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**Admitted Pro hac vice*

***Pro hac vice application to be filed*

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Voto Latino, Inc. and Priorities USA,

Plaintiffs,

v.

Katie Hobbs, in her official capacity as Arizona
Secretary of State,

Defendant.

No. 2:19-cv-05685-PHX-DWL

**AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs Voto Latino, Inc. and Priorities USA, through the undersigned attorneys,
2 file this Amended Complaint for Declaratory and Injunctive Relief against Katie Hobbs, in
3 her official capacity as the Arizona Secretary of State (“Secretary”), and upon information
4 and belief allege as follows:

5 **NATURE OF THE CASE**

6 1. During the 2016 presidential preference election, 72,304 Arizonans cast their
7 ballot for Marco Rubio to become the Republican presidential candidate—even though
8 Rubio had withdrawn from the race several days prior to the election. Why did so many
9 Arizonans waste their vote on a ghost candidate? Because they were among the nearly 80%
10 of Arizonans who vote by mail, and Arizona’s law requiring that mail-in ballots be received
11 by 7:00 p.m. on Election Day—not postmarked—means that voters must cast and mail their
12 ballots well in advance of Election Day to be considered timely. A.R.S. § 16-548(A). By
13 the time voters heard of the critical information, their votes had already been cast.

14 2. Voters in that election were by no means the only voters negatively impacted
15 by Arizona’s deadline. Election after election, thousands of otherwise eager voters are
16 caught unaware by the fact that Arizona requires ballots to be received by 7 p.m. on Election
17 Day (“Election Day Receipt Deadline”). A.R.S. § 16-548(A). In 2008, at least 1,611 ballots
18 were rejected for arriving after the Election Day Receipt Deadline, even though many of
19 them were mailed multiple days before election day. That number is steadily increasing. In
20 2012, more than double that number—4,107 ballots—were rejected. And in the 2018
21 midterm election, a lower turnout election than either the 2008 and 2012 general election,
22 more than 2,500 ballots were rejected because they arrived after the Election Day Receipt
23 Deadline. A disproportionate number of these ballots were cast by Arizona’s Hispanic and
24 other minority voters.

25 3. It is not surprising that such a large number of ballots arrive after Arizona’s
26 Election Day Receipt Deadline; A.R.S. § 16-548(A) effectively creates a second, little-
27 known shadow deadline, the “Pre-Election Cutoff.” Arizona’s election officials define the
28 Pre-Election Cutoff in various ways, but all appear to agree that a ballot must be mailed at

1 least five full days in advance of the election—and sometimes six or seven days—to have
2 a reasonable certainty that it will arrive in time to be counted. If the ballot is received after
3 7 p.m. on Election Day, the ballot is discarded. Even if the ballot was postmarked well in
4 advance of Election Day, including before or during the five to seven recommended days,
5 but failed to arrive because of mail irregularities, the ballot is rejected.

6 4. As a result, Arizona's Election Day Receipt Deadline, and the corresponding
7 Pre-Election Cutoff it necessitates, confuses voters and confounds their reasonable
8 expectations. In nearly all other mail-related deadlines in modern life, mail is considered
9 timely if it is *postmarked* by the applicable deadline. Even in Arizona, in non-election
10 contexts such as tax and insurance payments, postmarks are used to guide deadlines for
11 mail-related activities. Further—as illustrated above—late-breaking changes routinely alter
12 political dynamics during the final days before an election. Voters have a reasonable
13 expectation that they can (and should) evaluate the candidates and issues up to and including
14 Election Day.

15 5. Arizona has no legitimate interest in enforcing the Election Day Receipt
16 Deadline, particularly where over the last decade it has pushed voters across the State to
17 utilize mail voting. Although Arizona may certainly set a reasonable deadline to receive
18 ballots to ensure the finality of election results, the current Election Day Receipt Deadline
19 is unreasonable and disenfranchising: it is contrary to voters' reasonable expectations,
20 necessitates that ballots be cast far earlier than they need to be, and is poorly communicated
21 to voters. Moreover, it has real consequences for elections. Over the last several election
22 cycles, multiple races in Arizona have been decided by margins of mere hundreds of votes
23 and in some cases far less—1,500 to even 30 votes could easily make the difference in an
24 election outcome. And allowing the State to count these votes could correspondingly save
25 the State and counties significant amounts of money spent on costly recounts and post-
26 election litigation.

27 6. The State can still serve its election administration interest by accepting ballots
28 postmarked by Election Day and received within a reasonable time—five business days, at

1 a minimum—thereafter. After all, Arizona need not complete its total vote count until 20
2 days after Election Day. A.R.S. § 16-642(A). And Arizona already contemplates that a
3 certain number of ballots will not be countable right away; ballots that arrive in a timely but
4 incomplete fashion are curable up to five business days after Election Day. *Id.* § 16-550.
5 Counting ballots that have been postmarked by Election Day, as long as they are received
6 within five business days of Election Day, at a minimum, would serve the State’s interests
7 in finality of results without unduly burdening its voters. It would also ensure that all
8 Arizona voters have sufficient protections in place to ensure that their right to vote is not
9 arbitrarily and repeatedly denied.

10 7. While the Election Day Receipt Deadline affects all Arizona voters, it
11 particularly disenfranchises Arizonans in rural counties. In 2018, for example, voters in
12 rural Navajo County were 4.5 times more likely to have their mail ballot rejected for arriving
13 after the Election Day Receipt Deadline than voters in urban Maricopa County. In rural
14 Cochise County, that ratio jumped to 5.1, and in rural Santa Cruz County, voters were 5.9
15 times more likely to have their ballot rejected for arriving after the Election Day Receipt
16 Deadline than voters in Maricopa County.

17 8. In rural areas, mail service is unreliable and delay-ridden. Instead of going
18 directly from one rural address to another nearby address, local mail in rural areas is often
19 re-routed through a central processing facility in Phoenix, which increases delivery times.
20 As a consequence, rural voters must take particular care to mail their ballot well in advance
21 of Election Day and are especially vulnerable to Arizona’s refusal to count ballots that
22 arrive after the Election Day Receipt Deadline.

23 9. Further, the Election Day Receipt Deadline has particularly profound
24 implications for Arizona’s Hispanic and Latino voters. Statistically, they comprise a
25 disproportionately significant portion of voters whose ballots are rejected under the Election
26 Day Receipt Deadline. Indeed, in Maricopa County, Hispanic and Latino voters are twice
27 as likely to be disenfranchised by the Election Day Receipt Deadline than white voters. And
28 in rural counties with high Hispanic and Latino populations such as Santa Cruz, where 83%

1 of the population is Hispanic/Latino, ballots are 7.6 times more likely to be rejected for
2 arriving after the Election Day Receipt Deadline.

3 10. The reasons for this disparity are varied, but each is traceable to Arizona's long
4 history of discrimination against minority voters and, particularly, against members of its
5 Hispanic and Latino community. *First*, discrimination in education has led to persistent
6 gaps that have left these minority voters less educated than their white counterparts, which
7 makes them less likely to be aware of the Election Day Receipt Deadline. *Second*, given the
8 lack of language assistance provided to voters—coupled with Arizona's sustained
9 resistance to bilingual education and mandated English-only education—Hispanic and
10 Latino voters are less likely to understand the instructions provided by county election
11 officials regarding the Election Day Receipt Deadline, particularly when those instructions
12 are inconsistent. *Third*, due to disparities in income, Hispanic and Latino voters experience
13 higher rates of poverty than white voters, and have less access to reliable transportation and
14 often less flexible work schedules, both of which make it more difficult for them to turn in
15 a mail ballot by other means, such as in-person at the county recorder's office or a polling
16 location by the Election Day Receipt Deadline.

17 11. Arizona's unjustified imposition of the Election Day Receipt Deadline violates
18 the First and Fourteenth Amendments because it imposes an undue burden on voters that is
19 not outweighed by any legitimate interest on the part of the State. Further, the Election Day
20 Receipt Deadline strips voters of their right to procedural due process. For all these reasons,
21 the Election Day Receipt Deadline should be enjoined.

22 **JURISDICTION AND VENUE**

23 12. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress
24 the deprivation under color of state law of rights secured by the United States Constitution.

25 13. This Court has original jurisdiction over the subject matter of this action
26 pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the
27 Constitution and laws of the United States.
28

1 infrastructure to engage Americans in the progressive movement by running a permanent
2 digital campaign to persuade and mobilize citizens around issues and elections that affect
3 their lives. In furtherance of this purpose, Priorities works to help educate, mobilize, and
4 turn out voters across the country, including in Arizona. In 2020, Priorities expects to make
5 millions of dollars of contributions and expenditures to educate, mobilize, and turn out
6 voters in state and federal elections around the country, including thousands of dollars to
7 educate, mobilize, and turn out voters in Arizona elections. Arizona's enforcement of its
8 Election Day Receipt Deadline for casting ballots directly harms Priorities because it
9 burdens and disenfranchises the voters Priorities supports through its work and
10 contributions in Arizona. As a result, Priorities has to expend and divert additional funds
11 and resources in GOTV, voter education efforts, mobilization, and turn-out activities in
12 Arizona, at the expense of its voter support initiatives in other states and other voter
13 education and turnout programs in Arizona.

14 19. Defendant Katie Hobbs is sued in her official capacity as Secretary of State for
15 the State of Arizona (the "Secretary"). The Secretary is a person within the meaning of 42
16 U.S.C. § 1983 and acts under color of state law. She is the Chief Elections Officer for
17 Arizona. A.R.S. § 16-142(A)(1). As Arizona's Chief Elections Officer, the Secretary is
18 responsible for overseeing the voting process in Arizona and is empowered with broad
19 authority to carry out that responsibility. The Secretary also issues the Arizona Election
20 Procedures Manual ("Manual"), which establishes election procedures and administration
21 across Arizona's 15 counties. A.R.S. § 16-452. The Manual is approved by the Governor
22 and the Arizona Attorney General and carries the force of law. A.R.S. § 16-452(B). Arizona
23 law also requires the Secretary, after consulting with county officials, to "prescribe rules to
24 achieve and maintain the maximum degree of correctness, impartiality, uniformity and
25 efficiency on the procedures for early voting and voting, and of producing, distributing,
26 collecting, counting, tabulating and storing ballots." A.R.S. § 16-452(A). Thus, the
27 Secretary directs county officials, who are responsible for physically counting ballots,
28 regarding when to count or reject ballots.

GENERAL ALLEGATIONS

Mail Voting in Arizona

20. Arizonans have a right to vote by mail. A.R.S. § 16-541(A). Over the past decade, early voting by mail has grown exponentially in Arizona. In the 2008 general election, for example, just over a million Arizona voters cast their ballot by mail. By the 2016 general election, that number had doubled to over two million voters. In 2018, a lower-turnout midterm election, over 1.9 million voters voted by mail. This rapid growth in mail ballots is not surprising. Arizona has engaged in extensive efforts to increase its use.

21. Since 2007, Arizona has maintained a Permanent Early Voter List, commonly known as the “PEVL,” under which any Arizona voter can choose to automatically receive a mail ballot for every election. A.R.S. § 16-544(A). Since the PEVL’s creation, Arizona has actively encouraged its voters to sign up and participate in the program. As a result, mail voting is exceedingly popular in Arizona, and today approximately 80% of Arizona voters receive their ballot in the mail.

22. Voters who are enrolled in the PEVL, or who request a mail ballot at least 27 days before the election, are entitled to be sent a mail ballot between 24 and 27 days before the election. A.R.S. § 16-542(C). A mail ballot is sent to voters by first-class, non-forwardable mail. It must be accompanied by a postage-prepaid return envelope, an affidavit, and instructions to complete the mail ballot. See 2014 Arizona Elections Manual, Chapter 3 - Early Voting, 56.

23. To be counted, a voter’s ballot and accompanying affidavit must be received by the voter’s county recorder’s office by 7 p.m. on Election Day. A.R.S. § 16-548(A). Ballots received after 7 p.m. on Election Day are rejected, even if they were mailed well in advance of the election, and including ballots mailed by the five, six, and seven-day Pre-Election Cutoff promoted by the Secretary of State and county recorders’ offices.

24. Arizona voters have some non-mail alternative options to return their ballot outside of the mail; however, by far the most popular method is to return the ballot the same

1 way that it arrived—via mail. In the most recent presidential election, approximately 90%
2 of Arizona voters who voted with a mail ballot returned their ballot to their county through
3 the U.S. postal service.

4 25. Voters also have the option to personally drop their ballot off at the county
5 recorder’s office or at any polling location on Election Day. A.R.S. § 16-548. But these
6 options are more time-consuming and burdensome for voters in rural counties who often
7 live many miles from a drop-off location, as well as Hispanic and Latino voters who have
8 difficulty obtaining transportation or leaving work during the window in which recorders’
9 offices and polling locations are open. As a result, these options are less popular and less
10 accessible to Arizona voters. In the most recent presidential election, only 10% of Arizona
11 voters who voted with a mail ballot returned it to a physical location such as a polling place
12 or county recorder’s office.

13 26. Furthermore, in recent years Arizona has passed or contemplated legislation
14 that would strip away these non-mail alternative options. One previously popular method
15 of returning a ballot was ballot collection, in which a voter would entrust their ballot to an
16 advocate, volunteer, friend, or neighbor to personally deliver it to election officials. That
17 practice, which Arizona’s Hispanic and Latino, Native American, and African American
18 voters relied on to overcome the challenges they face in returning mail-in ballots—e.g.,
19 unreliable mail service, restrictive work schedules, or lack of access to transportation—was
20 criminalized in 2016. See A.R.S. § 16-1005(H)-(I); see also *Democratic Nat’l Comm. v.*
21 *Reagan*, 329 F. Supp. 3d 824 (D. Ariz. 2018), *aff’d*, 904 F.3d 686 (9th Cir. 2018), *reh’g en*
22 *banc granted*, 911 F.3d 942 (9th Cir. 2018) (“DNC”).

23 27. Further, during the most recent legislative session, the Arizona Legislature
24 contemplated, but ultimately decided against, banning all methods of ballot return other
25 than the mail. S.B. 1046 (2019). The bill’s sponsor has stated that she will introduce the
26 legislation again in the next session.

27 28. Once the Election Day Receipt Deadline has passed, Arizona begins
28 processing its ballots. When voters cast a mail ballot in Arizona, election officials must

1 confirm that each voter did not vote in person, verify the voter's eligibility to vote, and open
2 and scan the voter's ballot. See A.R.S. § 16-552. If a ballot was received in time, but appears
3 to be invalid (because it has, for example, an incomplete affidavit or an apparently
4 mismatched signature), election officials will contact the voter, who has five business days
5 in which to cure their ballot. A.R.S. § 16-550. Election officials have 20 days after Election
6 Day to complete the count and certify results. *Id.* § 16-642(A).

7 **The Election Day Receipt Deadline**

8 29. Every election a substantial and increasing number of ballots are discarded
9 because they arrive after the Election Day Receipt Deadline. While the publicly available
10 data is incomplete, even the partial picture is alarming. In 2008, only seven counties
11 reported data on late-returned ballots, but those counties collectively rejected 1,611 ballots
12 for arriving after the Election Day Receipt Deadline. In 2012, those same seven counties
13 rejected more than double that amount—4,107 ballots. And in the 2018 midterm election,
14 a lower turnout election than either the 2008 and 2012 general elections, ten of Arizona's
15 fifteen counties collectively reported rejecting more than 2,500 ballots because they arrived
16 after the Election Day Receipt Deadline.

17 30. The numbers speak for themselves; clearly, thousands of Arizona voters
18 believe their ballot is timely even when it is not. Because of the challenges in estimating
19 mail delivery times, elections officials—much less the average voter—cannot accurately
20 predict when ballots must be mailed to ensure that they arrive by the Election Day Receipt
21 Deadline. In the 2014 general election, for example, the Arizona Secretary of State's Office
22 “named Thursday, Oct. 30, the ‘deadline’ for mailing in early ballot so they will arrive in
23 time,” but noted that “[that] deadline is unofficial and was set as a guideline based on the
24 time it takes a ballot to reach a county recorder's office.” As the Communications Director
25 for the Arizona Secretary of State's Office explained, if a voter did not mail their ballot by
26 that Thursday, voters should not put their ballot in the mail “because it *may or may not* get
27 here on time,” and if “it arrives [the day after the election] it won't count.” See Rachel Lund,
28 *Late With Your Early Ballot? Here Are Tips for Making Sure Your Vote is Counted*, Arizona

1 Capitol Times (Oct. 30, 2014), [https://azcapitoltimes.com/news/2014/10/30/az-late-early-](https://azcapitoltimes.com/news/2014/10/30/az-late-early-ballot-tips-to-make-sure-vote-counts/)
2 [ballot-tips-to-make-sure-vote-counts/](https://azcapitoltimes.com/news/2014/10/30/az-late-early-ballot-tips-to-make-sure-vote-counts/) (emphasis added).

3 31. County Recorders have not been able to provide any more clarity to voters. In
4 fact, just last month, the Pima County Recorder's Office provided two different
5 "recommended deadlines" for when voters were "required" to mail their ballot for it to be
6 counted.¹ Counties' recommendations on when to place a ballot in the mail shift for a simple
7 reason: those recommendations are purely guesses.

8 32. Without clear guidance from election officials, Arizona voters are themselves
9 forced to guess when their ballots must be placed in the mail to ensure that they will be
10 counted. In any event, many ballots that are rejected for arriving too late are mailed and
11 postmarked *before* Election Day, on the erroneous belief that a ballot is timely as long as it
12 is postmarked by Election Day.

13 33. The Election Day Receipt Deadline, and the confusion it generates, contributes
14 to Arizona voters' remarkable lack of confidence that their ballots are actually counted.
15 Compared to voters in all 50 states, Arizona voters are the least likely to say that they are
16 confident that their own vote was actually counted. And compared to voters in all 50 states,
17 Arizona voters are the most likely to say they were "not too confident" or "not at all
18 confident" that the votes of other people in their city or county were actually counted.

19 34. The widespread belief that a ballot is timely as long as it is postmarked by
20 Election Day is reasonable; it is consistent with the way mail-related deadlines are
21 administered under the state law and across modern life. Postmarks are used to assess the
22 timeliness of payments, applications, and other documents submitted to the government in
23 other contexts: taxes and other state-mandated deadlines are determined according to
24 postmarks, not the date—much less the time of day—the mailed item is actually received.

25
26 ¹ The Pima County Recorder's Office website, for example, currently recommends
27 that voters mail their ballots by the Thursday before the election to ensure their ballots
28 would be counted. But just weeks ago, the same Pima County Recorder's Office issued a
press release for the most recent election instructing voters to mail their ballots on or before
the Wednesday before the election to ensure their ballots would be counted.

1 See, e.g., A.R.S. § 1-218(A) (requiring documents related to taxes, including returns,
2 statements, and payments, that have been mailed to “be deemed filed and received by the
3 addressee on the date shown by the postmark”); A.R.S. § 20-191 (stating that insurance
4 premium payments made by mail are deemed timely as of the date shown on the postmark);
5 Ariz. Admin. Code R17-4-304 (stating the date of receipt of applications for vehicle
6 registrations is the date of the postmark stamp).

7 35. Postmark rules make good sense. Mail delivery times in Arizona are
8 unpredictable, particularly in rural areas where home delivery is not common and even local
9 mail is often re-routed through central processing facilities in far-flung cities. This
10 unpredictability increases the risk of a late-arriving ballot, even when voters mail their
11 ballots well in advance of Election Day.

12 36. A postmark rule is also particularly key in the voting context because it aligns
13 with practical realities of the election cycle. Campaigns often consider the final week before
14 the election to be a key week of voter engagement and activity. Candidates, advocacy
15 organizations, political volunteers and the like conduct “get-out-the-vote” activities,
16 canvasses, town hall meetings, candidate Q&A sessions, and all manner of voter
17 engagement during the final crucial days of the election cycle. Frequently, late-breaking
18 news can entirely change the landscape for a race, and voters can and should remain open
19 to new information until Election Day itself.

20 37. For example, during the 2016 presidential preference election, tens of
21 thousands of votes arrived for Marco Rubio, even though he dropped out of the race in the
22 final days before Election Day. But due to the Election Day Receipt Deadline, and the
23 corresponding Pre-Election Cutoff deadlines for casting their ballots, those voters were
24 unable to consider that information before casting a ballot for a nonexistent candidate. If
25 the Election Day Receipt Deadline had not been in place, those voters could have re-
26 allocated their votes among other Republican candidates who actually remained in the race,
27 giving those voters the opportunity to truly participate in the election. It is clear that what
28

1 happens in the final days before an election matters, and the Election Day Receipt Deadline
2 deprives voters of the opportunity to take those events into account.

3 38. Further, the Election Day Receipt Deadline is unreasonable because it
4 unnecessarily shortens voters' time to return their ballots. A postmark rule would allow the
5 State to accept ballots received within a reasonable time after Election Day, which makes
6 sense given that Arizona has 20 days after Election Day to complete the vote-counting
7 process. A.R.S. § 16-642(A). Arizona already permits voters to cure incomplete ballots up
8 to five business days after Election Day. *Id.* § 16-550. Thus, counting ballots that have been
9 postmarked by Election Day, as long as they are received within a reasonable period after
10 Election Day (at a minimum, within the five-business-day cure period), would align with
11 Arizona's existing voting laws and provide all Arizona voters sufficient time to have their
12 votes counted.

13 39. In addition to the unreasonable burdens the Election Day Receipt Deadline
14 places on Arizona voters, it has real consequences for Arizona elections. Over the last
15 several election cycles multiple races in Arizona have been decided by narrow margins of
16 anywhere from 100 votes to a mere margin of 20 votes. The 2,500 to 4,000 votes rejected
17 by Arizona each year because of its Election Day Receipt Deadline could easily have made
18 the difference in these election outcomes. And allowing the State to count these votes would
19 correspondingly have saved the State and counties significant resources spent on costly
20 recounts and post-election litigation.

21 40. The State has no legitimate interest in imposing the Election Day Receipt
22 Deadline, particularly where it has pushed Arizona voters to utilize mail voting and has
23 provided very limited alternative options for returning those ballots. While Arizona may set
24 a reasonable deadline for receiving ballots to ensure the finality of election results, the
25 Election Day Receipt Deadline is not reasonable: voters do not reasonably expect that they
26 must submit their ballots so far ahead of Election Day—nor could they, given that even
27 election officials are not sure what the precise date for mailing in ballots should be, the
28

1 requirement to do so is poorly communicated to voters, and it is completely unnecessary to
2 ensure that all ballots are received and counted within a reasonable time.

3 **The Election Day Receipt Deadline's Effect on Rural and Minority Voters**

4 41. The Election Day Receipt Deadline has a disproportionate impact on rural and
5 Hispanic and Latino voters in Arizona. In 2018, for example, voters in rural Navajo County
6 were 4.5 times more likely to have their mail ballot rejected for arriving after the Election
7 Day Receipt Deadline than voters in urban Maricopa County. In rural Cochise County, the
8 ratio jumps to 5.1, and in Santa Cruz County, voters are 5.9 times more likely to have their
9 ballot rejected for arriving after the Election Day Receipt Deadline than voters in Maricopa
10 County. And Arizona's Hispanic and Latino voters are disparately disenfranchised no
11 matter where they live. Indeed, not only are ballots 7.6 times more likely to be rejected for
12 failure to arrive by the Election Day Receipt Deadline in rural Hispanic and Latino counties
13 such as Santa Cruz, but even in urban Maricopa County, Hispanic and Latino voters are
14 twice as likely to be disenfranchised by the Election Day Deadline Receipt than white voters
15 are.

16 42. None of this is surprising; mail delivery in rural Arizona is complicated and
17 riddled with delays, and Arizona's long-history of discrimination interacts directly with the
18 Election Day Receipt Deadline to make it more difficult for Hispanic and Latino voters to
19 timely cast their mail-in ballots.

20 43. Voters living in rural areas of Arizona lack reliable mail service. These voters
21 typically do not have mailboxes at their homes and often do not receive personal mail
22 delivery services. Rather, they must frequently travel to one of a few post offices, many
23 miles away from where they live and work, to either pick up or drop off their mail. Given
24 the long distance, long work days, lack of readily available transportation, whether public
25 or personally owned, and correspondingly poor roadways, these voters are not able to visit
26 the post office with any regularity. As a consequence, arranging to pick up their ballots at
27 the post office 24 and 27 days before the election, and then dropping them off not long
28 thereafter to meet the Election Day Receipt Deadline is particularly difficult for rural voters.

1 44. Further, there is no guarantee that rural voters' ballots will arrive by the
2 Election Day Receipt Deadline given the unusual routing system used in rural parts of
3 Arizona. Because local mail in rural areas is not sent directly from one rural address to
4 another nearby address and is instead re-routed through a central processing facility in some
5 other part of the state, delivery times increase. Consequently, rural voters are uniquely
6 required to mail their ballots well in advance of Election Day. Otherwise, they risk having
7 their ballots rejected—through no fault of their own—for arriving after the Election Day
8 Receipt Deadline. Mailing their ballots a significant number of days before Election Day is
9 no guarantee that their ballots will arrive on time.

10 45. Rural Arizona also contains a number of communities that are predominately
11 populated by minority voters. And as an Arizona district court recently found, “[r]eady
12 access to reliable and secure mail service is nonexistent” in some of these minority
13 communities. *See DNC*, 329 F. Supp. 3d at 869. Native American voters, in particular,
14 traditionally struggle with mail service because of, among other things, a severe lack of
15 postal service infrastructure within their communities.

16 46. Rural Hispanic and Latino voters in Arizona also face similar problems in
17 accessing secure and reliable mail service. For example, in heavily Hispanic San Luis and
18 Somerton, for example, voters often lack home delivery mail service or live miles away
19 from the nearest post office. In San Luis specifically, which is 98% Hispanic, nearly all of
20 the city's residents must rely on a single post office that is located across a major highway
21 to send and receive mail, even though the vast majority of San Luis' residents lack reliable
22 transportation and there is no available taxi service. Given the distance they must travel to
23 send mail, these residents tend to visit the post office infrequently.

24 47. Even in more urban neighborhoods, Hispanic and Latino voters often face
25 difficulties with unsecure mail boxes and fear that mail will be stolen from their homes. For
26 example, some voters live in neighborhoods with one community mailbox that does not
27 accept outgoing mail and voters are required to put their mail in an open basket next to the
28 mailbox, with no means of securing it. These voters are thus reluctant to mail a ballot from

1 their homes and must make longer journeys to mail their ballots from a more secure
2 location. Despite the difficulties in mailing back ballots, it still is the best return method in
3 those communities because inflexible work schedules and a lack of transportation often
4 mean that dropping a ballot off in person at the county recorder's office or at a polling
5 location on Election Day is not feasible.

6 48. These difficulties are exacerbated when voters, through no fault of their own,
7 do not receive their ballots in the mail until close to a week before the election is scheduled
8 to take place, requiring that the voter return the ballot personally, rather than by mail, to
9 ensure that it arrives by the deadline.

10 49. Hispanic and Latino voters are also disproportionately more likely than white
11 voters to have economic or personal circumstances—including, but not limited to, language
12 barriers and limited English fluency, lack of reliable transportation to mail their ballots, or
13 difficulties in taking time off work to do the same—that make it even more challenging to
14 comply with the Election Day Receipt Deadline.

15 50. For example, the Election Day Receipt Deadline disparately impacts Arizona's
16 Hispanic and Latino voters who are often less educated than white voters due to persistent
17 gaps in education caused by historical and on-going discrimination. See James Thomas
18 Tucker, et al., *Voting Rights in Arizona: 1982-2006*, 17 Rev. L. & Soc. Justice 283, 284 -
19 341 (2008). As a result, as one court has explained, “[d]ue to their lower levels of literacy
20 and education, minority voters are more likely to be unaware of certain technical rules, such
21 as the requirement that early ballots be received by the county recorder, rather than merely
22 postmarked, by 7:00 p.m. on Election Day.” See *DNC*, 329 F. Supp. 3d at 868.

23 51. Further, given the lack of language assistance provided to voters—coupled
24 with Arizona's sustained resistance to bilingual education and mandated English-only
25 education, see Tucker, *supra* at 284-341—Hispanic and Latino voters experience ongoing
26 language barriers that make them less likely to understand the instructions provided by
27 county election officials regarding the Election Day Receipt Deadline. This is further
28 complicated by the fact that, historically, Spanish-speaking voters have received incorrect

1 and misleading information from election officials. In the two most recent presidential
2 cycles, for example, Spanish-speaking voters received incorrect information about the
3 election, ranging from wrong election dates to wrong titles for measures on those voters'
4 official ballots.

5 52. Moreover, Arizona's dissemination of incorrect and inaccurately translated
6 information breeds distrust and infuses more confusion into the election process, making it
7 particularly difficult for Hispanic and Latino voters to understand the shifting five, six, and
8 seven day deadlines for mailing in a mail-in ballot, particularly where those deadlines do
9 not comport with other standard deadlines for mailing government documents in Arizona.

10 53. Finally, "[r]acial disparities between minorities and non-minorities in
11 socioeconomic standing, income, employment, education, health, housing, transportation,
12 criminal justice, and electoral representation have persisted in Arizona." *DNC*, 329 F. Supp.
13 3d at 876. As a result, Hispanic and Latino voters experience higher rates of poverty than
14 white voters, and often have less access to reliable transportation and less flexible work
15 schedules, both of which make it more difficult for them to travel to the post office, polling
16 location, or county recorder's office to submit their ballots in time to meet the Election Day
17 Receipt Deadline.

18 54. Indeed, according to the U.S. Census Bureau's 2013-2017 American
19 Community Survey 5-Year Estimates, Hispanic, African-American, and Native-American
20 poverty rates in Arizona exceeded the white poverty rate for that same time period. Based
21 on the 5-Year Estimates, as of 2017, Hispanics, Native Americans, and African Americans
22 were all less likely to graduate high school in Arizona than whites were. Further, whites
23 were nearly 1.5 times more likely to have a bachelor's degree than African Americans,
24 almost three times more likely than Hispanics, and more than three times as likely as Native
25 Americans in Arizona.

26 55. Decades of research have demonstrated that deficiencies in socio-economic
27 standing, such as those described above, significantly impact an individual's ability to fully
28 participate in the political process, and the interaction between these deficiencies and the

1 Election Day Receipt Deadline is no different. Thus, while Arizona’s Election Day
 2 Deadline Receipt burdens all voters, it also imposes a disproportionate burden on Arizona’s
 3 rural and Hispanic and Latino voters.

4 **CLAIMS FOR RELIEF**

5 **COUNT I**

6 **First and Fourteenth Amendments** 7 **U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202** 8 ***Undue Burden on the Right to Vote***

9 56. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this
 10 Complaint and the paragraphs in the counts below as though fully set forth herein.

11 57. Under the *Anderson-Burdick* balancing test, a court considering a challenge to
 12 a state election law must carefully balance the character and magnitude of injury to the First
 13 and Fourteenth Amendment rights that the plaintiff seeks to vindicate against the
 14 justifications put forward by the State for the burdens imposed by the rule. *See Burdick v.*
Takushi, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

15 58. This balancing test utilizes a flexible sliding scale, where the rigorousness of
 16 scrutiny depends upon the extent to which the challenged law burdens voting rights. *See*
 17 *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 (9th Cir. 2016); *see also*
 18 *Akins v. Sec’y of State*, 154 N.H. 67 (2006) (applying *Anderson-Burdick* and holding that
 19 strict scrutiny was the correct test to determine constitutionality of ballot order system that
 20 prioritized candidate names alphabetically).

21 59. Courts need not accept a state’s justifications at face value, particularly where
 22 those justifications are “speculative,” otherwise it “would convert *Anderson-Burdick*’s
 23 means-end fit framework into ordinary rational-basis review wherever the burden a
 24 challenged regulation imposes is less than severe.” *Soltysik v. Padilla*, 910 F.3d 438, 448–
 25 49 (9th Cir. 2018) (citing *Pub. Integrity All.*, 836 F.3d at 1024–25); *see also Crawford v.*
 26 *Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling op.) (“However
 27 slight th[e] burden may appear, . . . it must be justified by relevant and legitimate state
 28

1 interests *sufficiently weighty to justify the limitation.*”) (internal citation and quotation
2 marks omitted) (emphasis added).

3 60. Arizona’s Election Day Receipt Deadline imposes a severe burden on all
4 Arizona voters—and rural and Hispanic and Latino voters in particular—who vote by mail.
5 These voters must first learn about the Election Day Receipt Deadline and accurately guess
6 when their ballot must be mailed for it to be counted. For voters who, through no fault of
7 their own, misjudge how long it will take for their ballot to arrive back to their county, or
8 for those who never learn about Arizona’s Election Day Receipt Deadline, the punishment
9 is swift and severe: total disenfranchisement. But Arizona’s Election Day Receipt Deadline
10 also severely burdens all voters who vote by mail even if those voters’ ballots are
11 successfully counted. By requiring its voters to cast their mail ballots a week before the
12 election in order for those ballots be counted, Arizona’s Election Day Receipt Deadline
13 forces Arizona voters to cast their ballots before they can account for any critical
14 information about the election or the candidates that arises during the final week leading up
15 to Election Day—arguably, the most critical week in an entire election cycle. Arizona’s
16 Election Day Receipt Deadline thus deprives voters of the ability to engage in this robust
17 period of civic engagement, because it effectively requires them to have already cast their
18 vote.

19 61. While Arizona’s imposition of its Election Day Receipt Deadline burdens all
20 Arizona voters who vote by mail, it also particularly impacts subgroups, like Arizona’s rural
21 population and its Hispanic and Latino voters, who, given where they live, must often cast
22 their ballots even further in advance of Election Day to ensure their ballots will arrive by
23 the Election Day Receipt Deadline. Arizona’s Election Day Receipt Deadline also generally
24 imposes a particularly heavy burden on Hispanic and Latino voters, who face heightened
25 barriers to participation in Arizona’s mail ballot system.

26 62. While Arizona has a legitimate regulatory interest in a *general* cutoff for
27 receiving ballots, the State derives no meaningful benefit from imposing the Election Day
28 Receipt Deadline, particularly where it has heavily promoted mail-in balloting and

encouraged over 80 percent of its electorate to vote by mail. Arizona has a full 20 days to finalize election results, and it already allows voters to cure otherwise incomplete ballots a full five business days after Election Day. Arizona would suffer no significant administrative burden if it, at a minimum, extended that same five-business-day deadline to permit for the receipt of ballots that were postmarked on or before Election Day, but which arrive within five business days after the election. In fact, the extension of the deadline would likely decrease administrative burdens and improve election outcomes in Arizona by providing the State and counties with the opportunity to count all votes cast in close races, avoiding potential recount and post-election litigation costs. Arizona thus has no legitimate interest, and certainly no compelling interest that is narrowly drawn, in rejecting ballots that are postmarked before or on Election Day and which are received within, at a minimum, five business days after Election Day.

63. In short, Arizona’s Election Day Receipt Deadline is not supported by a state interest that is sufficient to justify the resulting burden on the right to vote, and thus unduly burdens the right to vote of all Arizona voters generally and Arizona’s rural and Hispanic and Latino voters in particular in violation of the First and Fourteenth Amendments.

COUNT II

Due Process

U.S. Const. Amend. XIV, 42 U.S.C. § 1983

Denial of Procedural Due Process

64. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

65. The Due Process Clause of the United States Constitution prohibits the states from depriving “any person of . . . liberty . . . without due process of law.” U.S. CONST. amend. XIV, § 1. Which protections are due in a given case requires a careful analysis of the importance of the rights and the other interests at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976); *Nozzi v. Hous. Auth. of City of L.A.*, 806 F.3d 1178, 1192 (9th Cir. 2015). Courts must first consider “the nature of the interest that will be affected” by the

1 government's action as well as the "degree of potential deprivation that may be created" by
2 existing procedures. *Nozzi*, 806 F. 3d at 1192–93. Second, "courts must consider the
3 'fairness and reliability' of the existing procedures and the 'probable value, if any, of
4 additional procedural safeguards.'" *Id.* at 1193 (quoting *Mathews*, 424 U.S. at 343). Finally,
5 courts must consider "the public interest, which 'includes the administrative burden and
6 other societal costs that would be associated with' additional or substitute procedures. *Id.*
7 (quoting *Mathews*, 424 U.S. at 347). Overall, "due process is flexible and calls for such
8 procedural protections as the particular situation demands." *Mathews*, 424 U.S. at 334,
9 (quotation and citation omitted).

10 66. Arizona's procedures for voting by mail must comport with due process. *See*
11 *Raetzl v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990).
12 "Such due process is not provided when the election procedures [for voting by mail]" do
13 not adequately protect the right to vote or ensure that an "individual is not continually and
14 repeatedly denied so fundamental a right." *Id.*; *see also Saucedo v. Gardner*, 335 F. Supp.
15 3d 202, 217 (D.N.H. 2018) ("Having induced voters to vote by absentee ballot, the State
16 must provide adequate process to ensure that voters' ballots are fairly considered and, if
17 eligible, counted.").

18 67. "When an election process 'reache[s] the point of patent and fundamental
19 unfairness,' there is a due process violation." *Fla. State Conference of N.A.A.C.P. v.*
20 *Browning*, 522 F.3d 1153, 1183 (11th Cir. 2008) (quoting *Roe v. Alabama*, 43 F.3d 574,
21 580 (11th Cir. 1995)). A state's elections system, "the specifics of which are not explicitly
22 made known to potential voters, that leaves potential voters in the dark as to its effect on a
23 voter's [ability to vote] and that fails to give voters a fair opportunity to [participate], is
24 fundamentally unfair and violative of the Due Process Clause of the Fourteenth
25 Amendment." *Id.* at 1185.

26 68. The nature of the interest at stake in this case—the right to vote and to have
27 that vote count—is the most precious liberty interest of all because it is preservative of all
28 other basic civil and political rights.

1 69. But Arizona's existing procedures for counting mail ballots too often deprive
2 voters of having their ballot counted because (1) many voters do not learn of the Election
3 Day Receipt Deadline before Election Day, and (2) even voters who do learn of the Election
4 Day Receipt Deadline may not have their ballots counted if those ballots do not arrive in
5 the mail at the county recorder's office, through no fault of their own, by 7 p.m. on Election
6 Day. Arizona's Pre-Election Cutoff further deprives all Arizona voters who vote by mail of
7 the ability to cast a meaningful and informed vote by requiring voters to cast their ballots a
8 full week (or more) before Election Day if they wish to ensure that their ballots will actually
9 be counted.

10 70. Arizona's Election Day Receipt Deadline is neither a reliable nor fair way to
11 administer voting by mail. The Election Day Receipt Deadline and the corresponding Pre-
12 Election Cutoff for casting ballots is, in fact, devoid of reliability because Arizona's
13 elections officials can only offer voters their best guess of when voters must place their
14 ballots in the mail for it to be counted. Nor is the Election Day Receipt Deadline fair because
15 it effectively requires some voters—particularly rural voters and minority voters—to cast
16 their ballots before the rest of the electorate if they wish to be afforded the same process as
17 other voters in the State and to have their votes counted. Arizona's Election Day Receipt
18 Deadline is also not fair to all Arizona voters who vote by mail because it forces those voters
19 to cast their ballots with incomplete information and before candidates have delivered their
20 final pitches to the voters.

21 71. The value of additional or substitute procedural safeguards to ensure that the
22 votes of Arizona's mail voters are both meaningfully cast and actually counted is readily
23 apparent. A substitute procedure—requiring mail ballots to be postmarked on or before
24 Election Day and received by the county within, at a minimum, five business days after
25 Election Day to be counted—solves the inequities inherent in Arizona's Election Day
26 Receipt Deadline. A postmark date not only offers a reliable date to Arizona voters by which
27 they must cast their ballots, but it also ensures that rural voters and minority voters are not
28 more likely to have their ballot rejected simply because they live in a town with slower mail

1 service. A postmark date additionally ensures that all of Arizona's voters can consider any
2 information that may arise and influence voters' choices in the last week of the election.

3 72. Because Arizona is not required to finalize its election results for 20 days after
4 the election and already allows voters to cure incomplete ballots within five business days
5 of the election, requiring Arizona to accept ballots that are postmarked on or before Election
6 Day and which arrive, at a minimum, within five business days of Election Day would put
7 a minimal administrative burden on the state, if any. And as the Supreme Court has
8 explained, "administrative convenience" cannot justify the deprivation of a constitutional
9 right. *See Taylor v. Louisiana*, 419 U.S. 522, 535 (1975).

10 73. Having induced its voters to vote by mail, Arizona must establish adequate
11 procedures to ensure that voters have a reliable, fair, and effective method to cast their
12 ballots. Because Arizona's Election Day Receipt Deadline is markedly inadequate in all of
13 those respects, and Arizona is readily capable of instituting a substitute procedure which
14 would protect those voters' rights with minimal burden to the state, Arizona's Election Day
15 Receipt Deadline violates Arizona voters' procedural due process rights.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

18 A. Declaring that Arizona's imposition of its Election Day Receipt Deadline for
19 casting mail ballots and its failure to count the votes of otherwise eligible voters who
20 lawfully mail their ballots before or on Election Day, but whose ballots are not received—
21 through no fault of their own—by 7 p.m. on Election Day, violates the First and Fourteenth
22 Amendments to the United States Constitution by placing an undue burden on those voters
23 and particularly on Arizona's rural and Hispanic and Latino voters by subjecting them to
24 arbitrary and disparate treatment;

25 B. Declaring that Arizona's imposition of its Election Day Receipt Deadline for
26 casting mail ballots and its failure to count the votes of otherwise eligible voters who
27 lawfully mail their ballots before or on Election Day, but whose ballots are not received—
28

1 through no fault of their own—by 7 p.m. on Election Day violates the Due Process Clause
2 of the Fourteenth Amendment to the United States Constitution;

3 C. Permanently enjoining the Secretary, her respective agents, officers,
4 employees, and successors, and all persons acting in concert with each or any of them,
5 from rejecting ballots that are postmarked by Election Day and arrive at a county recorder's
6 office within, at a minimum, five business days of Election Day;

7 D. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees
8 pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

9 E. Granting such other and further relief as the Court deems just and proper,
10 including requiring the Secretary to accept ballots that were postmarked on or before
11 Election Day if received within, at a minimum, five business days of Election Day.

12 Dated: December 2, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ Sarah R. Gonski