

Multiple Documents

Part	Description
1	Main Document
2	Exhibit Exhibit A
3	Proposed Order

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

21 Mi Familia Vota, et al.,
22 Plaintiffs,
23 v.
24 Katie Hobbs, et al.,
25 Defendants.

Case No. 21-CV-01423-DWL

**DSCC’S AND DCCC’S MOTION
TO INTERVENE**

INTRODUCTION

1
2 Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenors DSCC and
3 DCCC (together, the “Democratic Party Committees”) move to intervene as Plaintiffs in
4 the above-captioned case.

5 The Democratic Party Committees have significant interests in this litigation, in
6 which Mi Familia Vota and other plaintiffs challenge unjustifiable and unduly restrictive
7 voting measures recently enacted by the Arizona Legislature. Those restrictions directly
8 threaten the fundamental right to vote of the Democratic Party Committees’ members and
9 constituents, as well as the electoral prospects of their candidates. In addition, DSCC has a
10 unique and significant interest in protecting its thus-far successful efforts to invalidate
11 Arizona’s refusal to allow voters whose mail ballots are flagged for rejection due to a
12 missing signature the same opportunity to “cure” that deficiency as voters whose ballots
13 are deficient due to a mismatched signature or who fail to produce an accepted form of
14 identification when they present to vote in person (i.e., “no-ID in-person voters”).

15 Thus, whether reviewed under the standards applicable to intervention as of right or
16 permissive intervention, the Democratic Party Committees’ motion to intervene should be
17 granted.

18 Counsel for DSCC and DCCC has conferred with counsel for Plaintiffs, the
19 Secretary, and the Attorney General regarding their position as to the Democratic Party
20 Committees’ Motion to Intervene. Plaintiffs will note their position when they file their
21 response to the Republican Party Committees’ intervention on September 30th. The
22 Secretary takes no position. The Attorney General consents.

23
24 **RELEVANT FACTUAL BACKGROUND**

25 **I. Prior Litigation**

26 In 2019, the Arizona Legislature passed a law permitting mail voters whose ballot
27 affidavits were perceived to have a mismatched signature up to five days after the election

1 to “cure” that issue, prove their identity, and have their ballot counted. A.R.S. § 16-550(A).
2 That five-day post-election cure period was the same that is extended to Arizona voters
3 who vote in person but fail to produce a copy of an acceptable form of voter identification
4 at the time that they vote. A.R.S. § 16-579(A).

5 In 2019, the Secretary of State sought to issue guidance in Arizona’s Election
6 Procedures Manual (“EPM”) stating that ballot affidavits with a “missing” signature could
7 be cured during the same period as ballots flagged for rejection due to mismatched
8 signatures and no-ID in-person voters, but the Attorney General vetoed that guidance.
9 *Arizona Democratic Party v. Hobbs* (“ADP”), 485 F. Supp. 3d 1073, 1082 (D. Ariz. 2020)
10 (discussing relevant background). As a result, Arizona voters were subject to an
11 inconsistent cure regime.

12 DSCC and two other plaintiffs, including the Arizona Democratic Party (but not
13 DCCC) challenged that process last cycle in *ADP v. Hobbs*, No. CV-20-1143-DLR (D.
14 Ariz.), arguing that it imposed an undue burden on the right to vote in violation of the First
15 and Fourteenth Amendments, and separately constituted a violation of procedural due
16 process under the Fourteenth Amendment. The matter was assigned to Judge Douglas L.
17 Rayes, who consolidated the preliminary injunction hearing with a trial on the merits, and
18 after careful consideration of the arguments and evidence, issued a permanent injunction
19 requiring the Secretary of State and Arizona county recorders to allow missing-signature
20 voters to cure their ballots on the same timeline as mismatched-signature voters and no-ID
21 in-person voters. *ADP*, 485 F. Supp. 3d at 1081.

22 The Attorney General, Republican National Committee (“RNC”), and Arizona
23 Republican Party all intervened as defendants in the case, and they appealed Judge Rayes’
24 decision. The matter reached the Ninth Circuit mere weeks before the November election,
25 and a motions panel stayed the injunction in an order that relied heavily on *Purcell v.*
26 *Gonzalez*, 549 U.S. 1, 4 (2006), which discourages federal courts from issuing orders that
27

1 alter election laws on the eve of an election. *ADP v. Hobbs*, 976 F.3d 1081, 1085 (9th Cir.
2 2020). The appeal has since been briefed on the merits and, as of the date of this filing,
3 remains pending.

4 **II. 2021 Legislation**

5 This litigation concerns two pieces of suppressive voting legislation that were
6 pushed through the Arizona Legislature by the Republican majority, during the 2021
7 legislative session, in the face of substantial public opposition.

8 **A. S.B. 1003: The Cure Period Law**

9 First, and despite Judge Rayes' explicit, evidence-based findings that the differential
10 treatment of missing signature voters was "unreasonable," *ADP*, 485 F. Supp. 3d at 1091,
11 Republicans in the Arizona Legislature rushed to codify the same unjustifiably inconsistent
12 cure process into law with the enactment of S.B. 1003, which was signed by the Governor
13 on May 7, 2021. They did so propelled by dangerously disingenuous theories about voter
14 fraud and conspiracy that were weaponized by Republicans nationally and here in Arizona
15 in an unprecedented effort to undermine (and overturn) the legitimate results of the 2020
16 presidential election. That those theories were repeatedly and thoroughly debunked made
17 no difference to the Legislature, which took extraordinary steps both to keep those lies
18 alive and to pass new restrictions on voting to specifically target access to the state's
19 immensely popular voting by mail system.

20 **B. S.B. 1485: The Voter Purge Law**

21 The second piece of restrictive voting legislation that the Arizona Legislature
22 pushed through over intense public opposition aims directly at Arizona's permanent early
23 voting list ("PEVL"). Arizonans have had the right to vote by mail without an excuse since
24 1991. *See* A.R.S. § 16-541(A). To facilitate the easy use of this right (which has also eased
25 the burden on elections officials of, e.g., running elections preparing for the possibility that
26 any number of Arizona's over four million voters may appear in person to vote) Arizona
27

1 established the PEVL in 2007. *See* A.R.S. § 16-544.

2 Since the creation of the PEVL, voting by mail has steadily grown in popularity,
3 with around 75 percent of voters now signed up. The Secretary of State’s website lauds
4 Arizona’s “PROUD HISTORY OF SECURE AND RELIABLE VOTING BY MAIL,”
5 stating that “[m]ost Arizonans” now exercise their right to vote using mail voting.¹ And, in
6 recent years, turnout among voters of color in particular has increased, in large part due to
7 the PEVL. Results from the 2020 election demonstrate that voters of color were
8 disproportionately likely to be new mail voters.

9 Through the enactment of S.B. 1485, the Legislature purported to rebrand the
10 “permanent” early voting list into an “active” early voting list (“AEVL”). Under the new
11 law, election officials are now required to move to purge from the early voting list any
12 voter who has not voted *using* an early ballot in two consecutive prior election cycles. In
13 other words, by the law’s clear terms, engaged voters who vote *in person* on election day
14 during the prior two consecutive elections are subject to being purged from the PEVL under
15 the new statute. There is no justifiable reason for imposing this new purge regime. And its
16 context strongly suggests that the real motivation behind it was to effectively shave
17 additional lawful voters off of the early voting rolls, many of whom will discover too late
18 that they will not be receiving a ballot in the mail as anticipated.

19 Notably, *inactive* voters were *already* subject to removal from the PEVL prior to
20 the enactment of S.B. 1485. The law required—and still does require—that prior to each
21 election, county recorders mail a notice to all voters on the PEVL. The notice must include
22 “the dates of the elections that are the subject of the notice, the dates that the voter’s ballot
23 is expected to be mailed and the address where the ballot will be mailed,” as well as provide
24 the voter a means to update their address and the opportunity to decline to receive a mail
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26
27 ¹ *Voting by Mail: How to Get a Ballot-by-Mail*, Ariz. Sec’y of State (last visited Sept. 15,
28 2021), <https://azsos.gov/votebymail>.

1 ballot for the upcoming election. A.R.S. § 16-544(E). If the notice is returned
2 undeliverable, the county recorder must send a follow up notice, and if the voter “does not
3 complete and return a new registration form with current information to the county recorder
4 or make changes to the elector’s voter registration information that is maintained online
5 within thirty-five days, the elector’s registration status shall be changed from active to
6 inactive.” *Id.* §§ 16-544, 16-166(A). If at any point a voter’s registration becomes inactive
7 or is cancelled, or if the voter asks to be removed, the voter is removed from the PEVL. *Id.*
8 § 16-544(E)-(H).

9 * * *

10 Both S.B. 1003 and S.B. 1485 will operate to and appear to be intentionally crafted
11 for the purpose of making it harder for Arizonans of color to participate in the state’s
12 elections. As Judge Rayes found, the differential cure regime that the Attorney General
13 promoted and the Legislature has now enacted into law is flatly unreasonable and does not
14 actually promote any of the state interests that the state has claimed in it. Similarly, there
15 is no indication that the process that has been in place to remove inactive voters from the
16 PEVL was in any way insufficient to ensure the integrity of that list. Nevertheless, after
17 historic levels of minority voting in the 2020 election, including in particular through the
18 use of mail voting, the Legislature swiftly acted, over strong and vocal public opposition,
19 to impose these additional and entirely unnecessary burdens on utilizing what has now
20 become the predominant means by which Arizona voters exercise their right to the
21 franchise.
22

23 As the Mi Familia Vota Complaint alleges, Latinx citizens make up 19% of the
24 State’s voters, but 33% of would-be removals, and Native American citizens make up .9%
25 of voters, but 1.3% of would-be removals under the new “AEVL” regime. ECF No. 1 at
26 16-17. These communities, moreover, are far more likely to have difficulties casting a
27 ballot in person, due to ongoing impacts of discrimination that have persisted in Arizona
28

1 for decades. The Legislature was fully aware of the likely and anticipated impacts these
2 laws would have on the State’s voters of color; indeed, legislators pushed them through in
3 the face of substantial objections that these laws would have a devastating impact on the
4 right to vote in Latinx and Native American communities in particular.

5 **III. This Litigation**

6 Plaintiffs Mi Familia Vota, Arizona Coalition for Change, Living United for Change
7 in Arizona (“LUCHA”), and the League of Conservation Voters (“Chispa Arizona”) filed
8 this action on August 16, 2021. They allege that S.B. 1003 and S.B. 1485 are each
9 unconstitutional under the First, Fourteenth, and Fifteenth Amendments to the United
10 States Constitution, and violate the Voting Rights Act of 1965. Specifically, their
11 Complaint alleges that the laws individually and cumulatively impose severe burdens on
12 the right to vote without any state interest to justify the restrictions (Count I). The
13 Complaint further alleges that the laws were each passed with discriminatory purpose, in
14 violation of both the Fourteenth and Fifteenth Amendments (Count II) and Section 2 of the
15 Voting Rights Act of 1965 (Count III).

16 The RNC and the National Republican Senatorial Committee (the “Proposed
17 Republican Intervenors”) have moved to intervene, arguing that the potential invalidation
18 of S.B. 1003 and S.B. 1485 threatens to impede their interests in “Republican voters . . .
19 vot[ing], Republican candidates . . . win[ning], and Republican resources . . . be[ing] spent
20 wisely rather than wasted on diversions.” Dkt. No. 28 at 6. That motion remains pending;
21 Plaintiffs’ deadline to respond to it is September 30.

22 The Proposed Republican Intervenors are not explicit in their papers as to exactly
23 how ensuring that all voters with identity-related deficiencies in voting have the same
24 opportunity to prove that they did, in fact, cast their ballots before they are rejected will
25 cause Republican voters to not vote, Republican candidates to lose, or Republican
26 resources to be spent unwisely. Similarly, they avoid stating exactly why they believe that
27

1 removal of minority voters in disparate numbers from the early voting list will have the
2 same effect.

3 But it is not difficult to imagine why they might perceive these laws—and
4 specifically their impact on minority voters—as crucial to furthering their interests in
5 “Republican candidates winning” elections in Arizona: in 2020, nearly 60% of voters of
6 color in Arizona voted for President Joe Biden and Vice-President Kamala Harris,
7 including 61% of Latinx voters and 80% of voters from the Navajo Nation and Hopi
8 Reservation. Latinx voters in particular make up an increasingly powerful part of the state’s
9 electorate: a full quarter of the state’s registered voters are now believed to be Latinx. And
10 Native American turnout is understood to have been crucial in President Biden’s success
11 in Arizona in 2020: for example, approximately about 17,500 more voters turned out from
12 the Navajo and Hopi reservations in 2020 than in 2016, a number substantially larger than
13 President Biden’s 10,457 vote margin of victory over Donald Trump.

14 As noted, Latinx and Native American voters in Arizona historically have supported
15 Democratic candidates by substantial numbers over their Republican opponents. For that
16 reason alone, the Democratic Party Committees have specific interests in this litigation,
17 which seeks to protect those voters’ most fundamental right; the right to vote. But even if
18 that were not the case—or if this Court were to determine that those interests were
19 adequately protected by the current Plaintiffs—both the standards applicable to permissive
20 intervention and principles of equity would require that, if the Proposed Republican
21 Intervenors are permitted to intervene to protect their apparent interest in *restricting* the
22 right to vote in Arizona, the Democratic Committees should likewise be permitted to
23 intervene to protect their interest in *safeguarding and promoting* the right to vote.
24

25 **STANDARD OF LAW**

26 Courts in the Ninth Circuit employ a four-part test when considering a motion for
27 intervention as of right:

1 (1) the motion must be timely; (2) the applicant must claim a “significantly
2 protectable” interest relating to the property or transaction which is the
3 subject of the action; (3) the applicant must be so situated that the disposition
4 of the action may as a practical matter impair or impede its ability to protect
5 that interest; and (4) the applicant’s interest must be inadequately represented
6 by the parties to the action.

7
8 *Arizonans for Fair Elections*, 335 F.R.D. at 273 (quoting *Wilderness Soc.*, 630 F.3d at
9 1177). Courts are “required to accept as true the non-conclusory allegations made in
10 support of an intervention motion.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810,
11 819 (9th Cir. 2001) (citation and quotation marks omitted).

12 In the alternative, a court may grant permissive intervention to a party under Rule
13 24(b), “where the applicant for intervention shows ‘(1) independent grounds for
14 jurisdiction; (2) the motion is timely; and (3) the applicant’s claim or defense, and the main
15 action, have a question of law or a question of fact in common.’” *Arizonans for Fair
16 Elections*, 335 F.R.D. at 276 (quoting *United States v. City of Los Angeles*, 288 F.3d 391,
17 403 (9th Cir. 2002)).

18 ARGUMENT

19 **I. Intervention as of right is warranted under Rule 24(a)(2).**

20 The Democratic Party Committees satisfy the necessary factors for intervention as
21 of right: they have filed this motion at an exceedingly early stage of this litigation, before
22 any substantive rulings have been issued, they have significant and unique interests at stake
23 in the action, the disposition of the case could impair those interests, and the existing parties
24 to the action do not adequately represent them.

25 **A. The motion is timely.**

26 The Democratic Party Committees’ motion for intervention is timely. Three factors
27
28

1 guide the court in considering timeliness in this context: “(1) the stage of the proceeding at
2 which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason
3 for and length of the delay.” *County of Orange v. Air California*, 799 F.2d 535, 537 (9th
4 Cir. 1986).

5 Here, the original Plaintiffs filed their Complaint only five weeks ago on August 17,
6 2021. DSCC and DCCC are filing this motion to intervene “before any proceedings ha[ve]
7 taken place.” *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996), *as*
8 *amended on denial of reh’g* (May 30, 1996). Furthermore, the Court has not yet decided
9 the Proposed Republican Intervenors’ pending motion to intervene, and this motion is filed
10 before the plaintiffs’ response to that motion is due. *See* ECF No. 40. Thus, granting the
11 motion for intervention would not prejudice the other parties because it was “filed before
12 the district court ha[s] made any substantive rulings.” *Id.*

13 **B. The disposition of this action may impair the Democratic Party**
14 **Committees’ significant interests.**

15 The Democratic Party Committees also satisfy the intertwined second and third
16 prongs of the standard for intervention as of right: (1) they have significant interests at
17 stake, and (2) disposition of this action may, as a practical matter, impair or impede those
18 interests. “[A] prospective intervenor ‘has a sufficient interest for intervention purposes if
19 it will suffer a practical impairment of its interests as a result of the pending litigation.’”
20 *Wilderness Soc’y*, 630 F.3d at 1179 (quoting *California ex rel. Lockyer v. United States*,
21 450 F.3d 436, 441 (9th Cir. 2006)). “It is generally enough that the interest is protectable
22 under some law, and that there is a relationship between the legally protected interest and
23 the claims at issue.” *Id.* (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)).
24 In assessing whether such an interest is sufficiently “impair[ed] or impede[d],” Fed. R. Civ.
25 P. 24(a)(2), courts “look[] to the ‘practical consequences’ of denying intervention.” *Nat.*
26 *Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*,
27

1 385 F.2d 694, 702 (D.C. Cir. 1967)). The Federal Courts of Appeals, including the Ninth
2 Circuit, have had “little difficulty concluding” that, where an intervenor has a protectible
3 interest in the outcome of litigation, such interest would be impaired by a denial of
4 intervention. *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th
5 Cir. 2011). The Democratic Party Committees have multiple distinct interests at stake in
6 this litigation that easily satisfy this standard.

7 *First*, the Committees have significant interests in advancing the fundamental
8 constitutional rights of their members and constituents, which are threatened by the
9 suppressive voting legislation that this litigation challenges. Courts have repeatedly held
10 that, where an action carries with it the prospect of disenfranchising a political party’s
11 members, the party has a cognizable interest at stake—and that it may intervene to protect
12 them. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008)
13 (agreeing with unanimous view of Seventh Circuit that Democratic Party had standing to
14 challenge a voter identification law that risked disenfranchising its members); *Ne. Ohio*
15 *Coal. for the Homeless v. Husted*, 696 F.3d 580 (6th Cir. 2012) (Democratic Party allowed
16 to intervene in case where challenged practice would lead to disenfranchisement of its
17 voters); *Wood v. Raffensperger*, 1:20-cv-04651-SDG, Dkt. No. 52 (N.D. Ga. Nov. 19,
18 2020) (granting intervention to DSCC, DCCC, and Georgia Democratic Party in action
19 seeking to invalidate election in Georgia). Here, as discussed above, S.B. 1003 and S.B.
20 1485 impose severe and disparate burdens upon and will disenfranchise the Democratic
21 Party Committees’ members and constituencies. Intervention is therefore warranted on this
22 ground.

23
24 *Second*, as political party committees, DSCC and DCCC each have a direct interest
25 in their Party’s and candidates’ electoral prospects in Arizona—including specifically to
26 the U.S. Senate and U.S. House. Because S.B. 1003 and S.B. 1485 threaten to
27 disenfranchise or make it harder for voters who would support the Democratic Party
28

1 Committees' candidates to successfully vote in Arizona's elections, they threaten the
2 Committees' electoral prospects, providing an independent basis for intervention. *See, e.g.,*
3 *Democratic Party v. Benkiser*, 459 F.3d 582, 586-87 (5th Cir. 2006); *see also DCCC v.*
4 *Ziriaux*, 487 F. Supp. 3d 1207, 1226 (N.D. Okla. 2020) (finding Democratic Party
5 organization "has an interest in ensuring that its voters have an opportunity to vote for
6 Democratic Party candidates"). Here, voters from Latinx and Native American
7 communities, both of which have overwhelmingly favored Democratic candidates in the
8 past, are threatened with removal from the early voting list at significantly greater rates.
9 And, as the Complaint recognizes, both laws challenged in this action originated *not* with
10 actual concerns about purported fraud or improprieties in voting, but rather with
11 unhappiness about the success of *Democratic candidates* in the 2020 Election. ECF No. 1,
12 ¶¶ 48-56, 64-67. In short, the Democratic Party Committees should be allowed to intervene
13 as Plaintiffs because the practical consequences of denying intervention would be to impair
14 their significant interest in their electoral prospects in the state.

15 *Third*, with respect only to the right-to-vote claim against S.B. 1003, DSCC seeks
16 to intervene given its protectable interest in the litigation pending in *ADP v. Hobbs*.²
17 Regardless of how the Ninth Circuit resolves that appeal, questions regarding the impact
18 of that litigation on the claims at issue here, and vice versa, are almost certain to arise.
19 Denying intervention would therefore impair, as a practical matter, DSCC's ability to
20 safeguard its interests stemming from that separate litigation.³

22 ² The claims in that case overlap but are not coextensive with the claims presented here.
23 *ADP v. Hobbs* concerns certain constitutional challenges to Arizona's failure to provide a
24 uniform cure period for voters to resolve identification questions. That case does not
25 present any claims of intentional discrimination and does not address the new restrictions
26 targeting the PEVL system.

27 ³ As noted above, the RNC (which has now moved to intervene in this case), along with
28 the Arizona Republican Party and the Trump Campaign, were allowed to intervene as
defendants in *ADP v. Hobbs*. *See* 2020 WL 6559160, at *1. Their attempt to participate in
this litigation only underscores the salience of DSCC's interests here. *Cf. Paher v.*

1 **C. The Democratic Party Committees’ interests are not adequately**
2 **represented by the parties.**

3 Finally, DSCC and DCCC satisfy the fourth and final factor for intervention as of
4 right because their unique and significant interests are not adequately represented by the
5 existing parties in this action. Courts consider three factors in determining the adequacy of
6 representation: (1) whether the interest of a present party is such that it will undoubtedly
7 make all of a proposed intervenor’s arguments; (2) whether the present party is capable
8 and willing to make such arguments; and (3) whether a proposed intervenor would offer
9 any necessary elements to the proceeding that other parties would neglect. *Arakaki v.*
10 *Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), *as amended* (May 13, 2003) (cleaned up).
11 “The ‘most important factor’ in assessing the adequacy of representation is ‘how the
12 interest compares with the interests of existing parties.’” *Citizens for Balanced Use v.*
13 *Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki*, 324 F.3d at
14 1086). This element “requires a ‘minimal’ showing and is satisfied if existing parties’
15 representation of its interest ‘may be’ inadequate.” *Arizonans for Fair Elections*, 335
16 F.R.D. at 275 (quoting *Citizens for Balanced Use*, 647 F.3d at 898). Courts in the Ninth
17 Circuit “follow[] the guidance of Rule 24 advisory committee notes that state that if an
18 absentee would be substantially affected in a practical sense by the determination made in
19 an action, he should, as a general rule, be entitled to intervene.” *Arakaki*, 324 F.3d at 1086;
20 Advisory Comm. Note to Fed. R. Civ. P. 24 (1966 Am.).

21
22 This factor, too, favors intervention. DSCC and DCCC are political party
23 organization seeking to intervene as Plaintiffs to safeguard the fundamental rights of their

24
25 _____
26 *Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (“That a group of voters
27 similar to Plaintiffs have apparently moved to intervene in Proposed Intervenors’ State
28 Court Action further underscores the significance of the interests at stake and that
impairment of the ability to protect the various interests will likely result should
intervention be disallowed here.”). If the RNC is permitted to participate in this litigation,
and present its view of the impact of any final decision in *ADP v. Hobbs* to this Court, then
the DSCC should be permitted to do the same.

1 members and candidates and their own electoral prospects in the state. The original
2 Plaintiffs are nonpartisan, nonprofit organizations. Thus, by comparing the interests of the
3 parties, even if there were *some* overlap, the parties do not share precisely the same
4 “ultimate objective,” so the inquiry should end there. *See Citizens for Balanced Use*, 647
5 F.3d at 898-99. Moreover, it is far from clear, if not highly unlikely, that the original
6 Plaintiffs will make “all of” proposed Intervenors’ arguments. *See Arakaki*, 324 F.3d at
7 1086; *see also, e.g., Paher v. Cegavske*, 2020 WL 2042365, at *3 (granting intervention
8 where it appeared different arguments may be made). In any event, because the Democratic
9 Party Committees have articulated clear interests at stake, *see supra*, they should “be
10 entitled to intervene.” *Arakaki*, 324 F.3d at 1086 (quoting Advisory Comm. to Fed. R. Civ.
11 P. 24 (1966 Am.)).

12 Finally, with respect to DSCC’s request to intervene regarding the right-to-vote
13 claims against S.B. 1003, the original Plaintiffs are not parties to the separate litigation in
14 *ADP v. Hobbs*, and there is no guarantee that DSCC’s interests—much less its arguments—
15 regarding the interaction between the two suits will be adequately presented if DSCC is
16 not permitted to intervene. This risk becomes particularly heightened if the RNC and
17 National Republican Senatorial Committee *are* permitted to intervene, given that the RNC
18 and Attorney General are among the parties that pursued the still-pending appeal in that
19 related case.

20
21 For the foregoing reasons, the Democratic Party Committees meet each of the
22 factors required for intervention as of right; the motion to intervene should therefore be
23 granted.

24 **II. Alternatively, permissive intervention is appropriate under Rule 24(b).**

25 Even if the Court were to conclude that the Democratic Party Committees do not
26 meet the requirements for intervention as of right, it should grant permissive intervention
27 under Rule 24(b). A court has broad discretion to grant permissive intervention when (1)

1 the motion is timely, and (2) the intervenors' claim and the main action have a question of
2 law or fact in common. *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. at 268.⁴ Courts
3 also consider “whether the intervention will ‘unduly delay or prejudice the adjudication of
4 the’” original parties’ rights. *Venegas v. Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989) (quoting
5 Fed. R. Civ. P. 24(b)(3)).

6 The Democratic Party Committees meet each of these requirements. *First*, the
7 motion to intervene—which comes before any substantive proceedings or rulings—is
8 timely. *Nw. Forest Res. Council*, 82 F.3d at 837. *Second*, the claims they bring clearly share
9 “common questions of law or fact” with the original claims, as reflected by the proposed
10 complaint in intervention, attached as **Exhibit A**. *Third*, no prejudice or undue delay will
11 result if the motion is granted. *Venegas*, 867 F.2d at 530. Intervention motions that take
12 place before any substantive rulings generally do not prejudice the parties in the lawsuit.
13 *Nw. Forest*, 82 F.3d at 837. Additionally, the Democratic Party Committees have a strong
14 interest in the timely and final resolution of the matters raised in this lawsuit and will agree
15 to abide by any and all scheduling orders or other limitations imposed by the court.
16 *Arizonans for Fair Elections*, 335 F.R.D. at 266 (“The State has agreed to abide by the
17 Court’s briefing schedule. Thus, there is no possible prejudice in allowing the State to
18 intervene.”). For all of these reasons, the Democratic Party Committees also satisfy the
19 permissive intervention inquiry and the Court—if it does not find that intervention as of
20 right is warranted—should exercise its discretion to allow permissive intervention.

21 CONCLUSION

22 For the foregoing reasons, DSCC and DCCC respectfully request that the Court
23

24 ⁴ A third factor, that the intervenor shows there is independent jurisdiction for its claims
25 “does not apply to proposed intervenors in federal-question cases when the proposed
26 intervenor is not raising new claims.” *Freedom from Religion Found., Inc. v. Geithner*, 644
27 F.3d 836, 844 (9th Cir. 2011). Because the only claims the Democratic Party Committees
28 seek to bring arise under the same provisions of the U.S. Constitution and federal statute
as the original Plaintiffs, the independent jurisdiction inquiry “drops away.” *Freedom from
Religion Found.*, 644 F.3d at 844; *Beckman*, 966 F.2d at 473.

1 grant its motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative,
2 permissively under Rule 24(b).

3 Dated: September 24, 2021

Respectfully Submitted,

4
5 /s/ Daniel A. Arellano
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2021, I caused the foregoing to be filed and served electronically via the Court’s CM/ECF system upon counsel of record.

/s/ Christina M. Kinsey_____

EXHIBIT A

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

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

25 Plaintiffs,

26 and

27 DSCC, and DCCC,

28 [Proposed] Plaintiff-
Intervenors,

Case No. 21-CV-01423-DWL

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

1
2 v.

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

23
24 Defendants.

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

29
30 **NATURE OF THE CASE**

31
32 1. This is an action brought under the U.S. Constitution and the Voting Rights
33 Act of 1965 to vindicate and safeguard the fundamental right to vote. “No right is more
34 precious in a free country than that of having a voice in the election of those who make the
35 laws under which, as good citizens, we must live. Other rights, even the most basic, are

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **JURISDICTION AND VENUE**

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

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

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

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

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

1 Arizona.

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

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

9 **PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ⁴ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 notice within the statutory period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 CLAIMS FOR RELIEF

18 COUNT ONE

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

20
21 ¹⁴ *Addressing the Urgent Needs of our Tribal Communities: Hearing Before the Comm. on Energy and Commerce*, 116th Cong. (2020) (testimony of Jonathan Nez, Navajo Nation President).

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

23
24 ¹⁶ Sydney Page, *Getting To the Polls Can Be Hard in Navajo Nation. This Woman Is Leading Voters on Horseback*, Wash. Post (Nov. 2, 2020), <https://www.washingtonpost.com/lifestyle/2020/11/02/navajo-nation-horse-vote-polls-election/>.

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

First and Fourteenth Amendments)

1
2 122. Plaintiffs reallege and incorporate by reference all prior paragraphs, as if
3 fully set forth herein.

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

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

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

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

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

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

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

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

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

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

21 **COUNT TWO**

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

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

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

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

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

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

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

18 **COUNT THREE**

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

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

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

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

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

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

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

15 **PRAYER FOR RELIEF**

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

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

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Dated: September 24, 2021

Respectfully Submitted,

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**Pro Hac Vice Applications to be filed*

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,

Plaintiffs,

v.

Katie Hobbs, et al.,

Defendants.

Case No. 21-CV-01423-DWL

**[PROPOSED] ORDER
GRANTING DSCC’S AND
DCCC’S MOTION TO
INTERVENE**

Proposed Intervenors DSCC and DCCC moved to intervene in the above captioned matter. Having considered the parties’ motion, the Court finds that the DSCC and DCCC have demonstrated a right to intervene under Federal Rule of Civil Procedure 24(a)(2). Good cause thus appearing, the Court hereby **GRANTS** the motion and orders the following:

It is **HEREBY ORDERED** that DSCC’s and DCCC’s Motion to Intervene is **GRANTED**.

IT IS SO ORDERED.