

1 Sarah R. Gonski (# 032567)
2 PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
3 Phoenix, Arizona 85012-2788
Telephone: 602.351.8000
4 Facsimile: 602.648.7000
SGonski@perkinscoie.com
DocketPHX@perkinscoie.com

5
6 Marc E. Elias*
John Devaney*
Amanda R. Callais*
7 K'Shaani O. Smith*
Christina A. Ford*
8 PERKINS COIE LLP
700 Thirteenth Street NW, Suite 600
9 Washington, D.C. 20005-3960
Telephone: 202.654.6200
10 Facsimile: 202.654.6211
melias@perkinscoie.com
11 jdevaney@perkinscoie.com
acallais@perkinscoie.com
12 kshaanismith@perkinscoie.com
christinaford@perkinscoie.com

13 **Pro hac vice application to be filed*

14 *Attorneys for Plaintiffs*

15
16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF ARIZONA**

18 Voto Latino, Inc. and Priorities USA,
19
20 Plaintiffs,

21 v.

22 Katie Hobbs, in her official capacity as
Arizona Secretary of State,
23 Defendant.

No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

24
25
26
27
28

1 Plaintiffs Voto Latino, Inc. and Priorities USA, through the undersigned attorneys,
2 file this Complaint for Declaratory and Injunctive Relief against Katie Hobbs, in her official
3 capacity as the Arizona Secretary of State (“Secretary”), and upon information and belief
4 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8 Rubio had withdrawn from the race several days prior to the election.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, 1,611 ballots were
18 rejected for arriving after the Election Day Receipt Deadline, even though many of them
19 were mailed multiple days before election day. That number is steadily increasing. In 2012,
20 more than double that number—4,107 ballots—were rejected. And in the 2018 general
21 election, at least 4,500 ballots were rejected in Maricopa and Navajo Counties alone because
22 they arrived after the Election Day Receipt Deadline.¹ A disproportionate number of these
23 ballots were cast by Arizona’s minority voters.

24 3. It is not surprising that such a large number of ballots arrive after Arizona’s
25 Election Day Receipt Deadline; A.R.S. § 16-548(A) effectively creates a second, little-
26 known shadow deadline, the “Pre-Election Cutoff.” Arizona’s election officials define the

27 _____
28 ¹ There do not appear to be any statewide reported numbers for 2018; however, both Maricopa and Navajo reported the number of ballots rejected for late arrival.

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

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

16 5. Arizona has no legitimate interest in enforcing the Election Day Receipt
17 Deadline, particularly where over the last decade it has pushed voters across the State to
18 utilize mail voting. Although Arizona may certainly set a reasonable deadline to receive
19 ballots to ensure the finality of election results, the current Election Day Receipt Deadline
20 is unreasonable and disenfranchising: it is contrary to voters’ reasonable expectations,
21 necessitates that ballots be cast far earlier than they need to be, and is poorly communicated
22 to voters. The State can still serve its election administration interest by accepting ballots
23 postmarked by Election Day and received within a reasonable time—five business
24 days—thereafter. After all, Arizona need not complete its total vote count until 20 days
25 after Election Day. A.R.S. § 16-642(A). And Arizona already contemplates that a certain
26 number of ballots will not be countable right away; ballots that arrive in a timely but
27 incomplete fashion are curable up to five business days after Election Day. *Id.* § 16-550.
28 Counting ballots that have been postmarked by Election Day, as long as they are received

1 within five business days of Election Day, would serve the State's interests in finality of
2 results without unduly burdening its voters. It would also ensure that all Arizona voters have
3 sufficient protections in place to ensure that their right to vote is not arbitrarily and
4 repeatedly denied.

5 6. While the Election Day Receipt Deadline affects all Arizona voters, it
6 disenfranchises Arizonans in rural counties by a much greater margin. For example, in
7 2018, approximately 1,535 voters were disenfranchised in urban Maricopa County. In
8 contrast, 3,062 late ballots were reported in Navajo County and 6,227 ballots were reported
9 as late in Yuma County, both of which have a significantly smaller number of registered
10 voters than Maricopa.

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

17 8. Further, the Election Day Receipt Deadline has particularly profound
18 implications for Arizona's Hispanic and Latino voters. Statistically, they comprise a
19 disproportionately significant portion of voters whose ballots are rejected under the Election
20 Day Receipt Deadline. Indeed, in rural counties, Hispanic and Latino voters are five to six
21 times more likely to be disenfranchised than white voters, and even in urban Maricopa
22 County, they are twice as likely to be disenfranchised by the Election Day Receipt Deadline
23 than white voters.

24 9. The reasons for this disparity are varied, but each is traceable to Arizona's long
25 history of discrimination against minority voters and, particularly, against members of its
26 Hispanic and Latino community. *First*, discrimination in education has led to persistent
27 gaps that have left these minority voters less educated than their white counterparts, which
28 makes them less likely to be aware of the Election Day Receipt Deadline. *Second*, given the

1 lack of language assistance provided to voters—coupled with sustained resistance to
2 bilingual education and mandated English-only education—Hispanic and Latino voters are
3 less likely to understand the instructions provided by county election officials regarding the
4 Election Day Receipt Deadline, particularly when those instructions are inconsistent. *Third*,
5 due to disparities in income, Hispanic and Latino voters experience higher rates of poverty
6 than white voters, and have less access to reliable transportation and often less flexible work
7 schedules, both of which make it more difficult for them to turn in a mail ballot by other
8 means such as in-person at the county recorder’s office or a polling location by the Election
9 Day Receipt Deadline.

10 10. Arizona’s unjustified imposition of the Election Day Receipt Deadline violates
11 the First and Fourteenth Amendments because it imposes an undue burden on voters that is
12 not outweighed by any legitimate interest on the part of the State. Further, the Election Day
13 Receipt Deadline strips voters of their right to procedural due process, and it undermines
14 the ability of Arizona’s Hispanic and Latino voters to elect candidates of their choice, in
15 violation of Section 2 of the Voting Rights Act. For all these reasons, the Election Day
16 Receipt Deadline should be enjoined.

17 **JURISDICTION AND VENUE**

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

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

23 13. This Court has personal jurisdiction over Defendant, who is sued in her
24 official capacity only.

25 14. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial
26 part of the events that gave rise to Plaintiffs’ claims occurred in this judicial district.

27
28

1 millions of dollars of contributions and expenditures to educate, mobilize, and turn out
2 voters in state and federal elections around the country, including thousands of dollars to
3 educate, mobilize, and turn out voters in Arizona elections. Arizona's enforcement of its
4 Election Day Receipt Deadline for casting ballots directly harms Priorities because it
5 burdens and disenfranchises the very voters Priorities supports through its work and
6 contributions in Arizona. As a result, Priorities has to expend and divert additional funds
7 and resources in GOTV, voter education efforts, mobilization, and turn-out activities in
8 Arizona, at the expense of its voter support initiatives in other states and other voter
9 education and turnout programs in Arizona.

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

25 **GENERAL ALLEGATIONS**

26 **Mail Voting in Arizona**

27 19. Arizonans have a right to vote by mail. A.R.S. § 16-541(A). Over the past
28 decade, early voting by mail has grown exponentially in Arizona. In the 2008 general

1 election, for example, just over a million Arizona voters cast their ballot by mail. By the
2 2016 general election, that number had doubled to over two million. In 2018, a lower-
3 turnout midterm election, over 1.9 million voters voted by mail. This rapid growth in mail
4 ballots is not surprising. Arizona has engaged in extensive efforts to increase its use.

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

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

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

22 23. Arizona voters have some non-mail alternative options to return their ballot
23 outside of the mail; however, by far the most popular method is to return the ballot the same
24 way that it arrived—via mail. In the most recent presidential election, approximately 90%
25 of Arizona voters who voted with a mail ballot returned their ballot to their county through
26 the U.S. postal service.

27 24. Voters also have the option to personally drop their ballot off at the county
28 recorder’s office or at any polling location on Election Day. A.R.S. § 16-548. But these

1 options are more time-consuming and burdensome for voters in rural counties who often
2 live many miles from a drop-off location, as well as Hispanic and Latino voters who have
3 difficulty obtaining transportation or leaving work during the window in which recorders'
4 offices and polling locations are open. As a result, these options are less popular and less
5 accessible to Arizona voters. In the most recent presidential election, only 10% of Arizona
6 voters who voted with a mail ballot returned it to a physical location such as a polling place
7 or county recorder's office.

8 25. Furthermore, in recent years Arizona has passed or contemplated legislation
9 that would strip away these non-mail alternative options. One previously popular method
10 of returning a ballot was ballot collection, in which a voter would entrust their ballot to an
11 advocate, volunteer, friend, or neighbor to personally deliver it to election officials. That
12 practice was criminalized in 2016. *See* A.R.S. § 16-1005(H)-(I); *see also Democratic Nat'l*
13 *Comm. v. Reagan*, 329 F. Supp. 3d 824 (D. Ariz. 2018), *aff'd*, 904 F.3d 686 (9th Cir. 2018),
14 *reh'g en banc granted*, 911 F.3d 942 (9th Cir. 2018) ("DNC"). Further, during the most
15 recent legislative session, the Arizona Legislature contemplated, but ultimately decided
16 against, banning all methods of ballot return other than the mail. S.B. 1046 (2019). The
17 bill's sponsor has stated that she will introduce the legislation again in the next session.

18 26. Once the Election Day Receipt Deadline has passed, Arizona begins
19 processing its ballots. When voters cast a mail ballot in Arizona, election officials must
20 confirm that each voter did not vote in person, verify the voter's eligibility to vote, and open
21 and scan the voter's ballot. *See* A.R.S. § 16-552. If a ballot was received in time, but appears
22 to be invalid (because it has, for example, an incomplete affidavit or an apparently
23 mismatched signature), election officials will contact the voter, who has five business days
24 in which to cure their ballot. A.R.S. § 16-550. Election officials have 20 days after Election
25 Day to complete the count and certify results. *Id.* § 16-642(A).

26 **The Election Day Receipt Deadline**

27 27. Every election a substantial and increasing number of ballots are discarded
28 because they arrive after the Election Day Receipt Deadline. While the publicly available

1 data is incomplete, even the partial picture is alarming. In 2008, only seven counties
2 reported data on late-returned ballots, but those counties collectively rejected 1,611 ballots
3 for arriving after the Election Day Receipt Deadline. In 2012, those same seven counties
4 rejected more than double that amount—4,107 ballots. In the 2018 general election,
5 Maricopa County alone rejected 1,535 ballots for arriving late, and Navajo County reported
6 rejecting an eye-popping 3,062 late ballots—over 8 percent of all ballots cast in that county.

7 28. Precincts *within* counties also report substantial variation in ballot arrival
8 times, reflecting just how arbitrary mail service can be even within a county. In Navajo
9 County, for example, the percentage of early ballots that arrived late ranged from a low of
10 2 percent in some precincts to as high as 12 percent in others.

11 29. The numbers speak for themselves; clearly, a large swath of Arizona voters
12 believe their ballot is timely even when it is not. Because of the challenges in estimating
13 mail delivery times, elections officials—much less the average voter—cannot accurately
14 predict when ballots must be mailed to ensure that they arrive by the Election Day Receipt
15 Deadline. In the 2014 general election, for example, the Arizona Secretary of State’s Office
16 “named Thursday, Oct. 30, the ‘deadline’ for mailing in early ballot so they will arrive in
17 time,” but noted that “[that] deadline is unofficial and was set as a guideline based on the
18 time it takes a ballot to reach a county recorder’s office.” As the Communications Director
19 for the Arizona Secretary of State’s Office explained, if a voter did not mail their ballot by
20 that Thursday, voters should not put their ballot in the mail “because it *may or may not* get
21 here on time,” and if “it arrives [the day after the election] it won’t count.” *See* Rachel Lund,
22 *Late With Your Early Ballot? Here Are Tips for Making Sure Your Vote is Counted*, Arizona
23 Capitol Times (Oct. 30, 2014), [https://azcapitoltimes.com/news/2014/10/30/az-late-early-
24 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).

25 30. County Recorders have not been able to provide any more clarity to voters. In
26 fact, just last month, the Pima County Recorder’s Office provided two different
27 “recommended deadlines” for when voters were “required” to mail their ballot for it to be
28

1 counted.² Counties' recommendations on when to place a ballot in the mail shift for a simple
2 reason: those recommendations are purely guesses.

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

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

14 33. The widespread belief that a ballot is timely as long as it is postmarked by
15 Election Day is reasonable; it is consistent with the way mail-related deadlines are
16 administered under the state law and across modern life. Postmarks are used to assess the
17 timeliness of payments, applications, and other documents submitted to the government in
18 other contexts: taxes and other state-mandated deadlines are determined according to
19 postmarks, not the date—much less the time of day—the mailed item is actually received.
20 *See, e.g.*, A.R.S. § 1-218(A) (requiring documents related to taxes, including returns,
21 statements, and payments, that have been mailed to "be deemed filed and received by the
22 addressee on the date shown by the postmark"); A.R.S. § 20-191 (stating that insurance
23 premium payments made by mail are deemed timely as of the date shown on the postmark);
24
25

26 ² 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 Ariz. Admin. Code R17-4-304 (stating the date of receipt of applications for vehicle
2 registrations is the date of the postmark stamp).

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

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

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

26 37. Further, the Election Day Receipt Deadline is unreasonable because it
27 unnecessarily shortens voters’ time to return their ballots. A postmark rule would allow the
28 State to accept ballots received within a reasonable time after Election Day, which makes

1 sense given that Arizona has 20 days after Election Day to complete the vote-counting
2 process. A.R.S. § 16-642(A). Arizona already permits voters to cure incomplete ballots up
3 to five business days after Election Day. *Id.* § 16-550. Thus, counting ballots that have been
4 postmarked by Election Day, as long as they are received within the five-business-day cure
5 period, would align with Arizona’s existing voting laws and provide all Arizona voters
6 sufficient time to have their votes counted.

7 38. The State has no legitimate interest in imposing the Election Day Receipt
8 Deadline, particularly where it has pushed Arizona voters to utilize mail voting and has
9 provided very limited alternative options for returning those ballots. While Arizona may set
10 a reasonable deadline for receiving ballots to ensure the finality of election results, the
11 Election Day Receipt Deadline is not reasonable: voters do not reasonably expect that they
12 must submit their ballots so far ahead of Election Day—nor could they, given that even
13 election officials are not sure what the precise date for mailing in ballots should be, the
14 requirement to do so is poorly communicated to voters, and it is completely unnecessary to
15 ensure that all ballots are received and counted within a reasonable time.

16 **The Election Day Receipt Deadline’s Effect on Rural and Minority Voters**

17 39. The Election Day Receipt Deadline has a disproportionately severe impact on
18 rural and Hispanic and Latino voters in Arizona. For example, in 2018, approximately 1,535
19 voters were disenfranchised in urban Maricopa County. In contrast, 3,062 late ballots were
20 reported in Navajo County and 6,227 ballots were reported as late in Yuma County, both of
21 which have a significantly smaller number of registered voters than Maricopa. And
22 Arizona’s Hispanic and Latino voters are disparately disenfranchised no matter where they
23 live. Indeed, in rural counties, Hispanics are nearly five to six times more likely to be
24 disenfranchised than white voters by the Election Day Receipt Deadline, and even in urban
25 Maricopa County, they are twice as likely to be disenfranchised than white voters.

26 40. None of this is surprising; mail delivery in rural Arizona is complicated and
27 ridden with delays, and Arizona’s long-history of discrimination interacts directly with the
28

1 Election Day Receipt Deadline to make it more difficult for Hispanic and Latino voters to
2 timely cast their mail-in ballots.

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

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

21 43. Rural Arizona also contains a number of communities that are predominately
22 populated by minority voters. And as an Arizona district court recently found, “[r]eady
23 access to reliable and secure mail service is nonexistent” in some of these minority
24 communities. *See DNC*, 329 F. Supp. 3d at 869.

25 44. Native American voters, in particular, traditionally struggle with mail service
26 because of, among other things, a severe lack of postal service infrastructure within their
27 communities. On the Navajo Reservation for example,
28

1 reservation residents rely on a patchwork of trading posts,
2 contract post offices, regular post offices and commercial mail
3 services, along with trucks shuttling mail among far-flung
4 operations that may be a several-hour drive from any given
5 tribal member's home. Once a ballot is in this system, it travels
6 to the reservation voter or back to the county via a sorting
7 facility in Arizona, New Mexico or Utah, sometimes via
8 multiple states.³

9 45. Given this patchwork of services, Native American voters who utilize voting
10 by mail are particularly vulnerable to Arizona's strict enforcement of its Election Day
11 Receipt Deadline. Indeed, during the past election, numerous ballots were rejected due to
12 the Election Day Receipt Deadline in Native American precincts throughout Navajo
13 County.

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

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

28 ³ Stephanie Woodard, Return to Sender: Navajo Voteres Reject Mail-in Voting, IN THESE TIMES (Mar. 12, 2016), <https://inthesetimes.com/rural-america/entry/18963/mail-in-voting-on-navajo-reservation-may-violate-voting-rights-act>.

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

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

9 49. As discussed in more detail below, as a result of Arizona's long history of
10 discrimination, Hispanic and Latino voters are also disproportionately more likely to have
11 economic or personal circumstances—including, but not limited to, language barriers and
12 limited English fluency, lack of reliable transportation to mail their ballots, or difficulties
13 in taking time off work to do the same—that make it even more challenging to comply with
14 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. As a result, Hispanic and Latino voters are less likely to be aware of the
18 Election Day Receipt Deadline.

19 51. Further, given the lack of language assistance provided to voters—coupled
20 with Arizona's sustained resistance to bilingual education and mandated English-only
21 education—Hispanic and Latino voters experience ongoing language barriers that make
22 them less likely to understand the instructions provided by county election officials
23 regarding the Election Day Receipt Deadline. This is further complicated by the fact that
24 historically Spanish-speaking voters have received incorrect and misleading information
25 from election officials. In the two most recent presidential cycles, for example, Spanish-
26 speaking voters received incorrect information, ranging from wrong election dates to wrong
27 titles for measures on those voters' official ballots.
28

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

6 53. Finally, due to disparities in income, Hispanic and Latino voters experience
7 higher rates of poverty than white voters, and often have less access to reliable
8 transportation and less flexible work schedules, both of which make it more difficult for
9 them to travel to the post office, polling location, or county recorder's office to submit their
10 ballots in time to meet the Election Day Receipt Deadline.

11 54. Given this evidence, it is clear that voters living in rural communities and
12 Hispanic and Latino voters across the state are disproportionately affected by the Election
13 Day Receipt Deadline and, without action from this Court, will continue to be in upcoming
14 elections.

15 **Arizona's History of Discrimination Against Racial, Ethnic,
16 and Language Minorities**

17 55. Arizona has a lengthy history of discrimination that has made it more difficult
18 for minorities to participate in the political process and elect candidates of their choice.
19 These discriminatory actions resulted in Arizona becoming, in 1975, a covered jurisdiction
20 subject to federal preclearance for any change to its voting laws, practices, or procedures,
21 under Section 5 of the Voting Rights Act.

22 56. When Arizona became a state in 1912, Native Americans were excluded from
23 voting.⁴ Even after the United States Congress passed the Indian Citizenship Act in 1924,

24
25 ⁴ Hispanics were granted the right to vote in Arizona when it became a state in 1912
26 by virtue of the Treaty of Guadalupe Hidalgo, which was signed in 1848 at the close of the
27 Mexican-American War. The treaty required that Congress pass legislation recognizing all
28 Mexican Americans as full U.S. citizens. Prior to becoming a state, Arizona (which was a
U.S. territory) did not allow Mexican Americans to vote. Notably, as discussed herein, at
the time that it became a state in 1912, Arizona enacted an English literacy test which had
the effect of preventing these newly enfranchised Mexican Americans (as well as Native
Americans and African Americans) from voting.

1 recognizing Native Americans as citizens and, thereby, affording them the right to vote,
2 Arizona's Constitution continued to deny Native Americans that right. It was not until 1948
3 when the Arizona Supreme Court found that such treatment was unconstitutional that
4 Native Americans were granted the right to vote in Arizona. *See Harrison v. Laveen*, 196
5 P.2d 456, 463 (Ariz. 1948). Despite being granted the legal right to vote in 1948, Native
6 Americans, as well as Hispanics and African Americans, have continued to face barriers to
7 participation in the franchise and elect candidates of their choice.

8 57. In 1912, Arizona enacted an English literacy test for voting. The test was
9 enacted specifically "to limit 'the ignorant Mexican vote.'" David R. Berman, *Arizona*
10 *Politics and Government: The Quest for Autonomy, Democracy, and Development* at 48-49
11 (UNIV. OF NEV. PRESS 1998). Furthermore, well into the 1960s it was also a practice for
12 white Arizonans to challenge minority voters at the polls by asking them to read and explain
13 literacy cards. In 1970, Congress amended the Voting Rights Act to enact a nationwide ban
14 on literacy tests after finding that they were used to discriminate against voters on account
15 of their race or ethnicity. *See Oregon v. Mitchell*, 400 U.S. 112, 118 (1970). In reaching that
16 finding, Congress specifically cited evidence which showed "that voter registration in areas
17 with large Spanish-American populations was consistently below the state and national
18 averages." *Id.* at 132. Congress found that, "[i]n Arizona, for example, only two counties
19 out of eight with Spanish surname populations in excess of 15% showed a voter registration
20 equal to the state-wide average." *Id.* Congress also noted that Arizona had a serious
21 deficiency in Native American voter registrations. *See id.* Rather than comply with the law
22 and repeal its literacy test, Arizona challenged the ban, arguing that it could not be enforced
23 to the extent that it was inconsistent with the State's literacy requirement. *Id.* at 117. The
24 United States Supreme Court upheld Congress's ban. *Id.* at 131-33. Nevertheless, Arizona
25 waited until 1972, two years after the Court's decision, to repeal its literacy test.

26 58. Arizona's English literacy test also compounded the effects of the State's long
27 history of discrimination in the education of minority citizens. From 1912 until the Supreme
28 Court's decision in *Brown v. Board of Education*, segregated education was widespread

1 throughout Arizona, and sanctioned by both the courts and the state legislature. *See*
2 *Dameron v. Bayless*, 126 P. 273 (Ariz. 1912); *see also Ortiz v. Jack*, No. Civ-1723 (D. Ariz.
3 1955) (discontinuing segregation of Mexican children at schools); *Gonzales v. Sheely*, 96
4 F. Supp. 1004, 1008-09 (D. Ariz. 1951) (enjoining segregation of Mexican school children
5 in Maricopa County). Spanish-speaking students were directly targeted based on their
6 language.

7 59. Even where schools were not segregated, Arizona enacted restrictions on
8 bilingual education, mandating English-only education in public schools as early as 1919.
9 *See James Thomas Tucker, et al., Voting Rights in Arizona: 1982-2006*, 17 Rev. L. & Soc.
10 Justice 283, 284 (2008). Many of these English-only restrictions have remained in effect in
11 some form to the present day, despite the fact that such programs have led to poor
12 educational outcomes for Arizona's students. *See id.* at 339-40 (noting “[t]he available
13 evidence in Arizona reveals that bilingual education programs have been more effective at
14 raising students’ test scores than [English-immersion programs]”).

15 60. Indeed, as recently as 2000, Arizona banned bilingual education with the
16 passage of Proposition 203. This ballot initiative, which is only the second of its kind to be
17 passed in the United States, is the most restrictive ban on bilingual education in the nation.
18 In addition to severely restricting the educational opportunities of limited English-
19 proficiency students in Arizona, the law has led to widespread confusion and discrimination
20 as well, with reports of students being slapped for speaking Spanish at school and teachers
21 being afraid they will be fired if they communicate with students in Spanish, even when
22 outside of the classroom. *Id.* at 341.

23 61. In addition to Arizona's formal prohibitions on bilingual education, the State
24 has a long record of failing to provide adequate funding to teach its non-English speaking
25 students—one of “the largest and fastest-growing segments of the school population in
26 Arizona.” *Id.* at 338-39 (“As of 2000, there were almost 140,000 [non-English speaking]
27 students enrolled in Arizona public schools.”); *see also id.* at 339. In some instances, the
28 State has reportedly underfunded its programs for non-English speaking students by as

1 much as ninety percent, leading to high illiteracy and dropout rates. Remarkably, this
2 underfunding has taken place despite multiple court orders instructing Arizona to develop
3 an adequate funding formula for its programs, including a 2005 order in which Arizona was
4 held in contempt of court for refusing to provide adequate funding for its educational
5 programs. *Flores v. Arizona*, 405 F. Supp. 2d 1112 (D. Ariz. 2005), *vacated*, 204 Fed. App'x
6 580 (9th Cir. 2006).

7 62. Arizona's history of segregation, limitations on bilingual education, and
8 systemic underfunding of education for non-English speaking students not only contributes
9 to educational disparities amongst Arizona's Hispanic and Native American populations
10 but, when combined with Arizona's literacy test, has had the effect of denying Hispanics
11 and Native Americans the right to vote and elect candidates of their choice.

12 63. More recently, Arizona passed discriminatory measures to make it more
13 difficult for minority voters to cast their ballots and elect candidates of their choice. In
14 2016, elections officials in Arizona's most populous county, Maricopa County, made
15 national headlines when, due to their decision to drastically reduce the number of voting
16 locations for the March 22 presidential preference election, they forced thousands of voters
17 to wait in lines for upwards of five hours to cast their votes for their preferred presidential
18 nominee. In many cases, voters were unable to wait in these multi-hour lines and were
19 wholly disenfranchised. The reduction of voting locations was particularly burdensome for
20 Maricopa County's Hispanic and African-American communities, many of which had
21 fewer polling locations than Anglo communities and, in some instances, no voting locations
22 at all.

23 64. Also in 2016, the Arizona State Legislature passed H.B. 2023, which severely
24 restricted the collection of mail-in ballots. Prior to H.B. 2023's passage, Native American,
25 Hispanic, and African-American voters relied heavily on the practice of ballot collection to
26 overcome the challenges they face in returning mail-in ballots—e.g., unreliable mail
27 service, restrictive work schedules, lack of access to transportation—and to ensure that their
28 ballots arrived at the county recorder's office by the Election Day Receipt Deadline. H.B.

1 2023 was passed largely along partisan lines; supporters of the bill not only ignored the
2 devastating impact that the loss of ballot collection would have on these communities, but
3 they also utilized racial appeals in securing its passage. *See DNC*, 329 F. Supp. 3d at 876-
4 77. Though a challenge to H.B. 2023 is pending in federal court, ballot collection in Arizona
5 remains severely restricted to date.

6 65. Due to its long history of discrimination, Arizona was one of only three states
7 to be covered under Section 4(f)(4) of the Voting Rights Act for Spanish Heritage. Twelve
8 of its 15 counties, including Maricopa County, are also covered separately under Section
9 203, which requires minority language assistance. As a result of its inclusion under the
10 Voting Rights Act, Arizona had some improvements in the numbers of Hispanics and
11 Native Americans registering and voting and, relatedly, in the overall representation of
12 minority-elected officials in the State.

13 66. Nevertheless, Arizona also has a recognized history of racially polarized
14 voting that continues today. *See DNC*, 329 F. Supp. at 876; *Feldman v. Ariz. Sec’y of State’s*
15 *Office*, 843 F.3d 366, 406-07 (9th Cir. 2016); *Gonzalez v. Arizona*, 677 F.3d 383, 407 (9th
16 Cir. 2012), *aff’d sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013).
17 In the most recent redistricting cycle, the Arizona Independent Redistricting Commission
18 found that at least one congressional district and five legislative districts clearly exhibited
19 racially polarized voting. *See Gary King, et al., Racially Polarized Voting Analysis (Draft)*,
20 *Ariz. Indep. Redistricting Comm’n*, 10, 20 (2011), *available at*
21 [https://azredistricting.org/Meeting-Info/AZ%20racially%20polarized%20voting%20analy](https://azredistricting.org/Meeting-Info/AZ%20racially%20polarized%20voting%20analysis%20112911%20-%20DRAFT.pdf)
22 [sis%20112911%20-%20DRAFT.pdf](https://azredistricting.org/Meeting-Info/AZ%20racially%20polarized%20voting%20analysis%20112911%20-%20DRAFT.pdf). Exit polls for the 2016 general election demonstrate
23 that voting between non-minorities and Hispanics continues to be polarized along racial
24 lines. *DNC*, 329 F. Supp. 3d at 876.

25 67. Thus, only one Hispanic and African American have ever been elected to
26 statewide office, and Arizona has never elected a Native American to statewide office. No
27 Native American or African American has ever been elected to the U.S. House of
28 Representatives to represent Arizona or served on the Arizona Supreme Court. Further, no

1 Hispanic, Native American, or African American has ever served as a U.S. Senator
2 representing Arizona or as Attorney General for the State of Arizona.

3 68. It is also well-settled that “[r]acial disparities between minorities and non-
4 minorities in socioeconomic standing, income, employment, education, health, housing,
5 transportation, criminal justice, and electoral representation have persisted in Arizona.”
6 *DNC*, 329 F. Supp. 3d at 876.

7 69. According to the U.S. Census Bureau’s 2013-2017 American Community
8 Survey 5-Year Estimates, Hispanic, African-American, and Native-American poverty rates
9 in Arizona exceeded the white poverty rate for that same time period. Based on the 5-Year
10 Estimates, as of 2017, Hispanics, Native Americans, and African Americans were all less
11 likely to graduate high school in Arizona than whites were. Further, whites were nearly 1.5
12 times more likely to have a bachelor’s degree than African Americans, almost three times
13 more likely than Hispanics, and more than three times as likely as Native Americans in
14 Arizona.

15 70. Decades of research have demonstrated that deficiencies in socio-economic
16 standing, such as those described above, significantly impact an individual’s ability to fully
17 participate in the political process, and the interaction between these deficiencies and the
18 Election Day Receipt Deadline is no different.

19 71. There is a clear causal link between Arizona’s history of discrimination and
20 the likelihood that a voter will miss the Election Day Receipt Deadline. For example,
21 Arizona’s history of language-based discrimination—including a recent history of errors in
22 Spanish-language voting materials—makes it far more likely for Spanish-speaking voters
23 to be misinformed about voting rules, such as when they must mail their ballots and when
24 their ballot needs to arrive by. As one court has explained, “[d]ue to their lower levels of
25 literacy and education, minority voters are more likely to be unaware of certain technical
26 rules, such as the requirement that early ballots be received by the county recorder, rather
27 than merely postmarked, by 7:00 p.m. on Election Day.” *See DNC*, 329 F. Supp. 3d at 868.
28 Minority voters are more likely to live in lower-income and tribal communities, many of

1 which lack secure outgoing mailboxes, which makes it more difficult to return a mail ballot.
2 The disparate lack of reliable access to transportation also makes minority voters less able
3 to access a sometimes far-flung post office or outgoing mail box. And economic constraints
4 often require minorities to work multiple jobs and shift-work, which often results in less
5 flexibility to turn in a mail ballot by another means such as in-person at the county
6 recorder's office or a polling location.

7 72. Thus, the on-going effects of Arizona's history of discrimination are directly
8 linked to the Election Day Receipt Deadline and the burdens that it places on Arizona's
9 minority voters.

10 **CLAIMS FOR RELIEF**

11 **COUNT I**

12 **First and Fourteenth Amendments**

13 **U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202**

14 ***Undue Burden on the Right to Vote***

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

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

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

1 76. Courts need not accept a state’s justifications at face value, particularly where
2 those justifications are “speculative,” otherwise it “would convert *Anderson-Burdick*’s
3 means-end fit framework into ordinary rational-basis review wherever the burden a
4 challenged regulation imposes is less than severe.” *Soltysik v. Padilla*, 910 F.3d 438, 448–
5 49 (9th Cir. 2018) (citing *Pub. Integrity All.*, 836 F.3d at 1024–25); *see also Crawford v.*
6 *Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling op.) (“However
7 slight th[e] burden may appear, . . . it must be justified by relevant and legitimate state
8 interests *sufficiently weighty to justify the limitation.*”) (internal citation and quotation
9 marks omitted) (emphasis added).

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

25 78. While Arizona’s imposition of its Election Day Receipt Deadline burdens all
26 Arizona voters who vote by mail, it also particularly impacts subgroups, like Arizona’s rural
27 population and its Hispanic and Latino voters, who, given where they live, must often cast
28 their ballots even further in advance of Election Day to ensure their ballots will arrive by

1 the Election Day Receipt Deadline. Arizona’s Election Day Receipt Deadline also generally
2 imposes a particularly heavy burden on Hispanic and Latino voters, who face heightened
3 barriers to participation in Arizona’s mail ballot system.

4 79. While Arizona has a legitimate regulatory interest in a *general* cutoff for
5 receiving ballots, the State derives no meaningful benefit from imposing the Election Day
6 Receipt Deadline, particularly where it has heavily promoted mail-in balloting and
7 encouraged over 80 percent of its electorate to vote by mail. Arizona has a full 20 days to
8 finalize election results, and it already allows voters to cure otherwise incomplete ballots a
9 full five business days after Election Day. Arizona would suffer no significant
10 administrative burden if it extended that same five-business-day deadline to permit for the
11 receipt of ballots that were postmarked on or before Election Day, but which arrive within
12 five business days after the election. Arizona thus has no legitimate interest, and certainly
13 no compelling interest that is narrowly drawn, in rejecting ballots that are postmarked
14 before or on Election Day and which are received within five business days after Election
15 Day.

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

20 **COUNT II**

21 **Due Process**

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

23 ***Denial of Procedural Due Process***

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

26 82. The Due Process Clause of the United States Constitution prohibits the states
27 from depriving “any person of . . . liberty . . . without due process of law.” U.S. CONST.
28 amend. XIV, § 1. Which protections are due in a given case requires a careful analysis of

1 the importance of the rights and the other interests at stake. *See Mathews v. Eldridge*, 424
2 U.S. 319, 334–35 (1976); *Nozzi v. Hous. Auth. of City of L.A.*, 806 F.3d 1178, 1192 (9th
3 Cir. 2015). Courts must first consider “the nature of the interest that will be affected” by the
4 government’s action as well as the “degree of potential deprivation that may be created” by
5 existing procedures. *Nozzi*, 806 F. 3d at 1192–93. Second, “courts must consider the
6 ‘fairness and reliability’ of the existing procedures and the ‘probable value, if any, of
7 additional procedural safeguards.’” *Id.* at 1193 (quoting *Mathews*, 424 U.S. at 343). Finally,
8 courts must consider “the public interest, which ‘includes the administrative burden and
9 other societal costs that would be associated with’ additional or substitute procedures. *Id.*
10 (quoting *Mathews*, 424 U.S. at 347). Overall, “due process is flexible and calls for such
11 procedural protections as the particular situation demands.” *Mathews*, 424 U.S. at 334,
12 (quotation and citation omitted).

13 83. Arizona’s procedures for voting by mail must comport with due process. *See*
14 *Raetzl v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990).
15 “Such due process is not provided when the election procedures [for voting by mail]” do
16 not adequately protect the right to vote or ensure that an “individual is not continually and
17 repeatedly denied so fundamental a right.” *Id.*; *see also Saucedo v. Gardner*, 335 F. Supp.
18 3d 202, 217 (D.N.H. 2018) (“Having induced voters to vote by absentee ballot, the State
19 must provide adequate process to ensure that voters’ ballots are fairly considered and, if
20 eligible, counted.”).

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

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

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

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

24 88. The value of additional or substitute procedural safeguards to ensure that the
25 votes of Arizona’s mail voters are both meaningfully cast and actually counted is readily
26 apparent. A substitute procedure—requiring mail ballots to be postmarked on or before
27 Election Day and received by the county within five business days after Election Day to be
28 counted—solves the inequities inherent in Arizona’s Election Day Receipt Deadline. A

1 postmark date not only offers a reliable date to Arizona voters by which they must cast their
2 ballots, but it also ensures that rural voters and minority voters are not more likely to have
3 their ballot rejected simply because they live in a town with slower mail service. A postmark
4 date additionally ensures that all of Arizona’s voters can consider any information that may
5 arise and influence voters’ choices in the last week of the election.

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

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

19 **COUNT III**

20 **Section 2 of the Voting Rights Act - Effects Prong**

21 **52 U.S.C. § 10301(a)**

22 ***Denial or Abridgement of the Right to Vote***

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

25 92. Section 2 of the Voting Rights Act provides in part that “[n]o voting
26 qualification or prerequisite to voting or standard, practice, or procedure shall be imposed
27 or applied by any State . . . in a manner which results in a denial or abridgement of the right
28 of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).

1 93. Arizona’s Election Day Receipt Deadline has had and—if this Court does not
2 institute the remedy that Plaintiffs request—will continue to have, an adverse and disparate
3 impact on Hispanic and Latino citizens of Arizona.

4 94. The Election Day Receipt Deadline makes it more difficult for members of
5 Arizona’s Hispanic and Latino community, as compared to white voters, to participate in
6 the political process and to elect representatives of their choice. These voters are more likely
7 than white voters to be unaware of the Election Day Receipt Deadline, have their mail
8 ballots arrive after Election Day, and have their ballots rejected.

9 95. Thus, these voters are highly likely to face substantial burdens when voting,
10 which are more likely to result in their disparate disenfranchisement and a reduction of their
11 participation in future elections.

12 96. Hispanics in Arizona have suffered from, and continue to suffer from,
13 discrimination on the basis of race. The ongoing effects of this discrimination include
14 socioeconomic disparities between Hispanics and whites in Arizona. Arizona’s history of
15 language-based discrimination—including a recent history of errors in Spanish-language
16 voting materials—also makes it far more likely for Spanish-speaking voters to be
17 misinformed about voting rules, such as when they must mail their ballots and when their
18 ballot needs to arrive by. “Due to their lower levels of literacy and education, minority
19 voters are more likely to be unaware of certain technical rules, such as the requirement that
20 early ballots be received by the county recorder, rather than merely postmarked, by 7:00
21 p.m. on Election Day.” *See DNC*, 329 F. Supp. 3d at 868. These language barriers,
22 disparities in access to reliable mail service, educational attainment, and other disparities
23 resulting at least in part from the State’s long history of discrimination against these
24 communities all cause the Election Day Receipt Deadline to disparately disenfranchise
25 Hispanic and Latino voters. The Election Day Receipt Deadline has caused and will
26 continue to cause an inequality in the opportunity of members of these minority
27 communities to vote in Arizona.

28

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

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

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

10
11 Dated: November 26, 2019

s/ Sarah R. Gonski

12

Sarah R. Gonski (# 032567)
13 PERKINS COIE LLP
14 2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788

15 Marc E. Elias*
16 John Devaney*
17 Amanda R. Callais*
18 K'Shaani O. Smith*
19 Christina A. Ford*
Perkins Coie LLP
700 Thirteenth Street NW, Suite 600
20 Washington, D.C. 20005-3960

21 **Pro hac vice application to be filed*

22 *Attorneys for Plaintiffs*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ Sarah R. Gonski