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8 **Motion for Pro Hac Vice Forthcoming*

9 *Attorneys for Plaintiffs*

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 Kathleen Winn, Chairwoman of the Pima County) Case No.:
Republican Party, and the Pima County)
15 Republican Party) **COMPLAINT**
16 Plaintiffs,)
17 vs.)
18 Adrian Fontes, in his official capacity as Arizona)
Secretary of State; Kris Mayes, in her official)
19 capacity as Arizona Attorney General)
20 Defendants.)
21)
22)

23 Plaintiffs bring this Complaint against defendant Adrian Fontes, in his official capacity as
24 Arizona Secretary of State (the “Secretary”), and Kris Mayes, in her official capacity as Arizona
25 Attorney General (the “Attorney General”) (collectively “Defendants” or the “State”) and alleges as
26 follows:

27 **INTRODUCTION**
28

1 1. This action challenges provisions of the 2025 Arizona Elections Procedures Manual.
2 The EPM governs how elections are conducted in the State of Arizona with the force and effect of
3 law. The 2025 EPM is said to be intended to maintain ““the maximum degree of correctness,
4 impartiality, uniformity and efficiency”” in elections procedures across Arizona. Ariz. Sec’y of State,
5 2025 Elections Procedure Manual, preface (2025) [hereinafter “EPM”] (quoting A.R.S. § 16-452(A)).
6 Violation of any provision of the EPM is punishable as a class-two misdemeanor. *See id.* § 16-
7 452(C); *Am. Encore v. Fontes*, 152 F.4th 1097, 1106 (9th Cir. 2025).

8 2. The 2025 EPM places restrictions (“Political Speech Restrictions”) on constitutionally
9 protected speech in a manner that is both overly broad and vague, in a manner than fails to provide
10 adequate notice to voters and election observers of what conduct is prohibited, and in a manner subject
11 to arbitrary and discriminatory enforcement.

12 3. Arizona law permits electioneering that occurs outside the 75-foot limit established in
13 A.R.S. § 16-515(A). Electioneering is defined as “occur[ing] when an individual knowingly,
14 intentionally, by verbal expression and in order to induce or compel another person to vote in a
15 particular manner or to refrain from voting expresses support for or opposition to a candidate who
16 appears on the ballot in that election, a ballot question that appears on the ballot in that election or a
17 political party with one or more candidates who appear on the ballot in that election.” A.R.S. § 16-
18 515(I).

19 4. Chapter 9, Section III.A of the 2025 EPM prohibits otherwise permissible
20 electioneering “outside the 75-foot limit if it is audible from a location inside the door to the voting
21 location” (“Electioneering Ban”). EPM at 202. One of the Electioneering Ban’s critical flaws is that
22 it does not answer the question of audible *to whom* and therefore invites capricious application.

23 5. Chapter 9, Section III.D of the 2025 EPM directs voting location officials to “preserve
24 order and remove persons engaging in voter intimidation, threats and coercion, as defined in state and
25 federal law, from the voting location.” EPM at 204.

26 6. Section III.D of the 2025 EPM provides several examples of potentially intimidating
27 conduct inside or near a voting location, including: “[a]ggressive behavior, such as yelling at or
28 taunting a voter or poll worker”; “[i]mpersonating a law enforcement officer or otherwise wearing

1 clothing, uniforms or official-looking apparel intended to deter, intimidate, or harass voters”; and
2 “[r]aising repeated frivolous voter challenges to poll workers without any good faith basis, or raising
3 voter challenges based on race, ethnicity, national origin, language, religion, or disability.” EPM at
4 204–05.

5 7. The 2025 EPM provides no guidance as to how election officials are to interpret and
6 implement these provisions and thus again invites arbitrary enforcement. It merely directs that “[t]he
7 inspector and/or marshal must use sound judgment to decide whether to contact law enforcement, and
8 any higher-level decisions should be raised through the officer in charge of elections.” *Id.* at 204.

9 8. The 2025 EPM’s restrictions on electioneering and speech amount to violations of the
10 rights enumerated under the First and Fourteenth Amendments of the U.S. Constitution (as to its Due
11 Process and Equal Protection Clauses contained in Section 1 thereof).

12 LEGAL BACKGROUND

13 9. A.R.S. § 16-452(A) directs the Secretary of State to “prescribe rules to achieve and
14 maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the
15 procedures for early voting and voting[.]” These rules are “prescribed in an official instructions and
16 procedures manual to be issued not later than December 31 of each odd-numbered year immediately
17 preceding the general election.” A.R.S. § 16-452(B).

18 10. An individual “who violates any rule adopted pursuant to this section is guilty of a
19 class 2 misdemeanor.” A.R.S. § 16-452(C).

20 11. Courts must consider a government’s “‘authoritative constructions’ in interpreting a
21 state law.” *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 17 (2018). But this must be interpreted in
22 light of Arizona’s anti-deference law which effectively permits only authoritative constructions
23 issued by the Arizona Supreme Court to be consulted as a matter of state law. Non-binding
24 interpretations of the 2025 by Arizona Executive Branch officials, such as the Secretary of State,
25 Governor, or Attorney General, thus may *not* be considered authoritative for this purpose (a principle
26 that would inherently include refusal by this Court to defer to any representations made by the
27 Defendants herein in future briefing). *See* 12 A.R.S. § 12-910(F) (“In a proceeding brought by or
28 against the regulated party, the court shall decide all questions of law, including the interpretation of

1 a constitutional or statutory provision or a rule adopted by an agency, without deference to any
2 previous determination that may have been made on the question by the agency.”). Section 12-910(F)
3 eliminated deference doctrine in Arizona to the State’s Executive Branch and agencies as of April 11,
4 2018, making Arizona law similar to the approach the U.S. Supreme Court has now mandated in
5 *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024) (overruling *Chevron* deference as
6 established in *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984)).

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

16 13. The unconstitutional restrictions on otherwise permissible electioneering and political
17 speech chill the speech of all persons at voting locations and political parties like the Plaintiff Pima
18 County Republican Party in particular.

19 **THE PARTIES, JURISDICTION, AND VENUE**

20 14. Kathleen Winn is the Chairwoman of the Pima County Republican Party and a resident
21 of Pima County, Arizona.

22 15. In her role as Chairwoman, Winn approves political party observers, receives
23 complaints submitted by observers and communicates with the Pima County Board of Elections and
24 the Pima County Recorder to resolve issues, and organizes ride shares for in-person voting.

25 16. Chairwoman Winn typically votes in-person on Election Day.

26 17. The Pima County Republican Party is a political organization based in Tucson,
27 Arizona. The Pima County Republican Party “is dedicated to preserving conservative values,
28 defending individual liberties, and promoting policies that strengthen our community.”

1 18. The Pima County Republican Party trains and selects political party members to
2 observe tabulation, signature verification, ballot processing, early and election day voting, and ballot
3 drop boxes.

4 19. Members of the Pima County Republican Party regularly engage in electioneering to
5 promote Republican candidates and policies.

6 20. Members of the Pima County Republican Party will continue to engage in
7 electioneering in the 2026 election cycle and beyond.

8 21. The Pima County Republican Party has incurred and will continue to incur costs to
9 comply with the 2025 EPM's Electioneering Ban and Political Speech Restrictions.

10 22. The 2025 EPM directly regulates the Pima County Republican Party insofar as it
11 purports to regulate election observers designated by the party and therefore establishes the Party's
12 standing here. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992) ("When the suit is
13 one challenging the legality of government action or inaction, the nature and extent of facts that must
14 be averred (at the summary judgment stage) or proved (at the trial stage) in order to establish standing
15 depends considerably upon whether the plaintiff is himself an object of the action (or forgone action)
16 at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury,
17 and that a judgment preventing or requiring the action will redress it.").

18 23. Absent the 2025 EPM's Electioneering Ban and Political Speech Restrictions, the
19 Pima County Republican Party would not have had to incur costs associated with compliance.

20 24. The Pima County Republican Party has trained and will continue to train its members
21 to ensure compliance with the 2025 EPM.

22 25. The Pima County Republican Party regularly interacts with voters and elections
23 officials both within and outside the 75-foot electioneering boundary.

24 26. Members of the Pima County Republican Party are harmed by the Electioneering Ban
25 and Political Speech Restrictions that now subject otherwise protected political speech to criminal
26 penalty based on the arbitrary and discriminatory enforcement of election officials who must enforce
27 overly broad and vague terms characterized by high degrees of subjectivity.

28

1 27. Defendant Adrian Fontes is the Secretary of State (“Secretary”) and is named in this
2 action in his official capacity only. The Secretary is a constitutional officer who is party of the
3 Executive Branch of Arizona. His principal office is in Maricopa County.

4 28. Under A.R.S. § 16-452, the Secretary must draft the EPM every two years. The EPM
5 has the force of law once approved by the Governor and Attorney General.

6 29. The Secretary is the chief election officer of the State of Arizona. A.R.S. § 16-
7 142(A)(1).

8 30. Defendant Kris Mayes is the Attorney General and is named in this action in her
9 official capacity only. The Attorney General is a constitutional officer who is party of the Executive
10 Branch of Arizona. Her principal office is in Maricopa County.

11 31. This suit is brought pursuant to *Ex Parte Young*, 209 U.S. 123, 159-60 (1908), and
12 thus is not subject to the Eleventh Amendment. *See R.W. v. Columbia Basin College*, 77 F.4th 1214,
13 1220 (9th Cir. 2023).

14 32. The Attorney General has statutory authority to enforce and prosecute violations of
15 Title 16 of the Arizona Statutes under A.R.S. § 16-1021.

16 33. The Attorney General is tasked with approving the EPM under A.R.S. § 16-452(B).

17 34. This Court has subject matter jurisdiction because this case alleges violations of the
18 United States Constitution, which thus inherently presents federal questions of law. 28 U.S.C. § 1331.

19 35. This Court also possesses subject matter jurisdiction under 28 U.S.C. § 1343(a)(3)
20 because this is a suit designed to “redress the deprivation, under color of any State law, statute,
21 ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the
22 Constitution of the United States or by any Act of Congress providing for equal rights of citizens or
23 of all persons within the jurisdiction of the United States.”

24 36. Venue is proper because a substantial part of the events or omissions giving rise to the
25 claims occurred in this District. 28 U.S.C. § 1391(b)(2).

26 37. Additionally, on information and belief and consistent with state constitutional law,
27 Secretary Fontes and Attorney General Mayes both reside in this District and thus venue is also proper
28 here pursuant to 28 U.S.C. § 1391(b)(1). *See* Ariz. Const., art. V, § 1(D) (The officers of the executive

1 department during their terms of office shall reside at the seat of government where they shall keep
2 their offices and the public records, books and papers.”). The capital of Arizona, its seat of
3 government, is Phoenix. *See* Ariz. Const., art. XX, ¶ 9.

4 GENERAL ALLEGATIONS

5 38. The Arizona Legislature grants the Secretary of State limited authority to “prescribe
6 rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and
7 efficiency on the procedures for early voting and voting[.]” A.R.S. § 16-452(A).

8 39. The Secretary of State solicited public feedback on the draft 2025 EPM from August
9 1, 2025 through August 31, 2025.

10 40. Arizona Speaker of the House Steve Montenegro and Arizona Senate President
11 Warren Petersen submitted comments noting that prior versions of the EPM infringed on First
12 Amendment rights. Ex. 1, Letter from Hon. Steve Montenegro and Hon. Warren Petersen to Ariz.
13 Sec’y of State Adrian Fontes (Aug. 29, 2025).

14 41. Arizona Representative Alexander Kolodin, Chair of the Select Committee on
15 Election Integrity and Florida-Style Voting Systems, submitted comments opposing the Political
16 Speech Restrictions. Ex. 2, Letter from Hon. Alexander Kolodin to Ariz. Sec’y of State Adrian Fontes
17 (Aug. 29, 2025).

18 42. Arizona Free Enterprise Club President Scott Mussi submitted comments requesting
19 removal of Chapter 9, Section III. Ex. 3, Letter from Scott Mussi to Ariz. Sec’y of State Adrian
20 Fontes (Aug. 29, 2025).

21 43. A coalition of Arizona groups including the ACLU of Arizona, All Voting is Local
22 Action, and Progress Arizona submitted comments that, *inter alia*, suggested revisions to the
23 Electioneering Ban. Ex. 4, Letter from Natalia Sells to Ariz. Sec’y of State Adrian Fontes (undated).

24 44. The updated Draft did not include any suggested revisions to Chapter 9, Section III.
25 *See* Ex. 5, Ariz. Sec’y of State, Public Comments Incorporated into 2025 DRAFT EPM.

26 45. The Secretary’s refusal to adopt recommended changes submitted by the public makes
27 unmistakable his intention to enforce the provisions as written, further negating any possible claim of
28 deference by the Secretary in this or other EPM litigation.

1 46. The Secretary of State submitted an updated Draft EPM to the Governor and Attorney
2 General for review and approval on October 1, 2025.

3 47. The Final 2025 EPM was approved by the Governor and Attorney General and
4 published by the Secretary of State on December 22, 2025.

5 48. “Once adopted, the EPM has the force of law; any violation of an EPM rule is
6 punishable as a class two misdemeanor.” *Am. Encore v. Fontes*, 152 F.4th 1097, 1106 (9th Cir.
7 2025).

8 THE THREAT OF ENFORCEMENT

9 49. The Political Speech Restrictions are deliberate policy choices made by the Secretary
10 and approved by the Governor and Attorney General. The Secretary chose to retain the Political
11 Speech Restrictions despite opposition by the Speaker of the Arizona House and Arizona Senate
12 President and several public interest groups.

13 50. Following adoption of the EPM, Plaintiff Pima County Republican Party, through
14 counsel, wrote to the Secretary of State and the Attorney General on February 12, 2026 requesting
15 disavowal of Chapter 9, Section III.A and Section III.D and issuance of a guidance document
16 prescribing a policy of non-enforcement of Chapter 9, Section III.A and Section III.D. Ex. 6, Letter
17 from Neal Cornett to Ariz. Sec’y of State Adrian Fontes and Att’y Gen. Kris Mayes (Feb. 12, 2026).

18 51. In a joint response, attorneys for the Attorney General and Secretary of State replied
19 on March 4, 2026, concluding:

20 [The EPM’s political speech and electioneering provisions] do not create “rules that
21 govern the conduct of members of the public not engaged in the work of conducting
22 elections.” (2025 EPM, Preface.) The Offices do not believe that election officials
23 should interpret the EPM’s descriptions of the statutory bans on electioneering and
24 voter intimidation to be stricter than the relevant statutes, and are unaware of any
25 election official doing so. . . The Offices believe that the EPM’s descriptions of the
26 statutory bans on electioneering and voter intimidation are accurate and that the
statutory bans are constitutional on their face. The Offices will not unequivocally
disavow an intent to enforce the underlying statutes. Whether and how the Offices will
enforce the statutes in a specific situation will depend on the facts—as all enforcement
decisions do.

27 Ex. 7, Letter from Hon. Josh Whitaker and Hon. Karen J. Hartman-Tellez to Neal Cornett (Mar. 4,
28 2026).

1 52. Despite the Preface’s language, the EPM may still be enforced against the Plaintiffs.
2 For instance, the EPM makes a different statement in Chapter 9, Section III that is directly contrary
3 to the argument quoted above from the March 4, 2026 joint response. Namely (with emphasis added),

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

9 ***The electioneering ban applies to the election board, other election officials, political
10 party observers, and any voter or other individual within the 75-foot limit.***

11 EPM at 202. The Electioneering Ban, by definition, applies to “a person” and thus to all persons who
12 engage in the prohibited conduct. Additionally, completely contrary to the March 4, 2026 joint
13 statement, the Electioneering Ban is not limited only to those engaged in the work of conducting
14 elections; it instead applies as well to “any voter or other individual within the 75-foot limit.”

15 53. Moreover, Pima County Republican Party members will “engage[] in the work of
16 conducting elections” through observation and challenges, activities that fall squarely within the
17 regulatory framework of the EPM.

18 54. Furthermore, Chapter 9, Section III of the EPM provides election officials authority
19 and guidance to contact law enforcement and/or remove both voters and political party observers
20 from voting locations for actions elections officials deem to be electioneering or voter intimidation.

21 55. By refusing to disavow enforcement of the EPM’s provisions, the Secretary and
22 Attorney General have acknowledged that they will enforce it. A refusal to disavow enforcement “is
23 strong evidence that the state intends to enforce the law[.]” *California Trucking Ass’n v. Bonta*, 996
24 F.3d 644, 653 (9th Cir. 2020).

25 56. The Secretary and Attorney General’s refusal to modify the speech provisions in
26 response to Plaintiff’s objections confirms their endorsement of the provisions as written and
27 demonstrates the credible threat of enforcement.
28

1 57. The Secretary and Attorney General have not issued additional direction to County
2 Attorneys and Recorders establishing a non-enforcement policy.

3 58. “[A] Plaintiff satisfies the injury-in fact-requirement where he alleges ‘an intention to
4 engage in a course of conduct arguably affected with a constitutional interest, but proscribed by
5 statute, and there exists a credible threat of prosecution there under.’” *Susan B. Anthony List v.*
6 *Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v. United Farm Workers Nat. Union*, 442 U.S.
7 289, 298 (1979)).

9 59. Additionally, the Attorney General’s failure to exercise a veto over the Draft EPM
10 constitutes a “refusal to disavow enforcement.”

11 **THE ELECTIONEERING AND POLITICAL SPEECH RESTRICTIONS ARE**
12 **UNCONSTITUTIONAL**

13 60. The First Amendment states “Congress shall make no law . . . abridging the freedom
14 of speech[.]”

15 61. The Fifth Amendment’s Section 1 states, in relevant part, “No person shall be . . .
16 deprived of life, liberty, or property, without due process of law[.]”

18 62. The Fourteenth Amendment applies the Fifth Amendment’s Due Process Clause to
19 state governments and prohibits any deprivation of life, liberty, or property without due process of
20 law. *See, e.g., Malinsky v. New York*, 324 U.S. 401, 415 (1945) (Frankfurter, J., concurring) (“Of
21 course the Due Process Clause of the Fourteenth Amendment has the same meaning. To suppose that
22 ‘due process of law’ meant one thing in the Fifth Amendment and another in the Fourteenth is too
23 frivolous to require elaborate rejection.”).

24 63. A statute which criminalizes speech or conduct must “provide a person of ordinary
25 intelligence fair notice of what is prohibite[d].” *U.S. v. Williams*, 553 U.S. 285, 304 (2008). A statute
26 may not be “so standardless that it authorizes or encourages seriously discriminatory enforcement,”
27 as doing so “fails to comport with due process.” *Id.*

1 64. The Electioneering and Political Speech Restrictions violate the First Amendment and
2 the Fourteenth Amendment’s Due Process Clause.

3 65. The EPM directs election officials to “preserve order and remove persons engaging in
4 voter intimidation, threats and coercion, as defined in state and federal law, from the voting location.
5 The [officials] must use sound judgment to decide whether to contact law enforcement, and any
6 higher-level decisions should be raised through the officer in charge of elections.” EPM at 204.
7

8 66. Among the actions that may be considered “intimidating conduct” are:

- 9 • “Aggressive behavior, such as yelling at or taunting a voter or poll worker;”
- 10 • “Using threatening language to a voter or poll worker;”
- 11 • “Following voters or poll workers coming to or leaving a voting location, including to
12 or from their vehicles;”
- 13 • ***“Impersonating a law enforcement officer or otherwise wearing clothing, uniforms
14 or official-looking apparel intended to deter, intimidate, or harass voters[.]”***
- 15 • “Directly confronting, questioning, photographing, or videotaping voters or poll
16 workers in a harassing or intimidating manner, including when the voter or poll worker
17 is coming to or leaving the polling location;”
- 18 • ***“Raising repeated frivolous voter challenges to poll workers without any good faith
19 basis[.]”***
- 20 •
- 21 •

22 *Id.* at 204–05 (emphasis added).

23 67. The prohibitions impact not only voters, but the political party observers that Plaintiff
24 Pima County Republican Party intends to utilize during the 2026 primary and general elections.

25 68. The Political Speech Restrictions impact constitutionally protected speech.

26 69. ***First***, the Political Speech Restrictions chill the constitutionally protected speech of
27 voters and political party observers. Law enforcement officers rightfully fear removal for merely
28 wearing their uniforms if they vote on their way to work, at their lunch break, or on their way home.

1 Similarly, a political party representative, an individual whose presence is subject to the approval of
2 the political party and election officials (A.R.S. § 16-590), may opt to refrain from raising challenges
3 for fear of removal from the vicinity of the election. The joint statement of March 4, 2026 provides
4 no rational basis for such an impingement on poll watching.

5
6 70. **Second**, the Political Speech Restrictions criminalize constitutionally protected speech
7 of political party observers and voters through A.R.S. § 16-452. The EPM explicitly directs election
8 officials to contact law enforcement “to preserve order and remove persons engaging in voter
9 intimidation, threats and coercion, as defined in state and federal law, from the voting location.” EPM
10 at 204.

11 71. For instance, a voting law enforcement or military officer may be removed and
12 charged with violations of Arizona law because an election official believes wearing a uniform is
13 intended to deter, intimidate, or harass voters, even though uniform wearing may simply be incident
14 to a tight work schedule the uniform-wearing voter faces on election day or even just motivated by
15 the uniform wearer’s convenience as he or she goes about his or her day.

17 72. And, as another example, political party representatives may be removed and charged
18 with violations of Arizona law simply because an election official deems her challenges “repeated”
19 and “frivolous.” Again, the March 4, 2026 joint statement provides no rational basis defense for this
20 burden.

21 73. **Third**, the Political Speech Restrictions are unlawful content-based and viewpoint-
22 based restrictions on speech. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163, (2015) (“Content-
23 based laws—those that target speech based on its communicative content—are presumptively
24 unconstitutional and may be justified only if the government proves that they are narrowly tailored to
25 serve compelling state interests.”); *Id.* at 168 (“Government discrimination among viewpoints—or
26 the regulation of speech based on ‘the specific motivating ideology or the opinion or perspective of
27 the speaker’—is a ‘more blatant’ and ‘egregious form of content discrimination.’”).

1 74. **Fourth**, the Political Speech Restrictions violate the First Amendment in that they are
2 nebulous and discretionary in a manner unmoored “by objective, workable standards.” *Minnesota*
3 *Voters All. v. Mansky*, 585 U.S. 1, 21 (2018).

4 75. The Electioneering Ban provides that “no electioneering may take place outside the
5 75-foot limit if it is audible from a location inside the door to the voting location.” EPM at 202.

6 76. The Political Speech Restrictions and the Electioneering Ban also violate the
7 Fourteenth Amendment’s Due Process Clause by contravening fair notice principles. A.R.S. §§ 16-
8 1006, 1013, 1017, and 1018 require an individual to **knowingly** attempt interference with another’s
9 attempts to vote. The EPM, however, allows an election official to remove or request law
10 enforcement remove an individual from a polling location for merely wearing a uniform, raising their
11 voice, or raising voter challenges election officials deem “frivolous.”
12

13 77. The Electioneering Ban similarly invites arbitrary enforcement by sharp-eared election
14 officials as well as discriminatory enforcement that classes the language of one as impermissible
15 electioneering and that of another similar speaker as permissible speech. Moreover, the addition of
16 the condition “audible from a location inside the door to the voting location” expands the proscribed
17 boundary of A.R.S. § 16-515, which provides the predicate for the electioneering violations.
18 Audibility can vary from hearer to hearer. Worse yet, audibility can easily **be asserted**, in the form of
19 *post hoc* rationalizations, to try to justify, after the fact, why an election official wanted to remove a
20 speaker, where in reality, what is motivating the enforcer of the EPM are prohibited reasons, such as
21 the speaker being from the opposite party or because of disagreement with the speaker’s political or
22 other viewpoints even for reasons outside of party membership or status. The risk of penalizing
23 political speech or chilling it is simply too great for the EPM to withstand constitutional muster.
24

25 78. Measuring electioneering in the mind of the hearer, using subjective standards of
26 audibility and individual views of interference with the voting process are not a valid constitutional
27 bases for restricting speech the hearer does not want to hear.
28

1 79. Additionally, the Political Speech Restrictions and Electioneering Ban are void on
2 vagueness grounds because both “fail to provide people of ordinary intelligence a reasonable
3 opportunity to understand what conduct [they] prohibit” and because “[they]’ authorize[] or even
4 encourage[] arbitrary and discriminatory enforcement.” *Johnson v. United States*, 576 U.S. 591, 612
5 (2015) (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)).
6

7 80. Lastly, the Political Speech Restrictions and Electioneering Ban constitute violations
8 of the Fourteenth Amendment Section 1’s Equal Protection Clause under both the *Bush v. Gore*
9 doctrine and under the *Anderson-Burdick* balancing doctrine.

10 81. The Equal Protection Clause of the Fourteenth Amendment prohibits the State from
11 vesting government officials with the power to restrict citizens’ right to vote and their First
12 Amendment rights without providing uniform, objective, and consistently applicable standards. As
13 the Supreme Court held in *Bush v. Gore*, 531 U.S. 98 (2000), a legal scheme that delegates
14 enforcement to individual officers applying a subjective, standardless test can inevitably result, as it
15 does here, in the disparate treatment of similarly situated citizens based solely on the identity of the
16 enforcing officer, a structural defect the Constitution was designed to prevent.
17

18 82. The principle articulated in *Bush v. Gore* extends beyond the context of vote recounts
19 to the fundamental right of free speech at and around the polls, particularly within the sensitive context
20 of elections. Just as the State may not value one person’s vote over another through arbitrary and
21 disparate treatment, it may not permit expressive activity near polling places only to subject its
22 enforcement to a standardless inquiry that guarantees unequal results. The core infirmity lies not in
23 the outcome of any specific enforcement action, but in the process itself, where the lack of specific,
24 knowable *ex ante* standards allows results to vary based on individual judgment rather than the rule
25 of law.
26

27 83. The Electioneering Ban and Political Speech Restrictions at issue replicate this
28 structural defect by relying on operative standards, such as audibility or the intent to harass, which

1 provide no objective metric for enforcement officers to determine when expressive conduct crosses
2 the legal line. Consequently, similarly situated speakers will face different legal (and indeed criminal)
3 consequences based entirely on the subjective sensibilities of the officer present and the specific
4 circumstances of the encounter. This arbitrary enforcement mechanism is uniquely dangerous in the
5 electoral context, where real-time, standardless judgments by election workers can silence core
6 political speech without opportunity for prior judicial review or appeal.
7

8 84. Because the challenged provision conditions the exercise of a fundamental expressive
9 right on a standard so subjective that it is designed to produce different results for similarly situated
10 speakers, it constitutes a violation of the Equal Protection Clause. This structural deficiency cannot
11 be cured by good-faith enforcement, as the defect arises from the absence of any standard capable of
12 guaranteeing equal application. Therefore, Plaintiffs respectfully submit that the 2025 EPM must be
13 enjoined to prevent the continued arbitrary and disparate treatment of citizens in violation of the
14 Fourteenth Amendment's Equal Protection Clause.
15

16 85. The 2025 EPM is similarly invalid under the *Anderson-Burdick* framework.

17 86. *Anderson v. Celebrezze*, 460 U.S. 780 (1983), arose when John Anderson, running as
18 an independent presidential candidate, challenged Ohio's early filing deadline for independent
19 candidates (March 20) as unconstitutionally burdening his ability to get on the ballot. The Supreme
20 Court held the deadline unconstitutional and, more importantly, articulated a flexible balancing test:
21 courts must weigh the character and magnitude of the burden on First and Fourteenth Amendment
22 rights against the precise interests the state advances as justifications, considering the extent those
23 interests make the burden necessary.
24

25 87. And *Burdick v. Takushi*, 504 U.S. 428 (1992), involved a Hawaii voter who wanted to
26 cast a write-in ballot but was prohibited by state law. The Court upheld the ban and refined the
27 *Anderson* framework by introducing a sliding scale of scrutiny tied to the severity of the burden,
28 wherein *severe burdens* are subject to strict scrutiny and therefore must be narrowly drawn to serve

1 a compelling state interest but *reasonable non-discriminatory burdens* are typically upheld by a
2 State’s expressed regulatory interests as long as those are reasonable.

3 88. Defendants’ enforcement of subjective electioneering and intimidation standards in
4 the 2025 EPM violates the First and Fourteenth Amendments under the *Anderson–Burdick*
5 framework. The challenged provisions authorize poll workers to exclude or eject voters or contact
6 law enforcement based on indeterminate criteria—such as whether apparel “deters,” whether a voter’s
7 presence is “intimidating,” or whether wearing a law-enforcement uniform may influence others—
8 without objective, uniform standards. As the Ninth Circuit has recognized, election regulations that
9 burden core voting and expressive rights must be sufficiently definite and evenhanded; where they
10 are not, they cannot survive constitutional scrutiny. *See Nader v. Brewer*, 531 F.3d 1028 (9th Cir.
11 2008) (overturning restrictions on an independent candidate).

12
13 89. The challenged provisions of the 2025 EPM impose substantial burdens on both the
14 right to vote and the right to engage in protected expression at the polls. Voters must guess at what
15 conduct or attire will trigger removal, risking disenfranchisement based on discretionary, *ad hoc*
16 judgments by individual officials. Such uncertainty chills participation and invites arbitrary
17 enforcement across precincts—precisely the type of unjustified burden the Ninth Circuit has
18 invalidated when election rules lack adequate tailoring to the State’s interests. *Contrast De La Fuente*
19 *v. Padilla*, 930 F.3d 1101 (9th Cir. 2019) (upholding ballot access measures for independent
20 candidates where major parties were not discriminated against, in part because minor party candidates
21 consistently appeared alongside major party candidates in California elections under the relevant
22 provisions of state election law).

23
24 90. Any legitimate interests the State may assert—such as preventing voter intimidation
25 or maintaining orderly polling places—can be achieved through clear, objective standards that
26 prohibit true threats, coercion, or obstruction. The State’s choice instead to employ vague and
27 subjective criteria is not narrowly tailored and results in unequal treatment of similarly situated voters.
28

1 These burdens are severe within the meaning of the *Anderson-Burdick* framework. Thus, under the
2 Ninth Circuit’s application of *Anderson-Burdick*, the poorly defined restrictions challenged in the
3 EPM here fail constitutional scrutiny. *See Public Integrity Alliance, Inc. v. City of Tucson*, 836 F.3d
4 1019 (9th Cir. 2016) (balancing and means-end fit analysis supply the applicable standard of review
5 not mere rational basis review). The balance in this case strongly tips against the challenged
6 restrictions in the 2025 ERM since the March 4, 2026 joint statement does not adequately defend the
7 means-end fit requirement.
8

9 **COUNT I – Electioneering Ban**
10 **Violations of the First & Fourteenth Amendments**
11 **Asserted Under 42 U.S.C. § 1983**
12 **(Declaratory and Injunctive Relief)**

12 91. Plaintiffs incorporate the paragraphs above as if stated here.

13 92. The 2025 EPM criminalizes otherwise protected free speech outside of the 75-foot
14 limit through its Electioneering Ban.

15 93. Plaintiffs face a real threat of prosecution because the Attorney General and Governor
16 approved the 2025 EPM, meaning that there exists a threat of prosecution for violations of the 2025
17 EPM.
18

19 94. Despite being asked to do so, the Attorney General and Secretary of State have refused
20 to unequivocally disavow enforcement of the Electioneering Ban.

21 95. Plaintiffs engage in electioneering activities that would otherwise be lawful under the
22 First and Fourteenth Amendments.

23 96. These electioneering activities are now subject to potential criminal prosecution from
24 the Attorney General and therefore the Plaintiffs’ otherwise constitutionally protected electioneering
25 activities may be prosecuted.
26

27 97. Plaintiffs have standing to assert its own respective free speech rights as well as that
28 of its members pursuant to associational standing.

1 98. In sum, the Electioneering Ban is unconstitutional because it is subject to arbitrary and
2 discriminatory enforcement and is both a content-based and view-point-based restriction on speech.
3 These features make the Electioneering Ban a violation of each and all of the following core
4 constitutional rights: First Amendment free speech, as well as the due process and equal protection
5 guarantees.

6
7 **COUNT II – POLITICAL SPEECH RESTRICTIONS**
8 **Violation of the First and Fourteenth Amendments**
9 **Asserted Under 42 U.S.C. § 1983**
10 **(Declaratory and Injunctive Relief)**

11 99. Plaintiffs incorporate the paragraphs above as if stated here.

12 100. The 2025 EPM criminalizes otherwise protected free speech inside and outside of the
13 75-foot limit through its Electioneering Ban.

14 101. Plaintiffs face a real threat of prosecution because the Attorney General and Governor
15 approved the 2025 EPM, meaning that there exists a threat of prosecution for violations of the 2025
16 EPM.

17 102. Despite being asked to do so, the Attorney General and Secretary of State have refused
18 to unequivocally disavow enforcement of the Political Speech Restriction.

19 103. Plaintiffs engage in a variety of election activities that would otherwise be lawful
20 under the First and Fourteenth Amendments.

21 104. These activities are now subject to potential criminal prosecution from the Attorney
22 General and therefore the Plaintiffs' otherwise constitutionally protected electioneering activities may
23 be prosecuted.

24 105. Plaintiffs has stating to assert its own respective free speech rights as well as that of
25 its members.

26
27 106. In sum, the Political Speech Restrictions are unconstitutional because they are subject
28 to arbitrary and discriminatory enforcement and are both a content-based and view-point-based

1 restrictions on speech. These features make the Political Speech Restrictions a violation of each and
2 all of the following core constitutional rights: First Amendment free speech, as well as the due process
3 and equal protection guarantees.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request that the Court provide the following expedited
6 relief:

7
8 A. A declaratory judgment providing that the 2025 EPM provisions challenged in this
9 action violate the First and Fourteenth Amendments of the U.S. Constitution;

10 B. A preliminary and permanent injunction prohibiting the Secretary and the Attorney
11 General from enforcing or implementing the challenged provisions of the 2025 EPM;

12 C. An injunction directed at the Secretary to promulgate an EPM that complies with the
13 First and Fourteenth Amendments;

14 D. In the alternative, an injunction against the Secretary and Attorney General to issue a
15 policy of non-enforcement of the challenged provisions of the 2025 EPM to all County Records and
16 County Attorneys;

17 E. An award of Plaintiffs' reasonable attorneys' fees and costs in accordance with
18 applicable law, including 42 U.S.C. § 1988; and
19

20 F. Any other relief as the court deems necessary, equitable, proper and just.
21

22 Dated: May 1, 2026

Respectfully Submitted,

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