



649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
(602) 382-4078

Kory Langhofer, Ariz. Bar No. 024722
kory@statecraftlaw.com

Thomas Basile, Ariz. Bar. No. 031150
tom@statecraftlaw.com

Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

REPUBLICAN PARTY OF ARIZONA,
LLC, an Arizona limited liability company
and political party committee;
REPUBLICAN NATIONAL
COMMITTEE, a national political party
committee; and GINA SWOBODA, an
individual,

Plaintiffs,

v.

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

Defendants.

Case No. CV2025-022859

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

(Assigned to the Hon. Michael Herrod)

1 Plaintiffs Republican Party of Arizona, LLC (“RPAZ”), the Republican National
2 Committee (“RNC”), and Gina Swoboda respectfully submit this response in opposition
3 to the Defendants’ Motion to Dismiss the Complaint.

4 **INTRODUCTION**

5 In the Defendants’ telling, officials can register as voters individuals who are
6 constitutionally ineligible to participate in Arizona elections, and no one—not lawful
7 voters and not even one of the major political parties that compete for public offices—can
8 seek judicial recourse to stop them. But the case law confirms what common sense
9 counsels: the RPAZ and RNC, as political organizations that engage in voter registration
10 and vie to earn lawful votes, have a concrete and extant interest in the question of whether
11 the Arizona Constitution permits an individual “who has never resided in the United
12 States” (let alone in Arizona) to vote in this State’s elections. A.R.S. § 16-103(E). And
13 even if an actualized “injury” were necessary to enter the courthouse doors, a statute that
14 expands the franchise to ineligible individuals necessarily causes the dilution of lawful
15 votes and constitutes a state-imposed distortion of the electoral competitive environment.

16 On the merits, the Defendants advance a proposition as discordant with logic as it
17 is with the constitutional text—namely, that the Arizona Constitution permits individuals
18 who have never resided in Arizona, or even set foot in the State, to vote in its elections.
19 This argument, however, incorrectly conflates *bona fide* residency requirements with
20 *durational* residency requirements. While Article VII, Section 2(A) permits the
21 Legislature to calibrate the specific length of time an individual must live in Arizona
22 before she can register to vote, the establishment of actual residency remains an
23 irreducible constitutional prerequisite to voting in this State.
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARGUMENT

I. **The Constitutionality of A.R.S. § 16-103(E) Presents an Actual and Justiciable Controversy, and the Plaintiffs Have Adequately Alleged Vote Dilution and Competitive Harms That Are Traceable to It**

Before parsing the Defendants’ specific arguments, two preliminary principles should undergird the entirety of the Court’s standing analysis. First, when (as here), multiple plaintiffs seek the same non-monetary relief, the existence of one plaintiff’s standing obviates the issue as to the remaining plaintiffs. *See City of Tucson v. Pima Cnty.*, 199 Ariz. 509, 514 ¶ 14 (App. 2001) (“[E]ven if Pima County and Tortolita lack standing, there remain parties with unequivocal standing who offer the same arguments.”); *Melendres v. Arpaio*, 695 F.3d 990, 999 (9th Cir. 2012) (“The general rule . . . is that once the court determines that one of the plaintiffs has standing, it need not decide the standing of the others.”). Second, courts “look[] to whether the petitioner plausibly *alleged*” a basis for standing; “defendants cannot defeat standing merely by assuming they will ultimately win.” *Brewer v. Burns*, 222 Ariz. 234, 238 ¶ 14 (2009). Thus, the operative question for standing purposes is whether, *if* A.R.S. § 16-103(E) is unconstitutional, the Complaint has adequately alleged that at least one Plaintiff has a cognizable legal interest in, or will sustain an injury that is fairly traceable to, the statute.

A. **Political Party Organizations Have a Concrete and Definite Interest in the Constitutionality of Statutes Governing the Electoral Process**

Although the Court would not know it from reading the Defendants’ Motion, the Court of Appeals has recognized—in a case featuring one of these Plaintiffs and one of these Defendants—that political parties’ singular interest in the lawful administration of elections is sufficient to confer standing under the Declaratory Judgments Act, A.R.S. § 12-1831, *et seq.* (“DJA”). *See Republican Nat’l. Comm. v. Fontes*, 566 P.3d 984, 989–90, ¶¶ 13–15 (App. 2025). There, the RNC had challenged the validity of the Elections Procedures Manual promulgated by the Secretary pursuant to A.R.S. § 16-452. Citing the

1 RNC’s well-pleaded allegations that it had a direct interest “in the administration and
2 procedural integrity of Arizona elections” that would be “necessarily affected” by
3 allegedly unlawful regulations, the court agreed that the RNC met “the test for standing
4 because an actual controversy exists between parties who are sufficiently interested here.”
5 *Id.* at 990 ¶ 14.¹

6 RNC’s holding engrafts with nearly perfect congruity onto the Complaint in this
7 case. Here, as in *RNC*, the RNC and RPAZ expressly alleged that each entity “sponsors
8 and conducts voter registration drives, expends significant resources supporting
9 Republican candidates in Arizona, and has an interest in the administration of elections
10 and the competitive environment affecting Republican candidates in Arizona.” Compl. ¶¶
11 8–9. The Court must, of course, accept these averments as true for purposes of deciding
12 the Defendants’ Motion. *See generally Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417,
13 419 ¶ 7 (2008). But they evince the undeniable and intuitively obvious reality that
14 political party organizations are the engine of electoral politics; they register voters,
15 incubate candidates, frame the issues, and engage substantively and integrally with the
16 regulatory structures through which votes are cast and elections are decided. If they are
17 not “necessarily affected by the administration of procedures that govern every stage of
18 the electoral process,” *RNC*, 566 P.3d at 990 ¶ 15, then who is?

19 Even if *RNC* were not controlling, the RPAZ and RNC have plausibly alleged a
20 real interest in an actual controversy, which is all that is needed for standing under the
21 DJA. The DJA provides that “[a]ny person . . . whose rights, status or other legal relations
22 are affected by a statute . . . may have determined any question of construction or validity
23 arising under the . . . statute.” A.R.S. § 12-1832. This jurisdictional grant “is to be
24 liberally construed and administered.” *Id.* § 12-1842. Importantly, “actual injury is not
25 required” to obtain declaratory relief. *Ariz. Creditors Bar Ass’n. v. State*, 257 Ariz. 406,
26

27
28 ¹ Although the RNC had brought its claim under the Arizona Administrative Procedures Act, the court also independently found standing under the DJA.

1 410 ¶ 12 (App. 2024) (citing *Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415
2 (2022)). Rather, there need only be [1] “‘an actual controversy ripe for adjudication’ and
3 [2] ‘parties with a real interest in the questions to be resolved.’” *Ariz. Creditors*, 549 P.3d
4 at 209 ¶ 12 (citation omitted); *see also Café Valley, Inc. v. Navidi*, 235 Ariz. 252, 255, ¶
5 10 (App. 2014) (DJA standing exists when a complaint pleads “sufficient facts to establish
6 that there is a justiciable controversy, i.e., one that ‘arises where adverse claims are
7 asserted upon present existing facts, which have ripened for judicial determination.’”).
8 Each prerequisite is satisfied here.

9 First, there is an “actual,” concrete, and ongoing controversy concerning A.R.S. §
10 16-103(E)’s validity. The statute’s implementation is in no sense contingent or
11 conjectural. Individuals whom the Plaintiffs allege are constitutionally ineligible have
12 been, and continue to be, voting in Arizona elections under A.R.S. § 16-103(E)’s
13 auspices. *See* Compl. ¶¶ 27–31; *contrast Ariz. Creditors*, 257 Ariz. at 412 ¶ 20 (finding
14 no declaratory judgment standing with respect to purely “hypothetical” applications of a
15 statute); *Mills*, 253 Ariz. at 424 ¶ 25 (declaratory judgment standing is lacking when the
16 claim is “dependent upon future events and contingencies within control of the plaintiff”
17 (citation omitted)). At least as framed in the Plaintiffs’ Complaint, no aspect of A.R.S. §
18 16-103(E) application or enforcement is abstract or speculative. The Plaintiffs’ dispute
19 with the Defendants concerning the statute’s constitutionality accordingly “is an actual
20 one based on presently existing facts.” *Mills*, 253 Ariz. at 425 ¶ 30.

21 Second, the RNC and RPAZ’s voter registration activities and integral
22 intertwinement with Arizona’s electoral structures engender a real and concrete interest in
23 A.R.S. § 16-103(E)’s validity. As discussed above, *RNC*’s holding that the RNC (and, by
24 implication, other political party entities) “are necessarily affected by the administration
25 of procedures that govern every stage of the electoral process,” 566 P.3d at 990 ¶ 15,
26 disposes of the Defendants’ standing argument. But more broadly, the Arizona Supreme
27 Court has held that voters have a “beneficial interest” in ensuring that county recorders’
28

1 election administration practices conform to controlling laws. *See Ariz. Pub. Integrity All.*
2 *v. Fontes*, 250 Ariz. 58, 62, ¶ 12 (2020). A stake sufficient to qualify as a “beneficial
3 interest” definitionally constitutes a “real interest” under the DJA’s “liberal[,]” A.R.S. §
4 12-1842, framework. In the same vein, the Supreme Court similarly found that “a trade
5 association with members living and working in Pima County” had standing under the
6 DJA to challenge a state statute that preempted local mask mandates that Pima County
7 might otherwise have enacted. *See Ariz. Sch. Bds. Ass’n. v. State*, 252 Ariz. 219, 225 ¶ 20
8 (2022); *see also Pena v. Fullinwider*, 124 Ariz. 42, 44 (1979) (“Appellants as consumers
9 are ‘affected’ by the amendment [which related to labeling standards] because cost-per-
10 unit pricing information is designed to allow them to compare the costs of different
11 commodities. They have an actual or real interest in the matter for determination.”).

12 The reasoning of these cases extinguishes the Defendants’ standing objection. If a
13 given county employee (and her trade union) has a cognizable legal interest in the county
14 government’s possible adoption of an as-yet nonexistent ordinance, and any consumer can
15 challenge the contents of a product label, then a political party organization surely has at
16 least an equally palpable stake in the constitutionality of a statute that directly governs the
17 qualification of the voters who will elect or defeat that party’s candidates. *See also Yes on*
18 *Prop. 200 v. Napolitano*, 215 Ariz. 458, 470 ¶ 39 (App. 2007) (holding that political
19 committee and residents’ complaint challenging the implementation of a statewide ballot
20 measure “set forth sufficient facts to establish a real dispute based upon an actual
21 controversy between the Plaintiffs and the Governor”).

22 In sum, the Complaint alleges an extant and ongoing controversy concerning the
23 constitutionality of a voter registration law and is brought by Plaintiffs that “are
24 necessarily affected by the administration of procedures that govern every stage of the
25 electoral process.” *RNC*, 566 P.3d at 990 ¶ 15. The Court accordingly can and should
26 reach the merits, and any alleged “lack of actual injury [does] not doom [the Plaintiffs’]
27 standing.” *Ariz. Creditors*, 257 Ariz. at 411 ¶ 15; *see also City of Surprise v. Ariz. Corp.*
28

1 *Comm'n.*, 246 Ariz. 206, 210 ¶ 9 (2019) (noting that the DJA is “‘the simplest and best
2 way’ of resolving conflicting claims regarding statutory and constitutional authority of
3 public officials.” (quoting *Merrill v. Phelps*, 52 Ariz. 526, 529 (1938))).

4 **B. The Complaint Adequately Pleads Vote Dilution and Competitive**
5 **Injuries**

6 “[S]tanding is not jurisdictional, but is instead a prudential doctrine” in Arizona
7 courts. *Dobson v. State ex rel. Comm’n on Appellate Court Appointments*, 233 Ariz. 119,
8 122 ¶ 9 (2013).² Nevertheless, in alleging that A.R.S. § 16-103(E) enables the casting of
9 unlawful votes by a discrete and identifiable subpopulation that skews non-Republican,
10 the Plaintiffs have delineated actionable vote dilution and competitive harms.

11 1. Vote Dilution

12 The participation of constitutionally ineligible individuals in Arizona elections
13 necessarily diminishes the voting power of qualified electors, such as Plaintiff Swoboda.
14 This harm—which is definite and concrete because it derives directly from an actual and
15 quantifiable number of currently registered voters—easily sustains standing.

16 The Arizona Constitution secures for qualified individuals not simply the ability to
17 cast a ballot, but to do so in elections that are “free and equal.” Ariz. Const. art. II, § 21.
18 This guarantee embodies a fundamental right that is vested in, and personal to, every
19 eligible citizen. *See Chavez v. Brewer*, 222 Ariz. 309, 408 ¶ 36 (App. 2009); *Mayor and*
20 *Council of City of Tucson v. Royal*, 20 Ariz. App. 83, 87 (App. 1973) (“It is without cavil
21 that the right to vote is a constitutionally protected right.”). An inevitable corollary is that,
22 if a qualified elector’s vote is effectively nullified or diminished by the casting of
23 unlawful ballots in the same election, that individual has sustained a redressable injury.

24 *Hall v. District of Columbia Board of Elections*, 141 F.4th 200 (2025), is
25

26 ² The Attorney General disagreement with the Supreme Court on this point, *see* Mot. at
27 n.4, does not detract from the binding character of its controlling precedents. *State v.*
28 *Davis*, 108 Ariz. 75, 76 (1972) (“The trial court may not overrule or review a decision of
this Court.”).

1 compelling both for its factual similarities and the cogency of its analysis.³ There, several
2 District of Columbia residents challenged a local ordinance that would have allowed
3 allegedly ineligible individuals (to wit, non-citizens) to vote in District elections.
4 Reversing the trial court’s dismissal for lack of standing, the D.C. Circuit recognized that,
5 “[l]ogically and mathematically,” the plaintiffs had alleged a colorable dilution claim
6 because “granting the franchise to noncitizens will expand the . . . electorate and reduce
7 the voting power of each U.S. citizen voter in local elections.” *Id.* at 206. That reasoning
8 transposes exactly to this case. The Complaint alleges that A.R.S. § 16-103(E)
9 unconstitutionally augments the Arizona electorate by permitting the registration of
10 individuals who have never resided here. *See* Compl. ¶¶ 36, 43. That insertion of
11 ineligible voters into the electorate, by definition, correspondingly diminishes the voting
12 power of qualified electors. Straining to deflect from *Hall*’s persuasive force, the
13 Defendants conjoin a misunderstanding of standing doctrine with inapt analogies to
14 dissimilar claims.

15 First, they argue that because any introduction of illegal votes “equally affects all
16 voters in [the] state,” the Plaintiffs posit only “generalized grievances.” Mot. at 10. But
17 this reasoning wanders into the fallacy of confusing “concreteness” with “numerosity.”
18 *Hall*, 141 F.4th at 207. “Often the fact that an interest is abstract and the fact that it is
19 widely shared go hand in hand. But their association is not invariable, and where a harm
20 is concrete, though widely shared, the [Supreme] Court has found ‘injury in fact,’”
21 including in voting rights contexts implicating “large numbers of voters.” *Fed. Election*
22 *Comm’n v. Akins*, 524 U.S. 11, 24 (1998). The notion that an “injury” is denoted by its
23 confinement to only a discrete population subset not only is definitionally inconsistent
24

25 ³ The Defendants puzzlingly complain that the Plaintiffs have cited “no authority with
26 precedential effect in this Court” in support of their vote dilution claim. Mot. at 8. But
27 neither have the Defendants, who rely on a smattering of federal cases. Excepting U.S.
28 Supreme Court holdings on questions of federal law, federal court decisions from any
jurisdiction carry such weight as an Arizona court chooses to ascribe to them. The Ninth
Circuit enjoys no special solicitude. *See Skydive Ariz., Inc. v. Hogue*, 238 Ariz. 357, 365
¶ 29 (App. 2015).

1 with the concept of harm, but carries the perverse implication that “the most injurious and
2 widespread Government actions could be questioned by nobody.” *United States v.*
3 *Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 688 (1973); *see also*
4 *Hall*, 141 F.4th at 207 (repudiating the idea that a “government action [is] unreviewable as
5 long as it disadvantages everyone equally”).

6 In this vein, the Supreme Court’s decision in *Gill v. Whitford*, 585 U.S. 48 (2018),
7 discredits, rather than buttresses, the Defendants’ theory of standing in vote dilution cases.
8 There, the Supreme Court held that any voter who resides in an allegedly gerrymandered
9 district has standing to challenge the constitutionality of his district’s boundaries. *See id.*
10 at 66–67. That conclusion is irreconcilable with the Defendants’ apparent position that a
11 plaintiff must allege a diminution in his voting power relative to other electors in the
12 jurisdiction. Each voter in a gerrymandered district retains a vote that is equally weighted.
13 The dilution derives not from the plaintiff’s position relative to *other voters* within the
14 jurisdiction, but rather the adverse effect on his voting power relative to “another,
15 hypothetical district” that was not gerrymandered. *Id.* at 67.

16 The Plaintiffs’ vote dilution claim in this case conforms to *Gill*’s analytical
17 framework. The Complaint alleges that Plaintiff Swoboda is registered to vote in
18 Maricopa County, Arizona, and that A.R.S. § 16-103(E)’s inclusion of ineligible
19 individuals in the universe of registered voters dilutes her vote relative to an alternative
20 electorate comprised only of constitutionally qualified voters. *See* Compl. ¶¶ 10, 36. That
21 other voters in the same jurisdiction possess an identical claim does not obviate the
22 concreteness of the harm.⁴

23
24 Second, the Defendants construct their argument on cases that diverge from this

25
26 ⁴ By contrast, a voter outside Arizona would not have standing to challenge A.R.S. § 16-
27 103(E) merely because electoral outcomes in this state influence the composition of
28 Congress or the election of the President. *See Gill*, 585 U.S. at 68 (voters outside the
allegedly gerrymandered districts lacked a sufficiently concrete interest “in their
collective representation in the legislature,” and in influencing the legislature’s overall
‘composition’ and ‘policymaking.’”).

1 dispute in a dispositive respect: Plaintiff Swoboda’s alleged vote dilution harm is fairly
2 traceable to existing and known illegal registrations; it entails no speculation or surmise.
3 Defendants strain to forge an analogy to *Mussi v. Hobbs*, 2024 WL 4988589 (D. Ariz.
4 Dec. 5, 2024), where the court dismissed on standing grounds claims that the Secretary
5 had failed to perform statutorily mandated maintenance of voter lists. But the court’s
6 holding (which the court itself described as a “debatable call”) pivoted on its finding that
7 the plaintiffs’ allegation that ineligible registrants were voting in Arizona elections was
8 fundamentally “speculative.” *Id.* at *3, *5; *see also Lake v. Hobbs*, 623 F. Supp. 3d 1015,
9 1027–28 (D. Ariz. 2022) (the hypothetical possibility that electronic tabulators might be
10 hacked or manipulated was “too speculative to establish standing”).

11 There is nothing conjectural or contingent about the claim here. The Complaint
12 expressly alleges, and the Defendants (even setting aside the strictures of Rule 12(b))
13 cannot deny, that there are currently on the voter rolls actual non-residents who have
14 registered pursuant to A.R.S. § 16-103(E). In fact, the Federal Post Card Application
15 (“FPCA”) and the Federal Write-In Absentee Ballot (“FWAB”) contain fields for such
16 individuals to expressly represent that they have never resided in Arizona. *See* Compl. ¶¶
17 15, 17. And because registering via a properly completed FPCA or FWAB automatically
18 results in the issuance of a ballot, *see id.* ¶ 15—indeed, the FWAB is itself a ballot, *see*
19 A.R.S. § 16-543.02(D)—these unlawful registrations correspond to actual, quantifiable
20 votes cast in Arizona elections.

21 In sum, standing to bring a vote dilution claim “turns on whether a plaintiff voter
22 has suffered an individualized loss of electoral influence.” *Hall*, 141 F.4th at 207. Here,
23 A.R.S. § 16-103(E) has resulted in the registration of, and issuance of ballots to, specific
24 and identifiable individuals who have never resided in Arizona. This insertion of
25 constitutionally defective votes into the Arizona electorate necessarily dilutes, on a one-
26 for-one basis, the efficacy of lawful ballots cast by qualified electors, such as Plaintiff
27 Swoboda. “That all voters in the state[] suffer this injury . . . does not make it an
28

1 ‘abstract’ one.” *Michel v. Anderson*, 14 F.3d 623, 626 (D.C. Cir. 1994). And because it is
2 attributable to actual registrations, no speculation or supposition is needed to actualize this
3 dilutive harm.

4 2. Competitive Injury

5 By impermissibly enabling the registration of a subset that is overwhelmingly non-
6 Republican in its political orientation, A.R.S. § 16-103(E) distorts the competitive
7 landscape in a manner that disadvantages the RNC, RPAZ, and, by extension, Republican
8 candidates in Arizona. “[T]he ‘potential loss of an election’” is a cognizable legal injury,
9 and thus “may give rise to standing.” *Mecinas v. Hobbs*, 30 F.4th 890, 899 (9th Cir.
10 2022) (citation omitted)). That proposition is the premise of competitive standing. When
11 a political party or candidate’s electoral prospects are diminished because of a state
12 statute, regulation, or practice that is alleged to be unlawful, the adversely affected party
13 or candidate may seek judicial recourse “from being forced to participate in an ‘illegally
14 structured competitive environment.’” *Id.* at 898 (quoting *Shays v. Fed. Election*
15 *Comm’n*, 414 F.3d 76, 87 (D.C. Cir. 2005)).

16 The Complaint adequately states a competitive injury. Non-residents who
17 registered under A.R.S. § 16-103(E) are, for purposes of the voter registration rolls,
18 (inaccurately) classified as a subset of so-called “UOCAVA voters,” in reference to the
19 federal Uniformed and Overseas Absentee Voting Act, 52 U.S.C. § 20301, which governs
20 registration and voting for military personnel and their families, and certain Americans
21 living abroad.⁵ 34.4% of all Maricopa County voters are Republicans and 27.9% are
22 Democrats. But among Maricopa’s UOCAVA registrants, Democrats overwhelm
23 Republicans by a 45.2% to 23.8% margin. Compl. ¶¶ 27–29. The subgroup of “never
24 residents” is at least as non-Republican in its composition. *Id.* ¶ 31. A.R.S. § 16-103(E)
25 thus skews the composition of the electorate to the detriment of the Republican Party.
26

27 ⁵ This classification of “never resident” voters is actually a misnomer. UOCAVA does
28 *not* require any State to extend the franchise to individuals who have never resided within
its borders. *See infra* Section III.

1 Neither of the Defendants’ counterarguments persuade. First, they contend that
2 A.R.S. § 16-103(E) does not exert a “state-imposed disadvantage” because it is neutral on
3 its face with respect to the registrants’ party affiliations. *See* Mot. at 6. But the facial
4 neutrality or (non)-partisan valence of the challenged law is not determinative, or even
5 especially relevant, to its capacity to induce competitive harm. *Shays* illustrates the point
6 well. There, two congressional candidates challenged certain regulations of the Federal
7 Election Commission’s (“FEC”), which they alleged failed to adequately implement and
8 enforce statutory campaign finance restrictions. The candidates argued that the FEC’s
9 approach enabled their opponents to take advantage of campaign funding practices that
10 the candidates posited were unlawful. *See* 414 F.3d at 83–84. Echoing the Defendants’
11 position here, the FEC countered that since “the rules grant [the plaintiffs] the same legal
12 options as their opponents, any disadvantage they suffer stems not from those rules, but
13 from their own choice not to exploit them.” *Id.* at 84. The court found standing. While
14 acknowledging that the plaintiffs’ rivals were not afforded nonmutual “special benefits”
15 under the challenged regulations, it reasoned that the plaintiffs incurred an injury in the
16 form of “*intensified* competition,” adding that they “must anticipate and respond to a
17 broader range of competitive tactics than [the] law would otherwise allow.” *Id.* at 86.
18 Likewise, the point here is not that A.R.S. § 16-103(E) is innately anti-Republican in
19 design, but rather that its practical operation has resulted in an (unconstitutional)
20 distortion of the electoral playing field to Republican Party organizations’ disadvantage.
21 That is enough to denote a competitive injury.

22 Second, Defendants assert that the Plaintiffs have not demonstrated sufficient
23 “causation” between A.R.S. § 16-103(E) and political outcomes. *See* Mot. at 7–8. But
24 the Ninth Circuit expressly “reject[ed]” the notion that plaintiffs must allege that the
25 challenged law or regulation “has changed (or imminently will change) the actual
26 outcome of a partisan election.” *Mecinas*, 30 F.4th at 899; *see also League of United*
27 *Latin Am. Citizens v. Executive Office of the President*, CV 25-0946 (CKK), 2025 WL
28

1 1187730, at *34 (D.D.C. Apr. 24, 2025) (finding that Democrat committees and
2 candidates had competitive standing to challenge executive order requiring documentary
3 proof of citizenship for voting in federal elections, explaining that a plaintiff “proceeding
4 under a theory of ‘illegally structured’ political competition ‘has no obligation to
5 demonstrate definitively that he has less chance of victory’ under the challenged rules
6 than he would under some alternative scheme” (citation omitted)). Plaintiffs need not
7 show differentials in vote counts or election results attributable to A.R.S. § 16-103(E).

8 **II. Individuals Who Register Under A.R.S. § 16-103(E) Are Constitutionally**
9 **Ineligible Because They Have Not Established Arizona Residency for Any**
10 **Period of Time**

11 **A. Article VII, § 2(A) Imposes a *Bona Fide* Residency Requirement**

12 “No person shall be entitled to vote” in any Arizona election, “unless such person .
13 . . shall have resided in the state for the period of time preceding such election as
14 prescribed by law.” Ariz. Const. art. VII, § 2(A). In other words, to register to vote, an
15 individual must “have resided in the state,” although the Legislature may in its discretion
16 determine the precise length of the requisite residency.

17 This bifurcation—constitutionalizing a residency requirement but permitting the
18 Legislature to decide its duration—makes historical and doctrinal sense. The Supreme
19 Court has “emphasize[d]” the foundational “difference between bona fide residence
20 requirements and durational residence requirements.” *Dunn v. Blumstein*, 405 U.S. 330,
21 343 (1972). The former are mandates that an aspiring voter must—at some point in
22 time—have established a home in the jurisdiction. These *bona fide* residency
23 prerequisites are “necessary to preserve the basic conception of a political community.”
24 *Id.* at 343–44. In contrast, durational residency requirements—*i.e.*, mandates that an
25 individual must not only have established residency but maintained it for a specific
26 interval of time—“represent[] a separate voting qualification imposed on bona fide
27 residents” that, if excessive, can pose federal constitutional concerns. *Id.* at 344.
28

1 Eliding this integral distinction, the Defendants instead declare that Article VII,
2 Section 2(A) represents a wholesale abdication to the Legislature not only to define
3 “residency,” but to absolve certain individuals from their obligation to actually obtain it
4 before registering to vote. Textual, structural, and historical interpretive guideposts,
5 however, uniformly refute this position.

6 “When called upon to interpret a constitutional provision, we first examine the
7 provision’s plain language; if that language is unambiguous, we generally must follow the
8 text as written.” *Tumacacori Mission Land Dev., Ltd. v. Union Pacific R. Co.*, 228 Ariz.
9 100, 102 ¶ 6 (App. 2011). The operative clause provides that registrant must “have
10 resided in the state for the period of time” set by the Legislature. The linguistically and
11 logically obvious meaning of that phrase is that an individual must “have resided” in
12 Arizona before she can register to vote here, although the Legislature can decide for how
13 long she must do so. Further, courts “do not interpret the constitution as to render
14 portions of it superfluous.” *Fann v. State*, 251 Ariz. 425, 435 ¶ 28 (2021). The Arizona
15 Legislature intrinsically “has all power not expressly prohibited or granted to another
16 branch of government.” *State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 342 ¶ 5 (1999)
17 (citation omitted). If the Framers had intended to devolve to the Legislature the question
18 of whether *any* residency prerequisite should attach to voter registration at all, they would
19 have done so by simply remaining silent on the question.

20 Article VII’s structure also belies the Defendants’ position. *See generally Burns v.*
21 *Ariz. Pub. Serv. Co.*, 254 Ariz. 24, 30 ¶ 23 (2022) (courts read a constitutional provision
22 “in its broader context”). Section 3 provides that “[f]or the purposes of voting, no person
23 shall be deemed to have gained or lost a residence” for certain temporary absences. And
24 Section 6 withholds residency status for servicemembers simply because they are
25 stationed here. If Article VII, Section 2(A) actually were disclaiming any constitutional
26 residency requirement, these clauses would serve little purpose. Construing them instead
27 as enumerated exceptions to the general rule that all voters must “have resided” in this
28

1 State before they can register imparts symmetry and coherence to Article VII as a whole.

2 Finally, Article VII, Section 2(A)'s historical evolution confirms that it preserves a
3 *bona fide* residency requirement while leaving the question of duration to the Legislature.
4 The original incarnation of the clause, as adopted in 1912, provided that a registrant "shall
5 have resided in the state for one year immediately preceding such election." By the
6 1970's, however, the Supreme Court had concluded that while *bona fide* residency
7 requirements generally "withstand close constitutional scrutiny," durational residency
8 mandates are suspect under the Fourteenth Amendment. *Dunn*, 405 U.S. at 344.
9 Declining to adopt any bright-line temporal benchmark, the court held only that durational
10 residency requirements may be no longer than necessary to ensure "orderly, accurate, and
11 efficient" election administration, adding that "a 50-day registration period approaches the
12 outer constitutional limit." *Burns v. Fortson*, 410 U.S. 686, 686–87 (1973). In response
13 to these rulings, most States (including Arizona) coalesced around policies that required
14 new voters to have resided in the jurisdiction for at least approximately 30 days prior to
15 the election. See A.R.S. § 16-120(A) (imposing general 29-day durational residency
16 requirement). The upshot is that Article VII, § 2(A)'s original one-year residency
17 criterion was, by the late twentieth century, contrary to the U.S. Constitution.

18 The current version of Article VII, § 2(A) was proposed to the electorate in the
19 2000 general election by the Legislature as one component of a constitutional amendment
20 that, according to its title, related to "constitutional textual terminology." See House
21 Concurrent Resolution 2004, Forty-Fourth Arizona Legislature, Second Regular Session,
22 available at <https://www.azleg.gov/legtext/44leg/2r/laws/hcr2004.htm>. The remaining
23 provisions of the amendment confirmed that the minimum voting age is eighteen (rather
24 than twenty-one), removed gendered pronouns, and modified language describing certain
25 disabilities. As succinctly summarized in its official Fact Sheet, HCR 2004 was intended
26 only to correct "obsolete language" and conform the state constitution to federal
27 constitutional commands. See Fact Sheet, HCR 2004 (2000), available at
28

1 <https://tinyurl.com/43r8sp6f>.

2 In other words, HCR 2004 did not abolish the Arizona Constitution’s residency
3 requirement for voting. Indeed, if that had been the intent, the obvious drafting tact would
4 have been to simply strike the relevant clause entirely. Rather, the amendment was aimed
5 only at aligning Article VII, § 2 with the U.S. Supreme Court’s directives that *bona fide*
6 residency requirements remain permissible, but that durational residency rules must be
7 carefully tailored to practical election administration exigencies—a task that the
8 Legislature is best suited to perform.

9 **B. Individuals Who Have “Never Resided” in Arizona Are Not**
10 **“Residents” Within the Meaning of Article VII, § 2**

11 The Defendants also appear to contend that those registered under A.R.S. § 16-
12 103(E) are, in fact, “residents” under Article VII, § 2(A) because the Legislature has
13 defined them as such. *See* Mot. at 14 (arguing that “residence can be acquired through a
14 parent who is registered to vote in Arizona”). Two flaws afflict that theory.

15 First, it presents an interpretive oxymoron. A.R.S. § 16-103(E) by its terms
16 encompasses only individuals who have “never resided in the United States.” Even if one
17 might conceptualize some theoretical dichotomy whereby a person has “never resided” in
18 Arizona for purposes of A.R.S. § 16-103(E) and yet is a “resident” of Arizona within the
19 meaning of Article VII, § 2(A), that curious (if not incoherent) proposition is untethered
20 from any Arizona law or precedent.

21 Second, it artificially augments the Legislature’s limited grant of authority under
22 Article VII, § 2(A). The constitutional provision merely permits the Legislature to
23 “prescribe[.]” the “period of time” in which an individual must reside in Arizona before
24 she can register to vote. It does not empower the Legislature to define “residency” as a
25 *constitutional* construct—let alone define it in such a manner that someone who has
26 “never resided” in Arizona, A.R.S. § 16-103(E), is nevertheless a “resident.” The term
27 “reside,” as used in Article VII, § 2(A), is imbued with an independent and static meaning
28

1 that the judiciary alone can discern. *See generally Forty-Seventh Legislature of State v.*
2 *Napolitano*, 213 Ariz. 482, 485 ¶ 8 (2006) (“[O]ur courts bear ultimate responsibility for
3 interpreting [the Constitution]’s provisions.”).

4 To this end, Arizona courts always have understood “residency” (or “domicile”) to
5 mean the confluence of “physical presence” and “intent to . . . remain here for an
6 indefinite period of time.” *DeWitt v. McFarland*, 112 Ariz. 33, 34 (1975) (cleaned-up).
7 The undersigned’s research has located no Arizona authority ratifying residency for an
8 individual who has never set foot in this State.

9 The Defendants invoke the *Restatement* for their argument that “a person’s
10 domicile of origin is acquired at birth and is the domicile of one of his parents.” Mot. at
11 14 (citing RESTATEMENT 2D CONFLICT OF LAWS § 18 (1971)).⁶ As an initial matter, the
12 *Restatement* provision is aimed at resolving disputes over a child’s domicile at the time of
13 his birth when the parents reside in different locations and/or the child’s legitimacy is in
14 question. Whatever rule it embodies is logically and temporally disconnected from A.R.S.
15 § 16-103(E), which applies to *adults* with a parent who resides in Arizona *at the time of*
16 *that adult voter’s registration*—regardless of whether the parent resided in Arizona at the
17 time of the registrant’s birth.⁷ More fundamentally, Defendants cannot muster any
18 Arizona case or other authority that has conferred residency status on an individual who
19 never established a physical presence in this State.

20 Further, while the *Restatement* is a useful tool for resolving residency questions in
21 common law and perhaps statutory contexts, its value in constitutional construction is far
22 more dubious. “When interpreting the Arizona Constitution, we ‘give terms the original
23 public meaning understood by those who used and approved them.’” *EFG Am., LLC v.*
24 *Ariz. Corp. Comm’n*, 569 P.3d 806, 809 ¶ 11 (App. 2025) (quoting *Matthews v. Indus.*

26 _____
27 ⁶ It appears that the Defendants intended to cite § 14.

28 ⁷ Indeed, if the voter’s parent was herself registered under UOCAVA, neither voter would
reside in Arizona, thus belying the Defendants’ reliance on notions of inherited residency.

1 *Comm’n. of Ariz.*, 254 Ariz. 157 (2022)). Absent any indication that the *Restatement’s*
 2 recommendations informed the drafters and ratifiers of Article VII, § 2(A)—and the
 3 Defendants offer none—it is unclear whether or why a court would draw on that treatise
 4 to distill the meaning of “residency” as a constitutional term. In short, an individual who
 5 has “never resided in the United States,” A.R.S. § 16-103(E), necessarily has never
 6 “reside[d]” in Arizona for purposes of qualifying as an eligible registrant under Article
 7 VII, § 2(A). The statute accordingly conflicts irremediably with the Constitution.

8 **III. UOCAVA Does Not Require States to Allow Individuals Who Have Never**
 9 **Resided There to Vote**

10 In a puzzling paragraph that appears to be an ambiguous admixture of legal and
 11 policy arguments, the Defendants urge the Court “not [to] read the Arizona Constitution to
 12 deprive U.S. citizens of their right to vote, as protected by UOCAVA.” Mot. at 17. First,
 13 this statement partakes of a certain circularity; whether and—more importantly—*where*
 14 this subset of registrants has a “right to vote” is the precise question now in dispute. More
 15 fundamentally (and as the Defendants’ decision not to raise a preemption defense tacitly
 16 acknowledges), UOCAVA never mandated A.R.S. § 16-103(E)’s adoption. UOCAVA
 17 secures a right to vote in federal elections for three classes of citizens: (1) a military
 18 service member who “is absent from the place of residence where the member is
 19 otherwise qualified to vote”; (2) a person who is overseas but “is qualified to vote in the
 20 last place in which the person was domiciled before leaving the United States” and (3) “a
 21 person who resides outside the United States and (but for such residence) would be
 22 qualified to vote in the last place in which the person was domiciled before leaving the
 23 United States.” 52 U.S.C. §§ 20310(1), (5). It does not enshrine a “right to vote” for any
 24 individual who has never resided in Arizona. And it certainly does not compel Arizona to
 25 allow individuals who have never lived in this State to decide who governs it.

26
 27 **CONCLUSION**

28 For the foregoing reasons, the Court should deny the Motion to Dismiss.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 25th day of August, 2025.

STATECRAFT PLLC

By: /s/Thomas Basile

Kory Langhofer

Thomas Basile

649 North Fourth Avenue, First Floor

Phoenix, Arizona 85003

Attorneys for the Plaintiffs



1 **ORIGINAL** of the foregoing filed electronically via TurboCourt on the 25th day of
2 August, 2025 with:

3 MARICOPA COUNTY SUPERIOR COURT
4 201 West Jefferson Street
5 Phoenix, Arizona 85003

6 **COPY** served electronically this same date on:

7 Hayleigh S. Crawford
8 Syreeta A. Tyrell
9 Alexa G. Salas
10 **OFFICE OF THE ATTORNEY GENERAL**
11 2005 North Central Avenue
12 Phoenix, Arizona 85004-1692
13 Hayleigh.Crawford@azag.gov
14 Syreeta.Tyrell@azag.gov
15 Alexa.Salas@azag.gov
16 ACL@azag.gov
17 *Attorneys for Defendant State of Arizona*

18 Karen J. Hartman-Tellez
19 Kara Karlson
20 Kyle Cummings
21 **OFFICE OF THE ATTORNEY GENERAL**
22 2005 North Central Avenue
23 Phoenix, Arizona 85004-1692
24 Karen.Hartman@azag.gov
25 Kara.Karlson@azag.gov
26 Kyle.Cummings@azag.gov
27 *Attorneys for Defendant Adrian Fontes*

28 */s/ Daxon Ernyei*

Daxon Ernyei