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UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF ARIZONA

ROQUE “ROCKY” DE LA FUENTE,
and ALLIANCE PARTY,

Plaintiffs,

vs.

KATIE HOBBS, in her official capacity
as the Secretary of State of Arizona,

Defendants.

Case No.: _____

CIVIL COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

1. Plaintiffs, by and through their undersigned legal counsel, file this action seeking prospective declaratory and injunctive relief and to modify Arizona’s signature collection and witnessing requirements as applied to independent and third-party presidential candidates seeking to qualify for the November 3, 2020, Arizona general election ballot as a direct consequence of the current and ongoing COVID-19 pandemic. The Governor’s emergency orders effectively shutting down the State of Arizona from March to June and the social distancing protocols

1 employed by federal and state governments to combat the spread of COVID-19 and
2 the long-term fear and unwillingness of individual voters to be approached by
3 strangers requesting that they sign election petitions in violation of social distancing
4 norms drummed into their heads by federal, state and local officials through
5 executive orders, proclamations, press conferences and the nearly ubiquitous media
6 advertising purchased both by government agencies (such as the CDC) and
7 commercial businesses seeking to glom on to the “Stay Home Stay Safe...We Are
8 In This Together” mantra make it functionally impossible to collect the over 39,000
9 signatures required to secure ballot access for independent and third-party candidates
10 for Arizona’s November 3, 2020 presidential election.
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15 2. On April 23, 2020, Judge Rebecca R. Pallmeyer of the United States
16 District Court for the Northern District of Illinois, preliminarily enjoined the number
17 of signatures required to place the name of an independent candidate on the 2020
18 general election ballot by reducing the number of signatures required to secure ballot
19 access to 10% of the normal statutory requirement as a result of the social distancing
20 and stay-at-home orders issued to stem the transmission of the novel Wuhan
21 coronavirus in Illinois. *See, Libertarian Party of Illinois v. Pritzker*, 1:20-cv-02112,
22 Doc. No. 27 (N.D. Ill, J. Pallmeyer, April 23, 2020).
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26 3. In support, Plaintiffs need only allege obvious and indisputable facts –
27 that the signature collection requirement imposed by Section 16-341 of the Arizona
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1 Revised Statutes on independent and third-party presidential candidates should be
2 held unconstitutional for the 2020 presidential election as a result of the ongoing
3 pandemic which makes it functionally impossible for independent and third-party
4 presidential candidates to collect the required number of valid signatures to secure
5 ballot access for the 2020 Arizona general election.
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8 4. Excessive ballot access requirements impair “core political speech” of
9 both candidates and voters afforded the highest level of constitutional protection
10 under the First and Fourteenth Amendments to the United States Constitution.
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12 5. Under the current pandemic conditions and restrictions, as applied to
13 access to the 2020 presidential general election ballot, the requirements imposed on
14 independent and third-party presidential candidates by A.R.S. §16-341 impose a
15 temporary severe restriction on rights guaranteed under the First and Fourteenth
16 Amendments to the United States Constitution which are not narrowly tailored to
17 advance a compelling governmental interest during an ongoing public health
18 emergency and its immediate aftermath and are unconstitutional and must be
19 immediately enjoined and/or modified.
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23 6. Accordingly, Plaintiffs respectfully request that this Court enjoin
24 Defendant from strictly enforcing A.R.S. §16-341 for the 2020 general election and
25 provide complete relief in the form of an order requiring Defendant to print Plaintiff
26 De La Fuente’s name on the 2020 presidential ballot if Plaintiff either: (1) timely
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1 files, in addition to all other documents required to be filed, a nomination petition
2 containing 10% of the number of valid signatures required to secure ballot access
3 under A.R.S. §16-341; or, in the alternative, (2) timely pays a filing fee, in addition
4 to all other documents required to be filed, of \$5,000.00 to Defendant on or before
5 4:00 p.m. on September 4, 2020, in lieu of the signature collection requirement
6 imposed by A.R.S. §16-341.
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8 JURISDICTION

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11 7. Jurisdiction lies in this Court under 28 U.S.C. § 1331, providing that
12 the district courts of the United States shall have original jurisdiction of all civil
13 actions arising under the Constitution of the United States.
14

15 8. Moreover, jurisdiction lies under 42 U.S.C. § 1983 and 28 U.S.C. §
16 1343(a), the jurisdictional counterpart of 42 U.S.C. § 1983 as Plaintiffs allege a
17 violation of rights guaranteed to them under the United States Constitution.
18

19 VENUE

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21 9. Venue is proper in the United States District Court for the District of
22 Arizona under 28 U.S.C. § 1391(b) because a substantial part of the events and
23 omissions giving rise to Plaintiffs' claims occurred in this district. Furthermore,
24 Defendant exercises her statutory authority within this district and maintains her
25 principal office within this district.
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PARTIES

10. Plaintiff Alliance Party (hereinafter sometimes “Plaintiff Alliance Party” or “Alliance Party”) was created on October 14, 2018, at a meeting in Denver, Colorado when three political parties, the American Moderates Party, the Modern Whig Party and the American Party of South Carolina, agreed to merge to create the Alliance Party. On January 4, 2019, the Alliance Party officially registered with the Federal Elections Commission. Thereafter, the Independence Party merged with the Alliance Party in 2019; the American Alliance Party merged with the Alliance Party in 2019 and in 2020, the Independent Party of Connecticut formally merged with the Alliance Party.

11. Plaintiff Alliance Party is governed by the Alliance Party National Committee. Jim Rex is the Chairman of Plaintiff Alliance Party National Committee. Plaintiff Alliance Party’s mailing address is P.O. Box 1354, Anacortes, WA 98221.

12. On April 25, 2020, Plaintiff Alliance Party conducted an online national convention and formally nominated Plaintiff Roque “Rocky” De La Fuente of California as its 2020 nominee for the Office of President of the United States and Darcy Richardson of Florida as its 2020 nominee for the Office of Vice President of the United States. Owing to automatic ballot status in certain states, Plaintiff Alliance Party’s presidential ticket secured immediate ballot access for the 2020 general election in Delaware, South Carolina, Mississippi and Florida.

1 13. Plaintiff Roque “Rocky” De La Fuente (hereinafter “Plaintiff”), is the
2 2020 nominee of Plaintiff Alliance Party for the Office of President of the United
3 States.
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5 14. Plaintiff De La Fuente intends to seek ballot access for the 2020
6 presidential general election in every state where is he permitted to secure ballot
7 access.
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9 15. Plaintiff De La Fuente is over the age of 35, is a natural born citizen of
10 the United States of America, having been born in San Diego, California and has
11 been a continual resident of the United States for over 35 years.
12

13 16. Plaintiff De La Fuente satisfies all of the qualifications enumerated
14 under the Presidential Qualification Clause of Article II, section 1, clause 5 of the
15 United States Constitution.
16

17 17. Defendant Katie Hobbs is sued in her official capacity as the chief
18 elections official of the State of Arizona and charged with enforcing Section 16-341
19 of the Arizona Revised Statues. Defendant Hobbs is the supervisor and director of
20 all election matters in Arizona and is sued for declaratory and injunctive relief under
21 42 U.S.C. § 1983 and 28 U.S.C. § 2201, as well as costs and attorney’s fees under
22 42 U.S.C. § 1988(b).
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26 18. At all relevant times, Defendant is engaged in state action under color
27 of state law.
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FACTS

19. Plaintiff Alliance Party nominated their national ticket on April 25, 2020.

20. Plaintiff Alliance Party nominated Plaintiff Roque “Rocky” De La Fuente as their 2020 nominee for the Office of President of the United States.

21. In Arizona, presidential candidates who do not seek to run under a recognized political party label may be nominated to appear on the general election ballot by gathering the required number of signatures on nomination petitions from registered voters. Once the candidate designates his or her vice-presidential running mate and completes other required paperwork, the candidate’s name (along with the candidate’s chosen label) will appear on Arizona’s 2020 presidential general election ballot alongside the recognized party nominees.

22. Section 16-341(E) & (F) of the Arizona Revised States provides the signature requirements and deadlines imposed on independent presidential candidates to gain access to Arizona’s general election presidential ballot:

(E) The nomination petition shall conform as nearly as possible to the provisions relating to nomination petitions of candidates to be voted for at primary elections and shall be signed by at least the number of persons who are registered to vote determined by calculating three percent of the persons who are registered to vote of the state, county, subdivision or district for which the candidate is nominated who are not members of a political party that is qualified to be represented by an official party ballot at the next ensuing primary election an accorded representation on the general election ballot.

1
2 (F) The percentage of persons who are registered to vote necessary to
3 sign the nomination petition shall be determined by the total number of
4 registered voters from other than political parties that are qualified to
5 be represented by an official party ballot at the next primary election
6 and accorded representation on the general election ballot in the state,
7 county, subdivision or district on January 2 of the year in which the
8 general election is held. Notwithstanding the method prescribed by
9 subsection E of this section and this subsection for calculating the
10 minimum number of signatures necessary, and person who is registered
11 to vote in the state, county, subdivision or district for which the
12 candidate is nominated is eligible to sign the nomination petition
13 without regard to the signer's party affiliation.

14 23. On January 2, 2020, there were 1,301,292 registered voters in Arizona
15 who were not registered in a political party qualified to be represented by an official
16 party ballot at the next primary election and accorded representation on the 2020
17 general election ballot.

18 24. As of June 18, 2020, Plaintiff Alliance Party is not a political party
19 qualified in Arizona to be represented by an official party ballot at the next ensuing
20 primary election.

21 25. Based on information published on Defendant's official website, only
22 the Republican, Democratic and Libertarian parties are qualified to nominate their
23 presidential candidates by an official party ballot at the next ensuing primary election.

24 26. Accordingly, Plaintiff Alliance Party must collect 39,039 valid
25 signatures from registered voters on nomination petitions to secure access to the
26 2020 general election ballot for Plaintiff Alliance Party's presidential and vice
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1 presidential nominees.

2 27. Pursuant to A.R.S. §16-341(G), Plaintiff Alliance Party must file
3 nomination petitions to place the name of Plaintiff De La Fuente on the 2020 general
4 election ballot no later than the sixtieth day before the general election.
5

6 28. For the November 3, 2020, presidential general election, the deadline
7 for Plaintiffs to file their nomination petition is 4 p.m. on September 4, 2020.
8

9 29. Pursuant to A.R.S. §16-341(M), Defendant also permits nomination
10 petitions to be signed electronically through the state's "E-Qual" system.
11

12 30. Despite the availability of the "E-Qual" system, there is no reasonably
13 available method to permit Plaintiffs to contact Arizona voters to communicate their
14 candidacy and the requirement for them to sign their nomination petition through the
15 state's "E-Qual" system without engaging in direct person-to-person contact.
16

17 31. Accordingly, the state's "E-Qual" system is not a reasonable,
18 constitutional substitute to the person-to-person contact between Plaintiffs'
19 circulators and Arizona voters necessary to secure the 39,039 valid signatures to
20 qualify for the 2020 presidential general election ballot.
21

22 32. Collecting signatures by hand, on paper nomination petitions, through
23 face-to-face solicitation is inherently burdensome, labor-intensive and inefficient as
24 a means of demonstrating voter support. Many signatures are often invalidated due
25 to illegibility, missing information and other mere technical defects. This obligates
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1 candidates and political parties to collect at least 25% to 50% more signatures than
2 required, in order to account for those signatures that might be later invalidated. In
3 fact, in other states, such as Virginia, the Virginia Board of Elections expressly
4 recognize that candidate should collect at least 50% additional signatures above the
5 minimum number by instructing candidates: “Because people who are not registered
6 to vote often sign petitions for candidates, we recommend that you collect at least
7 7,500 signatures. . . .” See, VIRGINIA STATE BOARD OF ELECTIONS “HOW TO RUN
8 FOR OFFICE FOR INDEPENDENT OR THIRD PARTY POLITICAL ORGANIZATIONS:
9 *BALLOT ACCESS REQUIREMENTS FOR THE NOVEMBER 3, 2020 GENERAL ELECTION*
10 *FOR PRESIDENT AND VICE PRESIDENT*” at p. 9.

11
12 33. Accordingly, the number of raw signatures that Plaintiffs need to collect
13 to secure ballot access for the 2020 Arizona presidential general election is between
14 48,000 and 58,000.

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16 34. Colorado and Oklahoma have opted to impose a filing fee instead of
17 signature collection requirements for presidential candidates in order to protect their
18 legitimate interest to limit access to their general election ballot and to prevent ballot
19 clutter and voter confusion:

20 (a) Colorado imposes a \$1,000 filing fee, due August 5, 2020;

21 (b) Oklahoma imposes a \$35,000 filing fee, due July 15, 2020.

1 35. In December 2019, an outbreak of respiratory disease caused by a novel
2 coronavirus emerged in Wuhan, China. The respiratory disease caused by the novel
3 coronavirus has been named COVID-19 and is a highly infectious disease that is
4 spread by person-to-person contact and, as of May 31, 2020, has resulted in over
5 103,000 deaths in the United States and 369,000 deaths worldwide.
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8 36. On January 30, 2020, long after the Wuhan novel coronavirus had
9 spread well beyond China, the World Health Organization (“WHO”) finally
10 classified that COVID-19 constitutes a Public Health Emergency of International
11 Concern.
12

13 37. Immediately after the WHO declared COVID-19 a Public Health
14 Emergency of International Concern, and as a result of confirmed cases of COVID-
15 19 in the United States in California and Washington, on January 31, 2020, Health
16 and Human Services Secretary Alex M. Azar declared a nationwide public health
17 emergency retroactive to January 27, 2020.
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20 38. On February 27, 2020, to slow the spread of COVID-19, the United
21 States Centers for Disease Control (“CDC”) issued guidance recommending, among
22 other things (such as frequent hand washing, and refraining from touching mouth
23 and face with hands), that members of the public practice “social distancing” a
24 practice designed to minimize close contact with others to keep sick individuals from
25 coming in contact with healthy individuals in order to limit opportunities for
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1 transmission of the Wuhan novel coronavirus. The CDC continues to recommend
2 that everyone avoid large gatherings and crowds, and maintain a distance of
3 approximately six feet from all strangers (i.e., all non-family members).
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5 39. On March 11, 2020, the WHO declared COVID-19 to be a global
6 pandemic.
7

8 40. On March 13, 2020, the President of the United States declared a
9 national emergency, retroactive to March 2, 2020, due to uncontained community
10 transmission of the Wuhan novel coronavirus within the United States and the
11 resulting expanding outbreak of COVID-19.
12

13 41. On March 11, 2020, Arizona Governor Douglas Ducey issued and
14 Defendant executed a state of emergency determining that the COVID-19 outbreak
15 presents conditions in Arizona, which are or are likely to be beyond the control of
16 the services, personnel, equipment, and facilities of any single county, city or town,
17 and which require the combined efforts of the State and the political subdivisions,
18 and thus justifies a declaration of a State of Emergency which is to remain in effect
19 until the resolution of the outbreak as determined by the Arizona Department of
20 Health Services.
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22 42. On March 19, 2020, Governor Ducey issued and Defendant executed
23 Executive Order 2020-08 extending the validity of driving permits that have an
24 expiration date between March 1, 2020 and September 1, 2020 for 6 month from the
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1 expiration date declaring that: “The United States Center for Disease Control and
2 Prevention (CDC) has stated that certain people are at higher risk of serious illness
3 as a result of COVID-10 including older adults, people with serious chronic medical
4 conditions like heart disease, diabetes, and lung disease, and the CDC recommends
5 that everyone, especially people who are at higher risk, should avoid crowds as much
6 as possible” and “minimizing required in-person visits to conduct government
7 services, including visiting Motor Vehicle Division Offices (MVD), is consistent
8 with CDC guidelines.”
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12 43. Also on March 19, 2020, Governor Ducey issued and Defendant
13 executed Executive Order 2020-19 limiting the operation of non-essential businesses
14 in counties with COVID-19 cases for an indefinite period of time in order to “slow
15 the spread of COVID-19, declaring that: “The disease caused by COVID-19 is
16 contagious and can be fatal, resulting in the World Health Organization declaring it
17 a global pandemic, and....the State of Arizona has experienced community spread
18 of COVID-19...as it continues to spread across the country and state, posing an
19 increasing threat to public health...and, [w]hereas, on March 16, 2020, the CDC
20 issued updated guidance recommending that individuals avoid gatherings of more
21 than 10 people.”
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1 44. On March 23, 2020, Governor Ducey issued and Defendant executed
 2 Executive Order 2020-12, protecting certain essential businesses from local closures
 3
 4 so long as social distancing is observed.

5 45. On March 30, 2020, Governor Ducey issued and Defendant executed
 6 Executive Order 2020-18 ordering that:
 7

8 Arizona shall institute a “Stay home, Stay healthy, Stay connected”
 9 policy that promotes physical distancing, while also encouraging social
 10 connectedness. This builds on actions the state has already taken, and
 11 further memorializes some already in effect, to slow the spread of
 COVID-19 ad protect our citizens.

12 Under this policy, all individuals in the State of Arizona shall limit time
 13 away from their place of residence or property, except: (a) To conduct
 14 or participate in Essential Activities, (b) For employment, to volunteer
 15 or participate in Essential Functions, (c) To utilize any services or
 16 products provided by Essential Businesses, (d) Employment, if as a sole
 17 proprietor or family owned business, work is conducted in a separate
 18 office space from your home and the business is not open to serve the
 public, (e) No person shall be required to provide documentation or
 proof of their activities to justify their activities under this order.

19 46. Executive Order 2020-18 makes no provision classifying the
 20 circulation of nomination petitions or election petitions to be an Essential activity.
 21

22 47. Executive Order 2020-18 expressly forbids the circulation of
 23 nomination petitions and election petitions providing that: “Non-essential business
 24 may continue to operate those activities that do not require in-person, on-site
 25 transactions....”
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48. Furthermore, Executive Order 2020-18 explains that:

“The intent of this Executive Order is to ensure that people maintain physical distance to the maximum extent feasible, while enabling essential services to continue, protecting people’s rights and slowing the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence...they should at all times and as much as reasonably possible comply with physical distancing recommendations. All provisions of this Executive Order shall be interpreted to effectuate this intent. Prior to any enforcement action being taken to enforce this order in accordance with A.R.S. § 26-317, a person shall be notified and given an opportunity to comply.

49. Executive Order 2020-18 was initially in effect through April 30, 2020. Executive Order 2020-33 extended the “Stay home, Stay Healthy, Stay Connected” order to May 15, 2020.

50. Thereafter, Executive Order 2020-36, issued by Governor Ducey and executed by Defendant on May 12, 2020, rescinds the “Stay at Home” order and sets the parameters for the partial reopening of the State of Arizona while still emphasizing that:

(1) Arizona shall institute a “Stay Healthy, Return Smarter, Return Stronger” policy **that promotes physical distancing**, while encouraging social connectedness and allows businesses to gradually and safely open in compliance with federal guidelines as the state continues to mitigate and prevent the spread of COVID-19....(4) **All individuals, when in public areas, should maximize physical distance from others. Social settings where appropriate physical distancing is not practical should be avoided unless precautionary measures are observed and CDC guidelines are followed**....(8) The intent of this Executive Order is to ensure that the State of Arizona continues to mitigate the spread of COVID-19 to the greatest extent possible.

1 51. On April 7, 2020, Governor Ducey issued and Defendant executed
 2 Executive Order 2020-24 temporarily imposed isolation or self-quarantine
 3 requirements for all persons who arrive in the State of Arizona from an area with
 4 substantial community spread of the novel Wuhan coronavirus providing that any
 5 person who violates Executive Order 2020-24 may be charged with a Class 1
 6 misdemeanor and subject to a fine not to exceed \$2,500.
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8 52. On April 8, 2020, Governor Ducey issued and Defendant executed
 9 Executive Order 2020-26 providing remote online notarization pursuant to rules
 10 promulgated by Defendant to ensure a secure identity verification process through
 11 online audio-video technology permitting the notary and signer to converse in real-
 12 time as the signatures and tamper-proof seals are placed on the electronic document
 13 and following procedures outlined in A.R.S. §§ 41-371 through 41-380. The order
 14 explains that: “due to the spread of COVID-19, the CDC issued guidance
 15 encouraging people to telecommute and recommending that people adopt social
 16 distancing practices by maintaining a distance of at least six feet from each other.
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22 53. Executive Order 2020-33, was issued on April 29, 2020 by Governor
 23 Ducey and executed by Defendant to start the reopening process of the state while
 24 continuing to warn that:
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26 “...to combat COVID-19, and at the recommendation of the state’s
 27 health officials, the State of Arizona must continue its efforts by further
 28 limiting potential exposure through a policy of physical distancing

1 while maintaining social connectedness, and....although strides to
2 assess, mitigate and prepare for the COVID-19 response and recovery
3 have been made, **the current efforts in the State to limit potential**
4 **exposure through a policy of physical distancing while maintaining**
5 **social connectedness is necessary....”**

6 54. Executive Order 2020-34, issued on May 4, 2020 permitting certain
7 non-essential business to reopen in Arizona, continues to incorporate the need to
8 maintain social distancing norms.
9

10 55. Governor Ducey’s new vehicle and driver licensing rules and remote
11 notarization provisions demonstrate that requiring in-person contact to satisfy
12 Arizona’s nomination petition requirements is not presently possible, has not been
13 possible since Plaintiff Alliance Party nominated their national ticket on April 25,
14 2020, and will continue to be severely problematic for the few remaining weeks left
15 to file nomination petitions even if Governor Ducey fully rescinds his declared state
16 of emergency.
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20 56. In fact, Defendant herself continues to impose a closure of her own
21 office to prevent in-person filing of election petitions, instructing circulators and
22 candidates to mail their petitions to her office rather than file election petitions at her
23 office in Phoenix.
24

25 57. If Defendant continues to protect her own staff from the threat of in-
26 person transmission of the Wuhan novel coronavirus, then she cannot advance any
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1 legitimate argument why petition circulators need to subject themselves to an
2 excessive threat of transmission by collecting the currently mandated over 39,000
3 signatures to secure ballot access for Plaintiff De La Fuente.
4

5 58. The national health emergency declared in the United States by the
6 President effective March 2, 2020, the CDC social distancing guidelines and
7 Governor Ducey's executive orders imposing stay at home and 6 foot social
8 distancing requirements makes it nearly impossible for third-party and independent
9 presidential candidates to collect the required number of valid signatures in order to
10 gain access to the Arizona's 2020 general election ballot; and even if such signatures
11 can be collected the challenged requirement places the health and lives of petition
12 circulators, voters and the public at large at unnecessary risk – a risk that Defendant
13 is not willing to impose on her own staff.
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18 59. Given the severity of the community transmission of the Wuhan novel
19 coronavirus and the resulting COVID-19 pandemic and its impact on Arizona,
20 including the recent uptick in COVID-19 cases in Arizona after the state began the
21 recent process of re-opening from lockdown, it remains uncertain whether many
22 voters will be willing to be approached by strangers (i.e., petition circulators) in
23 sufficient numbers for Plaintiffs to be able to collect the required number of
24 signatures to secure ballot access – a failure wholly unrelated to the level of support
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1 by Arizona voters to place Plaintiff De La Fuente's name on the 2020 Arizona
2 presidential ballot.
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4 60. Petitioning to qualify candidates for the Arizona's November 3, 2020,
5 general election ballot is not defined as an "essential" activity under any of Governor
6 Ducey's executive orders.
7

8 61. Government officials at virtually every level are continuing to direct
9 people to stay at home and/or to continue to practice social distancing and to avoid
10 proximity to any non-family member within 6 feet.
11

12 62. Simply stated, short of wide-spread vaccination for the Wuhan novel
13 coronavirus, which will not occur, at the earliest, until the end of 2020 (fingers
14 crossed), there is no evidence that the social distancing conditioning imposed by
15 Governor Ducey's state of emergency and associated executive orders, as well as,
16 the federal CDC guidance and public campaigns to convince the public that social
17 distancing is necessary for the public health, it will remain nearly impossible to
18 collect a sufficient number of valid signatures solely because citizens do not want
19 strangers to approach them within 6 feet which is necessary for any petition
20 circulator to communicate with voters and to collect their signatures.
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25 63. It is impossible to collect a signature on an election petition and
26 maintain 6 feet of social distancing.
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1 64. For instance, Governor Jay Inslee of Washington, in Proclamation 20-
2 53 issued on May 5, 2020, modified certain ballot access requirements in the State
3 of Washington acknowledging that:
4

5 WHEREAS, not all candidates for public office have the means to pay
6 the required filing fee to be included on the ballot for election, and the
7 statutory alternative to paying the fee involves collecting a sufficient
8 number of signatures from voters, which is very difficult to do by the
9 May 15, 2020, deadline without the person-to-person contact currently
10 prohibited by Proclamation 20-25 and as amended (Stay Home Stay
11 Healthy); and

12

13 Based on the above noted situation and under the provisions of RCW
14 43.06.220(2)(g), I also find that, as a result of the COVID-19 pandemic,
15 strict compliance with [ballot access signature requirements] will
16 prevent, hinder, or delay action that is necessary to prevent person-to-
17 person contact and to remove barriers that prevent some candidates for
18 election in Washington State from being included on the ballot for
19 election....

20 65. By Executive Order New York Governor Cuomo indefinitely
21 suspended the circulation of all election petitions in New York for independent and
22 third-party candidates in New York.

23 66. Governor Ducey has issued multiple executive orders delaying or
24 modifying dozens of Arizona laws to accommodate the social distancing
25 requirements to help prevent the spread of the Wuhan novel coronavirus and
26 COVID-19. However, Governor Ducey has failed to modify any of the ballot access
27

1 requirements imposed solely on third-party and independent presidential candidates
2 to secure ballot access for the 2020 presidential election.
3

4 67. Collecting signatures on nomination petitions during the current
5 COVID-19 pandemic endangers not only the health and lives of Arizona voters, but
6 also the health and lives of petition circulators and the public at large. If a petition
7 circulator or voter is infected of the Wuhan novel coronavirus and is not so aware,
8 the collection of signatures for nomination petitions place everyone at risk of further
9 transmission of the virus responsible for COVID-19.
10
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12 68. Furthermore, as a direct result of the COVID-19 pandemic, it is unlikely
13 that petition circulators will be able to gather signatures because there are fewer
14 people congregating in public places and fewer people likely to open their doors to
15 uninvited strangers seeking to collect signatures on election petitions.
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18 69. Even after the public health emergency is lifted, the COVID-19
19 pandemic will continue with predictions from federal health officials such as
20 Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases,
21 of a second COVID-19 wave if CDC social distancing guidelines are not followed
22 even after states begin to allow non-essential commercial activity to resume. See,
23 Axelson, Ben “Dr. Fauci: Coronavirus Second Wave ‘not inevitable’ if we do these
24 things” Syracuse.com, May 28, 2020, [www.syracuse.com/coronavirus/2020/05/dr-](http://www.syracuse.com/coronavirus/2020/05/dr-fauci-coronavirus-second-wave-not-inevitable-if-we-do-these-things.html)
25 [fauci-coronavirus-second-wave-not-inevitable-if-we-do-these-things.html](http://www.syracuse.com/coronavirus/2020/05/dr-fauci-coronavirus-second-wave-not-inevitable-if-we-do-these-things.html)
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1 70. Even after the pandemic subsides, the COVID-19 outbreak is likely to
2 continue to have a negative effect on signature collection for nomination petitions in
3 Arizona for a substantial period of time extending beyond the current election cycle.

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5 71. Available voter registration data provides no information that would
6 facilitate the ability of Plaintiffs to conduct a petition drive and secure signatures
7 solely through Arizona's "E-Qual" system.

8
9 72. The challenged signatures requirement was adopted long before the
10 advent of the online "E-Qual" system and the excessive number of signatures that
11 independent and third-party presidential candidates are required to collect to secure
12 ballot access never contemplated that such a large number of signatures could be
13 collected through online electronic signatures. Nor has Arizona made any effort to
14 facilitate the collection of a significant number of nomination petition signatures
15 solely through the "E-Qual" system, such as providing email addresses for registered
16 voters (as some state provide).

17
18 73. The costs of alternative public advertising, as opposed to direct person-
19 to-person contact through petition circulators, needed to make the "E-Qual" system
20 account for the collection of a significant percentage of the signatures required to
21 gain ballot access for independent and third-party presidential candidates imposes
22 such a severe impairment on "core political speech" that forced reliance on the "E-
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1 Qual” system is, itself, a violation of rights guaranteed to Plaintiffs under the First
2 and Fourteenth Amendments to the United States Constitution.

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4 74. The United States Supreme Court has recognized that presidential
5 elections are unique as they are the only national elections and decided beyond the
6 borders of any one state, such that states have a diminished interest in imposing their
7 most restrictive ballot access requirements.

8
9 75. The “E-Qual” system was not designed or intended to be the sole means
10 to collect petition signatures in Arizona, especially as applied to independent and
11 third-party presidential ballot access is inconsistent with Supreme Court precedent.

12
13 76. Plaintiff De La Fuente has demonstrated substantial public support in
14 securing ballot access as the presidential nominee of the both the American Delta
15 Party and the Reform Party in the 2016 presidential general election in Alaska,
16 Nevada, Utah, Colorado, New Mexico, Wyoming, Idaho, Montana, North Dakota,
17 Wisconsin, Iowa, Minnesota, Kentucky, Tennessee, Mississippi, Florida, New
18 Jersey, Rhode Island, New Hampshire and Vermont.

19
20 77. Plaintiffs have secured automatic ballot access for the 2020 presidential
21 general election in Florida, South Carolina, Mississippi and Delaware.

22
23 78. In light of the COVID-19 pandemic, the requested remedy of modifying
24 Arizona law to order Defendant to print Plaintiff De La Fuente’s name on the 2020
25 Arizona presidential ballot if either: (1) Plaintiffs file a nomination petition

1 containing valid signatures equal to 10% of the statutory mandate (i.e., 3,904 valid
2 signatures); or, in the alternative, (2) Plaintiffs timely pay of a filing fee of \$5,000,
3
4 in lieu of collecting signatures on nomination petitions, will both ensure that only
5 legitimate presidential candidates will appear on the Arizona presidential ballot and
6
7 protect the integrity of a national election by permitting candidates who have secured
8
9 ballot access in other states to secure access on all other state ballots through reduced
10
signature collection requirement and/or filing fees in lieu of signature collection.

11 79. Arizona law, together with the Wuhan novel coronavirus, the COVID-
12 19 pandemic and Governor Ducey's executive orders imposing restrictions on social
13
14 contacts and the Governor's failure to amend Arizona election laws to protect
15
16 Plaintiffs' severely impaired rights guaranteed under the First and Fourteenth
17
18 Amendments to the United States Constitution for the 2020 election, is the direct
cause of injury-in-fact to Plaintiffs' rights under the federal constitution.

19 80. Plaintiffs' injuries are fairly traceable to Arizona laws requiring
20
21 Plaintiffs to collect a minimum of 39,039 valid signatures, without permitting any
22
23 modification during public health emergencies.

24 81. This Court has the authority to provide complete relief and redress
25
26 Plaintiffs' injuries by issuing prospective declaratory and injunctive relief
27
28 prohibiting Defendants' strict enforcement of A.R.S. § 16-341 and ordering
Defendants' to place Plaintiff De La Fuente's name on the 2020 Arizona presidential

1 ballot if: (1) Plaintiffs timely file nomination petition containing 3,904 valid
2 signatures (10% of the statutory requirement); or, in the alternative, (2) Plaintiffs'
3
4 timely pay a \$5,000 filing fee in lieu of filing a nomination petition.

5 82. Plaintiffs have no other remedy available at law.

6
7 **CAUSE OF ACTION**

8 **COUNT I**
9 **(First Amendment)**

10 83. Plaintiffs reassert each preceding paragraph as if set forth fully herein.

11 84. In light of the ongoing public health emergency caused by the
12
13 community transmission of the Wuhan novel coronavirus and resulting COVID-19
14 pandemic and the actions and inactions taken by Governor Ducey to enforce social
15 distancing requirements to retard the community transmission of the coronavirus in
16 Arizona, while taking no action to alleviate ballot access requirements for third-party
17 and independent presidential candidates, the in-person signature collection
18 requirements imposed by A.R.S. § 16-341(A) severely impair rights guaranteed to
19 Plaintiffs under the First and Fourteenth Amendments to the United States
20 Constitution as applied to the 2020 general election.
21
22
23

24 85. The signature collection requirements imposed on independent and
25 third-party presidential candidates by A.R.S. § 16-341(A) is not narrowly tailored to
26 advance a compelling governmental interest during the state of emergency and
27
28

1 public health crisis caused by the COVID-19 pandemic where face-to-face signature
2 collection is currently unlawful and nearly impossible for the foreseeable future as a
3 result of the long-term social distancing conditioning of voters resulting from
4 government action to stem the current and future outbreaks of COVID-19.

5
6 86. Under the circumstances of the current COVID-19 pandemic and
7 Governor Ducey's executive orders seeking to contain the further spread of the virus
8 causing COVID-19 and in combination with the failure of Governor Ducey to
9 modify signature collection requirements for independent and third-party
10 presidential candidates contesting the 2020 presidential election, a real and actual
11 controversy exists between the parties.

12
13 87. Plaintiffs are suffering and will continue to suffer irreparable injury as
14 a direct and proximate result of the violations alleged herein unless Defendant's
15 strict enforcement of A.R.S. § 16-341 is declared unlawful and enjoined as applied
16 to the 2020 general election.

17
18 88. Plaintiffs demand the relief requested herein.

19
20
21 **REQUESTED RELIEF**

22
23 **NOW WHEREFORE**, Plaintiffs respectfully request the following relief
24 from this Court:

25
26 (A) Assume original jurisdiction over the above captioned action;

1 (B) Issue an emergency temporary restraining order and/or preliminary
2 injunction prohibiting Defendant from strict enforcement of the signature collection
3 requirements of A.R.S. § 16-341(A) against Plaintiffs and order Defendants to print
4 Plaintiff De La Fuente's name on Arizona's 2020 presidential ballot if Plaintiff
5 either: (1) Timely files, in addition to all other required documents, a nomination
6 petition with 3,904 valid signatures of qualified Arizona voters; or, in the alternative,
7 (2) Pay a filing fee of \$5,000, in addition to all other required documents, in lieu of
8 the requirement to file a nomination petition;
9
10
11

12 (C) Issue a declaratory judgment stating that the signature collection
13 requirements imposed on independent and third-party presidential candidates by
14 A.R.S. § 16-341 cannot be constitutionally enforced under the requirements of the
15 First and Fourteenth Amendments to the United States Constitution as applied to the
16 2020 presidential general election;
17
18

19 (D) Issue a permanent injunction prohibiting Defendants' strict
20 enforcement of the signature collection requirements of A.R.S. § 16-341 imposed
21 on independent and third-party presidential candidates during a declared state of
22 emergency and/or public health emergency during the period to lawfully circulate a
23 nomination petition in the State of Arizona;
24
25

26 (E) Order Defendant to pay Plaintiffs their costs and reasonable attorney's
27 fees under 42 U.S.C. § 1988(b); and,
28

1 (F) Retain jurisdiction over this matter and order Defendant to provide
2 Plaintiffs any additional relief that this Court may deem appropriate and just.
3

4 Respectfully submitted,

5 Dated: June 29, 2020

6 /s Morgan J.C. Scudi
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