for voting”—except to specify that the phrase should be interpreted broadly
20 enough to include activity as diminutive as “forwarding an early ballot addressed to another
21 person.” *Id.* § 16-1016. The possibilities of prohibited activities are thus nearly limitless,
22 ranging from registering a person to vote, to helping a person update their address for
23 purposes of voting, to merely providing them with information on how to sign up for the
24 active early voting list or cast their ballot. In fact, even *helping a person cancel their other*
25 *voter registrations* could be considered providing them with a “mechanism for voting”
26 under SB 1260, meaning that not only would Plaintiffs be prohibited from helping voters
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1 register to vote because of SB 1260, but they would also be prohibited from helping them
2 to remain registered to vote in compliance with SB 1260 by cancelling other registrations.

3 54. The Felony Provision also does not describe the “knowingly” *mens rea*
4 requirement in any detail. From the plain text, a person could be guilty of a class 5 felony
5 if they “[k]nowingly” “provide[] a mechanism for voting” regardless of whether they know
6 that the specific person they are helping is registered in another state, and regardless of
7 whether the person actually intends to vote in two states.

8 55. Though voting in more than one state is illegal, it is perfectly legal to be
9 registered to vote in more than one state or in more than one county in Arizona. In fact, it
10 is quite common.

11 56. The Felony Provision will severely chill Plaintiffs’ voter registration and
12 mobilization efforts in Arizona by making it a crime to “knowingly” provide “a mechanism
13 for voting” to a voter who is registered to vote in another state. The ambiguity in the plain
14 language of the Felony Provision only adds to the burden on Plaintiffs and makes it more
15 likely that they will be deterred from engaging in voter registration and mobilization efforts.
16 It is unclear, for example, which of Plaintiffs’ voter registration or mobilization activities
17 would constitute “a mechanism for voting.”

18 57. A large part of Plaintiffs’ voter registration and mobilization activities includes
19 registering and engaging with voters who have moved to Arizona from other states, making
20 it inevitable that some number among them have prior voter registrations in other states or
21 counties. If Plaintiffs’ employees or volunteers register or otherwise assist an individual
22 who has not taken the affirmative step of successfully canceling their previous voter
23 registration(s), they could face criminal penalties under the plain language of the Felony
24 Provision.

25 58. The Felony Provision—especially its vagueness and overbreadth—imposes a
26 severe burden on Plaintiffs’ voter registration and mobilization efforts in Arizona because
27 it apparently imposes felony charges on volunteers and staff for simply helping to register
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1 or mobilize voters who may not have affirmatively cancelled other voting registrations—in
2 other words, for being civically engaged or doing their jobs. And it requires organizations
3 such as Plaintiffs to either confirm that each person they reach out to is not registered to
4 vote in any other states, or to ensure that each person has successfully canceled any
5 registration in another state before providing any further assistance. As a result, Plaintiffs’
6 voter registration and mobilization activities will be severely hindered, and new Arizona
7 residents will have less support in registering to vote and voting.

8 **B. Cancellation Provision (A.R.S. § 16-165(A)(10), (B)) and Removal**
9 **Provision (A.R.S. § 16-544(Q)–(R))**

10 59. Through the Cancellation and Removal Provisions, SB 1260 imposes severe
11 burdens on voters who move within the state.

12 60. SB 1260 amends A.R.S. § 16-165 to add subsections (A)(10) and (B) (the
13 “Cancellation Provision”), which state that a county recorder “shall” cancel a registration
14 in the following two circumstances:

- 15 1. When the county recorder receives confirmation from
16 another county recorder that the person registered has registered
17 to vote in that other county.
- 18 2. If the county recorder receives credible information that a
19 person has registered to vote in a different county, the county
20 recorder shall confirm the person’s voter registration with that
21 other county and, on confirmation, shall cancel the person’s
22 registration pursuant to subsection A, paragraph 10 of this
23 section.

24 61. SB 1260 also amends A.R.S. § 16-544 to add subsections (Q) and (R) (the
25 “Removal Provision”), which state:

- 26 Q. When the county recorder receives confirmation from
27 another county that a person registered has registered to vote in
28 that other county, the county recorder shall remove that person
from the active early voting list.
- R. If the county recorder receives credible information that a
person has registered to vote in a different county, the county
recorder shall confirm the person’s voter registration with that

1 other county and, on confirmation, shall remove that person
2 from the county's active early voting list pursuant to subsection
3 Q of this section.

4 62. The Cancellation and Removal Provisions require a county recorder to cancel an
5 otherwise valid and active voter registration or remove an otherwise eligible voter from the
6 active early voting list merely because "the person registered has registered to vote in that
7 other county." A.R.S. § 16-165(A)(10); *id.* § 16-544(Q). SB 1260 contains no further
8 explanation of *which* county recorder "shall cancel" the person's registration or *which*
9 county recorder "shall remove" the person from the active early voting list. *Id.* § 16-
10 165(A)(10), (B); *id.* § 16-544(Q), (R). Even if a person now resides in, is eligible to vote
11 in, and intends to vote in a particular county, the Cancellation and Removal Provisions
12 appear to require the county recorder *of that county* to cancel the person's voter registration
13 or remove that person from the active early voting list if the person is registered in another
14 county.

15 63. The Cancellation and Removal Provisions compel county recorders to cancel
16 registrations and remove voters from the active early voting list without any requirement to
17 provide notice to the affected voters and regardless of whether the affected voters consent
18 to such action. *Id.* § 16-165(A)(10), (B); *id.* § 16-544(Q), (R). Similarly, there is no
19 requirement for the county recorder to contact the voter to determine which voter
20 registration should remain active. Without any notice, individual Arizona voters will have
21 no knowledge as to whether any of their voter registrations are active, or which ones remain
22 active, or whether they remain on any active early voting list.

23 64. The Cancellation and Removal Provisions do not contain any mechanism for the
24 county recorders to coordinate their cancellations or removals, resulting in a scenario for
25 voter disenfranchisement in which two county recorders might *each* cancel a voter's
26 registration (or remove the voter from the active early voting list) in their respective
27 counties upon receiving confirmation from each other that the voter has registered in both
28 counties. This double cancellation could result in a person being suddenly stripped of any

1 active voter registration and being removed from all active early voting lists, without any
2 notice whatsoever. And even if a voter’s registrations are not all cancelled, nothing in the
3 Cancellation Provision prevents the cancellation of the voter’s registration where the voter
4 currently resides, is eligible and intends to vote—a scenario that could also lead to
5 disenfranchisement without notice. The Removal Provision similarly fails to protect against
6 this situation; a voter could be removed, without notice, from the active early voting list in
7 the county in which they intend to vote.

8 65. The Cancellation and Removal Provisions also allow third parties to provide
9 county recorders with “credible information that a person has registered to vote in a
10 different county.” *Id.* § 16-165(B); *id.* § 16-544(R). Upon receiving such information, a
11 county recorder is required—again, regardless of whether the affected voter consents or is
12 even notified—to “confirm the person’s voter registration with that other county” and, upon
13 confirmation, to cancel the person’s registration or remove the person from the active early
14 voting list. *Id.* § 16-165(B); *id.* § 16-544(Q).

15 66. SB 1260 contains no explanation of what constitutes “credible information,” who
16 may provide it, or whether a county recorder has any duty to investigate.

17 67. The Cancellation and Removal Provisions will enable targeted voter suppression
18 by allowing third parties to provide “credible information” about certain populations who
19 may have moved. For example, a third party could contact the county recorder for the
20 county where each university in Arizona is located and notify them of any students who
21 have “registered to vote in a different county.” *Id.* § 16-165(B); *see also id.* § 16-544(Q).
22 Under the Cancellation and Removal Provisions, the county recorder would then be
23 required to confirm with another county recorder whether these students have registered in
24 a different county and, upon confirmation, cancel the students’ voter registrations and
25 remove the students from the active early voting list. There is no requirement to notify or
26 receive permission from the students prior to canceling their voter registrations or removing
27 them from the active early voting list.
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1 **C. Return Provision (A.R.S. § 16-544(P))**

2 68. SB 1260 also amends A.R.S. § 16-544 to add subsection (P) (the “Return
3 Provision”), which states:

4 A person who receives an early ballot at an address at which
5 another person formerly resided, without voting the ballot or
6 signing the envelope, shall write “Not at this address” on the
7 envelope and place the mail piece in a United States Postal
8 Service collection box or other mail receptacle. On receipt the
 county recorder or other officer in charge of elections shall
 proceed in the manner prescribed in subsection E of this section.

9 69. The Return Provision requires a person who receives an early ballot addressed
10 to a former resident to write “Not at this address” on the ballot and place the ballot in the
11 mail. *Id.* § 16-544(P). Assuming that the mail is successfully returned to the county recorder
12 as undeliverable, the county recorder, upon receipt, is required either to “contact the voter
13 at the voter’s new residence address in order to update that voter’s address or to move the
14 voter to inactive status,” meaning the voter would be removed from the active early voting
15 list. *Id.* § 16-544(E).

16 70. Though the Return Provision does not provide for specific penalties for the
17 failure to comply, the mandatory language of the Return Provision would create an
18 affirmative legal duty for Arizona residents to monitor their mail and mark and return any
19 early ballots meant for former residents.

20 71. In other words, an Arizona resident who receives an early ballot addressed to a
21 former resident and who simply ignores the early ballot (without marking it or placing it
22 back in the mail) would be in violation of Arizona law under the Return Provision. The
23 Return Provision effectively conscripts Arizona residents into helping the state purge their
24 neighbors from the voter rolls.

25 **D. The Challenged Provisions Are Not Severable**

26 72. The Return Provision, standing alone without an enforcement mechanism, would
27 not be “reasonable in light of [SB 1260] as originally drafted” and therefore cannot be
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1 severed from the rest of SB 1260. *AZ Petition Partners LLC v. Thompson*, 511 P.3d 570,
2 583 (Ariz. App. 2022).

3 73. Indeed, given that multiple interrelated parts of SB 1260 would violate federal
4 law and the U.S. Constitution in a myriad of ways, none of the Challenged Provisions of
5 SB 1260 are salvageable and each must be struck down to preserve the voting rights of
6 Arizona voters. *See Brown*, 194 Ariz. at 344 (holding that portions of a statute are severable
7 only if “the valid parts are effective and enforceable standing alone and independent of
8 those portions declared unconstitutional and if the valid and invalid portions are not so
9 intimately connected as to raise the presumption the legislature would not have enacted one
10 without the other, and the invalid portion was not the inducement of the act” (cleaned up)).

11 74. SB 1260 does not contain a severability provision, which demonstrates the
12 legislature’s intent to avoid “judicial surgery” on the bill. *Ruiz v. Hull*, 191 Ariz. 441, 459
13 (1998) (weighing the lack of a severability clause in favor of declining to sever invalid
14 portions of a constitutional amendment voted into law by Arizona citizens).

15 CLAIMS FOR RELIEF

16 COUNT I

17 **Free Speech and Association Challenge to the Felony Provision Brought Against** 18 **Mark Brnovich, in his official capacity as Attorney General for the State of Arizona,** 19 **on the Grounds That it is Unconstitutionally Vague and Overbroad Under** 20 **U.S. Const. amends. I, XIV; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202**

21 75. Plaintiffs incorporate by reference the allegations in Paragraphs 1–74 as though
22 fully set forth herein.

23 76. The Felony Provision is unconstitutionally overbroad and vague under the First
24 and Fourteenth Amendments. It does not define its operative phrase—providing a
25 “mechanism for voting”—except to specify that the phrase should be interpreted broadly
26 enough to include activity as diminutive as “forwarding an early ballot addressed to another
27 person.” The possibilities of prohibited activities are thus nearly limitless, ranging from
28 registering a person to vote, to helping a person update their address for purposes of voting

1 or registering to vote, to merely providing them with information on how to sign up for the
2 active early voting list or cast their ballot.

3 77. The Felony Provision also does not describe the “knowingly” *mens rea*
4 requirement in any detail. From the plain text, a person could be guilty of a class 5 felony
5 if they “[k]nowingly” “provide[] a mechanism for voting,” regardless of whether they know
6 that the person they are helping is registered in another state, and regardless of whether the
7 person actually intends to vote in two states.

8 78. A law is unconstitutionally vague when it “fails to provide a person of ordinary
9 intelligence fair notice of what is prohibited, or is so standardless that it authorizes or
10 encourages seriously discriminatory enforcement.” *Butcher v. Knudsen*, 38 F.4th 1163, 1169
11 (9th Cir. 2022) (quotation marks omitted). Vague statutes are especially egregious when
12 they “abut upon sensitive areas of basic First Amendment freedoms.” *Baggett v. Bullitt*, 377
13 U.S. 360, 372 (1964).

14 79. The Felony Provision lacks clarity about what activities are prohibited or what
15 activities could be deemed to provide a “mechanism for voting.” Nor does it explain clearly
16 what is meant by “knowingly provides a mechanism for voting.” Thus, it fails to provide
17 “fair notice of what is prohibited” and is “so standardless that it authorizes or encourages
18 seriously discriminatory enforcement.” *Butcher*, 38 F.4th at 1169 (quotation omitted).

19 80. Because Plaintiffs do not know which activities are permitted or prohibited under
20 the Felony Provision, and because they do not know what level of knowledge is required to
21 constitute a violation, their voter registration efforts and other voter engagement efforts will
22 be hindered. *See, e.g., League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D.
23 Tenn. 2019) (noting that even the threat of civil penalties “is likely to have a chilling effect
24 on the entirety of [a voter registration] drive, including its communicative aspects”). These
25 activities are core political speech. *Cf. Meyer v. Grant*, 486 U.S. 414, 421–22 (1988)
26 (describing circulating a petition as “the type of interactive communication concerning
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1 political change that is appropriately described as ‘core political speech’” and is protected
2 by the First Amendment).

3 81. A law is unconstitutionally overbroad when it makes conduct punishable that
4 under some circumstances is constitutionally protected activity. “[T]he overbreadth
5 doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment
6 rights if the impermissible applications of the law are substantial when ‘judged in relation
7 to the statute’s plainly legitimate sweep.’” *City of Chicago v. Morales*, 527 U.S. 41, 52
8 (1999) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612–615 (1973)).

9 82. Plaintiffs’ efforts to help voters register and cast their ballots, as well as the
10 accompanying conversations and interactions between Plaintiffs’ representatives or
11 volunteers and voters surrounding voting, are core political speech. *Cf. Meyer*, 486 U.S. at
12 421–22.

13 83. The Felony Provision is thus unconstitutionally vague and overbroad as it
14 criminalizes any activity that provides a “mechanism for voting,” without limitation,
15 chilling Plaintiffs’ efforts to register and mobilize voters and ensure that their voter
16 registration information is up to date.

17 84. The Felony Provision is therefore unconstitutional under the First and Fourteenth
18 Amendments to the U.S. Constitution.

19 COUNT II

20 **Procedural Due Process Challenge to the Felony Provision Brought Against Mark** 21 **Brnovich, in his official capacity as Attorney General for the State of Arizona** 22 **Under U.S. Const. amend. XIV; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202**

23 85. Plaintiffs incorporate by reference the allegations in Paragraphs 1–84 as though
24 fully set forth herein.

25 86. “It is a basic principle of due process that an enactment is void for vagueness if
26 its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108
27 (1972). The Supreme Court has long recognized that laws must give “the person of ordinary
28 intelligence a reasonable opportunity to know what is prohibited, so that he may act

1 accordingly” and “must provide explicit standards for those who apply them.” *Id.*; *see also*
2 *City of Chicago*, 527 U.S. at 52 (a law “may be impermissibly vague because it fails to
3 establish standards for the police and public that are sufficient to guard against the arbitrary
4 deprivation of liberty interests.”).

5 87. “The due process clause of the Fourteenth Amendment guarantees individuals
6 the right to fair notice of whether their conduct is prohibited by law,” and “[i]f a statute
7 subjects transgressors to criminal penalties,” as this one does, “vagueness review is even
8 more exacting.” *Forbes v. Napolitano*, 236 F.3d 1009, 1011 (9th Cir. 2000).

9 88. Although statutes do not have to be written with “mathematical” precision, they
10 must be “intelligible, defining a ‘core’ of proscribed conduct that allows people to
11 understand whether their actions will result in adverse consequences.” *Id.* “Regardless of
12 what type of conduct the criminal statute targets, the arbitrary deprivation of liberty is itself
13 offensive to the Constitution’s due process guarantee.” *Id.* at 1012.

14 89. Here, Plaintiffs and other Arizonans have liberty interests in not facing criminal
15 penalties, including imprisonment, and in being able to exercise the right to vote. *See Hamdi*
16 *v. Rumsfeld*, 542 U.S. 507, 529 (2004) (noting that “the most elemental of liberty interests”
17 is “the interest in being free from physical detention by one’s own government”); *Raetzl*
18 *v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1357 (D. Ariz. 1990)
19 (“Because voting is a fundamental right, the right to vote is a ‘liberty’ interest which may
20 not be confiscated without due process.”).

21 90. By changing the law to make it a felony for anyone to knowingly provide voting
22 assistance to eligible Arizona voters who have voter registrations in other states that have
23 not been affirmatively cancelled, without specifying what “core” behavior is prohibited, nor
24 providing any standards that would prevent arbitrary enforcement of the law, Defendants
25 have deprived eligible Arizona voters of their due process rights.

26 91. Absent relief, Plaintiffs, along with the Arizona Alliance’s members, will be
27 denied important rights guaranteed under the Fourteenth Amendment.
28

COUNT III

**Undue Burden on the Right to Vote Challenge to the Felony Provision
Brought Against Mark Brnovich, in his official capacity as Arizona Attorney
General for the State of Arizona**

Under U.S. Const. amends. I, XIV; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202

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92. Plaintiffs incorporate by reference the allegations in Paragraphs 1–91 as though fully set forth herein.

93. The Felony Provision will chill voter registration and mobilization efforts in Arizona because it makes it more costly and risky for organizations and individuals to undertake such activities. Some organizations may choose to cease such efforts altogether because of the risk of criminal penalties associated with providing assistance to a voter who registered to vote in another state and has not cancelled that registration.

94. The Felony Provision severely burdens the right to vote because the numerous voters who benefit from third party registration and mobilization efforts will have no opportunity or less opportunity to take advantage of such efforts. In addition, the Felony Provision burdens voters who wish to obtain assistance from third-party organizations engaged in registration and mobilization efforts because it requires voters to affirmatively and successfully cancel all other voter registrations before receiving assistance from any third party in either registering to vote, updating their voter registration information, or casting their ballot.

95. In the Ninth Circuit, a court considering a challenge to a state election law must carefully weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1187 (9th Cir. 2021) (cleaned up).

1 96. This balancing test uses a flexible sliding scale, where the rigorousness of
 2 scrutiny depends upon the extent to which the challenged law burdens voting rights. A law
 3 that imposes a “severe” burden is met with strict scrutiny. *Id.*

4 97. The Felony Provision will severely chill voter registration and mobilization
 5 activities in Arizona and consequently reduce Arizonans’ ability to receive assistance in
 6 registering to vote, updating their voter registration information, or casting their ballot.
 7 Meanwhile, the Felony Provision is not necessary or justified by any legitimate state
 8 interest. A person’s voter registration in another state is not related to whether that person
 9 is eligible to vote in Arizona.

10 98. The Felony Provision violates the First and Fourteenth Amendments by severely
 11 burdening the right to vote without justification by any legitimate state interest.

12 **COUNT IV**

13 **National Voter Registration Act (“NVRA”) § 8 Challenge to the Cancellation** 14 **Provision Brought Against All Defendants** 15 **Under U.S.C. § 20507(a), (d)**

16 99. Plaintiffs incorporate by reference the allegations in Paragraphs 1–98 as though
 17 fully set forth herein.

18 100. Section 8 of the NVRA, 52 U.S.C. § 20507(a)(3)–(4), makes it unlawful for the
 19 State to remove the name of a registrant from the official list of eligible voters unless it is
 20 either:

21 (A) at the request of the registrant; (B) as provided by State law,
 22 by reason of criminal conviction or mental incapacity; or (C) as
 23 provided under . . . a general program that makes a reasonable
 24 effort to remove the names of ineligible voters from the official
 25 lists of eligible voters by reason of . . . the death of the
 26 registrant; or . . . a change in the residence of the registrant[.]

27 101. With respect to removing the name of a person from the eligible voter list
 28 when the person has moved, 52 U.S.C. § 20507(d)(1) of the NVRA provides specifically
 that:

A State shall not remove the name of a registrant from the

1 official list of eligible voters ... unless the registrant (A)
2 confirms in writing that the registrant has changed residence to
3 a place outside the registrar’s jurisdiction in which the registrant
4 is registered; or (B)(i) has failed to respond to a notice . . . ; and
5 (ii) has not voted or appeared to vote . . . in [two consecutive
6 federal election cycles].

7 102. The Cancellation Provision requires county recorders to cancel an individual’s
8 voter registration if they receive “credible information that a person has registered to vote
9 in a different county” and confirm that registration with the other county. A.R.S. § 16-
10 165(B). There is no requirement to notify, or receive any authorization from, the affected
11 individual, much less to do so in accordance with the requirements of the NVRA.

12 103. The Cancellation Provision violates Section 8 of the NVRA and harms
13 Plaintiffs, including their employees, members, or volunteers, because the Cancellation
14 Provision requires county recorders to remove individuals from the official list of eligible
15 voters without following the procedural safeguards mandated by the NVRA. Under SB
16 1260, county recorders must remove a person from the registration list when the person has
17 moved and registered in another county, without (a) receiving written confirmation from
18 the individual, (b) providing notice to the individual and an opportunity for the individual
19 to respond, or (c) waiting for two consecutive federal election cycles in which the individual
20 has not voted or appeared to vote.

21 104. The Cancellation Provision also imposes a burden on Plaintiffs, including their
22 employees, members, or volunteers, by requiring voters to affirmatively cancel all of their
23 other voter registrations if they want to avoid having their preferred voter registration
24 canceled without their notice or consent. This requirement also violates Section 8 of the
25 NVRA, which delineates specific grounds upon which a state may cancel a voter’s
26 registration.

27 105. The Cancellation Provision undermines the stated purposes of the NVRA to
28 “increase the number of eligible citizens who register to vote,” “enhance[] the participation

1 of eligible citizens as voters,” “protect the integrity of the electoral process,” and “ensure
2 that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b).

3 106. Plaintiffs are entitled to declaratory and injunctive relief because Defendants
4 have violated Section 8 of the NVRA by requiring county recorders to improperly remove
5 individuals from the official list of eligible voters.

6 COUNT V

7 **NVRA § 5 and Preemption Challenge to the Felony Provision Brought Against Mark** 8 **Brnovich, in his official capacity as Attorney General for the State of Arizona** 9 **Under 52 U.S.C. § 20504(a), (d)**

10 107. Plaintiffs incorporate by reference the allegations in Paragraphs 1–106 as
11 though fully set forth herein.

12 108. Section 5 of the NVRA provides that a state’s motor vehicle driver’s license
13 application “shall serve as an application for voter registration with respect to elections for
14 Federal office unless the applicant fails to sign the voter registration application.” 52 U.S.C.
15 § 20504(a).

16 109. As Section 5 makes clear, “[a]ny change of address form submitted in
17 accordance with State law for purposes of a State motor vehicle driver’s license shall serve
18 as notification of change of address for voter registration.” *Id.* § 20504(d).

19 110. This command is mandatory and applies “unless the registrant states on the
20 [change-of-address] form that the change of address is not for voter registration purposes.”
21 *Id.*

22 111. The Felony Provision makes it a class 5 felony in Arizona to “knowingly
23 provide[] a mechanism for voting to another person who is registered in another state,
24 including by forwarding an early ballot addressed to the other person.” A.R.S. § 16-
25 1016(12).

26 112. The Felony Provision would apply to any person involved in helping update a
27 voter’s address for purposes of voting or registering to vote if that voter has previously
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1 registered to vote in another state and has not affirmatively canceled that other voter
2 registration.

3 113. The Felony Provision thus criminalizes enforcement of the NVRA, which
4 requires state officials to update a person's voter registration address if a person submits a
5 change of address form for their driver's license unless the person fails to sign the voter
6 registration application. 52 U.S.C. § 20504(a), (d). The Felony Provision harms Plaintiffs,
7 including their employees, members, or volunteers, by severely chilling and criminalizing
8 the process of updating a voter registration address with a change of address form for a
9 driver's license, which can lead to outdated voter rolls, disenfranchisement, and difficulty
10 updating one's voter registration address.

11 114. "Under the Supremacy Clause of the Federal Constitution, when a state law
12 conflicts with a properly enacted federal law, the state law is preempted." *Varela v. FCA*
13 *US LLC*, 505 P.3d 244, 250 (Ariz. 2022); *see also* U.S. Const. Art. VI cl. 2 ("This
14 Constitution, and the laws of the United States which shall be made in pursuance thereof .
15 . . shall be the supreme law of the land; and the judges in every state shall be bound thereby,
16 anything in the Constitution or laws of any State to the contrary notwithstanding.").

17 115. "States are precluded from regulating conduct in a field that Congress, acting
18 within its proper authority, has determined must be regulated by its exclusive governance."
19 *Arizona v. United States*, 567 U.S. 387, 399 (2012). Also, "state laws are preempted when
20 they conflict with federal law," such as when "compliance with both federal and state
21 regulations is a physical impossibility," as well as "where the challenged state law stands
22 as an obstacle to the accomplishment and execution of the full purposes and objectives of
23 Congress." *Id.* (quotation marks omitted).

24 116. "The assumption that Congress is reluctant to pre-empt does not hold when
25 Congress acts under [the Elections Clause], which empowers Congress to make or alter
26 state election regulations." *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 14
27 (2013) (quotation marks omitted).

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1 117. The Felony Provision undermines the stated purposes of the NVRA to “increase
2 the number of eligible citizens who register to vote,” “enhance[] the participation of eligible
3 citizens as voters,” “protect the integrity of the electoral process,” and “ensure that accurate
4 and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b).

5 118. The Felony Provision directly conflicts with the NVRA, makes compliance
6 with the NVRA impossible, and stands as an obstacle to the full purposes and objectives of
7 the NVRA. Thus, the Felony Provision is preempted by the NVRA.

8 119. Plaintiffs are entitled to declaratory and injunctive relief because the Felony
9 Provision violates and is preempted by the NVRA.

10 COUNT VI

11 **Procedural Due Process Challenge to the Cancellation and Removal Provisions** 12 **Brought Against All Defendants** 13 **Under U.S. Const. amend. XIV; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202**

14 120. Plaintiffs incorporate by reference the allegations in Paragraphs 1–119 as
15 though fully set forth herein.

16 121. The Cancellation and Removal Provisions compel county recorders to cancel
17 registrations and remove voters from the active early voting list without any requirement to
18 provide notice to the affected voters and regardless of whether the affected voters consent
19 to such action. A.R.S. § 16-165(A)(10), (B); *id.* § 16-544(Q), (R). Similarly, there is no
20 requirement for the county recorder to contact the voter to determine which voter
21 registration should remain active.

22 122. “Because voting is a fundamental right, the right to vote is a ‘liberty’ interest
23 which may not be confiscated without due process.” *Raetzl*, 762 F. Supp. at 1357.

24 123. The Cancellation and Removal Provisions violate due process because the
25 burden on voters being disenfranchised through removal from the registration and active
26 early voting lists without notice to the voter or opportunity to contest such action is not
27 outweighed by the State’s interest in maintaining up-to-date voter registration rolls or
28 preventing fraud. The Cancellation and Removal Provisions do not contain any mechanism

1 for the county recorders to coordinate their cancellations or removals, such that two county
2 recorders might *each* cancel a voter's registration (or remove the voter from the active early
3 voting list) in their respective counties upon receiving confirmation from each other that the
4 voter has registered in both counties. This double cancellation could result in a person being
5 suddenly stripped of any active voter registration and being removed from all active early
6 voting lists, without any notice whatsoever.

7 124. And even if a voter's registrations are not all cancelled, nothing in the
8 Cancellation Provision prevents the cancellation of the registration where the voter
9 currently resides, is eligible and intends to vote—a scenario that could also lead to
10 disenfranchisement without notice. The Removal Provision similarly fails to protect against
11 this situation; a voter could be removed, without notice, from the active early voting list in
12 the county in which they intend to vote.

13 125. The Cancellation and Removal Provisions do not have any reasonable relation
14 to a legitimate state interest. A person's voter registration in another county is not related
15 to whether that person is eligible to vote in Arizona. There is no reason why county
16 recorders cannot provide notice or obtain consent before cancelling a registration or
17 removing a voter from the early active voting list.

18 126. Nor are the Cancellation or Removal Provisions necessary to prevent election
19 fraud: a person can commit election fraud without having multiple voter registrations, and
20 having multiple voter registrations does not mean a person is committing election fraud.
21 The same rationale applies for people on the active early voting list.

22 127. Absent relief, Plaintiffs, along with the Arizona Alliance's members, will be
23 denied due process.
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COUNT VII**Undue Burden on the Right to Vote Challenge to the Cancellation and Removal Provisions Brought Against All Defendants Under U.S. Const. amends. I, XIV; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202**

128. Plaintiffs incorporate by reference the allegations in Paragraphs 1–127 as though fully set forth herein.

129. In the Ninth Circuit, a court considering a challenge to a state election law must carefully weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Hobbs*, 18 F.4th at 1187 (cleaned up).

130. This balancing test uses a flexible sliding scale, where the rigorousness of scrutiny depends upon the extent to which the challenged law burdens voting rights. A law that imposes a “severe” burden is met with strict scrutiny. *Id.*

131. The Cancellation and Removal Provisions severely burden the right to vote because they require voters to affirmatively and successfully cancel voter registrations in all Arizona counties—except for the one in which they intend to vote—in order to avoid the ultimate injury in the voting context: potential disenfranchisement because their registration has been cancelled or they have been removed from the active early voting list without notice.

132. Neither of these provisions has any reasonable relation to a legitimate state interest. A person’s voter registration in another county is not related to whether that person is eligible to vote in Arizona.

133. Nor are the Cancellation or Removal Provisions necessary to prevent election fraud: people can commit election fraud without having multiple voter registrations, and having multiple voter registrations does not mean a person is committing election fraud. The same rationale applies for people on the active early voting list.

1 134. The Cancellation and Removal Provisions violate the First and Fourteenth
2 Amendments by severely burdening the right to vote without any legitimate state interest.

3 **COUNT VIII**

4 **Equal Protection Challenge to the Cancellation and Removal Provisions Brought
Against All Defendants**

5 **Under U.S. Const. amend. XIV; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202**

6 135. Plaintiffs incorporate by reference the allegations in Paragraphs 1–134 as
7 though fully set forth herein.

8 136. “The Equal Protection Clause of the Fourteenth Amendment to the United
9 States Constitution guarantees each and every person that they will not be denied their
10 fundamental rights—including the right to vote—in an arbitrary or discriminatory manner.”
11 *Charfauros v. Bd. of Elections*, 249 F.3d 941, 951 (9th Cir. 2001). “[I]f a challenged statute
12 grants the right to vote to some citizens and denies the franchise to others, the Court must
13 determine whether the exclusions are necessary to promote a compelling state interest.” *Id.*
14 (cleaned up).

15 137. Both the Cancellation and Removal Provisions place a duty on voters to
16 affirmatively cancel their other voter registrations, which would disproportionately burden
17 voters who are more likely to have multiple voter registrations, such as young voters,
18 college students, older voters—many of whom move to Arizona when they reach retirement
19 age—and other transient voters who are more likely to be poorer voters and non-white
20 voters.

21 138. These same voters are more likely to register to vote in multiple states or
22 counties and are thus more likely to have their voter registrations canceled pursuant to the
23 Cancellation Provision and to be removed from the active early voting list pursuant to the
24 Removal Provision, without any notice or opportunity to take corrective action to maintain
25 their ability to vote.

26 139. The Cancellation and Removal Provisions will enable targeted voter
27 suppression by allowing third parties to provide county recorders with “credible
28

1 information” about people that have voter registrations in multiple counties, which would
2 then compel county recorders to confirm that information and, once confirmed, cancel the
3 affected voter registrations and remove affected voters from the active early voting list. As
4 discussed, SB 1260 makes it easier for voter suppressive groups to systematically target
5 groups that are more likely to move, register to vote in multiple counties, or rely on the
6 active early voting list, such as young voters, college students, older voters, and other
7 transient voters who are more likely to be nonwhite and poorer voters.

8 140. The Cancellation and Removal Provisions amount to an “arbitrary or
9 discriminatory” denial of the fundamental right to vote. *Charfauros*, 249 F.3d at 951.

10 141. The Cancellation and Removal Provisions are not “necessary to promote a
11 compelling state interest,” as is required if the provisions grant the right to vote to some
12 citizens but deny it to others. *Id.* (cleaned up). Having multiple voter registrations is legal
13 in Arizona and does not relate in any way to a person’s eligibility to vote.

14 142. Nor are the Cancellation or Removal Provisions necessary to prevent election
15 fraud: a person can commit election fraud without having multiple voter registrations, and
16 having multiple voter registrations does not mean a person is committing election fraud.
17 The same rationale applies for people on the active early voting list.

18 19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

- 21 a. Declaring, under the authority granted to this Court by 28 U.S.C.
22 §§ 1983, 2201, and 2202, that Defendants have violated the NVRA and the
23 First and Fourteenth Amendments through the Challenged Provisions of SB
24 1260;
- 25 b. Preliminarily and permanently enjoining Defendants, their respective agents,
26 officers, employees, and successors, and all persons acting in concert with
27 each or any of them, from enforcing SB 1260;

28

- 1 c. Awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees
2 incurred in bringing this action under 42 U.S.C. § 1988 and other applicable
3 laws; and
4 d. Granting such other and further relief as the Court deems just and proper.
5

6 Dated: September 2, 2022

Respectfully submitted,

7 */s/ Daniel A. Arellano*

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