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21 **SUPERIOR COURT OF ARIZONA**

22 **MARICOPA COUNTY**

23 REPUBLICAN PARTY OF ARIZONA,  
24 LLC, an Arizona limited liability  
25 company and political party committee;  
26 REPUBLICAN NATIONAL  
27 COMMITTEE, a national political party  
28 committee; and GINA SWOBODA, an  
individual,

Plaintiffs,

v.

STATE OF ARIZONA, a body politic;  
and ADRIAN FONTES, in his official  
capacity as the Secretary of State of  
Arizona,

Defendants.

No. CV2025-022859

**MOTION TO DISMISS**

(Assigned to the Hon. Michael Herrod)

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

#### 4 INTRODUCTION

5 Twenty years ago, the Arizona State Legislature introduced House Bill (“HB”)  
6 2288, which was enacted as A.R.S. § 16-103, to enable overseas citizens to vote in  
7 compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C.  
8 § 20301 *et seq.* (“UOCAVA”). *See* House Bill 2288, 47th Leg. 1st Reg. Sess. (2005). A  
9 group of Republican House Representatives and Senators introduced the Bill. *See id.* HB  
10 2288 was an uncontroversial proposal and received bipartisan support, with not a single  
11 legislator voting against it. Now, however, Plaintiffs Republican Party of Arizona, LLC  
12 and the Republican National Committee (together, “Party Plaintiffs”) and Gina Swoboda  
13 (collectively, “Plaintiffs”) seek to make it a controversy and have brought suit to  
14 challenge the constitutionality of subpart (E) of the statute. Plaintiffs ask this Court to  
15 now declare that A.R.S. § 16-103(E) violates article VII, § 2(A) of the Arizona  
16 Constitution because it allows—and has allowed, for the past twenty years—children of  
17 Arizona voters covered by UOCAVA, and who have never otherwise lived in the United  
18 States, to register to vote in Arizona, based on their parent’s residency. Plaintiffs also  
19 seek an injunction against implementation and enforcement of the statute.

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

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

1 2(A) in full, this Court will find that the Complaint is groundless.

2 **BACKGROUND**

3 Article VII, § 2(A) of the Arizona Constitution provides, as relevant here, that  
4 “[n]o person shall be entitled to vote . . . unless such person be a citizen of the United  
5 States of the age of eighteen years or over, and shall have resided in the state for the period  
6 of time preceding such election *as prescribed by law.*” (Emphasis added). Pursuant to  
7 its constitutional authority to prescribe residency requirements, the Legislature enacted  
8 A.R.S. § 16-103(E) in 2005. The statute provides that a U.S. citizen “who has never  
9 resided in the United States and whose parent is a United States citizen who is registered  
10 to vote in this state is eligible to register to vote and may vote in this state using a federal  
11 write-in early ballot as prescribed by section 16-543.02.” A.R.S. § 16-103(E).<sup>1</sup> Section  
12 16-543.02(A), in turn, ensures the right to vote for federal offices to overseas voters using  
13 the Federal write-in absentee ballot, consistent with UOCAVA.

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

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28 <sup>1</sup> For ease of reference, this Motion refers to voters covered by A.R.S. § 16-103(E) as  
“16-103(E) voters.”

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

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

### 15 LEGAL STANDARD

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

1  
2 **ARGUMENT**

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

4 Arizona courts have “a rigorous standing requirement,” *Fernandez v. Takata Seat*  
5 *Belts, Inc.*, 210 Ariz. 138, 140 ¶ 6 (2005), and “require[ ] standing as a matter of judicial  
6 restraint, informed by federal law,”<sup>2</sup> *Horne v. Hobbs*, No. 1 CA-CV 24-0615, 2025 WL  
7 1982692, at \*4 ¶ 18 (Ariz. App. July 17, 2025).

8 “Standing generally requires an injury in fact . . . caused by the complained-of  
9 conduct, and resulting in a distinct and palpable injury giving the plaintiff a personal stake  
10 in the controversy’s outcome.” *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406 ¶ 8  
11 (App. 2008). To establish standing, Plaintiffs must show that (1) they “suffered an injury  
12 in fact—an invasion of a legally protected interest which is (a) concrete and particularized  
13 . . . and (b) actual or imminent, not conjectural or hypothetical;” (2) a “causal connection  
14 between the injury and the conduct complained of;” and (3) it must “be likely, as opposed  
15 to merely ‘speculative,’ that the injury” is redressable. *Lujan v. Defs. of Wildlife*, 504  
16 U.S. 555, 560–61 (1992) (citations omitted); *see also Klein v. Ronstadt*, 149 Ariz. 123,  
17 124 (App. 1986) (requiring that a plaintiff “demonstrate some actual, concrete harm  
18 which will come to [them as a result of the challenged provision], not merely some  
19 speculative fear of infringement”). Allegations of “generalized harm that [are] shared  
20 alike by all or a large class of citizens” do not confer standing. *Sears v. Hull*, 192 Ariz.  
21 65, 69 ¶ 16 (1998).

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

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

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

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

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

10 The competitive standing theory "arose in the context of the commercial  
11 marketplace, specifically when *government-imposed restrictions* put certain market  
12 participants at a competitive disadvantage." *Castro v. N.H. Sec'y of State*, 701 F. Supp.  
13 3d 176, 182 (D.N.H. 2023) (citation omitted) (emphasis added). "In discrete contexts,  
14 courts have extended competitor standing to the political marketplace." *AB PAC v. Fed.*  
15 *Election Comm'n*, No. 22-2139 (TJK), 2023 WL 4560803, at \* 4 (D.D.C. July 17, 2023).

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

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

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

9 A statute generally permitting voters to register to vote, which is all that A.R.S. §  
10 16-103(E) does, is not akin to laws that directly affect or benefit candidates or political  
11 parties in a way that is comparable to the cases noted above. Unlike candidates who are  
12 already politically aligned with one party over another or whose mere presence on a ballot  
13 could siphon votes from a competitor, the subset of UOCAVA voters at issue are not  
14 inherently politically aligned, nor does their eligibility to vote automatically deprive Party  
15 Plaintiffs of votes or give votes to a competitor. Indeed, A.R.S. § 16-103(E) does not  
16 dictate that voters choose any political affiliation at all, much less structure a political  
17 environment. Therefore, on its face A.R.S. § 16-103(E) does not create a legally  
18 cognizable competitive advantage for any of Party Plaintiffs’ political rivals; nor is it  
19 inherently disadvantageous to Party Plaintiffs.

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

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

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

23 For example, in *Mecinas*, the court found an adequate causal nexus between the  
24 ballot-order statute and competitive disadvantage because candidate order creates a  
25 “position bias,” and county supervisors had “no discretion in ordering candidate names.”  
26 30 F.4th at 895, 900. Rather, they were “bound to follow” the challenged statute, which  
27 mandated that candidates affiliated with the successful political party in the most recent  
28 gubernatorial election be listed first. *Id.* In other words, because the statute mandated a

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

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

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

21 **B. Plaintiff Swoboda’s claim of “vote dilution” also cannot support**  
22 **standing.**

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

1 (See *id.* ¶ 36 (citing *Hall v. D.C. Bd. of Elections*, 141 F.4th 200, 206 (D.C. Cir. 2025).)

2 Plaintiffs’ vote dilution claim fails for multiple reasons.

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

12 Second, *Hall* does not change the law regarding vote dilution. Not only is *Hall*  
13 not binding precedent, it is grossly inconsistent with Supreme Court precedent that has  
14 limited vote dilution claims to cases where certain votes are weighted more heavily than  
15 others, usually in redistricting cases. See *Gill v. Whitford*, 585 U.S. 48, 49, 66 (2018)  
16 (emphasizing that “[t]o the extent the plaintiffs’ alleged harm is the dilution of their votes,  
17 that injury is district specific. . . . The boundaries of the district, and the composition of  
18 its voters, determine whether and to what extent a particular voter is packed or cracked”);  
19 *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (striking down a plan to apportion seats in  
20 the Alabama State Legislature by carving the state into legislative districts that covered  
21 significantly different numbers of constituents effectively weighing votes from rural  
22 counties more heavily than votes from urban counties); *Gray v. Sanders*, 372 U.S. 368,  
23 379–81 (1963) (finding a Georgia vote allocation system gave “one person . . . twice or  
24 10 times the voting power of another person in a statewide election merely because he  
25 lives in a rural area or because he lives in the smallest rural county” and held that the  
26 system violated the principles of both voter and political equality); *Baker v. Carr*, 369  
27 U.S. 186, 207–08 (1962) (finding injury where a classification disfavored “the voters in  
28

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

3 Furthermore, *Hall* is wholly inconsistent with key standing principles. As  
4 reaffirmed in *Gill*, to support standing plaintiffs must show “concrete and particularized  
5 injuries” and “standing is not dispensed in gross.” *Gill*, 585 U.S. at 65, 73 (citation  
6 omitted). A finding of injury on Plaintiffs’ vote dilution claim would necessarily require  
7 this Court to dispense standing “in gross,” conflicting with enduring standing precedent.  
8 Notably, other courts have rejected claims that allegedly ineligible voters casting ballots,  
9 which equally affects all voters in a state, creates a cognizable vote dilution injury because  
10 such generalized grievances are insufficient to support standing. *See, e.g., Wood v.*  
11 *Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020); *RNC v. Aguilar*, No. 24-CV-  
12 00518-CDS-MDC, 2024 WL 4529358, at \*3–4 (D. Nev. Oct. 18, 2024); *Pirtle v. Nago*,  
13 Civ. No. 22-00381 JMS-WRP, 2022 WL 17082168, at \*3 (D. Haw. Nov. 18, 2022);  
14 *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711–13 (D. Ariz. 2020). Because Plaintiffs’ vote  
15 dilution claim is not premised on a contention that A.R.S. § 16-103(E) favors some voters  
16 over others (*see* Compl. ¶¶ 36, 43), as opposed to having the same effect on all votes,  
17 their vote dilution claim is legally untenable.

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

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

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

7 In the absence of an actual injury, plaintiffs seeking a declaratory judgment must  
8 present an “actual controversy between interested parties.” *Toma v. Fontes*, 258 Ariz.  
9 109, 117 ¶ 23 (App. 2024). Plaintiffs must provide an “existing state of facts,” *Thomas*  
10 *v. City of Phoenix*, 171 Ariz. 69, 74 (App. 1991), showing the existence of a “present  
11 existing controversy” upon which the Court can “adjudicate any present rights,” *Mills v.*  
12 *Arizona Board of Technical Registration*, 253 Ariz. 415, 424 ¶ 25 (2022) (citation  
13 omitted). Factual allegations that “may or may not arise in the future” or an abstract  
14 “desire to know” about a statute’s constitutionality do not give rise to a justiciable claim  
15 for declaratory relief. *Thomas*, 171 Ariz. at 74.

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

19 To have standing to request a declaratory judgment, Plaintiffs must demonstrate,  
20 at minimum, that “an actual or real interest in the matter for determination.” *Pena v.*  
21 *Fullinwider*, 124 Ariz. 42, 44 (1979). This requires a showing that Plaintiffs are presently  
22 “[a]ffected by” the statute under which they seek a declaration; a general interest, or even  
23 a specific-but-unaffected-interest, is not enough. *Id.*; *see also* A.R.S. § 12-1832. For  
24 example, in *Mills*, the Arizona Supreme Court distinguished a plaintiff’s “real and present  
25 need to know” the constitutionality of a statute that threatened his rights to “speak freely”  
26

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

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

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

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

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

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

13 Because Party Plaintiffs have not alleged any “presently existing facts”  
14 establishing a “real and present need” for this Court to adjudicate whether A.R.S. § 16-  
15 103(E) is constitutional, there is no actual controversy for this Court to resolve. *See Mills*,  
16 253 Ariz. at 425 ¶ 30. Party Plaintiffs’ “desire to know” whether A.R.S. § 16-103(E) is  
17 constitutional does not make this a justiciable controversy. *See Thomas*, 171 Ariz. at 74;  
18 *see also Ariz. Creditors Bar Ass’n*, 257 Ariz. at 412 ¶ 22 (“An opinion that is advisory is  
19 no less so because it will bind or guide future courts.”).

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

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

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

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

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

23 This is wholly consistent with the longstanding conception of domicile.  
24 “[R]esidence” and “domicil[e]” are synonymous. *See Clark v. Clark*, 71 Ariz. 194, 197  
25 (1950) (relying on Ariz. Const. art. VII, §§ 3 and 6 relating to residence for voting  
26 purposes to determine domicile). A person’s domicile of origin is acquired at birth and  
27 is the domicile of one of his parents. *See* Restatement 2d Conflict of Laws § 18 (1971);  
28 *see also DeWitt v. McFarland*, 112 Ariz. 33, 33 (1975) (citing the Restatement); *Cornell*

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

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

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

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

20 “Prescribed by law” as used throughout the Arizona Constitution empowers the  
21 Legislature to make laws on the subject contemplated. *See Shute v. Frohmiller*, 53 Ariz.  
22 483, 488 (1939) *overruled in part on other grounds by Hudson v. Kelly*, 76 Ariz. 255  
23 (1953) (“[I]n stating that they shall be ‘as prescribed by law’ [the Constitution] refers to  
24 [the attorney general’s duties] and clearly makes it the duty of the legislature to say what  
25 they shall be.”). “The word ‘law’ in [the expression ‘prescribed by law’] means statute.”  
26 *Id.* Accordingly, the Arizona Constitution contemplates the Legislature enacting laws  
27 such as A.R.S. § 16-103(E). *See* Ariz. Const. art. VII, § 2(A); *see also id.* § 12 (“There  
28 shall be enacted registration and other laws to secure the purity of elections and guard

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

4 The Legislature has exercised this constitutional authority to define the residency  
5 requirement as generally requiring “actual physical presence in this state,” A.R.S. § 16-  
6 101(B), while also providing for certain legally acceptable proxies for specific subsets of  
7 voters. For example, those temporarily absent from the state are considered to maintain  
8 their residence even without actual physical presence in the state. *See* A.R.S. § 16-103(A)  
9 (referring to A.R.S. § 16-593, which provides rules for determining residence when a  
10 ballot is challenged). In the same vein, § 16-103(E) extends a UOCAVA overseas  
11 parent’s “residence” in Arizona to their children if those children have never resided in  
12 the United States. *See* A.R.S. §§ 16-103(E), -593(A)(9).

13 Plaintiffs attempt to avoid the clear dictate of the Arizona Constitution by pointing  
14 to a recent decision of the North Carolina Court of Appeals. (Compl. ¶ 40 (citing *Griffin*  
15 *v. N.C. State Bd. of Elections*, 915 S.E.2d 212, 227 (N.C. App. 2025).) Plaintiffs claim  
16 that the North Carolina law at issue in *Griffin* is “substantively similar to A.R.S. § 16-  
17 103(E).” (*Id.*) But that claim misses the mark. While the North Carolina *statute* is similar  
18 to the Arizona law, *the constitutional provisions* at issue are not.

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

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



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By /s/ Karen J. Hartman-Tellez  
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*/s/ Angie Santos*