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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

REPUBLICAN PARTY OF ARIZONA, LLC, an Arizona limited liability company and political party committee; REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and GINA SWOBODA, an individual, Plaintiffs, v. STATE OF ARIZONA, a body politic; and ADRIAN FONTES, in his official capacity as the Secretary of State of Arizona, Defendants.	No. CV2025-022859 **MOTION TO DISMISS** (Assigned to the Hon. Michael Herrod)

Defendants the State of Arizona and Adrian Fontes, in his official capacity as Arizona Secretary of State, move to dismiss the Complaint pursuant to Arizona Rules of Civil Procedure 12(b)(1) and (6).

INTRODUCTION

Twenty years ago, the Arizona State Legislature introduced House Bill ("HB") 2288, which was enacted as A.R.S. § 16-103, to enable overseas citizens to vote in compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 *et seq*. ("UOCAVA"). *See* House Bill 2288, 47th Leg. 1st Reg. Sess. (2005). A group of Republican House Representatives and Senators introduced the Bill. *See id.* HB 2288 was an uncontroversial proposal and received bipartisan support, with not a single legislator voting against it. Now, however, Plaintiffs Republican Party of Arizona, LLC and the Republican National Committee (together, "Party Plaintiffs") and Gina Swoboda (collectively, "Plaintiffs") seek to make it a controversy and have brought suit to challenge the constitutionality of subpart (E) of the statute. Plaintiffs ask this Court to now declare that A.R.S. § 16-103(E) violates article VII, § 2(A) of the Arizona Constitution because it allows—and has allowed, for the past twenty years—children of Arizona voters covered by UOCAVA, and who have never otherwise lived in the United States, to register to vote in Arizona, based on their parent's residency. Plaintiffs also seek an injunction against implementation and enforcement of the statute.

The Complaint should be dismissed because Plaintiffs lack standing. Every basis Plaintiffs proffer to support standing—competitive injury, vote dilution, and various alleged interests in the effectuation and enforcement of Arizona's constitutional residency qualification for voting—are insufficient to support standing here. For these reasons, as explained more fully below, the Court should dismiss the Complaint.

Lack of standing aside, Plaintiffs' constitutional claim also fails on the merits as a matter of law. The Complaint mis-frames what A.R.S. § 16-103(E) does while also minimizing the "as prescribed by law" text included in Ariz. Const. art. VII, § 2(A), which clearly allows the Legislature to enact this statute. Considering Ariz. Const. art. VII, §

2(A) in full, this Court will find that the Complaint is groundless.

BACKGROUND

Article VII, § 2(A) of the Arizona Constitution provides, as relevant here, that "[n]o person shall be entitled to vote . . . unless such person be a citizen of the United States of the age of eighteen years or over, and shall have resided in the state for the period of time preceding such election *as prescribed by law*." (Emphasis added). Pursuant to its constitutional authority to prescribe residency requirements, the Legislature enacted A.R.S. § 16-103(E) in 2005. The statute provides that a U.S. citizen "who has never resided in the United States and whose parent is a United States citizen who is registered to vote in this state is eligible to register to vote and may vote in this state using a federal write-in early ballot as prescribed by section 16-543.02." A.R.S. § 16-103(E).[1] Section 16-543.02(A), in turn, ensures the right to vote for federal offices to overseas voters using the Federal write-in absentee ballot, consistent with UOCAVA.

UOCAVA protects the right to vote for absent uniformed services voters and overseas U.S. citizen voters ("UOCAVA voters"), by requiring "[e]ach State" to permit UOCAVA voters "to use absentee registration procedures and to vote by absentee ballot" in federal elections. 52 U.S.C. § 20302(a)(1). It specifically permits "absent uniformed services voters and overseas voters to use Federal write-in absentee ballots . . . in general elections for Federal office." *Id.* § 20302(a)(3). It also requires "[e]ach State to . . . use the official post card form (prescribed under section 20301 . . .) for simultaneous voter registration application and absentee ballot application." *Id.* § 20302(a)(4). The Act defines "absent uniformed services voter[s]" to mean "(A) a member of a uniformed service . . .; (B) a member of the merchant marine . . .; and (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote." *Id.* § 20310(1)(A)–(C). Importantly, the Act

[1] For ease of reference, this Motion refers to voters covered by A.R.S. § 16-103(E) as "16-103(E) voters."

creates no distinction between overseas voters who reside overseas temporarily and those who reside overseas indefinitely. *See id.* § 20310(5).

On June 30, 2025, Plaintiffs sued Defendants, alleging that A.R.S. § 16-103(E) is facially "inconsistent with and violative of" Ariz. Const. art. VII, § 2(A) because it "allows individuals 'who ha[ve] never resided,'" in Arizona to register and vote in the state. (Compl. ¶¶ 39, 40 (alteration in original).) They request a declaratory judgment to that effect under the Arizona Declaratory Judgments Act, A.R.S. § 12-1831 *et seq*. (*Id.* ¶ A.) Plaintiffs also seek to enjoin Defendants from "accepting or effectuating voter registrations and mail ballot requests by" 16-103(E) voters. (*Id.* ¶ B.) Finally, Plaintiffs seek an injunction requiring Secretary Fontes to "take all actions necessary or appropriate to ensure that the Arizona-specific instructions accompanying the Federal Post Card Application and the Federal Write-In Absentee Ballot reflect that [16-103(E) voters] are not eligible to register to vote or cast ballots in federal or state elections in Arizona." (*Id.* ¶ C.)

LEGAL STANDARD

Under Rule 12(b)(1) a trial court may "dismiss an action for lack of subject matter jurisdiction." *Falcone Brothers & Assocs., Inc. v. City of Tucson*, 240 Ariz. 482, 487 ¶ 10 (App. 2016). Dismissal for failure to state a claim under Rule 12(b)(6) is appropriate when, "as a matter of law the plaintiff would not be entitled to relief under any interpretation of the facts." *Cleckner v. Ariz. Dep't of Health Servs.*, 246 Ariz. 40, 42 ¶ 6 (App. 2019) (cleaned up). Courts "assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts, but mere conclusory statements are insufficient." *Coleman v. City of Mesa*, 230 Ariz. 352, 356 ¶ 9 (2012). Courts "do not accept as true allegations consisting of conclusions of law" or "legal conclusions alleged as facts." *Swift Transp. Co. v. Ariz. Dep't of Revenue*, 249 Ariz. 382, 385 ¶ 14 (App. 2020) (citation omitted).

ARGUMENT

I. Plaintiffs do not have standing to seek injunctive relief.

Arizona courts have "a rigorous standing requirement," *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140 ¶ 6 (2005), and "require[ ] standing as a matter of judicial restraint, informed by federal law,"[2] *Horne v. Hobbs*, No. 1 CA-CV 24-0615, 2025 WL 1982692, at *4 ¶ 18 (Ariz. App. July 17, 2025).

"Standing generally requires an injury in fact . . . caused by the complained-of conduct, and resulting in a distinct and palpable injury giving the plaintiff a personal stake in the controversy's outcome." *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406 ¶ 8 (App. 2008). To establish standing, Plaintiffs must show that (1) they "suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical;" (2) a "causal connection between the injury and the conduct complained of;" and (3) it must "be likely, as opposed to merely 'speculative,' that the injury" is redressable. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (citations omitted); *see also Klein v. Ronstadt*, 149 Ariz. 123, 124 (App. 1986) (requiring that a plaintiff "demonstrate some actual, concrete harm which will come to [them as a result of the challenged provision], not merely some speculative fear of infringement"). Allegations of "generalized harm that [are] shared alike by all or a large class of citizens" do not confer standing. *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998).

Here, Plaintiffs bring a facial challenge against A.R.S. § 16-103(E) on the basis that it adds "a population of constitutionally ineligible individuals" to the voter rolls, asserting injury from competitive disadvantage and vote dilution. (Compl. ¶¶ 34, 36, 42.)

[2] Although Arizona courts have in recent decades held that standing is a prudential requirement, in fact the requirement is constitutionally mandated and jurisdictional. *See* Ariz. Const. art. VI, § 14(1) (superior court has jurisdiction over "Cases and proceedings"); *Campbell v. Thurman*, 96 Ariz. 212, 213–14 (1964); *State ex rel. Andrews v. Superior Court of Maricopa Cnty.*, 39 Ariz. 242, 245–47 (1931). But the Court need not reach that issue to grant this Motion.

Plaintiffs contend that A.R.S. § 16-103(E)'s addition of these individuals to the voter rolls results in disadvantage for Party Plaintiffs because these individuals are statistically more likely to be non-Republican (*id.* ¶¶ 27–34), and also dilutes the power of Ms. Swoboda's vote (*id.* ¶¶ 36, 43). As alleged, neither of Plaintiffs' claims of injury are sufficient to establish their standing.

A. Party Plaintiffs' alleged competitive injury is insufficient to confer standing.

Party Plaintiffs' competitive disadvantage claim is insufficient to satisfy either the injury-in-fact or causation requirements. Defendants discuss each requirement in turn.

The competitive standing theory "arose in the context of the commercial marketplace, specifically when *government-imposed restrictions* put certain market participants at a competitive disadvantage." *Castro v. N.H. Sec'y of State*, 701 F. Supp. 3d 176, 182 (D.N.H. 2023) (citation omitted) (emphasis added). "In discrete contexts, courts have extended competitor standing to the political marketplace." *AB PAC v. Fed. Election Comm'n*, No. 22-2139 (TJK), 2023 WL 4560803, at * 4 (D.D.C. July 17, 2023).

To establish competitive injury in the context of a "state-imposed disadvantage," Plaintiffs must show that the State has imposed specific regulatory or mandatory requirements or restrictions that advantage others over them. *See, e.g.*, *Castro*, 701 F. Supp. 3d at 183 (citing *Mecinas v. Hobbs*, 30 F.4th 890 (9th Cir. 2022) and *Shays v. Fed. Election Comm'n*, 414 F.3d 76 (D.C. Cir. 2005), the very cases Plaintiffs cite here, for establishing this showing). In the "state-imposed disadvantage" context, courts have found a competitive injury where a law allows additional competitors to be listed on a state's ballot, where a law structures the order in which candidates are listed on a ballot, or where a law directly creates a benefit or privilege for a competitor or a disadvantage for the challenger.

For example, in *Nelson v. Warner*, 472 F. Supp. 3d 297 (S.D. W. Va. 2020), the court found competitive injury because a state ballot-order statute mandated that ballots for partisan offices list first the party whose candidate for president received the most

votes in the last election. *Id.* at 303–04. The court found electoral harm to the plaintiff because such kinds of ballot-ordering create a competitive injury by "illegally structur[ing] a competitive environment." *Id.* (citation omitted). And in *Schulz v. Williams*, 44 F.3d 48 (2d Cir. 1994), the court found competitive injury where the challenged New York election law provisions allowed an additional political party to be placed on the state ballot. *Id.* at 53. In *Schulz*, the court specifically found that adding candidates on the ballot created "competition on the ballot from candidates that . . . were able to 'avoid complying with the Election Laws.'" *Id*

A statute generally permitting voters to register to vote, which is all that A.R.S. § 16-103(E) does, is not akin to laws that directly affect or benefit candidates or political parties in a way that is comparable to the cases noted above. Unlike candidates who are already politically aligned with one party over another or whose mere presence on a ballot could siphon votes from a competitor, the subset of UOCAVA voters at issue are not inherently politically aligned, nor does their eligibility to vote automatically deprive Party Plaintiffs of votes or give votes to a competitor. Indeed, A.R.S. § 16-103(E) does not dictate that voters choose any political affiliation at all, much less structure a political environment. Therefore, on its face A.R.S. § 16-103(E) does not create a legally cognizable competitive advantage for any of Party Plaintiffs' political rivals; nor is it inherently disadvantageous to Party Plaintiffs.

Mecinas and *Shay*, which Plaintiffs cite to support their allegations of a state-imposed disadvantage (Compl. ¶ 33), are in the same mold as the cases noted above. In *Mecinas*, the Ninth Circuit found that a state-mandated system for ordering candidate names that relied on the political parties' past election performance could create an unfair electoral advantage. 30 F.4th at 894–95, 899. In *Shays*, the D.C. Circuit found a competitive injury where the court concluded that the challenged FEC campaign finance rules "illegally structure[d] a competitive environment" in the way it regulated "candidates' . . . opportunities to persuade the electorate." 414 F.3d at 85, 87. Accordingly, *Mecinas* and *Shay* do not support a finding of competitive injury here.

Even assuming that voters generally having access to the ballot could constitute a state-imposed disadvantage, to support a finding of competitive injury, by definition Plaintiffs' must show that the potential voters at issue are sufficiently numerous to create some plausible competitive disadvantage. But Plaintiffs make no allegation about what percentage of the Arizona electorate are 16-103(E) voters. The Complaint contains no allegations at all from which the Court could reasonably infer the statistical or political significance, if any, of this specific subset of UOCAVA voters. Notably, all the statistics that Plaintiffs allege concern UOCAVA voters generally who are registered to vote in Maricopa County. (Compl. ¶¶ 29–31.) However, Plaintiffs do not allege the percentage of voters who are eligible to register under A.R.S. § 16-103(E) that are registered to vote in Maricopa county, or any other county for that matter. Accordingly, there is no basis from which the Court can reasonably infer that A.R.S. § 16-103(E) creates a competitive disadvantage against Party Plaintiffs and in favor of a competitor.

Furthermore, even assuming that Plaintiffs can satisfy the injury-in-fact requirement under their competitive injury theory, they cannot establish causation to support standing. To find causation, "the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Mecinas*, 30 F.4th at 899 (citation omitted); *see also Fulani v. Brady*, 935 F.2d 1324, 1329 (D.C. Cir. 1991) ("The [Supreme] Court . . . has made clear that an injury will not be 'fairly traceable' to the defendant's challenged conduct . . . where the injury depends not only on that conduct, but on independent intervening or additional causal factors.").

For example, in *Mecinas*, the court found an adequate causal nexus between the ballot-order statute and competitive disadvantage because candidate order creates a "position bias," and county supervisors had "no discretion in ordering candidate names." 30 F.4th at 895, 900. Rather, they were "bound to follow" the challenged statute, which mandated that candidates affiliated with the successful political party in the most recent gubernatorial election be listed first. *Id*. In other words, because the statute mandated a

system that was itself alleged to be competitively disadvantageous, the claimed competitive injury was fairly traceable to the challenged statute.

In contrast to *Mecinas*, Plaintiffs cannot show that A.R.S. § 16-103(E) causes their claimed competitive disadvantage. As discussed above, A.R.S. § 16-103(E) does not create a competitive injury in favor of any political party. Any disadvantage that Party Plaintiffs could plausibly suffer would result from independent causal factors entirely dictated by the separate action of third parties not before the Court—namely, the decision of a person to register under A.R.S. § 16-103(E) and to choose to vote for candidates who are not Republicans regardless of their party (or no party, like one-third of Arizona voters).

Tellingly, not even Plaintiffs contend that the statute is designed or implemented in a way that would tend to create a disparity between voters of one party or the other. Nor could they, because A.R.S. § 16-103(E) merely allows for the possibility of registering to vote. And a voter's party choice and ballot selections are entirely beyond the control of the State. Persons eligible to register under A.R.S. § 16-103(E) have complete autonomy to decide whether to register Republican, to register for another party, to remain unaffiliated, or not to register at all. Therefore, the mandatory causal link does not exist between A.R.S. § 16-103(E) and a voter's chosen party affiliation. Accordingly, Plaintiffs cannot establish the required causal nexus to support standing on a competitive injury theory here.

B. Plaintiff Swoboda's claim of "vote dilution" also cannot support standing.

Plaintiffs' claim of vote dilution is also not an injury sufficient to establish standing. Plaintiffs argue that Ms. Swoboda has suffered concrete and particularized harm because A.R.S. § 16-103(E)'s inclusion of constitutionally ineligible individuals in the Arizona electorate dilutes Ms. Swoboda's and other eligible qualified electors' voting power. (Compl. ¶¶ 36, 43.) Plaintiffs cite a recent case out of the District of Columbia Circuit in support of this argument, but no authority with precedential effect in this Court.

(*See id.* ¶ 36 (citing *Hall v. D.C. Bd. of Elections*, 141 F.4th 200, 206 (D.C. Cir. 2025).) Plaintiffs' vote dilution claim fails for multiple reasons.

First, Plaintiffs' theory of vote dilution, where votes are diluted merely by the general mathematical expansion of the electorate is not legally sound. The Ninth Circuit has explained that "[t]he crux of a vote dilution claim is *inequality* of voting power—not diminishment of voting power *per se*." *Election Integrity Project Cal., Inc. v. Weber*, 113 F.4th 1072, 1087 (9th Cir. 2024) (emphases in original). That is because "dilution of voting power, in an absolute sense, occurs any time the total number of votes increases in an election." *Id.* In contrast, vote dilution in "the l*egal* sense," and consistent with Supreme Court precedent, occurs "when disproportionate weight is given to some votes over others within the same electoral unit." *Id.* (emphasis in original) (citation omitted).

Second, *Hall* does not change the law regarding vote dilution. Not only is *Hall* not binding precedent, it is grossly inconsistent with Supreme Court precedent that has limited vote dilution claims to cases where certain votes are weighted more heavily than others, usually in redistricting cases. *See Gill v. Whitford*, 585 U.S. 48, 49, 66 (2018) (emphasizing that "[t]o the extent the plaintiffs' alleged harm is the dilution of their votes, that injury is district specific. . . . The boundaries of the district, and the composition of its voters, determine whether and to what extent a particular voter is packed or cracked"); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (striking down a plan to apportion seats in the Alabama State Legislature by carving the state into legislative districts that covered significantly different numbers of constituents effectively weighing votes from rural counties more heavily than votes from urban counties); *Gray v. Sanders*, 372 U.S. 368, 379–81 (1963) (finding a Georgia vote allocation system gave "one person . . . twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county" and held that the system violated the principles of both voter and political equality); *Baker v. Carr*, 369 U.S. 186, 207–08 (1962) (finding injury where a classification disfavored "the voters in

the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-à-vis voters in irrationally favored counties").

Furthermore, *Hall* is wholly inconsistent with key standing principles. As reaffirmed in *Gill*, to support standing plaintiffs must show "concrete and particularized injuries" and "standing is not dispensed in gross." *Gill*, 585 U.S. at 65, 73 (citation omitted). A finding of injury on Plaintiffs' vote dilution claim would necessarily require this Court to dispense standing "in gross," conflicting with enduring standing precedent. Notably, other courts have rejected claims that allegedly ineligible voters casting ballots, which equally affects all voters in a state, creates a cognizable vote dilution injury because such generalized grievances are insufficient to support standing. *See, e.g.*, *Wood v. Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020); *RNC v. Aguilar*, No. 24-CV-00518-CDS-MDC, 2024 WL 4529358, at *3–4 (D. Nev. Oct. 18, 2024); *Pirtle v. Nago*, Civ. No. 22-00381 JMS-WRP, 2022 WL 17082168, at *3 (D. Haw. Nov. 18, 2022); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711–13 (D. Ariz. 2020). Because Plaintiffs' vote dilution claim is not premised on a contention that A.R.S. § 16-103(E) favors some voters over others (*see* Compl. ¶¶ 36, 43), as opposed to having the same effect on all votes, their vote dilution claim is legally untenable.

Finally, even assuming Plaintiffs' contention of vote dilution could be legally viable, it still fails because it also is too attenuated to confer standing. *Mussi v. Fontes*, No. CV-24-01310-PHX-DWL, 2024 WL 4988589 (D. Ariz. Dec. 5, 2024), in which plaintiffs asserted that the Secretary was not complying with requirements to remove voters from the registration rolls, is particularly on point here. In *Mussi*, the court recognized that harm could only occur under a similar theory of vote dilution "after: (1) an ineligible voter requests an early ballot or presents at a polling place; (2) casts a ballot; (3) that ineligible ballot is tabulated; and (4) sufficient other ineligible voters engage in the same series of steps in a number sufficient to 'dilute' Plaintiffs' votes." *Id.* at *2 (citation omitted). The court in *Mussi* found that the plaintiffs could not establish standing under a vote dilution theory due to the speculative contingency nature of the alleged harm.

Id. at 5. The same speculative contingencies before harm could actually arise exist here. And, the same finding of a lack of standing is warranted.[3] *See Lake v. Fontes*, 83 F.4th 1199, 1204 (9th Cir. 2023) (finding "district court correctly dismissed the operative complaint for lack of . . . standing" where a claim of "election manipulation" is based on a "long chain of hypothetical contingencies") (citations omitted).

II. Plaintiffs have no standing to seek a declaratory judgment.

In the absence of an actual injury, plaintiffs seeking a declaratory judgment must present an "actual controversy between interested parties." *Toma v. Fontes*, 258 Ariz. 109, 117 ¶ 23 (App. 2024). Plaintiffs must provide an "existing state of facts," *Thomas v. City of Phoenix*, 171 Ariz. 69, 74 (App. 1991), showing the existence of a "present existing controversy" upon which the Court can "adjudicate any present rights," *Mills v. Arizona Board of Technical Registration*, 253 Ariz. 415, 424 ¶ 25 (2022) (citation omitted). Factual allegations that "may or may not arise in the future" or an abstract "desire to know" about a statute's constitutionality do not give rise to a justiciable claim for declaratory relief. *Thomas*, 171 Ariz. at 74.

Here, Plaintiffs provide no "existing state of facts" demonstrating a cognizable interest in an "actual controversy" upon which this Court can adjudicate their mere "desire to know" if A.R.S. § 16-103(E) is constitutional.

To have standing to request a declaratory judgment, Plaintiffs must demonstrate, at minimum, that "an actual or real interest in the matter for determination." *Pena v. Fullinwider*, 124 Ariz. 42, 44 (1979). This requires a showing that Plaintiffs are presently "[a]ffected by" the statute under which they seek a declaration; a general interest, or even a specific-but-unaffected-interest, is not enough. *Id.*; *see also* A.R.S. § 12-1832. For example, in *Mills*, the Arizona Supreme Court distinguished a plaintiff's "real and present need to know" the constitutionality of a statute that threatened his rights to "speak freely"

[3] Notably, Ms. Swoboda was one of the three plaintiffs in *Mussi*. Her co-plaintiffs have appealed that decision, but she did not. *See Mussi v. Fontes*, No. CV-24-01310-PHX-DWL, Doc. 51, Notice of Appeal (Mar. 5, 2025).

and "earn a living," from his "speculative" claim challenging a statutory provision that did "not affect[]" him. *Compare Mills*, 253 Ariz. at 424–45 ¶ 30 *with id.* at 425 ¶ 31. Similarly, in *Arizona Creditors Bar Association, Inc. v. State*, the court held that plaintiffs had standing to seek declaratory relief only as to the claims for which their "interests" were "sufficiently affected"—including those under which they were "regulated parties" presently required to comply with the challenged law. 257 Ariz. 406, 411–12 ¶¶ 16–20 (App. 2024).

Here, Party Plaintiffs allege that A.R.S. § 16-103(E) "directly affects," in gist, their interest in the "enforcement and implementation" of voter registration provisions in Arizona (Compl. ¶¶ 35, 46). As a threshold matter, such bare assertions do not confer standing. As the Arizona Supreme Court recently reaffirmed, "parties [cannot] eviscerat[e] the standing requirement by merely asserting an interest." *See Ariz. Sch. Bds. Ass'n v. State*, 252 Ariz. 219, 224 ¶ 18 (2022). The same is true for their asserted interest in the "administration of elections" (Compl. ¶¶ 8–9.) A generalized interest "in proper application of the Constitution and laws" that does not affect the plaintiff in a particularized way is not enough for standing. *See Lujan*, 504 U.S. at 573. And, as discussed above, Party Plaintiffs' "competitive injury" is not cognizable under a party-neutral law like A.R.S. § 16-103(E), so their purported interest in the "competitive environment affecting Republican candidates in Arizona" also fails. (Compl. ¶¶ 8–9.)

It is further impossible to discern a cognizable interest in A.R.S. § 16-103(E)'s constitutionality from the "existing facts" Plaintiffs allege in their complaint. Party Plaintiffs allege merely that they are "political party organizations that engage in voter registration efforts and participate in Arizona elections." (*Id.* ¶ 46.) Collectively, they engage in various efforts to register voters, support Republican candidates, and organize the Republican electorate statewide. (*Id.* ¶¶ 8–9.) Plaintiffs, however, do not allege any facts demonstrating that their status as political parties, nor any of their core activities, are in any way affected by Secretary performing his statutorily-required duties to facilitate registration for qualifying UOCAVA voters under A.R.S. § 16-103(E). Unlike in *Arizona*

Creditors and *Mills*, Party Plaintiffs have not demonstrated that A.R.S. § 16-103(E) directly regulates them or their members, or that it affects their rights as political party organizations. By its plain terms, A.R.S. § 16-103(E) directly affects a narrow and discrete group of people—those who have "never resided in the United States and whose parent is a United States citizen who is registered to vote in this state."

Indeed, Plaintiffs' true qualm with A.R.S. § 16-103(E) is with UOCAVA voters' political affiliations. (Compl. ¶¶ 27–34.) Even assuming that this interest was cognizable, Plaintiffs' speculative allegations about these voters' party affiliations or their future voting decisions are precisely the kind of "abstract" assertions that cannot support a claim for declaratory relief. *See Thomas*, 171 Ariz. at 74 (affirming the dismissal of plaintiffs' claim for a declaratory judgment as "too abstract" because a series of future events would need to occur for the statue to affect them).

Because Party Plaintiffs have not alleged any "presently existing facts" establishing a "real and present need" for this Court to adjudicate whether A.R.S. § 16-103(E) is constitutional, there is no actual controversy for this Court to resolve. *See Mills*, 253 Ariz. at 425 ¶ 30. Party Plaintiffs' "desire to know" whether A.R.S. § 16-103(E) is constitutional does not make this a justiciable controversy. *See Thomas*, 171 Ariz. at 74; *see also Ariz. Creditors Bar Ass'n*, 257 Ariz. at 412 ¶ 22 ("An opinion that is advisory is no less so because it will bind or guide future courts.").

To the extent Plaintiffs extend the foregoing arguments to Ms. Swoboda, which is unclear (Compl. ¶ 46), they also fail as to her. Ms. Swoboda's status and rights as a voter are similarly unaffected by A.R.S. § 16-103(E). As discussed in subpart (I)(B), Ms. Swoboda's claim of "vote dilution" is not a cognizable injury. Thus, it cannot be a basis for her claim that A.R.S. § 16-103(E) affects her status as a "resident and qualified elector of Maricopa County," or her right to "vote in all future Arizona elections." (Compl. ¶ 10.) And, as with Party Plaintiffs, Ms. Swoboda's claimed "interest in the enforcement and implementation" of state voter registration laws (Compl. ¶ 46) is precisely the kind of generalized interest that courts reject as a basis for declaratory relief.

III. Section 16-103(E) is consistent with the Arizona Constitution.

A. On its face, Ariz. Const. art. VII, § 2(A) permits the Legislature to enact laws like A.R.S. § 16-103(E).

Even if Plaintiffs had standing to pursue this action, their claim fails as a matter of law because the statute they challenge does not violate the Arizona Constitution. The Complaint asserts that Arizona Constitution article VII, § 2(A) requires that a person "shall have resided in the state" in order to possess the necessary qualifications to register to vote, and A.R.S. § 16-103(E) violates this requirement because it eliminates the constitutional residency requirement for certain people. (*See* Compl. ¶ 38.) But the constitutional provision at issue gives the Legislature the power to define residency rules, which it has done in enacting A.R.S. § 16-103 and other related statutes in Title 16.

Contrary to Plaintiffs' framing, A.R.S. § 16-103(E) does not eliminate the residency requirement. Rather, it provides that for a discrete group of people—citizens over the age of eighteen who are the children of "absent uniformed services voter[s]," "member[s] of the merchant marine," or "overseas voter[s]" as defined by UOCAVA, 52 U.S.C. § 20310(1), (4), (5), and who have never resided in the United States as a result—residence can be acquired through a parent who is registered to vote in Arizona. *See* A.R.S. § 16-103(E). In other words, for the children of an overseas parent who is registered in Arizona, the children are considered to reside in Arizona—the same way their parent is considered to reside in Arizona. *See, e.g.,* A.R.S. § 16-103(A). Said another way, § 16-103(E) simply extends the same treatment to children of overseas voters registered in Arizona that it extends to their parents.

This is wholly consistent with the longstanding conception of domicile. "[R]esidence" and "domicil[e]" are synonymous. *See Clark v. Clark*, 71 Ariz. 194, 197 (1950) (relying on Ariz. Const. art. VII, §§ 3 and 6 relating to residence for voting purposes to determine domicile). A person's domicile of origin is acquired at birth and is the domicile of one of his parents. *See* Restatement 2d Conflict of Laws § 18 (1971); *see also DeWitt v. McFarland*, 112 Ariz. 33, 33 (1975) (citing the Restatement); *Cornell*

v. Desert Fin. Credit Union, 254 Ariz. 477, 483 ¶ 23 (2023) ("In the absence of binding precedent, we follow the Restatement if it sets forth sound legal policy."). As such, a child whose domicile is in Arizona based on their parent's Arizona residence—as evidenced by the parent's Arizona voter registration—has legal Arizona residence even without physical presence within the State. *See* A.R.S. § 16-103(E) (allowing registration only if the voter's parent is registered to vote in Arizona).

This is precisely the type of discretion that Ariz. Const. art. VII, § 2(A) grants to the Legislature. Section 2(A) provides in full:

> No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of eighteen years or over, and **shall have resided in the state for the period of time preceding such election *as prescribed by law***, provided that qualifications for voters at a general election for the purpose of electing presidential electors shall be as prescribed by law. The word "citizen" shall include persons of the male and female sex.

Ariz. Const. art. VII, § 2(A) (emphasis added). The Court must read the constitutional provision in its entirety and give effect to each part, including the phrase "as . . . prescribed by law." *See, e.g.*, *State v. Lee*, 226 Ariz. 234, 238 (App. 2011) (citations omitted) ("We read constitutional provisions as a whole, and give meaningful operation to each part in harmony with the others.").

"Prescribed by law" as used throughout the Arizona Constitution empowers the Legislature to make laws on the subject contemplated. *See Shute v. Frohmiller*, 53 Ariz. 483, 488 (1939) *overruled in part on other grounds by Hudson v. Kelly*, 76 Ariz. 255 (1953) ("[I]n stating that they shall be 'as prescribed by law' [the Constitution] refers to [the attorney general's duties] and clearly makes it the duty of the legislature to say what they shall be."). "The word 'law' in [the expression 'prescribed by law'] means statute." *Id.* Accordingly, the Arizona Constitution contemplates the Legislature enacting laws such as A.R.S. § 16-103(E). *See* Ariz. Const. art. VII, § 2(A); *see also id.* § 12 ("There shall be enacted registration and other laws to secure the purity of elections and guard

against abuses of the elective franchise."); *Ahrens v. Kerby*, 44 Ariz. 337, 341 (1934) (discussing art. VII, § 12 and stating that the Legislature "may prescribe such qualifications [for voter registration] as it thinks wise" within the provision's bounds).

The Legislature has exercised this constitutional authority to define the residency requirement as generally requiring "actual physical presence in this state," A.R.S. § 16-101(B), while also providing for certain legally acceptable proxies for specific subsets of voters. For example, those temporarily absent from the state are considered to maintain their residence even without actual physical presence in the state. *See* A.R.S. § 16-103(A) (referring to A.R.S. § 16-593, which provides rules for determining residence when a ballot is challenged). In the same vein, § 16-103(E) extends a UOCAVA overseas parent's "residence" in Arizona to their children if those children have never resided in the United States. *See* A.R.S. §§ 16-103(E), -593(A)(9).

Plaintiffs attempt to avoid the clear dictate of the Arizona Constitution by pointing to a recent decision of the North Carolina Court of Appeals. (Compl. ¶ 40 (citing *Griffin v. N.C. State Bd. of Elections*, 915 S.E.2d 212, 227 (N.C. App. 2025).) Plaintiffs claim that the North Carolina law at issue in *Griffin* is "substantively similar to A.R.S. § 16-103(E)." (*Id.*) But that claim misses the mark. While the North Carolina *statute* is similar to the Arizona law, *the constitutional provisions* at issue are not.

Plaintiffs ignore key differences between the North Carolina Constitution and the Arizona Constitution and laws at issue here. In particular, the alleged "substantively similar" North Carolina law ran afoul of N.C. Const. art VI, § 2(1), which unlike Ariz. Const. art. VII, § 2(A) does not provide for the North Carolina General Assembly to prescribe laws about residence within the state for state elections like the one at issue in *Griffin*. Accordingly, *Griffin* is inapposite and provides no guide for this Court in applying Ariz. Const. art. VII, § 2(A) in this case.

For these reasons, the Legislature acted within its mandate to prescribe by law residency requirements for voters when it enacted A.R.S. § 16-103(E) and that statute does not violate Ariz. Const. art. VII, § 2(A).

B. Absent A.R.S. § 16-103(E), adult children who have acquired Arizona residence through their parents will lose their constitutional right to vote.

The Arizona Constitution expressly sets forth a right to vote. *See* Ariz. Const. art. II, § 21; *see also id.* art. VII, § 2(B) (recognizing "the rights of citizens of the United States to vote"). And, as noted above, federal law requires states to permit UOCAVA voters to register and vote for federal offices. *See* 52 U.S.C. § 20302. The UOCAVA voters at issue in this case, who otherwise meet the requirements of Ariz. Const. art. VII, § 2(A) – *i.e.,* United States citizens age eighteen or older – would be denied the right to vote in elections for federal office without A.R.S. § 16-103(E). This Court should not read the Arizona Constitution to deprive U.S. citizens of their right to vote, as protected by UOCAVA.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss the Complaint.

Rule 12(j) Certification

On July 24, 2024, undersigned counsel conferred in good faith with Plaintiffs' counsel via a video conference about our intention to file this Motion to Dismiss the Complaint. Plaintiffs' counsel did not identify any possible amendments to the Complaint that the parties agreed would cure the deficiencies identified in the Motion.

RESPECTFULLY SUBMITTED this 28th day of July, 2025.

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