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11
12 UNITED STATES DISTRICT COURT
13
14 FOR THE DISTRICT OF ARIZONA
15

16 Arizonans for Fair Elections (AZAN),
17 et al;

18 Plaintiffs,

19 v.

20 Katie Hobbs, Arizona Secretary of
21 State, et al,

22 Defendants.
23

Case No.: 2:20-cv-00658-DWL

**PLAINTIFFS' OPPOSITION TO
THE STATE'S CONDITIONAL
MOTION TO CERTIFY**

24 Plaintiffs oppose the Intervenor's request that the Court certify questions
25 concerning the interpretation of Arizona's Constitution to the Arizona Supreme Court.
26 The Plaintiffs have not challenged Article IV, Part 1, Section 1(9). The Court does not
27 need to rule on the application of this section to the E-Equal system. Intervenor and the
28 several Amici are wrong in claiming that it is necessary to challenge this section.

Intervenor is fully aware that but for recent changes to Arizona's Title 19,
substantial compliance, not strict compliance, applies to the requirements for gathering

1 initiative signatures. “Accordingly, in the context of the formal requirements for
 2 initiatives, substantial compliance means that the petition as circulated fulfills the purpose
 3 of the relevant statutory or constitutional requirements, despite a lack of strict or technical
 4 compliance.” *Feldmeier v. Watson*, 211 Ariz. 444, 447, ¶ 14, 123 P.3d 180, 183 (2005)
 5 (gathering cases). The Arizona Constitution does not explicitly require in-person
 6 signature gathering. Ariz. Const. art. IV, Pt. 1 § 1. Title 19, however, requires that
 7 “[c]onstitutional and statutory requirements for statewide initiative measures must be
 8 strictly construed and persons using the initiative process must strictly comply with those
 9 constitutional and statutory requirements.” A.R.S. § 19-102.01(A). This statute was
 10 enacted in 2017 to reverse the well-established case law of substantial compliance. 2017
 11 Ariz. Legis. Serv. Ch. 151 (H.B. 2244).

12 The Court does not need to rule on the application of Arizona’s Constitution to E-
 13 Qual to decide this case. Nor have Plaintiffs asked it to do so. The question need not be
 14 certified to the Arizona Supreme Court. For these same reasons, the Court does not need
 15 to address the State’s request for certification of its severability question.

16 For the foregoing reasons, Plaintiffs ask that this Court deny the State’s motion.

17 RESPECTFULLY SUBMITTED this 17th day of April, 2020

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 23 /s/James E. Barton II
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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2020 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and transmitted a copy to the follow parties via email.

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4