



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

Counsel for Plaintiffs

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

REPUBLICAN PARTY OF ARIZONA,
LLC, *et al.*,

Plaintiffs,

v.

STATE OF ARIZONA, *et al.*,

Defendants.

No. CV2025-022859

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

(Assigned to the Hon. Michael Herrod)

1 Plaintiffs Republican Party of Arizona (“RPAZ”), Republican National Committee
2 (“RNC”), and Gina Swoboda respectfully submit this response in opposition to Defendants
3 State of Arizona and Secretary of State Adrian Fontes’ Motion for Summary Judgment.

4 INTRODUCTION

5 It is undisputed that A.R.S. § 16-103(E)—which extends the franchise to individuals
6 who have “never resided in the United States” if their parent is registered to vote in
7 Arizona—is an active, extant law. It is inarguable that approximately 400 identifiable
8 individuals are registering and voting in Arizona elections under the statute’s auspices. And
9 it is undeniable that these voters’ inclusion on the rolls is skewing the electorate in a manner
10 that is, in absolute and relative terms, detrimental to the competitive interests of the
11 Republican Party and its candidates. Resisting these realities, the Defendants insist not only
12 that A.R.S. § 16-103(E) exacts no cognizable injury on the Plaintiffs, but also that the
13 Plaintiffs are not even “affected by A.R.S. § 16-103(E).” Def. Mot. at 7. These anemic
14 rationalizations, though, are as discordant with common sense as they are detached from
15 the case law.

16 Participants in elections “have a concrete and particularized interest in the rules that
17 govern the counting of votes in their elections, regardless of whether those rules harm their
18 electoral prospects or increase the cost of their campaigns.” *Bost v. Ill. State Bd. of*
19 *Elections*, 607 U.S. 71, 82 (2026). And even the pre-*Bost* jurisprudence on competitor
20 standing recognized the injury that inheres in any distortion of the electoral playing field.
21 The artificial hurdles that Defendants seek to introduce as obstructions to the assertion of
22 competitor standing—namely, that the challenged law must be facially discriminatory,
23 directly “regulate[]” the plaintiff, or causally affect voting decisions—find no sustenance
24 in any applicable authority. Finally, even assuming *arguendo* that the Plaintiffs are not
25 “injured” by A.R.S. § 16-103(E), political party organizations’ electoral fortunes are
26 determined by a law that governs eligibility to vote in the elections in which they compete.
27 They thus certainly are “affected” by the statute’s operation—which is all that the Arizona
28

1 Declaratory Judgment Act, A.R.S. § 12-1831, *et seq.*, demands.

2 The Defendants' exertions to shield A.R.S. § 16-103(E) from judicial review are
3 understandable, if ultimately untenable. By permitting individuals who have "never
4 resided" in Arizona to vote in this State's elections, § 16-103(E) is conceptually and even
5 semantically irreconcilable with Article VII, § 2(A), which confines the right to vote to
6 those who "have resided in the state" for a statutorily determined duration. Defendants'
7 effort to salvage § 16-103(E) depends on conflating statutory concepts with constitutional
8 commands. Residence generally denotes a physical presence coincident with an intent to
9 remain. According to the Defendants, the Legislature can unilaterally redefine "residence"
10 *as a constitutional term* to excise either or both elements. But this capsizes the most basic
11 axioms of constitutional law. Article VII, § 2(A) embodies a freestanding and fixed *bona*
12 *fide* residency requirement; its meaning is static and superordinate to whatever statutory
13 definitions the Legislature might fashion. And when, as here, a statute exempts a voter
14 from the Constitution's *bona fide* residence mandate—either expressly or (according to the
15 gloss that Defendants place on § 16-103(E)) by some tortured tautology that equates non-
16 residency with residency—it is unconstitutional and unenforceable.

17 Finally, the Defendants' reliance on the distinction between facial and as-applied
18 challenges quickly dissipates on closer inspection. Even if the court could save a statute on
19 the strength of wandering hypotheticals, the theoretical example proffered by the
20 Defendants features individuals who would, under Defendants' assumptions, qualify as
21 "residents" of Arizona under traditional principles of residency law. Because these
22 individuals could register to vote irrespective of § 16-103(E)—which, by its terms, applies
23 only to those who "have never resided" in Arizona—the Defendants' thought experiments
24 cannot defeat the Plaintiffs' showing that A.R.S. § 16-103(E) is unconstitutional on its face.

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. **Plaintiffs Have Cognizable Interests In, and Are Competitively Injured By, A.R.S. § 16-103(E)**

Standing doctrine in Arizona is functionalist and pragmatic. Courts employ it not as a Procrustean jurisdictional bar, but rather as “a principle . . . of judicial restraint,” *In re Estate of Stewart*, 230 Ariz. 480, 483 ¶ 9 (App. 2012), to ensure that the judiciary is not conscripted to devise elusive remedies for a “wholly abstract and widely dispersed” social problem, *Bennett v. Napolitano*, 206 Ariz. 520, 526 ¶ 28 (2003), or “to adjudicate hypothetical or abstract questions,” *Mills v. Ariz. Bd. of Technical Registration*, 253 Ariz. 415, 423 ¶ 24 (2022). Standing doctrine is, in short, simply a crucible for testing whether a putative claim presents an actual controversy and not a request for a “mere advisory opinion[.]” *Williams v. Ariz. Dept. of Econ. Sec.*, -- Ariz. --, 2026 WL 2409127, at *2 ¶ 10 (Ariz. Aug. 18, 2026) (citation omitted). As long as a dispute presents extant legal “issues [that] will be fully developed by true adversaries,” then the “prudential” standing rubric is satisfied. *Armory Park Neighborhood Ass’n. v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz. 1, 6 (1985). For exactly that reason, the “liberally construed and administered” Declaratory Judgment Act, A.R.S. § 12-1842, dispenses with any prerequisite of an actual “injury.” It is sufficient that the plaintiff is actually affected by the challenged statute or regulation.

Juxtaposed against that jurisprudential background, Defendants’ insistence that the largest political party in Arizona lacks any cognizable interest in the laws governing eligibility to vote is simply implausible. And even if proof of an actual injury were required, the undisputed facts evince that the RPAZ and/or the RNC are continuing to incur a competitive harm that is traceable to A.R.S. § 16-103(E).

A. **Plaintiffs Are Directly and Tangibly Affected By A.R.S. § 16-103(E)**

Given that A.R.S. § 16-103(E) inarguably is adding disproportionately more Democrats and other non-Republican voters to the rolls and effectuating votes cast by these individuals, the RPAZ’s and RNC’s rights and interests are affected by it. The Declaratory

Judgment Act is “remedial,” A.R.S. § 12-1842, and charges courts with resolving questions of law “in any proceeding . . . in which a judgment or decree will terminate the controversy or remove an uncertainty,” *id.* § 12-1835; *see also Schwamm v. Superior Court in and for Pima Cnty.*, 4 Ariz. App. 480, 482 (1966) (explaining that “the manifest intent” of the Declaratory Judgment Act is “to open up avenues of relief rather than to close avenues previously established”). To that end, an “actual injury is not required” to obtain a declaratory judgment. *Ariz. Creditors Bar Ass’n, Inc. v. State*, 257 Ariz. 406, 411 ¶ 15 (App. 2024). All that is needed is “an actual controversy between interested parties.” *Id.* The Defendants acknowledge that the question of A.R.S. § 16-103(E)’s constitutionality presents “a valid legal controversy,” but maintain that none of the Plaintiffs has a sufficient interest in the statute’s enforceability. Def. Mot. at 5.

To the contrary, there is perhaps no party more “interested” in statutes that determine eligibility to participate in Arizona elections than the entities that compete for votes. This “interest” is at least as substantial and tangible as those that have sustained standing under the Declaratory Judgment Act in prior cases. *See, e.g., Ariz. Sch. Bds. Ass’n, Inc.* (“ASBA”) *v. State*, 252 Ariz. 219, 225 ¶ 20 (2022) (holding that “a trade association with members living and working in Pima County” had standing to challenge a law that impeded the county’s “ability to exercise local control to protect its residents”); *Yes on Prop. 200 v. Napolitano*, 215 Ariz. 458, 470–71 ¶ 39 (App. 2007) (finding that a political committee and Arizona residents had standing under the Declaratory Judgment Act to challenge the Governor’s interpretation and implementation of a statute).

The crux of the Defendants’ argument that the Plaintiffs’ interest in § 16-103(E)’s validity is merely “general, not distinct” is that “none of [their] Arizona voter registration activities target individuals overseas potentially eligible to vote under A.R.S. § 16-103(E).” Def. Mot. at 5, 7. But this rationale is doubly defective.

First, it makes no factual or logical sense. The entire purpose of this action is to establish that § 16-103(E) is unconstitutional. For the RPAZ or RNC to deliberately spend resources on soliciting voter registrations that they believe to be constitutionally infirm—

1 not to mention likely disproportionately non-Republican, given the partisan skew of this
2 population—would be at best self-defeating and at worst *undermine* their standing or
3 expose them to cries of estoppel. *Cf. Ariz. Alliance for Retired Ams. v. Mayes*, 186 F.4th
4 622, 633 (9th Cir. 2026) (en banc) (emphasizing that “Plaintiffs cannot manufacture
5 standing” by diverting resources in connection with a law they later challenge in court);
6 *Robertson v. Fed. Election Comm’n.*, 45 F.3d 486, 490 (D.C. Cir. 1995) (holding that a
7 candidate could not challenge the constitutionality of campaign finance laws after accepting
8 funding under their auspices).

9 Second, and more fundamentally, it espouses an implausibly constricted theory of
10 the relationship that must bind the plaintiff to the statute that is the subject of the requested
11 declaration. The RPAZ and RNC are sufficiently “affected” by A.R.S. § 16-103(E) because
12 the record evidence establishes a direct nexus between the statute’s enforcement and the
13 composition of the electorate that determines the fate of the Republican Party and its
14 candidates. *ASBA* is illustrative. There, a trade association sought a declaration that a state
15 statute preempting county-level mask and vaccine mandates was unconstitutional. 252
16 *Ariz.* at 223 ¶¶ 7, 9. The plaintiff trade association and its members were, in other words,
17 at least two degrees removed from the statute’s actual impact; the law did not regulate them
18 directly, nor was it a certainty that the county government would necessarily enact the
19 ordinances the trade association desired but for the preemptive statute.¹ The Supreme Court
20 nevertheless found that the trade association’s putative interest in “the county’s ‘ability to
21 exercise local control to protect its residents’” to be enough for standing under the
22 Declaratory Judgment Act. *Id.* at 225 ¶ 20. If a trade group is sufficiently “affected” by a
23 law that restricts a third party from adopting hypothetical ordinances that the trade group
24 supports, then surely the RPAZ and RNC possess the requisite interest in a statute that
25 directly dictates who may or may not vote for the Republican Party’s candidates.

26
27 ¹ The plaintiffs alleged that the state statute “compelled the Pima County Board of
28 Supervisors to reject motions to implement” mask and vaccine mandates, 252 *Ariz.* at 225
¶ 20, but it does not factually or logically follow that a majority of the board otherwise
would have voted to adopt such measures even if they were not preempted.

Roving unsuccessfully for any precedent in which to ground their incongruous conception of the Declaratory Judgment Act, the Defendants instead rely heavily on *Arizona Free Enterprise Club v. Fontes*, 2025 WL 2462952 (Ariz. App. Aug. 27, 2025), which found that the RPAZ lacked standing to challenge a provision of the Elections Procedures Manual (“EPM”) concerning the verification of signatures on early ballot affidavits. Preliminarily, as an unpublished memorandum decision, *Arizona Free Enterprise Club* is “not binding on this court,” *State v. Rodriguez*, 260 Ariz. 36 ¶ 63 n.17 (App. 2025), and indeed “is not particularly instructive,” *In re Marriage of McCulloch and Parker*, 257 Ariz. 195, 203 ¶ 28 n.4 (App. 2024); *see also* Ariz. R. Sup. Ct. 111(c). More to the point, the court deemed standing absent only because the RPAZ “did not explain at the trial court or in its briefing how the EPM provision might impair” the RPAZ’s interests in the election system. 2025 WL 2462952, at *6 ¶ 32. It emphasized that a different conclusion may obtain if the RPAZ could show something more than “hypothetical[s],” such as (for example) evidence that the challenged EPM provision affected the number of early ballots that required signature curing. *Id.* at ¶¶ 33–34.

In this case, by contrast, any such evidentiary vacuum has been filled. There is nothing speculative or “hypothetical” about A.R.S. § 16-103(E)’s actual impact. The undisputed facts demonstrate not only that the statute resulted in the addition of at least approximately 400 voters to the rolls since 2020, but also that these registrations have skewed the composition of the electorate in a manner that is unfavorable to the Republican Party and its candidates. *See* Def. SSOF Exh. G; Pl. SSOF ¶¶ 12–16. Far from being abstract or “hypothetical,” A.R.S. § 16-103(E)’s effect on the RPAZ and RNC’s rights and interests is tangible and quantifiable.

This Court previously found that the Plaintiffs’ Complaint adequately alleged standing under the Declaratory Judgment Act. *See* Under Advisement Ruling (Oct. 24, 2025). And the Plaintiffs have subsequently proved what the Complaint posited: A.R.S. § 16-103(E) is directly altering the composition of the Arizona electorate in which the RNC and RPAZ vie for votes. This impact embodies a substantive and “legitimate interest in an

actual controversy” concerning the statute’s constitutionality. *Armory Park*, 148 Ariz. at 6.

B. A.R.S. § 16-103(E) Inflicts a Competitive Injury on the Political Party Plaintiffs

By “forc[ing]” the RNC and RPAZ “to participate in an ‘illegally structured’ competitive environment” tainted by the votes of constitutionally ineligible electors, A.R.S. § 16-103(E) exacts a competitive harm. *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022). Importantly, this injury subsists wholly in “[t]he counting of unlawful votes” in elections in which the Plaintiffs compete, “*regardless* of whether [§ 16-103(E)] harm[s] their electoral prospects or increase[s] the cost of their campaigns.” *Bost*, 607 U.S. at 78, 82 (emphasis added).²

Struggling to counter the RPAZ and RNC’s demonstrable competitive standing claim, the Defendants contrive two illusory prerequisites that find no traction in the case law.

First, they argue (at p. 10) that § 16-103(E) “in no way regulates Plaintiffs or any political party or candidate.” But the same was true of the statute at issue in *Bost*, which set uniform deadlines for the postmarking and receipt of voted ballots. *See* 607 U.S. at 74. Likewise, the challenged statute in *Mecinas* dictated the order in which county recorders must arrange candidates’ names on the ballot; it did not regulate or otherwise constrain candidates themselves. *See* 30 F.4th at 894–95. But the court in each case found that the relevant statutes’ *effects* on the competitive landscape engendered standing for candidates and political parties, respectively. *See Bost*, 607 U.S. at 77 (holding that “candidates . . . have an interest in a fair process”); *Mecinas*, 30 F.4th at 898 (explaining that the political

² In this vein, the Defendants’ odd rhetorical query of whether A.R.S. § 16-103(E) would “revert to being lawful if those same voters switched to voting Republican,” Def. Mot. at 12, voices a fundamental confusion between standing and the merits. A.R.S. § 16-103(E) is and always was unconstitutional because it allows individuals who have never resided in Arizona to vote in this State’s elections. For whom these individuals vote is irrelevant to the statute’s constitutionality. But the partisan distortion that the statute has exerted in its implementation underscores the concrete interest or injury that Defendants insist the Plaintiffs must adduce to have standing—although, as discussed above, this competitive harm ultimately does not pivot on the Republican Party’s “likelihood of winning or losing” any given election. *Bost*, 607 U.S. at 81.

party plaintiff’s “injury” was “being forced to participate in an ‘illegally structured competitive environment’”—not the imposition of any direct regulation); *see also DSCC v. Trump*, 26-CV-01114 (CJN), 2026 WL 2681471, at *5 (D.D.C. Sept. 13, 2026) (finding that candidates and political party committees had standing to challenge executive order concerning the Postal Service’s handling of ballots, noting that competitive standing concepts are “not limited only to” the “vote-counting” context).

Second, Defendants emphasize (at pp. 9, 10) that “A.R.S. § 16-103(E) makes no reference to political affiliation” and does not facially “discriminate[]” against Republicans. But the facial neutrality or (non)-partisan valence of the challenged law is not determinative, or even especially relevant, to its capacity to induce competitive harm. *See Bost*, 607 U.S. at 74–75 (finding standing to challenge neutral and generally applicable statute setting deadlines for ballot postmarking and receipt). *Shays v. Federal Election Commission* illustrates the point well. There, two congressional candidates challenged certain regulations of the Federal Election Commission (“FEC”), which they alleged failed to adequately implement and enforce statutory campaign finance restrictions. The candidates argued that the FEC’s approach enabled their opponents to take advantage of campaign funding practices that the candidates believed were unlawful. *See* 414 F.3d 76, 83–84 (D.C. Cir. 2005). Echoing the Defendants’ position here, the FEC countered that since “the rules grant [the plaintiffs] the same legal options as their opponents, any disadvantage they suffer stems not from those rules, but from their own choice not to exploit them.” *Id.* at 84. The court found standing. While acknowledging that the plaintiffs’ rivals were not afforded nonmutual “special benefits” under the challenged regulations, it reasoned that the plaintiffs incurred an injury in the form of “*intensified* competition,” adding that they “must anticipate and respond to a broader range of competitive tactics than [the] law would otherwise allow.” *Id.* at 86.

Likewise, the point here is not that A.R.S. § 16-103(E) is innately anti-Republican in design, but rather that its practical operation has resulted in an (unconstitutional) distortion of the electoral playing field to Republican Party organizations’ disadvantage.

1 That is enough to denote a competitive injury.

2 **C. Plaintiffs’ Competitive Injury Is Traceable to A.R.S. § 16-103(E)**

3 The nexus binding A.R.S. § 16-103(E) to the RNC and RPAZ’s competitive harm is
4 reified in the nearly 400 voters—84% of whom are not Republicans—who registered and
5 voted in Arizona elections between 2020 and 2024 pursuant to § 16-103(E)’s residency
6 exemption. *See* Def. SOF Exh. G; Pl. SSOFF ¶¶ 15–16. Defendants’ rejoinder (at p. 11) that
7 any electoral disadvantage to the Republican Party “*would result solely from the*
8 *independent and intervening choice of voters*” reflects a misunderstanding of traceability in
9 general and political competitor standing in particular. To be sure, a party’s injury must be
10 “fairly traceable to” the challenged enactment, *Arizonans for Second Chances,*
11 *Rehabilitation, and Public Safety v. Hobbs*, 249 Ariz. 396, 405 ¶ 23 (2020), and “remediable
12 by judicial decision,” *Brewer v. Burns*, 222 Ariz. 234, 237 ¶ 12 (2009). This does not,
13 however, demand a singular, exclusive, and invariable cause-and-effect relationship
14 between the object of a plaintiff’s requested relief and his injury. To the contrary, “the mere
15 existence of multiple causes of an injury does not defeat redressability.” *WildEarth*
16 *Guardians v. U.S. Dept. of Agric.*, 795 F.3d 1148, 1157 (9th Cir. 2015).

17 More to the point, whether or to what extent a challenged law is costing the
18 Republican Party or its candidates any specific number of votes is categorically irrelevant
19 to the existence of a redressable competitive injury. Candidate or political party plaintiffs
20 do **not** need to “show some substantial risk that a rule will cause them to lose the election,
21 [or] prevent them from achieving a legally significant vote threshold.” *Bost*, 607 U.S. at
22 79; *see also id.* at 80 (observing that judges are ill-suited to act as “political
23 prognosticators”). In that respect, *Bost* broke no new ground. The Ninth Circuit already
24 has flatly “reject[ed]” the notion that a plaintiff must prove that a statute being challenged
25 as competitively unfair “has changed (or will imminently change) the actual outcome of a
26 partisan election.” *Mecinas*, 30 F.4th at 899.

27 In sum, the RNC’s and RPAZ’s competitive injury is traceable to A.R.S. § 16-103(E)
28

1 because that statute has unlawfully skewed the electorate by inserting into it individuals
2 who are constitutionally ineligible to vote in an Arizona election. It is this deprivation “of
3 a fair process and accurate result”—not the statistical likelihood of any given voter casting
4 his ballot for or against Republicans—that is the crux of the Plaintiffs’ claim for relief.
5 *Bost*, 607 U.S. at 77.

6 **II. A.R.S. § 16-103(E) Is Facially Unconstitutional Because a Statute Cannot**
7 **Redefine or Vitate a Constitutional Term**

8 In permitting individuals who have “never resided in” Arizona to vote in Arizona
9 elections, A.R.S. § 16-103(E) is facially irreconcilable with Article VII, § 2(A) of the
10 Arizona Constitution, which bestows the franchise only on those who “have resided in the
11 state for the period” prescribed by the Legislature. “Because there is nothing ambiguous or
12 unclear about the statute or the constitution,” the court “must follow the text[s] as written,”
13 *Parker v. City of Tucson*, 233 Ariz. 422, 429 ¶ 17 (App. 2013), to the inexorable conclusion
14 that they collide with each other. And “[w]hen a state statute conflicts with Arizona’s
15 Constitution, the constitution must prevail.” *Dobson v. State ex rel. Comm’n. on Appellate*
16 *Court Appointments*, 233 Ariz. 119, 124 ¶ 17 (2013).

17 **A. Residence With “Zero Physical Presence” Is an Oxymoron**

18 Searching for an escape from this textual vise, the Defendants reason that the
19 Legislature can simply permit someone with “zero days of physical presence” in the State
20 to qualify as a “resident.” Def. Mot. at 13. This reasoning, though, quickly falls apart; it is
21 grounded in the implausible premise that a statute can redefine or modify a constitutional
22 word or phrase. Article VII, § 2(A) authorizes the Legislature to prescribe the necessary
23 *duration* of a putative voter’s residency—but that necessarily presupposes that the
24 individual has established residency in the first place.

25 In that vein, legal “residence” nearly always is denoted by “a state of mind combined
26 with actual physical presence in the state or county.” *St. Joseph’s Hosp. & Med. Ctr. v.*
27 *Maricopa Cnty.*, 142 Ariz. 94, 99 (1984). Defendants have proffered no historical or other
28 evidence that the term was intended to carry a bespoke or anomalous meaning in Article

VII, § 2(A). *See generally Matthews v. Indus. Comm’n. of Ariz.*, 254 Ariz. 157, 163 ¶ 29 (2022) (“When construing a constitutional provision, we seek to give terms the original public meaning understood by those who used and approved them.”). Defendants point to Sections 3 and 6 in support of the notion that Article VII does “not strictly tie Arizona residency to physical presence in every circumstance.” Def. Mot. at 14. But that structural distinction boomerangs on the Defendants; the narrow *exceptions* in those provisions necessarily imply that, in all other circumstances, a physical presence is, in fact, necessary. *See generally Estate of Tovrea v. Nolan*, 173 Ariz. 568, 573 (App. 1992) (“Under the rule of *expressio unius est exclusio alterius* . . . the statement of one exception implicitly denies the existence of other unstated exceptions.”).

It follows that, while the Legislature can decide how long an individual must reside in Arizona before he or she may register to vote, it cannot redefine or dictate the meaning of “residence” itself, as the word is used in Article VII, § 2(A). *See Fann v. State*, 251 Ariz. 425, 434 ¶ 24 (2021) (holding that a statute could not unilaterally define what is and is not a “grant,” as that term is used in the Constitution, explaining that “a statute cannot circumvent or modify constitutional requirements,” and legislators “usurp the function of the judiciary when they declare a law’s meaning”). The upshot is that a “residence” that entails no physical presence (or, for that matter, no intent to remain in Arizona) is, generally speaking, a constitutional impossibility. The Defendants’ rhetorical rationalizations and semantic acrobatics cannot obscure that the crux of their argument is simply that the Legislature can by statute christen as a “resident” an individual who is *constitutionally* a non-resident. And that paralogism runs headlong into the maxim that the Legislature “cannot enact laws which supersede constitutional provisions adopted by the people.” *Kilpatrick v. Superior Court in and for Maricopa Cnty.*, 105 Ariz. 413, 416 (1970).³

³ In critical contrast to the Arizona Constitution, Michigan’s Constitution expressly instructs the “legislature [to] define residence for voting purposes.” Mich. Const. art. II, § 1. The unpublished Michigan trial court decision cited by Defendants, *see* Def. SSOF Ex. J, hence has no discernible probative value in construing Article VII, § 2. *See generally Ariz. Cannabis Nurses Ass’n. v. Ariz. Dept. of Health Servs.*, 242 Ariz. 62, 67 ¶ 13 n.7 (App. 2017) (observing that “an unpublished decision” of a “New Mexico state trial court” “is not

1 In sum, the Arizona Constitution confers qualified elector status only on individuals
2 who “have resided” in the State. An individual who “has never resided in the United
3 States,” A.R.S. § 16-103(E), linguistically, legally, and logically is constitutionally
4 ineligible to vote in Arizona elections. In purporting to dictate otherwise, § 16-103(E)
5 conflicts with the Arizona Constitution, and accordingly is void.

6 **B. Defendants Can Identify No Constitutional Application of A.R.S. § 16-**
7 **103(E) to Any Non-Resident**

8 A.R.S. § 16-103(E) is, by its own terms, mutually exclusive of Article VII, § 2(A).
9 The latter mandates that an individual must “have resided in” Arizona before registering to
10 vote, while the statute applies exclusively to those who “have never resided” in the state.
11 Because § 16-103(E) hence “cannot be constitutionally enforced under any set of
12 circumstances,” the Plaintiffs have adduced a proper facial challenge. *Montenegro v.*
13 *Fontes*, 260 Ariz. 443, ¶ 16 (2025).

14 Attempting to manufacture a hypothetically constitutional application of § 16-
15 103(E), the Defendants (borrowing from a Nebraska case) postulate a fictitious individual
16 who was born outside the United States to parents who are residents of Arizona but who are
17 temporarily visiting abroad. *See* A.R.S. § 16-593(A)(3) (“A person does not lose his
18 residence by leaving his home to go to another country, state or foreign country for merely
19 temporary purposes, with the intention of returning.”). According to the Defendants, this
20 child would legally inherit or “adopt” the Arizona residency of her parents, even if the child
21 never established her own physical presence in Arizona. *See* Def. Mot. at 15–17.
22 Preliminarily, the hypothetical is factually implausible. For § 16-103(E) to apply to this
23 child, she not only would have to be born abroad, but also live abroad continuously for the
24 next 18 years of her life; if that were the case, however, the parent’s absence from Arizona
25 almost certainly was not “temporary.”

26 More importantly, this argument proves too much. Defendants’ reasoning appears
27 _____
28 precedential . . . Nor is it persuasive,” given the differences between the two states’
respective laws.

to rely on the common law precept that “a minor has the same domicile as the parent with whom he lives.” RESTATEMENT (SECOND) CONFLICT OF LAWS § 22 (1971). But assuming (without conceding) that Article VII, § 2(A) incorporates this principle, then the child in the Defendants’ example would, in fact, qualify as a legal “resident” of Arizona for constitutional and statutory purposes. *See Hiatt v. Lee*, 48 Ariz. 320, 324 (1936) (citing the *Restatement* in construing statutory residency requirements for voting purposes). A.R.S. § 16-103(E)—which applies solely to *non*-residents—would be irrelevant to her. Conversely, if Article VII, § 2(A)’s definition of “residence” does not recognize the *Restatement* principle, then A.R.S. § 16-103(E)’s application to Defendants’ hypothetical child would be unconstitutional.⁴

More generally, Defendants’ faulty conceptualization of a facial challenge neglects that “the proper focus” of a facial inquiry is only the voter registrations “that [§ 16-103(E)] actually authorizes, not those for which it is irrelevant.” *Moreno v. Brickner*, 243 Ariz. 543, 548 ¶ 17 (2018) (quoting *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015)); *see also United States v. Supreme Court of New Mexico*, 839 F.3d 888, 917 (10th Cir. 2016) (“A facial challenge is best understood as ‘a challenge to the terms of the statute, not hypothetical applications,’ and is resolved ‘simply by applying the relevant constitutional test to the challenged statute without attempting to conjure up whether or not there is a hypothetical situation in which application of the statute might be valid.’” (citation omitted)).

In other words, Defendants could defeat the Plaintiffs’ facial challenge only if there

⁴ Defendants say (at p. 15) that “RPAZ described the very voters to whom § 16-103(E) *would* constitutionally apply—e.g., “17-year-old dependents of military stationed overseas that turn 18 while their parent is stationed overseas.” To be clear, the RPAZ has never stipulated that any hypothetical application of § 16-103(E) would be constitutional, and the RPAZ’s representative could not testify to legal conclusions in any event, *see* Ariz. R. Evid. 701; she merely agreed that facilitating voter registrations for such individuals may have been a policy objective of the Legislature. In any event, as noted in Plaintiffs’ Motion for Summary Judgment (at pp. 3–4), military deployments can vary in duration, but rarely exceed a year or so. Defendants have offered no evidence for the facially spurious proposition that there are military service members who remain *continuously* stationed overseas for 18 or more years, such that their children never resided in their home state for any period of time before reaching voting age.

were an individual who “ha[s] resided” in Arizona within the meaning of Article VII, § 2(A)—and thus is constitutionally eligible to register to vote here—yet also “has never resided” in Arizona, and thus is within the scope of A.R.S. § 16-103(E)’s coverage. It is (or should be) obvious that no such person does or could exist.

In sum, because there is no intuitive, evidentiary, or even logical basis for positing that an individual could be an Arizona “resident” within the meaning of Article VII, § 2(A) yet simultaneously “have never resided” in Arizona such that he could register to vote only by application of A.R.S. § 16-103(E), Plaintiffs have established a valid facial challenge to § 16-103(E)’s constitutionality.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendants’ Motion for Summary Judgment.

RESPECTFULLY SUBMITTED this 28th day of September, 2026.

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 28th day of
2 September, 2026 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/ Kelly Sullivan

Kelly Sullivan