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11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**
14

15 Kathleen Winn, Chairwoman of the Pima County)
Republican Party, and the Pima County)
16 Republican Party)

17 Plaintiffs,)

18 vs.)
19)

20 Adrian Fontes, in his official capacity as Arizona)
Secretary of State; Kris Mayes, in her official)
21 capacity as Arizona Attorney General)

22 Defendants.)
23)
24)

Case No.: CV-2603108-PHX-MTL

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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20 A.R.S. § 16-411 - 5 -, - 8 -, - 9 -

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28

1 **Rules**

2 Federal Rule of Civil Procedure 65 - 1 -

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1 Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Kathleen Winn and the Pima County
2 Republican Party respectfully move for a preliminary injunction prohibiting implementation and
3 enforcement of the 2025 Arizona Elections Procedures Manual provisions that regulate the political
4 speech, conduct, and apparel of individuals in and around voting locations. *See* Ariz. Sec’y of State,
5 2025 Elections Procedures Manual Ch. 9, §§ III.A & III.D, at pp. 202–05 [hereinafter “EPM”].

6 INTRODUCTION

7 The 2025 EPM places stifling restraints on constitutionally protected political speech in
8 violation of the First Amendment and invites arbitrary and discriminatory enforcement in violation
9 of the Fourteenth Amendment. Chapter 9, section III.D of the EPM authorizes election officials to
10 remove or contact law enforcement to remove and presumably arrest individuals in or near voting
11 locations for: “[i]mpersonating a law enforcement officer or ***otherwise wearing clothing, uniforms***
12 ***or official-looking apparel*** intended to deter, intimidate, or harass voters[.]” EPM at 204–05
13 (emphasis added); “[u]sing threatening language to a voter or poll worker[.]” EPM at 204; “[d]irectly
14 confronting, questioning, photographing, or videotaping voters or poll workers in a harassing or
15 intimidating manner, including when the voter or poll worker is coming to or leaving the polling
16 location[.]” EPM at 205; or “[r]aising repeated frivolous challenges to poll workers without any good
17 faith basis[.]” *id.* [hereinafter, “Political Speech Restrictions”]. Moreover, the EPM provides
18 contradictory guidance on electioneering, wherein election officials must: “permit persons to engage
19 in electioneering and other political activity in public areas . . . outside the 75-foot limit” under chapter
20 8, section I, EPM at 146; yet simultaneously prohibit electioneering that “take[s] place outside the
21 75-foot limit if it is audible from a location inside the door to the voting location” under chapter 9,
22 section III.A, EPM at 202 [hereinafter, “Electioneering Ban”].

23 The Political Speech Restrictions and the Electioneering Ban violate the First and Fourteenth
24 Amendment rights of all Arizona voters. They are constitutionally deficient regulations that limit
25 protected political speech in and near voting locations and are facially overbroad and chilling; violate
26 due process standards by failing to provide fair notice of what speech is prohibited and are void for
27 vagueness; and violate equal protection standards under both the categorical *Bush v. Gore* analysis
28 and pursuant to the *Anderson-Burdick* balancing analysis.

LEGAL STANDARD

1
2 A party seeking a preliminary injunction must establish “(1) he is likely to succeed on the
3 merits of his claim, (2) he is likely to suffer irreparable harm absent the preliminary injunction, (3)
4 the balance of equities tips in his favor, and (4) a preliminary injunction is in the public interest.”
5 *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555
6 U.S. 7, 20 (2008)). When the non-moving party is the government, the last two *Winter* factors
7 ““merge.”” *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

8 Likelihood of success on the merits ““is a threshold inquiry and is the most important factor.””
9 *Id.* (citing *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020)). “It is well-established
10 that the first factor is especially important when a plaintiff alleges a constitutional violation and injury.
11 If a plaintiff in such a case shows he is likely to prevail on the merits, that showing usually
12 demonstrates he is suffering irreparable harm no matter how brief the violation.” *Id.* “Likelihood of
13 succeeding on the merits also tips the public interest sharply in [a plaintiff’s] favor because it is
14 ‘always in the public interest to prevent the violation of a party’s constitutional rights.’” *Id.* (citation
15 omitted).

ARGUMENT

16
17 The Political Speech Restrictions and Electioneering Ban violate the First Amendment
18 (applicable to Defendants through the Fourteenth) both as unreasonable content-based restrictions
19 and as facially overbroad restrictions. Moreover, they violate the Fourteenth Amendment’s Due
20 Process Clause, by failing to provide fair notice of what conduct is prohibited, and its Equal Protection
21 Clause, by applying arbitrary and subjective standards to the fundamental rights of speech and voting.

22 The Political Speech Restrictions are based on Arizona’s prohibitions on voter intimidation
23 and voting interference statutes. *See* A.R.S. §§ 16-1006, 16-1013, 16-1016, & 16-1017. The
24 Electioneering Ban stems from A.R.S. § 16-515(A) (“[N]o electioneering may occur within the
25 seventy-five foot limit.”) and A.R.S. § 16-515(H) (“Any person violating this section is guilty of a
26 class 2 misdemeanor.”). A violation of any regulation contained within the EPM is a class 2
27 misdemeanor. A.R.S. § 16-452(C).

28

1 The EPM contains Arizona’s “authoritative constructions” of the statutes and those
2 constructions must be considered in any facial challenge. *See Minnesota Voters Alliance v. Mansky*,
3 585 U.S. 1, 17 (2018). But this must be interpreted in light of Arizona’s anti-deference law which
4 effectively permits only authoritative constructions issued by the Arizona Supreme Court to be
5 consulted as a matter of state law. In short, Defendants cannot call for deference to their readings of
6 the intentions and impacts of the EPM and they especially cannot expect to call for deference to any
7 new interpretations of the EPM that they try to launch for this first time in briefing here.

8 Non-binding interpretations of the 2025 by Arizona Executive Branch officials, such as the
9 Secretary of State, Governor, or Attorney General, may not be considered authoritative. *See* A.R.S.
10 § 12-910(F) (“In a proceeding brought by or against the regulated party, the court shall decide all
11 questions of law, including the interpretation of a constitutional or statutory provision or a rule
12 adopted by an agency, without deference to any previous determination that may have been made on
13 the question by the agency.”). Section 12-910(F) eliminated deference doctrine in Arizona to the
14 State’s Executive Branch and agencies as of April 11, 2018, making Arizona law similar to the
15 approach the U.S. Supreme Court has now mandated in *Loper Bright Enterprises v. Raimondo*, 603
16 U.S. 369, 412 (2024) (overruling *Chevron* deference as established in *Chevron U.S.A., Inc. v. NRDC*,
17 467 U.S. 837 (1984)).¹

18 This Court therefore must take the provisions of the EPM as it finds them textually. And this
19 is especially true because in a joint position, the Defendants here took the position that the EPM does
20 not regulate the general public, only those engaged in the regulation of elections. *See* ECF No. 1-7.
21 But this is manifestly contrary to what the EPM actually says:

22 “Electioneering” occurs when a person knowingly, intentionally, and verbally
23 expresses support for, or opposition to, a candidate or ballot measure on the ballot
24 in that election, or a political party with one or more candidates who appear on the
25 ballot in that election, in order to induce or compel another person to vote in a
particular manner or to refrain from voting. A.R.S. § 16-515(I).

26 ¹ The Arizona Supreme Court ordered that the EPM is not subject to the notice-and-comment rulemakings of the Arizona
27 Administrative Procedure Act because it is subject instead to the more-specific procedural promulgation requirements set
28 in A.R.S. § 16-452. *See Republican Nat’l Comm. v. Fontes*, No. CV-25-0089-PR (Oct. 16, 2025) (summary order
indicating opinion forthcoming, though it has not yet been issued). However, this ruling does not turn off Arizona’s no-
deference in judicial review rule, since there is no indication in the EPM statute (A.R.S. § 16-452) as to how courts are to
review and determine the EPM’s consistency with constitutional or statutory law. Nor could a state statute or Arizona
Supreme Court decision determine or influence how federal courts engage in the judicial review of questions of federal
constitutional law in any event.

1 The electioneering ban applies to the election board, other election officials,
 2 political party observers, and **any voter or other individual** within the 75-foot limit.
 3 EPM at 202 (emphasis added).

4 We are thus left with the plain text of the EPM, which is ambiguous. And it is “self-evident”
 5 that an indeterminate prohibition carries with it “[t]he opportunity for abuse, especially where [it]
 6 has received a virtually open-ended interpretation.” *Mansky*, 585 U.S. at 21. The discretion granted
 7 to election officials instead “must be guided by objective, workable standards.” *Id.* State agencies
 8 cannot grant themselves interpretive flexibility by crafting regulations that are ambiguous and in
 9 such an untoward fashion aggrandize their power. *See United States v. Boler*, 115 F.4th 316, 322
 10 n.4 (4th Cir. 2024) (“The Supreme Court’s recent ruling in *Loper Bright Enterprises v. Raimondo*
 11 . . . calls into question the viability of *Auer* deference.”); *see also* John F. Manning, *Constitutional*
 12 *Structure and Judicial Deference to Agency Interpretations of Agency Rules*, 96 COLUM. L. REV.
 13 612, 655 (1996) (“The right of self-interpretation under *Seminole Rock* removes an important
 14 affirmative reason for the agency to express itself clearly; since the agency can say what its own
 15 regulations mean (unless the agency’s view is plainly erroneous), the agency bears little, if any, risk
 16 of its own opacity or imprecision.”). In short, no agency—federal or state—should be permitted to
 17 use ambiguity as a sword, effectively conferring powers upon itself, and especially not to use as
 18 biased political tools to disfavor their political opposition.

19 **I. Plaintiffs Are Likely to Succeed on the Merits.**

20 The Electioneering Ban and Political Speech Restrictions violate the First Amendment by
 21 unreasonably restricting speech in and near voting locations and through their overbreadth.
 22 Moreover, the Electioneering Ban and Political Speech Restrictions violate the Fourteenth
 23 Amendment’s Due Process Clause by failing to give fair notice of what actions are prohibited and the
 24 Equal Protection Clause by authorizing arbitrary and disparate treatment of voters and by failing to
 25 demonstrate that the restrictions are justified by a sufficiently weighty government interest.

26 **A. The EPM Unreasonably Restricts Speech In and Near Voting Locations**

27 The Electioneering Ban and the Political Speech Restrictions are regulations based on sections
 28 of Title XVI that prohibit electioneering within seventy-five-feet of a polling place, *see* A.R.S. § 16-

1 515(A) (“no electioneering may occur within the seventy-five foot limit”); *id.* § 16-515(H) (“Any
 2 person violating this section is guilty of a class 2 misdemeanor”), and voter intimidation and coercion,
 3 *see, e.g., id.* §§ 16-1006, 16-1013, 16-1016, & 16-1017, respectively.

4 Both restrictions apply inside and near voting locations. *See* EPM at 202 (“No electioneering
 5 may take place within the 75-foot limit of a voting location.”); *id.* at 204 (“The following are examples
 6 of actions that . . . may be considered intimidating conduct *inside or near the polling place*[.]”
 7 (emphasis added)). Voting locations are considered non-public fora where “rules strictly govern who
 8 may be present, for what purpose, and for how long.” *Mansky*, 585 U.S. at 12. Those rules however
 9 must be “‘reasonable in light of the purpose served by the forum’: voting.” *Id.* at 13 (citation omitted).
 10 That is determined by the state’s ability to “articulate some sensible basis for distinguishing what may
 11 come in from what must stay out.” *Id.* at 16 (citation omitted). The state need not provide perfect
 12 clarity, but its enforcement discretion must be guided by “objective, workable standards.” *Id.* at 21.

13 The Electioneering Ban articulates no such standard. Like the hypothetical posed in *Mansky*,
 14 the first question that comes to mind with a ban on electioneering outside 75 feet of a voting location
 15 which covers only such that is “audible from a location inside the door,” is: “audible to whom?”
 16 *Compare* EPM at 202, with *Mansky*, 585 U.S. at 20 (“The state emphasizes that the ban covers only
 17 apparel promoting groups whose political positions are sufficiently ‘well-known’ . . . Well known by
 18 whom?”). Defendants’ defense of the provision, that it “accurately reflects the statutory language,”
 19 ECF No. 1-7 at 4, is unconvincing. It is contradicted both in the EPM itself, *see* EPM at 146
 20 (“Requirement to Allow Electioneering Outside 75-Foot Limit”) and in statute, *see* A.R.S. § 16-
 21 411(I) (“Except in the case of an emergency, any facility that is used as a polling place . . . shall allow
 22 persons to electioneer and engage in other political activity outside of the seventy-five foot limit[.]”).

23 Arizona provides the following example of prohibited electioneering:

24 [I]f someone brings a megaphone to a voting location, stands 76 feet away, and announces
 25 “Vote for Trump!” or “Vote for Biden!” so that people inside the door to the voting location
 26 can hear, that person would likely be violating the statutory ban on electioneering because the
 person would be knowingly communicating their electioneering message well within the 75-
 foot limit.

27 ECF No. 1-7 at 4. The proffered example is an obvious call. An individual shouting into a megaphone
 28 at the 76-foot mark is *projecting their electioneering speech into the 75-foot protected zone*. The

1 flaw is that electioneering may take a multitude of forms other than an individual shouting into a
2 megaphone, and otherwise permissible electioneering occurring outside of the seventy-foot boundary
3 becomes impermissible merely because an election worker subjectively determines it is audible.
4 There are no objective, workable standards—decibel level, multi-party verification of noise levels, or
5 a prohibition on noise amplification near polling places— for enforcing the restriction while ensuring
6 it does not interfere with permissible electioneering practice. The State’s approach similarly burdens
7 more speech than is necessary. If the seventy-six foot/megaphone example is what the manual is
8 intended to prohibit, a simple prohibition on the use of amplification equipment within one-hundred-
9 fifty feet of the polling place should be more than sufficient. And such a restriction would be entirely
10 objective and not grant poll workers and law enforcement the powers to corral and referee speech.

11 The Political Speech Restrictions fare even worse. They allow election officials to remove
12 voters and political party observers for, *inter alia*, the following: “[i]mpersonating a law enforcement
13 officer or ***otherwise wearing clothing, uniforms or official-looking apparel*** intended to deter,
14 intimidate, or harass voters[.]” EPM at 204–05 (emphasis added); “[u]sing threatening language to a
15 voter or poll worker[.]” *id.* at 204; “[d]irectly confronting, questioning, photographing, or videotaping
16 voters or poll workers in a harassing or intimidating manner, including when the voter or poll worker
17 is coming to or leaving the polling location[.]” *id.* at 205; or “[r]aising repeated frivolous challenges
18 to poll workers without any good faith basis[.]” *id.* The EPM offers little-to-no additional
19 specification to guide the discretion of an election worker in determining *whether* or *how* to apply
20 any of these standards—except for those pertaining to voter challenges, which the EPM actually
21 addresses in some further detail elsewhere. *See, e.g., id.* at 218–221.

22 The apparel ban lacks any standards for application. How are election officials to determine
23 what uniforms or clothing would be intended to deter, intimidate, or harass voters? How are they to
24 determine what is intimidating to any individual voter as opposed to a subgroup of voters? How are
25 they to reconcile what is offensive to some but agreeable to others? How could they be expected to
26 separate their own personal and political biases from the inquiry? The determination would need to
27 be made by an election official and would necessarily be dependent on background knowledge and
28 biases of that official. Such a rule is inherently unreasonable. *See Mansky*, 585 U.S. at 19 (“A rule

1 whose fair enforcement requires an election judge to maintain a mental index of the platforms and
2 positions of every candidate and party on the ballot is not reasonable.”). Moreover, Pima County
3 contains two military installations, and military personnel regularly vote in dress uniforms,
4 operational camouflage patterns, or flight suits. Declaration of Joel Strabala (May 14, 2026)
5 (“Strabala Decl.”) at ¶ 20. Similarly, sheriff’s deputies, Arizona corrections officials, and other first
6 responders may wear their uniforms to vote on their way to or from work. Declaration of Dave Smith
7 (May 14, 2026) (“Smith Decl.”) at ¶ 13–14. Fears that individuals in uniform, or even clothing that
8 resembles some kind of uniform, may be considered “intimidating” and turned away from exercising
9 their right to vote are not fanciful or overblown. The New Mexico Secretary of State’s guidance on
10 voter intimidation specifically notes that “[u]niformed police officers, and poll watchers wearing
11 official-*seeming* clothing in polling places has been found to intimidate voters.” *Id.* at ¶ 11 (emphasis
12 added). Two uniformed sheriff’s deputies in North Carolina were turned away from a polling location
13 for wearing their uniforms in 2020. *Id.* at ¶ 10.

14 It is not just uniforms that may be considered intimidating, but any “clothing” an election
15 official determines is intended to deter, harass, or intimidate voters. Voters are permitted to wear
16 clothing with political messaging. *See* A.R.S. § 16-515(F) (“[A]n election official, a representative of
17 a political party[,], or a challenger . . . **shall not wear**, carry or display materials that identify or express
18 support for or opposition to a candidate, a political party or organization, a ballot question or any
19 other political issue[.]” (emphasis added)). Yet apparel permitted by statute may nevertheless subject
20 a voter to removal or prosecution if an election official deems it somehow intimidating. Is an
21 “America First” shirt considered intimidating? An “Antifa” shirt? A “No Kings” shirt? It’s hard to
22 say that any such inquiry would be more than a test that lies in the eye of the beholder.

23 The imprecise nature of the Political Speech Restrictions goes beyond the apparel restrictions.
24 Under the EPM’s rubric, a voter’s exasperation at a long line expressed as “you’re sure doing a swell
25 job here” or even a distasteful but ultimately benign “Let’s Go Brandon!” shirt or shout would be
26 grounds for removal. *See* EPM at 204 (“Aggressive behavior, such as yelling at **or taunting** a voter
27 or poll worker” (emphasis added)). The risk of election officials deeming legitimate political
28 commentary or criticism as an illegitimate or illegal threat is great, and subjecting a voter to potential

1 **criminal liability** or removal from a voting location for such impermissibly violates the First
2 Amendment. Moreover, the EPM is Arizona’s authoritative construction of the penal provisions of
3 Title XVI. *See Mansky*, 585 U.S. at 17. When Election officials are tasked with the discretion to turn
4 away voters without “objective, workable standards,” this is both impermissible under the First
5 Amendment and undermines the purpose of the regulation, which is an orderly election free from
6 coercion, intimidation, and inducement. *Id.* at 21–22.

7 **B. The Political Speech Restrictions and Electioneering Ban Are Overbroad**

8 The Political Speech Restrictions and Electioneering Ban further suffer from overbreadth. The
9 First Amendment overbreadth doctrine “‘instructs a court to hold a statute facially unconstitutional
10 even though it has lawful applications.’” *Tucson v. City of Seattle*, 91 F.4th 1318, 1327 (9th Cir. 2024)
11 (quoting *U.S. v. Hansen*, 599 U.S. 762, 769 (2023)). “If the challenger demonstrates that the statute
12 ‘prohibits a substantial amount of protected speech’ relative to its ‘plainly legitimate sweep,’ then
13 society’s interest in free expression outweighs its interest in the statute’s lawful applications, and a
14 court will hold the law facially invalid.” *Hansen*, 599 U.S. at 770 (quoting *U.S. v. Williams*, 553 U.S.
15 285, 292 (2008)). Facial invalidation requires that “a law’s unconstitutional applications must be
16 realistic, not fanciful, and their number must be substantially disproportionate to the statute’s lawful
17 sweep.” *Id.* (citations omitted). Courts may consider whether an unconstitutional application has
18 occurred in the past or whether such is implausible. *Tucson*, 91 F.4th at 1328 (citation omitted).

19 The Political Speech Restrictions and Electioneering Ban prohibit a substantial amount of
20 protected speech relative to their legitimate sweep. The Attorney General offers the example of an
21 individual shouting into a megaphone just outside the seventy-five-foot boundary as impermissible
22 electioneering audible inside a voting location. ECF No. 1-7 at 3. Even conceding this questionable
23 example, the prohibition sweeps in far more protected expression. *All* electioneering outside of the
24 seventy-five-foot boundary audible inside a voting location may result in the speaker being asked to
25 leave the area or having the police called for nothing more than an election official’s claim that the
26 electioneering was audible inside a polling place, despite authorization in A.R.S. § 16-411(I). How is
27 a poll worker’s assertion that he or she heard electioneering that he or she knew to be more than 75
28 feet away to be verified? And even if it can be reliably verified based on an accurate factual

1 assessment, how is it to be reliably verified in time not to effectively deny the excluded voter his/her
2 constitutional right to vote?

3 The Electioneering Ban similarly invites arbitrary and discriminatory enforcement by sharp-
4 eared election officials that allows an official to deem the language of one as impermissible
5 electioneering and that of another similar speaker as permissible speech. A.R.S. § 16-411(I) permits
6 electioneering outside of the seventy-five-foot boundary. The EPM places additional restrictions on
7 electioneering greater than those found in A.R.S. § 16-515. Audibility can vary significantly from
8 hearer to hearer. Worse yet, audibility can easily *be asserted* as a *post hoc* rationalization for any
9 otherwise unwarranted removal of a speaker by an election official which, in reality, was based on a
10 pretextual reason or motivation that the First Amendment prohibits—such as the speaker’s affiliation
11 with the opposite political party or disagreement with the speaker’s expressed political or other
12 viewpoints, even for reasons beyond party membership or status. The risk of penalizing political
13 speech or chilling it is simply too great for the EPM to withstand constitutional muster.

14 The Political Speech Restrictions are especially deficient. Consider the apparel provision, the
15 EPM offers no guidance on what clothing or attire could be likely to intimidate, harass, or deter voters;
16 nor any description of how an election official would determine that attire was intended to intimidate,
17 harass, or deter voters. It is nonetheless plausible that uniformed military or first responders will be
18 turned away from a voting location. New Mexico’s Secretary of State warns that the mere presence
19 of “[u]niformed police officers, and poll watchers wearing official-seeming clothing in polling places
20 has been found to intimidate voters.” Smith Decl. at ¶ 11. The EPM goes well beyond uniforms and
21 grants election officials broad discretion to either remove a voter or summon law enforcement for any
22 clothing they deem offending. Voters in uniform were denied entry in North Carolina. *Id.* at ¶ 10.

23 Likewise, the EPM’s prohibitions on “aggressive behavior” or “threatening language.”
24 Despite assurances that the EPM only “offers examples of conduct that may be intimidation so that
25 election officials can be on the lookout,” ECF No. 1-7 at 7, the EPM is the State’s authoritative
26 construction of the penal provisions in Title XVI. The EPM’s prohibition on “taunting a poll worker”
27 means doing so can lead to arrest and prosecution under A.R.S. § 16-452 or removal from the voting
28 location.

1 In short, the Political Speech Restrictions and Electioneering Ban violate the First
2 Amendment. They are unreasonable restrictions on constitutionally protected political speech in and
3 near voting locations and are facially overbroad and chilling. If allowed to take effect during the 2026
4 Primary and General Elections, they will chill political speech because individuals will rightly fear
5 their prosecution, removal from voting locations, and denial of their constitutional right to vote.

6 **C. The Electioneering Ban and Political Speech Restrictions Fail to Provide**
7 **Individuals Fair Notice of What is Prohibited**

8 “A fundamental principle in our legal system is that laws which regulate persons or entities
9 must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*,
10 567 U.S. 239, 253 (2012) (citation omitted). A law is unconstitutionally vague if it “fails to provide
11 a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it
12 authorizes or encourages seriously discriminatory enforcement.” *Williams*, 553 U.S. at 304 (citation
13 omitted). When a regulation touches speech, “rigorous adherence” to these principles is “necessary
14 to ensure that ambiguity does not chill protected speech.” *Fox Television*, 567 U.S. at 253–54.

15 The Electioneering Ban and Political Speech Restrictions fail to give notice of what is
16 prohibited and are susceptible to discriminatory enforcement. The Electioneering Ban fails to give
17 fair notice of what conduct it prohibits because as noted above, it conflicts with the Arizona statute
18 and the EPM’s own regulations. Individuals engaged in electioneering are placed in a position of not
19 knowing the parameters of acceptable conduct because of the conflict between what Title XVI permits
20 and what the EPM forbids. The flaw however is that the ban invites serious discriminatory
21 enforcement. The determination of audibility is entirely up to election officials who may carry any
22 number of biases or sensitivities or choose to measure audibility in divergent ways. There is no
23 “ascertainable standard” or “guideline[]” preventing election authorities from arbitrarily prosecuting
24 one group instead of another. *Kashem v. Barr*, 941 F.3d 358, 374 (9th Cir. 2019) (concluding that the
25 “No Fly List” criteria at issue were unlikely to be applied arbitrarily because they were based on
26 “articulable, concrete intelligence, assessed according to the Watchlisting Guidance” and a
27 “reasonable suspicion standard” that places “neutral limitations on the conduct of individual”
28 enforcement authorities (citation omitted)). It is left entirely to the whim of an election official.

1 The Political Speech Restrictions are similarly deficient. The EPM prohibits individuals from
2 “[r]aising repeated frivolous voter challenges to poll workers without any good faith basis[.]” EPM
3 205. While political party observation “is not a fundamental right that enjoys distinct First
4 Amendment protection[.]” *Arizona Democratic Party v. Arizona Republican Party*, No. CV-16-
5 03752-PHX-JJT, 2016 WL 8669978, at *13 (D. Ariz. Nov. 4, 2016), observers must still be given
6 fair notice of what is prohibited. The EPM offers guidance on what may be challenged and the
7 challenge procedure, but it does not offer guidance on what “repeated” or “frivolous” means. There
8 is a chilling effect on party observers know that if challenges are deemed frivolous, the observer may
9 be removed. An observer who is removed is unlikely to be replaced and if a voting location were to
10 be understaffed, an observer is thus more likely to not raise challenges to maintain his presence. *See*
11 Strabala Declaration at ¶¶ 24–30. This lack of standards and chilling effect invites arbitrary
12 enforcement to remove observers.

13 The apparel prohibition is perhaps the worst provision. The EPM prohibits “wearing clothing,
14 uniforms or official-looking apparel intended to deter, intimidate, or harass voters,” but offers no
15 guidance on what clothing would be likely to do that or how an official could make that determination
16 in an objective manner. Arizona has statutes to regulate “intimidating” conduct in a reasonable
17 manner. *See* A.R.S. § 13-3102(A)(11) (prohibiting individuals from carrying firearms into a polling
18 place during elections). There, fair notice is given to an individual. The apparel restriction lacks the
19 same clear guideposts, however, and permits an election official to not only remove a voter or
20 observer from a voting location based on their subjective reaction to voter attire, but subjects those
21 removed to criminal penalties under A.R.S. § 16-452 for violating the EPM or voter intimidation
22 statutes in Title XVI. If the Legislature so chooses, it may certainly attempt to impose reasonable
23 prohibitions on political attire in or near polling places. Texas has done so in a manner that survives
24 scrutiny. *See Ostrewich v. Tatum*, 72 F.4th 94, 106 (5th Cir. 2023) (ruling that the prohibition on
25 apparel related to a candidate, measure, or political party appearing on the ballot “draws the requisite
26 line between permitted and prohibited content to meet *Mansky*’s ‘reasonableness requirement.’”).

27 Finally, the EPM’s prohibition of “aggressive behavior” fails to provide adequate notice of
28 what conduct is prohibited. What qualifies as aggressive language, much like what qualifies as

1 annoyance, is dependent upon the listener. A regulation that relies on a subjective standard is
2 “constitutionally suspect.” *Edge v. City of Everett*, 929 F.3d 657, 665 (9th Cir. 2019).

3 **D. *Bush v. Gore* Prohibits Arbitrary and Disparate Treatment of the Public**

4 The Equal Protection Clause of the Fourteenth Amendment demands that when a State vests
5 in government officials the power to restrict citizens’ First Amendment rights, it must do so through
6 standards that are uniform, objective, and capable of consistent application. A law that delegates
7 enforcement to individual officers applying a subjective, standardless test inevitably produces the
8 very evil the Equal Protection Clause was designed to prevent: similarly situated citizens treated
9 differently based on nothing more than the identity of the officer who happens to observe their
10 conduct. The Supreme Court confronted precisely this structural problem in *Bush v. Gore*, holding
11 that the Equal Protection Clause is violated when a state subjects citizens to disparate treatment under
12 a scheme that lacks “specific standards to ensure its equal application.” 531 U.S. 98, 106 (2000).

13 The Court’s equal protection analysis in *Bush v. Gore* must apply to more than just the
14 recount context from which it arose. It articulated a principle of general applicability: namely, that
15 the Constitution “guarantees . . . equal treatment,” *id.* at 107; and that “[h]aving once granted the right
16 to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s
17 vote over that of another,” *id.* at 104–05. The same logic applies with equal force to the right to speak:
18 having once permitted citizens to engage in expressive activity in proximity to a polling place, the
19 State may not subject enforcement of the boundary to a standardless inquiry that guarantees unequal
20 results.

21 The core infirmity that *Bush v. Gore* identified was not any particular outcome of the recount,
22 but the process by which outcomes were determined—a process in which “standards for accepting or
23 rejecting contested ballots” varied not by law but by the individual judgment of each canvassing
24 board, producing results that could “vary not only from county to county but indeed within a single
25 county from one recount team to another.” *Id.* at 106. The Court rejected such arbitrariness.

26 The EMP provisions at issue replicate that kind of subjective recount team-to-recount team
27 election chaos. Their operative standards—such as audibility or wearing a uniform with the intent to
28 harass other voters—provide no truly objective metric by which an enforcement officer can assess

1 whether a given instance of expressive conduct crosses the legal line. The result, as in *Bush v. Gore*,
2 is that similarly situated speakers will be treated differently based solely on which officer is present,
3 what that officer's subjective sensibilities are, and perhaps who is doing the speaking (or in the case
4 of a voting officer happening to wear his employment uniform, the uniform-wearer's simple act of
5 standing in line to vote). That is the antithesis of equal protection of the laws.

6 The *Bush v. Gore* Court drew on a deep well of equal protection doctrine to reach this
7 conclusion, and that doctrine is fully applicable here, as it cited *Harper v. Virginia Board of Elections*,
8 383 U.S. 663 (1966). See 531 U.S. at 105. Just as the right to vote encompasses the right to have one's
9 ballot evaluated under consistent standards, the right to speak—and specifically to engage in lawful
10 political expression—encompasses the right to do so under standards clear enough that all speakers
11 know where the line is and all officers enforce the same line. A law that criminalizes or penalizes
12 expression measured by a subjective standard is not merely a First Amendment problem; it is
13 simultaneously an equal protection problem, because it guarantees that identically situated speakers
14 will face different legal consequences based on the unguided discretion of individual enforcement
15 officers.

16 This structural equal protection deficiency is compounded by the particular sensitivity of the
17 context—voting and elections. *Bush v. Gore* emphasized that “[w]hen the state legislature vests the
18 right to vote . . . in its people, the right to vote as the legislature has prescribed is fundamental; and
19 one source of its fundamental nature lies in the equal weight accorded to each vote and the equal
20 dignity owed to each voter.” *Id.* at 104.

21 The Electioneering Ban and Political Speech Restrictions sit at the intersection of voting rights
22 and expressive rights—two of the most jealously guarded constitutional freedoms. A subjective
23 standard in this context does not merely threaten arbitrary enforcement in the abstract; it threatens the
24 suppression of core political speech based on the unfettered judgment of a poll worker or election
25 official on Election Day, when there is no realistic opportunity for the targeted speaker to seek prior
26 judicial guidance, heightening the chilling effect of the EPM to constitutionally backbreaking levels.
27 The *Bush v. Gore* majority recognized that *ad hoc*, standardless judgments in the electoral context are
28 uniquely dangerous because they operate in real time, without deliberation, and without the ready

1 ability to get a timely appeal. The vague electioneering and political speech standards present
2 precisely the same danger here: a single officer’s subjective determination, made on the spot, silences
3 a speaker whose conduct might be deemed perfectly lawful by the officer at the next polling place
4 down the road or in another one of Arizona’s counties.

5 Minor differences between the administration of elections in one place to another do not
6 violate equal protection. The Equal Protection Clause does not demand the impossibility of
7 perfection. Here, however, it is a feature and not a bug—nor a mere *de minimis* difference in degree—
8 that impelled this lawsuit. The EPM’s Electioneering Ban and Political Speech Restrictions are simply
9 incapable of being enforced in an equal and evenhanded way. And that structural defect makes the
10 EPM a violation of equal protection, even if *Bush v. Gore* is interpreted and applied in a narrow
11 fashion.

12 Plaintiffs therefore maintain that the EPM violates the Equal Protection Clause of the
13 Fourteenth Amendment as construed in *Bush v. Gore* and the line of cases on which it relies. By
14 conditioning the exercise of a fundamental expressive right on a standard so subjective that it will
15 produce—indeed, is designed to produce—different results for similarly situated speakers depending
16 solely on the identity and sensibilities of the enforcing officer, the State has created the very “arbitrary
17 and disparate treatment” that the Constitution forbids. *Id.* at 104. No amount of good-faith
18 enforcement can cure a structural equal protection defect of this kind, because the defect lies not in
19 how the standard is applied but in the absence of any standard that could guarantee equal application.
20 Plaintiff thus respectfully submits that the challenged provision must be enjoined on that basis.

21 The Ninth Circuit recognizes that “the general principle that *Bush* applied—that ‘the
22 rudimentary requirements of equal treatment and fundamental fairness’ prohibit states from engaging
23 in wholly ‘arbitrary and disparate treatment’ of members of the public—is not unique to that case.”
24 *Election Integrity Project Cal., Inc. v. Weber*, 113 F.4th 1072, 1090 n.15 (9th Cir. 2024) (citation
25 omitted). The voting rules in *Election Integrity* were “sufficiently detailed and uniform to pass muster
26 under the Equal Protection Clause.” *Id.* at 1095. Likewise, the Ninth Circuit found Arizona’s DPOC
27 and DPOR requirements do not violate the “‘arbitrary and disparate treatment’” standard because the
28 applications were uniform. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 730–31 (9th Cir. 2025).

1 Crucially, the Court found that county recorders in Arizona would not act arbitrarily because of that
2 uniformity and a permanent injunction against a statute’s “reason to believe” provision was enjoined.²
3 *Id.* at 731. What is certain is that different treatment of voters is impermissible. *See Charfauros v. Bd.*
4 *of Elections*, 249 F.3d 941, 951 (9th Cir. 2001) (affirming the Supreme Court of the Commonwealth
5 of the Northern Mariana Islands’ decision that different treatment of voter challenges violated equal
6 protection).

7 **E. Arizona Has Not Demonstrated a Sufficiently Weighty Interest to Restrict Core**
8 **Political Speech under the *Anderson-Burdick* Framework**

9 Additionally, Plaintiffs are likely to succeed on the merits because the challenged provisions
10 violate the First and Fourteenth Amendments under the *Anderson-Burdick* framework. That
11 framework requires courts to weigh the character and magnitude of the burden imposed on voting
12 and expressive rights against the State’s asserted interests and the extent to which the regulation is
13 tailored to advance those interests. *See Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008). The
14 *Anderson-Burdick* framework “is a sliding scale test, where the more severe the burden, the more
15 compelling the state’s interest must be, such that a state may justify election regulations.” *Soltysik v.*
16 *Padilla*, 910 F.3d 438, 444 (9th Cir. 2018) (cleaned up). “Indeed, if a law imposes only reasonable,
17 nondiscriminatory restrictions upon voters’ rights, the State’s important regulatory interests are
18 generally sufficient to justify the restrictions.” *Election Integrity Project*, 113 F.4th at 1084 (cleaned
19 up). In the Ninth Circuit, “[t]he balancing test rests on the specific facts of a particular election system,
20 not on strained analogies to past cases.” *Arizona Green Party v. Reagan*, 838 F.3d 983, 990 (9th Cir.
21 2016) (cleaned up).

22 The facts here demonstrate the unreasonable, discriminatory restrictions on voters. The statutes
23 and policies at issue authorize election officials to exclude or eject voters based on inherently
24 subjective determinations, including whether a voter’s speech constitutes “electioneering” and is loud
25 enough to be “audible” inside a voting place, EPM at 202; or whether a person wearing a law-
26 enforcement or military uniform may “intimidate” or “deter” others from voting, EPM at 204. These
27

28 _____
² The district court’s injunction was upheld under the “Different Standards, Practices, and Procedures” provision of the Civil Rights Act.

1 standards provide no objective criteria to guide enforcement and instead delegate sweeping discretion
2 to individual officials at the point of voting.

3 Such discretion creates a serious risk of arbitrary and inconsistent application across precincts.
4 A voter wearing identical clothing may be permitted to vote in one location but removed from another
5 based solely on a poll worker’s personal judgment. The Ninth Circuit has recognized that “[u]neven
6 enforcement can pose an equal protection issue.” *O’Handley v. Weber*, 62 F.4th 1145, 1164 (9th Cir.
7 2023). The burdens extend beyond inconsistency to outright disenfranchisement. Voters who are
8 ejected from polling places—particularly close to closing time or without ready access to alternative
9 voting methods—may be unable to cast a ballot at all. The risk of exclusion based on subjective
10 criteria therefore implicates the core right to vote, not merely peripheral administrative concerns.

11 In addition, the challenged provisions burden protected expression. Wearing clothing, symbols,
12 or uniforms can constitute expressive conduct. When voters must guess whether their attire will be
13 deemed impermissible “intimidation,” they are forced to self-censor or risk losing their opportunity
14 to vote. The Ninth Circuit has held that such burdens on political participation and expression must
15 be closely scrutinized for their means-end fit and justification. *Short v. Brown*, 893 F.3d 671, 676 (9th
16 Cir. 2018) (providing that the state’s interests “must be sufficiently weighty to justify the limitation,
17 and there must be a means-ends fit between the state’s proffered justification and the rule employed”
18 (cleaned up)).

19 Defendants’ asserted interests here—i.e., preventing voter intimidation and preserving order—
20 are undoubtedly important. But under *Anderson–Burdick*, the existence of a legitimate interest is not
21 enough; the State must demonstrate that its chosen means justify the regulation. *See Crawford v.*
22 *Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008) (“However slight that burden may appear, as
23 *Harper* demonstrates, it must be justified by relevant and legitimate state interests sufficiently
24 weighty to justify the limitation.” (cleaned up)).

25 Less restrictive and more precise alternatives are readily available. The State could prohibit
26 objectively defined conduct, such as threats, coercion, or targeted harassment. It could also adopt
27 clear, content-neutral rules governing proximity, scientifically measurable noise levels, or disruption
28

1 observable by multiple witnesses. These types of standards would address genuine concerns without
2 vesting unbounded discretion in perhaps as little as one poll worker.

3 Instead, the State has adopted vague and subjective criteria that sweep far more broadly than
4 necessary. By allowing officials to remove voters based on perceived “intimidation” or
5 “electioneering,” the law invites viewpoint discrimination and uneven enforcement—harms that the
6 Ninth Circuit has repeatedly condemned in the election context. *See Chamness v. Bowen*, 722 F.3d
7 1110, 1118 (9th Cir. 2013) (“The fact that the regulation in this case is viewpoint neutral as to the
8 required term ‘No Party Preference’ supports the conclusion that it imposes only a slight burden on
9 speech.”); *Mi Familia Vota*, 129 F.4th at 708 n.3 (“Because the right to vote is fundamental, any
10 deprivation of that right caused by voter suppression measures is of grave concern to the public.
11 Federal circuit judges and district judges have consistently restrained acts of voter suppression.”
12 (citations omitted)).

13 In *Obama for America v. Husted*, the Sixth Circuit affirmed the district court’s preliminary
14 injunction blocking direction from the Ohio Secretary of State regarding Ohio’s early vote system,
15 wherein military voters could vote on the three days preceding election day, but non-military voters
16 could not. 697 F.3d 423 (6th Cir. 2012). After noting the inherent danger in permitting “extra early
17 voting time to groups that traditionally support the party in power and impos[ing] corresponding
18 burdens on the other party’s core constituents,” the Court found no “sufficiently weighty” interest in
19 reducing the early voting time of non-military voters. *Id.* at 435–36. The same danger lurks in the
20 EPM. Law enforcement and military voters are more likely to vote Republican. *See* Smith Decl. at ¶
21 16; Strabala Decl. at ¶ 23–24. The lack of clear standards also exacerbates the risk of discriminatory
22 application. Voters associated with certain professions, viewpoints, or communities—such as
23 individuals wearing military or law-enforcement uniforms—may be singled out based on subjective
24 perceptions rather than objective conduct. *Anderson–Burdick* does not permit such arbitrary burdens
25 on the franchise. *See Obama for America*, 697 F.3d at 428–436.

26 Balancing the significant burdens imposed against the State’s inadequately tailored approach,
27 the challenged provisions cannot survive constitutional scrutiny. Plaintiffs are therefore likely to
28 succeed on the merits of their claims. Because the ongoing enforcement of these provisions threatens

1 irreparable harm to Plaintiffs’ constitutional rights, and because the balance of equities and public
2 interest strongly favor protecting the right to vote free from arbitrary exclusion, a preliminary
3 injunction is warranted.

4 **II. The Remaining *Winter* Factors Decisively Favor Preliminary Injunctive Relief.**

5 Having established Plaintiffs’ likelihood of success on the merits of claims against
6 Defendants, it follows that: (A) Plaintiffs will likely suffer irreparable constitutional harm in the
7 absence of injunctive relief pending the final disposition of this case, while (B) the public interest
8 strongly supports preliminarily enjoining Defendants from violating Plaintiffs’ constitutional rights
9 through the Political Speech Restrictions and Electioneering Ban.

10 A finding of irreparable harm “follows inexorably” from a court’s “conclusion that the
11 government’s current policies are likely unconstitutional.” *Hernandez v. Sessions*, 872 F.3d 976, 995
12 (9th Cir. 2017). It is therefore “well established that the deprivation of constitutional rights
13 ‘unquestionably constitutes irreparable injury’” *per se*. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
14 Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Since Plaintiffs have demonstrated
15 Defendants’ likely violations of its constitutional rights and those of its members from the 2025
16 EPM’s Political Speech Restrictions and Electioneering Ban, “no further showing of irreparable
17 injury is necessary.” *Baird*, 81 F.4th at 1042 (quoting 11A Charles Alan Wright & Arthur R. Miller,
18 FEDERAL PRACTICE AND PROCEDURE § 2948.1 (3d ed. 1998)). Accordingly, the second *Winter* factor
19 decisively weighs in favor of granting preliminary injunctive relief to Plaintiffs.

20 Plaintiff’s “likelihood of success on the merits of [its] constitutional claim[s] also tips the
21 merged third and fourth factors decisively in [Plaintiff’s] favor.” *Baird*, 81 F.4th at 1042. “[A]ll citi
22 zens have a stake in upholding the Constitution,” *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir.
23 2005), and “it is always in the public interest to prevent the violation of a party’s constitutional
24 rights,” *Riley’s Am. Heritage Farms v. Elsassser*, 32 F.4th 707, 731 (9th Cir. 2022) (quoting *Melend*
25 *res*, 695 F.3d at 1002). Government defendants “cannot reasonably assert that [they are] harmed in
26 any legally cognizable sense by being enjoined from constitutional violations.” *Baird*, 81 F.4th at
27 1042 (quoting *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983)). Since Plaintiffs have heretofore
28 established likely violations of their constitutional rights, Plaintiffs have thereby “also

1 established that both the public interest and the balance of the equities favor a preliminary injunction”
2 under Ninth Circuit precedent. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014).
3 Accordingly, the merged third and fourth *Winter* factors decisively weigh in favor of granting
4 preliminary injunctive relief to Plaintiffs.

5 **CONCLUSION**

6 The Court should grant Plaintiff’s Motion for Preliminary Injunction prohibiting Defendants
7 from implementing and enforcing Chapter 9 §§ III.A & III.D of the EPM and directing Defendants
8 to promulgate an updated EPM that eliminates the challenged provisions or, in the alternative,
9 promulgate a statewide policy of non-enforcement of the challenged provisions.

10 Dated: May 15, 2026

Respectfully Submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for parties that are registered CM/ECF users will be served by the CM/ECF system pursuant to the notice of electronic filing.

/s/ Neal Cornett

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