

1 **WO**

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Arizona Democratic Party, et al.,  
Plaintiffs,  
v.  
Katie Hobbs, et al.,  
Defendants.

No. CV-20-01143-PHX-DLR  
**ORDER**

15  
16 Plaintiffs the Arizona Democratic Party (“ADP”), the Democratic National  
17 Committee (“DNC”), and the Democratic Senatorial Campaign Committee (“DSCC”) seek  
18 to enjoin Arizona’s election officials from rejecting vote-by-mail (“VBM”) ballots<sup>1</sup> in  
19 unsigned envelopes without allowing non-signing voters the same five days after Election  
20 Day to correct their omissions as allowed to voters whose envelopes contain perceived  
21 mismatched signatures and in-person voters without proper identification. At issue are  
22 Plaintiffs’ motions for a preliminary and permanent injunction (Doc. 2) and to preclude  
23 certain opinions offered by Professor Lonna Atkeson, an expert retained by Intervenor-  
24 Defendant the State of Arizona (“State”) (Doc. 101). The Court consolidated the  
25 preliminary injunction hearing with the final bench trial on the merits pursuant to Federal  
26 Rule of Civil Procedure 65(a)(2). Having considered the parties’ briefs (Docs. 2, 85, 86,  
27 91, 96, 97, 101, 105), their evidence,<sup>2</sup> and their presentations at the consolidated hearing,

28  
<sup>1</sup> Arizona law refers to VBM ballots as “early ballots.” A.R.S. § 16-545.  
<sup>2</sup> The parties stipulated to the admission of Plaintiffs’ Exhibits 1-32 (Doc. 107), and

1 the Court partially grants Plaintiffs' motion to preclude and grants Plaintiffs' motion for a  
2 permanent injunction.<sup>3</sup>

### 3 **I. Background**

4 Arizona allows no-excuse VBM during the twenty-seven days before an election.  
5 A.R.S. §§ 16-541, -542(C). Most voters choose this option. (Pl. Exh. 6.) VBM voters  
6 must return their completed ballots in specially provided, postage-paid envelopes and sign  
7 an affidavit printed on those envelopes. A.R.S. §§ 16-547, -548. Election officials  
8 compare these signatures with signatures on record to verify that the ballot returned was,  
9 in fact, cast by the voter to whom that ballot belongs. A.R.S. § 16-550. A ballot that cannot  
10 be verified will not be counted. A.R.S. § 16-552(B).

11 Every election, officials receive some ballots in unsigned envelopes and some in  
12 envelopes bearing signatures that appear not to match the signatures on those voters'  
13 registration records. Until recently, Arizona law was silent on what election officials  
14 should do with such ballots, leading each county to institute its own policies. (St. Exh. 101  
15 ¶ 25.) Some counties allowed voters to cure perceived mismatched signatures after  
16 Election Day, others did not. (*Id.*) Some counties allowed voters to cure missing signatures  
17 by Election Day, but no county—except Santa Cruz—allowed voters to do so after Election  
18 Day. (*Id.*; Pl. Exh. 7 at 3.)

19 This patchwork approach changed on August 27, 2019, when the Arizona legislature

20  
21 to the State's Exhibits 101-114, except for paragraphs 55-62, 72-76, and 94 of State Exhibit  
22 101 (Doc. 108), which are the subject of Plaintiffs' motion to preclude. This order cites  
23 Plaintiffs' exhibits as "Pl. Exh." and the State's exhibits as "St. Exh."

24 <sup>3</sup> Federal Rule of Civil Procedure 52(a)(1) requires the Court to "find the facts  
25 specially and state its conclusions of law separately," either on the record or in a separate  
26 opinion or memorandum decision. "One purpose behind Rule 52(a) is to aid the appellate  
27 court's understanding of the basis of the trial court's decision. This purpose is achieved if  
28 the district court's findings are sufficient to indicate the factual basis for its ultimate  
conclusions." *Vance v. Am. Hawaii Cruises, Inc.*, 789 F.2d 790, 792 (9th Cir. 1986)  
(internal citations omitted). The Court has chosen to issue a written decision "in narrative  
form because a narrative format more fully explains the reasons behind the Court's  
conclusions, which aids appellate review and provides the parties with more satisfying  
explanations. Any finding of fact that constitutes a conclusion of law is hereby adopted as  
a conclusion of law, and any conclusion of law that constitutes a finding of fact is hereby  
adopted as a finding of fact." *Juan Pollo Franchising, Inc. v. B & K Pollo Enters., Inc.*,  
No. EDCV 13-2010 JGB (SPx), 2015 WL 10695881, at \*1 (C.D. Cal. Aug. 6, 2015). Local  
Rule of Civil Procedure 52.1 is suspended.

1 amended the election code to provide a uniform cure period for ballot envelopes with  
2 perceived mismatched signatures. Arizona law now allows voters to cure perceived  
3 mismatched signatures up to five business days after an election.<sup>4</sup> A.R.S. § 16-550(A).  
4 This amendment mirrors Arizona’s treatment of ballots cast in person by voters who arrive  
5 at the polls without proper identification. Such voters are permitted to cast conditional  
6 provisional ballots, A.R.S. § 16-579(A), which will be counted if the voter presents an  
7 acceptable form of identification to the appropriate county recorder up to five business  
8 days after the election. (Pl. Exh. 3 at 196.) However, Arizona’s election code does not  
9 expressly address whether ballot envelopes with missing signatures may be cured.

10 Defendant Arizona Secretary of State Katie Hobbs (“Secretary”) sought to fill this  
11 gap. The Secretary is Arizona’s chief election officer and required by law to prescribe in  
12 the Election Procedures Manual (“EPM”) “rules to achieve and maintain the maximum  
13 degree of correctness, impartiality, uniformity and efficiency on the procedures for early  
14 voting and voting, and of producing, distributing, collecting, counting, tabulating and  
15 storing ballots.” A.R.S. §§ 41-121, 16-452(A). To that end, the Secretary’s October 2019  
16 draft EPM instructed election officials to permit voters to cure a missing signature within  
17 the same post-election time frame applicable to perceived mismatched signatures. (Pl. Exh.  
18 2 at 77.)

19 To become effective, the EPM must be approved by the Attorney General and  
20 Governor. A.R.S. § 16-452(B). The Attorney General objected to the Secretary’s draft  
21 because, in his view, Arizona law implicitly prohibits a post-election cure period for  
22 missing signatures. (Pl. Exhs. 24 (attached Excel spreadsheet), 26 at 11-13; St. Exh. 113.)  
23 Although the Secretary disagreed with the Attorney General’s interpretation of Arizona  
24 law,<sup>5</sup> she acquiesced to removing the language in the interest of timely issuing an updated  
25 version of the EPM. (Pl. Exh. 26 at 11-13.) The finalized EPM provides:

26 <sup>4</sup> The five-day post-election cure period applies only to elections that include a  
27 federal office; a three-day post-election cure period applies to all other elections. A.R.S. §  
28 15-550(A). For ease, the Court describes this post-election period as lasting “up to five  
days” after an election.

<sup>5</sup> This dispute over state law is immaterial. What matters is, at present, voters may  
not cure unsigned ballot envelopes after Election Day.

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

If the early ballot affidavit is not signed, the County Recorder shall not count the ballot. The County Recorder shall then make a reasonable and meaningful attempt to contact the voter via mail, phone, text message, and/or email, to notify the voter the affidavit was not signed and explain to the voter how they may cure the missing signature or cast a replacement ballot before 7:00pm on Election Day. The County Recorder shall attempt to contact the voter as soon as practicable using any contact information available in the voter’s record and any other source reasonably available to the County Recorder. Neither replacement ballots nor provisional ballots can be issued after 7:00pm on Election day.

(Pl. Exh. 3 at 82-83.)

On June 10, 2020, Plaintiffs filed a two-count complaint against the Secretary and the recorders for each of Arizona’s fifteen counties pursuant to 42 U.S.C. § 1983.<sup>6</sup> (Doc. 1.) Both counts allege that the Election-Day cure deadline for unsigned ballot envelopes violates the Fourteenth Amendment to the United States Constitution—in Count I, by unjustifiably burdening the right to vote; in Count II, by denying procedural due process.<sup>7</sup> (*Id.* ¶¶ 59-63.) Plaintiffs concurrently filed a motion for a preliminary and permanent injunction requiring Defendants to allow voters to cure missing signatures in the same post-election period applicable to perceived mismatched signatures. (Doc. 2.)

The Court granted motions to intervene filed by the State (Docs. 16, 28) and the Republican National Committee, the Arizona Republican Party, and Donald J. Trump for President, Inc. (Docs. 35, 60). At a June 23, 2020 scheduling conference, the Court granted, without objection, Plaintiffs’ request to consolidate the hearing on their preliminary injunction motion with the final bench trial on the merits. (Docs. 38, 39.) On August 18, 2020, the Court held the consolidated hearing. After the admission of evidence and oral argument, the matter was taken under advisement.

---

<sup>6</sup> Section 1983 creates a cause of action against any person who, under color of state law, deprives another of any rights, privileges, or immunities secured by the Constitution and laws of the United States. *Long v. Cty. of L.A.*, 442 F.3d 1178, 1185 (9th Cir. 2006).  
<sup>7</sup> Count I also cites the First Amendment. Because Plaintiffs are challenging a state law, their claims arise under the Fourteenth Amendment, which applies the First Amendment’s protections against states and their political subdivisions. *See City of Ladue v. Gilleo*, 512 U.S. 43, 45 n.1 (1994).

1 **II. Motion to Preclude**

2 Federal Rule of Evidence 702, which governs the admissibility of expert opinion  
3 testimony, provides:

4 A witness who is qualified as an expert by knowledge, skill,  
5 experience, training, or education may testify in the form of an  
6 opinion or otherwise if:

7 (a) the expert's scientific, technical, or other specialized  
8 knowledge will help the trier of fact to understand the evidence  
9 or to determine a fact in issue;

10 (b) the testimony is based on sufficient facts or data;

11 (c) the testimony is the product of reliable principles and  
12 methods; and

13 (d) the expert has reliably applied the principles and methods  
14 to the facts of the case.

15 The State retained Professor Atkeson to opine as an expert on matters related to election  
16 administration and voter behavior. Professor Atkeson's report was stipulated into  
17 evidence, except paragraphs 55-62, 72-76, and 94, which Plaintiffs challenged as  
18 unreliable. (Doc. 101.)

19 **A. The First Challenged Opinion**

20 Professor Atkeson opined in paragraphs 55-62 and 94 that post-election cure  
21 periods, especially generous ones, might result in lower cure rates. (St. Exh. 101.)  
22 Professor Atkeson reached this conclusion in two ways: empirically and theoretically.

23 For her empirical analysis, Professor Atkeson looked to the total number of VBM  
24 ballots rejected for a missing or mismatched signature in 2016 and 2018 across multiple  
25 jurisdictions with different cure periods. She then calculated the percent of missing  
26 signature or mismatched signature rejections as a percent of total ballots counted. These  
27 calculations showed that some states with longer post-election cure periods rejected a  
28 greater proportion of ballots with missing and mismatched signatures than other states with  
shorter cure periods. In Professor Atkeson's opinion, this data indicates longer post-  
election cure periods might result in lower cure rates.

Professor Atkeson's opinion regarding the implications of the empirical data is the

1 product of unreliable principles and methods. Rejection rates and cure rates are distinct,  
2 and there is no available statewide data on the number of ballots in each jurisdiction that  
3 initially were returned with missing or mismatched signatures and subsequently were  
4 cured. Focusing solely on the number of ballots in each category that ultimately were  
5 rejected reveals nothing about relative cure rates between these jurisdictions. Professor  
6 Atkeson also fails to control for other variables that could impact the relative rejection rates  
7 and does not assess whether the marginal differences between the examined jurisdictions  
8 are statistically significant. Professor Atkeson’s opinion regarding the empirical data  
9 therefore is inadmissible.

10 For her theoretical analysis, Professor Atkeson drew on her knowledge of and  
11 experience in political science to opine that voters might not be motivated to undertake the  
12 steps necessary to cure their ballots after an election unless a race is extraordinarily close.  
13 To the extent Professor Atkeson bases her opinion on her knowledge of and experience in  
14 political science, it is admitted. Professor Atkeson has significant, relevant experience in  
15 political science and election administration. She is a Professor of Political Science at the  
16 University of New Mexico, where she directs the Center for the Study of Voting, Elections  
17 and Democracy and the Institute for Social Research. (*Id.* ¶ 2.) Professor Atkeson has  
18 written extensively about election administration and political behavior, and she has spent  
19 significant time observing election administration processes. (*Id.* ¶¶ 3-4.) Based on her  
20 knowledge and experience in these areas, she may opine on the possible effects of post-  
21 election cure periods on voter behavior. However, the Court will accept this opinion for  
22 what it is—a political science theory about voter behavior—and assigns it little weight  
23 because the opinion lacks empirical support and is equivocal.

24 Accordingly, with respect to the first challenged opinion, the Court precludes the  
25 following portions of Professor Atkeson’s report: the third sentence of paragraph 56; the  
26 second and third sentences of paragraph 57; the first and third sentences of paragraph 58;  
27 the first sentence of paragraph 59; the words “and empirical results presented above suggest  
28 otherwise” from paragraph 60; paragraph 61; and paragraph 94. The remaining portions

1 of the challenged paragraphs are admitted but assigned little weight.

## 2 **B. The Second Challenged Opinion**

3 Professor Atkeson opined that the addition of a five-day post-election cure period  
4 for missing signatures likely would make it difficult or impossible for some counties to  
5 complete the election process under Arizona's current statutory limits.<sup>8</sup> (*Id.* ¶¶ 72-76.)  
6 This opinion is inadmissible for two reasons. First, Professor Atkeson bases her opinion  
7 on an examination of Arizona's election code and the declaration of Pima County Deputy  
8 Recorder and Registrar of Voters Christopher Roads (St. Exh. 107), but she does not  
9 analyze specific data regarding county staffing resources and funding, or the amount of  
10 time election officials would spend implementing a post-election cure period for unsigned  
11 ballot envelopes. Her opinion therefore is not based on data or facts. Second, Professor  
12 Atkeson's opinion will not help the Court understand the evidence or determine a fact at  
13 issue. The Court can review and interpret Arizona law and draw inferences from Mr.  
14 Roads' declaration without the assistance of an expert. Accordingly, the Court precludes  
15 the following portions of Professor Atkeson's report: the second sentence of paragraph 73;  
16 the first, second, sixth, and seventh sentences of paragraph 74; the second and sixth  
17 sentences of paragraph 75; and paragraph 76. The remaining portions of the challenged  
18 paragraphs are admitted.

## 19 **III. Motion for a Preliminary and Permanent Injunction**

20 Because the Court granted Plaintiffs' request to consolidate the preliminary  
21 injunction hearing with the final bench trial on the merits, the standards for the issuance of  
22 a permanent injunction govern. *See Knox v. Brnovich*, 336 F. Supp. 3d 1063, 1067 (D.  
23 Ariz. 2018). Before the Court may grant a permanent injunction, Plaintiffs must succeed  
24 on the merits of at least one of their claims and show that (1) they have suffered or  
25 imminently will suffer an irreparable injury, (2) no remedy available at law can adequately

---

26  
27 <sup>8</sup> This opinion is inconsistent with Professor Atkeson's opinion that post-election  
28 cure periods, especially longer ones, might result in lower cure rates. If a generous post-  
election cure period reduces cure rates, it should likewise reduce the administrative burdens  
associated with curing deficient ballots. Thus, even if the second challenged opinion were  
admissible, the Court would assign it little weight given this internal inconsistency.



1 compensate for that injury, (3) the balance of hardships warrants equitable relief, and (4) a  
2 permanent injunction would not disserve the public interest. *See eBay Inc. v.*  
3 *MercExchange, LLC*, 547 U.S. 388, 391 (2006).

#### 4 **A. Standing**

5 Federal courts may exercise power only in the context of cases and controversies.  
6 U.S. CONST. art. III, § 2, cl. 1. “Standing to sue is a doctrine rooted in the traditional  
7 understanding of a case or controversy.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547  
8 (2016). By “limit[ing] the category of litigants empowered to maintain a lawsuit in federal  
9 court to seek redress for a legal wrong,” the doctrine “ensure[s] that federal courts do not  
10 exceed their authority as it has been traditionally understood[.]” *Id.* (internal citations  
11 omitted). To have standing to litigate in federal court, a plaintiff “must have suffered or  
12 be imminently threatened with a concrete and particularized ‘injury in fact’ that is fairly  
13 traceable to the challenged action of the defendant and likely to be redressed by a favorable  
14 judicial decision.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118,  
15 125 (2014) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Only one  
16 plaintiff needs standing when, as here, only injunctive relief is sought. *Crawford v. Marion*  
17 *Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d*, 553 U.S. 181, 189 n.7 (2008).

18 Plaintiffs assert standing to sue on behalf of their members under a doctrine known  
19 as associational or representational standing. (Doc. 96 at 9.) To do so, Plaintiffs must  
20 show that (1) their members would otherwise have standing to sue in their own right, (2)  
21 the interests Plaintiffs seek to vindicate are germane to their organizational purpose, and  
22 (3) neither the claim asserted nor the relief requested requires individual members to  
23 participate in the lawsuit. *Smith v. Pac. Props. and Dev. Corp.*, 358 F.3d 1097, 1101-02  
24 (9th Cir. 2004). Although Plaintiffs must establish that they have relevant members, they  
25 need not identify by name specific injured members if “it is relatively clear, rather than  
26 merely speculative, that one or more members have been or will be adversely affected” by  
27 the challenged law, and where Defendants “need not know the identity of a particular  
28 member to understand and respond to” Plaintiffs’ claims. *Nat’l Council of La Raza v.*



1 *Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

2 The Court finds that the ADP has standing to sue on behalf of its members.<sup>9</sup> The  
3 ADP is a formal membership organization whose members include Arizona voters  
4 registered with the Democratic Party, of which there are 1,293,074 as of August 2020. (Pl.  
5 Exh. 30 ¶ 5.) Roughly a third of Arizona voters are registered with the Democratic Party  
6 (Pl. Exh. 1 at 10), and in past elections there has been at least one such voter whose ballot  
7 was rejected due to a missing signature (Pl. Exh. 30 ¶ 16). It therefore is relatively clear,  
8 rather than speculative, that on a prospective basis members of the ADP will be adversely  
9 affected by the Election-Day deadline for curing missing signatures.<sup>10</sup> Moreover,  
10 Defendants (including the Intervenor-Defendants) do not need to know the identities of  
11 specific affected ADP members to understand or respond to Plaintiffs' claims. The voting  
12 rights of registered Democratic voters are germane to the ADP's organizational mission,  
13 which is to elect Democratic Party candidates and promote Democratic ideals in Arizona.  
14 (*Id.* ¶ 8.) Lastly, neither the claims asserted, nor the relief requested require individual  
15 members to participate in the lawsuit.

16 Plaintiffs also assert standing to sue on their own behalves because the challenged  
17 law adversely impacts their organizational missions. (Doc. 96 at 12.) “[A]n organization  
18 may satisfy the Article III requirement of injury in fact if it can demonstrate: (1) frustration  
19 of its organizational mission; and (2) diversion of its resources to combat” the adverse  
20 effects of the challenged law. *Smith*, 358 F.3d at 1105.

21 The Court finds that the ADP has organizational standing.<sup>11</sup> Rejection of ballots  
22 reflecting votes for Democratic Party candidates frustrates the ADP's organizational  
23 mission.<sup>12</sup> (Pl. Exh. 30 ¶ 9.) As a result, the ADP has diverted and anticipates further

24 <sup>9</sup> The Court does not address whether the DNC or the DSCC also have standing to  
25 sue on behalf of their members.

26 <sup>10</sup> The Court rejects the State's argument that the injury suffered by such voters is  
27 not cognizable because it is self-inflicted. (Doc. 85-1 at 16.) Voters who forget to sign  
28 their ballots have not done so deliberately. Forgetfulness is an involuntary state that any  
voter might reasonably experience, and therefore is not avoidable in a practical sense.

<sup>11</sup> The Court does not address whether the DNC or the DSCC have organizational  
standing.

<sup>12</sup> The Court rejects the State's argument that the ADP must prove more Democratic  
voters submit unsigned ballot envelopes than non-Democratic voters. This sets an

1 diversion of resources to counteract these effects. (*Id.* ¶ 24.) For example, the ADP invests  
2 significant resources in helping Democratic voters fix signature issues. The ADP refers to  
3 this process as “ballot chase.” Pre-election ballot chase requires the ADP to either divert  
4 resources from other pre-election work or to hire additional staff to focus on pre-election  
5 ballot chase. Post-election ballot chase, on the other hand, could be accomplished with  
6 existing staff unburdened by pre-election work. (*Id.* ¶¶ 19-22.) Also, the ADP currently  
7 channels additional educational resources to areas with low English literacy rates to ensure  
8 that voters in those areas understand the signature rules for VBM ballots. A post-election  
9 cure period for unsigned envelopes would liberate at least some of these resources for the  
10 ADP’s pre-election organizational priorities, such as get-out-the-vote efforts and voter  
11 persuasion. (*Id.* ¶¶ 25-28.) These are sufficiently concrete and particularized injuries that  
12 are fairly traceable to the challenged law, and that could be redressed by a decision in  
13 Plaintiffs’ favor. *See Crawford*, 472 F.3d at 951 (“Thus the new law injures the Democratic  
14 Party by compelling the party to devote resources to getting to the polls those of its  
15 supporters who would otherwise be discouraged by the new law from bothering to vote.”);  
16 *One Wis. Inst., Inc. v. Nichol*, 186 F. Supp. 3d 958, 967 (W.D. Wis. 2016) (finding  
17 expenditure of resources for educating voters about how to comply with new state voter  
18 registration requirements sufficient to establish standing).

## 19 **B. Unjustified Burden on Voting Rights**

20 The Constitution protects the right to vote, but not the right to vote in any manner  
21 one chooses. *See Burdick v. Takushi*, 504 U.S. 428, 433 (1992). “Common sense, as well  
22 as constitutional law, compels the conclusion that government must play an active role in  
23 structuring elections.” *Id.*; *see also Storer v. Brown*, 415 U.S. 724, 730 (1974) (“[T]here  
24 must be a substantial regulation of elections if they are to be fair and honest and if some  
25 sort of order, rather than chaos, is to accompany the democratic processes.”). Challenges  
26 to election regulations therefore are resolved under a flexible standard designed to balance

27 \_\_\_\_\_  
28 impossibly high standard, as it cannot be known in advance how many voters will neglect  
to sign their ballot envelopes, who they will vote for, or how close those elections will be.

1 the individual’s right to vote with the need for rules ordering the process. The Court “must  
2 weigh ‘the character and magnitude of the asserted injury to the rights protected by the  
3 First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise  
4 interests put forward by the State as justifications for the burden imposed by its rule,’ taking  
5 into consideration ‘the extent to which those interests make it necessary to burden the  
6 plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S.  
7 780, 789 (1983)). This framework commonly is called the *Anderson/Burdick* framework,  
8 after the two Supreme Court decisions from which it derives.

9 Under *Anderson/Burdick*, the degree to which the Court scrutinizes “the propriety  
10 of a state election law depends upon the extent to which a challenged regulation burdens  
11 First and Fourteenth Amendment rights.” *Id.* A law that imposes severe burdens is subject  
12 to strict scrutiny, meaning it must be narrowly tailored to serve a compelling state interest.  
13 *Id.* “Lesser burdens, however, trigger less exacting review, and a State’s ‘important  
14 regulatory interests’ will usually be enough to justify ‘reasonable, nondiscriminatory  
15 restrictions.’” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (quoting  
16 *Burdick*, 504 U.S. at 434).

### 17 **1. Burdens**

18 Plaintiffs do not challenge the requirement that voters sign their ballot envelopes;  
19 they challenge the deadline by which voters must comply. They argue that the Election-  
20 Day cure deadline imposes severe, or at least “significant,” burdens because voters are  
21 disenfranchised if they fail to meet the deadline. (Doc. 2 at 12-13; Doc. 96 at 16.)

22 Plaintiffs’ argument misguidedly conflates the burdens imposed by a challenged law  
23 with the consequences of noncompliance. By definition, a voting prerequisite is something  
24 that voters must do before their votes will be counted. Whenever voters fail to comply  
25 with a voting prerequisite, their votes are not counted and they are, as Plaintiffs use the  
26 term, disenfranchised. If the burden imposed by a challenged law were measured by the  
27 consequence of noncompliance, then every voting prerequisite would impose the same  
28 burden and therefore would be subject to the same degree of scrutiny (presumably strict if

1 the burden is disenfranchisement). But this cannot be true because “not every voting  
2 regulation is subject to strict scrutiny,” *Pub. Integrity Alliance, Inc. v. City of Tucson*, 836  
3 F.3d 1019, 1024 (9th Cir. 2016), and the *Anderson/Burdick* framework necessarily  
4 contemplates that election laws can impose varying burdens. Although the number of  
5 voters whose votes are not counted can be evidence of the severity of the burdens imposed  
6 by a challenged law, the fact that those votes are not counted is not itself the burden.

7 *Crawford* is illustrative. There, the Supreme Court considered whether Indiana’s  
8 voter identification law, which required in-person voters to present photo identification,  
9 unconstitutionally burdened the right to vote. 553 U.S. at 185. A voter who had photo  
10 identification but was unable to present it on Election Day, or a voter who was indigent or  
11 had a religious objection to being photographed, could cast a provisional ballot, which then  
12 would be counted if the voter traveled to the circuit court clerk within ten days after the  
13 election and either presented photo identification or executed an affidavit. *Id.* at 185-86.  
14 In his controlling opinion, Justice Stevens explained “[t]he burdens that are relevant to the  
15 issue before us are those imposed on persons who are eligible to vote but do not possess a  
16 current photo identification that complies with the requirements of” the challenged law.  
17 *Id.* at 198. The Court described these burdens as “the inconvenience of making a trip to  
18 the [Indiana Bureau of Motor Vehicles], gathering the required documents, and posing for  
19 a photograph,” to obtain the required identification. *Id.* The Court did not characterize the  
20 burdens as disenfranchisement, even though failure to obtain the required identification or  
21 execute the appropriate affidavit would preclude the voter from casting a ballot that would  
22 be counted.

23 Here, there is nothing generally or inherently difficult about signing an envelope by  
24 Election Day. The small proportion of ballots regularly discarded due to a missing  
25 signature indicates that the challenged deadline imposes some degree of burden,  
26 particularly on voters who return their ballots too close to Election Day to receive notice  
27 of the problem or a meaningful opportunity to cure. But over 99% of voters timely comply.  
28 (St. Exh. 101 ¶¶ 56-57.) If the Election-Day cure deadline imposed significant burdens, it

1 is reasonable to expect that more voters would fail to overcome those burdens.<sup>13</sup> The Court  
2 therefore finds that the challenged deadline imposes only minimal burdens.

## 3 **2. Justifications**

4 The State offers four interests it believes are served by the challenged deadline: (1)  
5 fraud prevention; (2) reducing administrative burdens on poll workers; (3) orderly  
6 administration of elections; and (4) promoting voter participation and turnout. (Doc 85-1  
7 at 34-35.) The Court addresses each in turn.

### 8 **i. Fraud Prevention**

9 The State's interest in preventing voter and election fraud is important. *See*  
10 *Crawford*, 553 U.S. at 195. This interest is served by Arizona's signature requirement, and  
11 all deadlines serve as an enforcement mechanism for the underlying requirements to which  
12 those deadlines correspond. Thus, the State's fraud prevention interest is served by  
13 imposing a deadline by which voters must sign their ballots. But the relevant question is  
14 not whether the State may impose a deadline. It is whether the State has an interest in *this*  
15 deadline that outweighs or justifies the minimal burdens it imposes. Because there is no  
16 evidence that the challenged deadline reasonably prevents fraud, the Court finds that fraud  
17 prevention does not justify the minimal burdens imposed.

18 To begin, Arizona provides a more generous post-election deadline for resolving at  
19 least two other voter identification issues—VBM ballots in envelopes with perceived  
20 mismatched signatures and conditional provisional ballots cast by in-person voters who  
21 arrive at the polls without identification. Although these two identification issues differ in  
22 some respects from unsigned ballot envelopes, they pose the same fundamental problem:  
23 election officials cannot verify that the person who submitted the ballot is eligible to do so  
24 without additional information. Moreover, the post-election cure periods applicable to  
25 perceived mismatched signatures and conditional provisional ballots show that the  
26

---

27 <sup>13</sup> The Court is not suggesting that there is some minimum threshold of voters that  
28 must be affected before a voting rule can be deemed to impose a more substantial burden.  
But the number of voters who fail to comply with a challenged law is probative (though  
not necessarily dispositive) of the burdens imposed.

1 Election-Day deadline for curing missing signatures is not necessary to advance the State's  
2 fraud prevention interest. Although the State is not required to apply the least restrictive  
3 deadline, the State has not explained how its fraud prevention interest would be harmed if  
4 voters could cure missing signatures in the same post-election timeframe applicable to  
5 these other identification issues.

6 Further, according to the State, most elections are not plagued by fraud, and fraud  
7 generally is not suspected based on the number of ballots returned without signatures.  
8 (Doc. 112 at 69:19-21, 72:1-4.) In most cases, ballots in unsigned envelopes are not  
9 fraudulent ballots—they are ballots cast by otherwise eligible voters who neglected to sign  
10 the envelope. The State is not preventing fraud by discarding these ballots without giving  
11 voters a meaningful opportunity to supply their missing signatures.

## 12 **ii. Reducing Administrative Burdens**

13 The State's interest in reducing administrative burdens on poll workers is important.  
14 *See Lemons v. Bradbury*, 538 F.3d 1098, 1105 (9th Cir. 2008). On this record, however,  
15 that interest does not justify the minimal burdens imposed by the challenged deadline.

16 Most Arizona counties historically have implemented some form of a pre-election  
17 cure period for missing signatures, and the EPM now requires all counties to make  
18 reasonable efforts to contact impacted voters and afford them an opportunity to cure  
19 missing signatures by 7:00 p.m. on Election Day. The State has not shown that continuing  
20 to implement these existing cure procedures for an additional five business days after an  
21 election is likely to impose meaningful administrative burdens on election officials given  
22 the relatively small number of ballots at issue. For example, in 2016, Arizona rejected  
23 3,079 ballots in unsigned envelopes. In 2018, that number was 2,435. (St. Exh. 101 at 26,  
24 Table 2.) In any given election, such ballots constitute roughly one tenth of one percent of  
25 total ballots submitted, and available county-level data indicates that not all voters who are  
26 notified of a missing signature before Election Day cure the problem. (Pl. Exhs. 8 at 3, 17  
27 at 3-4, 20 at 3, 22 at 2.) Thus, if Arizona were to provide a post-election cure period for  
28 unsigned ballot envelopes, likely only a subset of that fraction of a percent would take



1 advantage of the opportunity.

2 Further, in the Secretary's judgment, Arizona could implement a post-election cure  
3 period without imposing significant administrative burdens on election officials because  
4 counties already do so for other voter identification issues. (Pl. Exh. 26 at 7-8.) Coconino  
5 County Recorder Patty Hansen echoed this sentiment, declaring that a post-election cure  
6 period would not impose significant administrative burdens or impact Coconino County's  
7 ability meet Arizona's certification deadline. (Pl. Exh. 29 ¶ 20.) Apache County and  
8 Navajo County also support a post-election cure period for missing signatures. (Doc. 90.)  
9 The Court assigns great weight to the Secretary's judgment, given her position as Arizona's  
10 chief election officer and corroboration from these county officials.

11 In contrast, Mr. Roads, Pima County's Deputy Recorder and Registrar of Voters,  
12 declared that a post-election cure period would impose significant administrative burdens  
13 on Pima County because the process for curing a missing signature is more labor intensive  
14 than curing a perceived mismatched signature:

15 The only way that this can occur is for the voter to travel to the  
16 Ballot Processing Center, for our staff to locate the particular  
17 ballot in the ballot room, to bring the ballot to the voter in the  
18 lobby and have them sign it. Our procedures require that two  
19 workers with different political party affiliations be present  
20 whenever a ballot is being handled. This will result in  
21 substantially more effort than occurs for a voter to confirm  
22 their signature. A voter can simply call our office to confirm  
23 their signature.

24 (St. Exh. 107 ¶ 19.) Later in his declaration, however, Mr. Roads stated that "[o]nly a very  
25 small percentage of voters in Pima County fail to sign their ballots." (*Id.* ¶ 21.) Indeed, in  
26 the 2018 General Election, Pima County rejected only 75 ballots due to a missing signature.  
27 This figure was 120 for the 2016 General Election, 64 for the 2014 General Election, and  
28 72 for the 2012 General Election. (Pl. Exh. 28 at 7.) Although curing missing signatures  
after an election might impose marginally greater administrative burdens on Pima County,  
these additional burdens are not significant enough to justify the challenged deadline  
considering these minimal figures.

Accordingly, on these facts, the Court finds that a post-election cure period would



1 not impose meaningful administrative burdens on election officials and, therefore, the  
2 State’s interest in alleviating administrative burdens does not justify the minimal burdens  
3 imposed by the challenged deadline. *Cf. Lemons*, 538 F.3d at 1104-05 (concluding that the  
4 state need not provide petition signers with notice that their signatures had been rejected  
5 and an opportunity cure where such procedures “would impose a *significant* burden” on  
6 election officials (emphasis added)); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915  
7 F.3d 1312, 1322-23 (11th Cir. 2019) (“In *Lemons*, the Ninth Circuit worried about the  
8 administrative difficulties associated with suddenly requiring state officials to provide  
9 notice and a chance to cure thousands of petition signers when no such requirement  
10 previously existed. . . . But here, Florida already had a cure mechanism for those with  
11 mismatched signatures.”); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 216 (D N.H. 2018)  
12 (noting that, in rejecting the claims in *Lemons*, the Ninth Circuit “assigned great weight to  
13 the administrative burden of additional procedures”).

### 14 **iii. Orderly Administration of Elections**

15 The State has an important interest in the orderly administration of elections,  
16 *Lemons*, 538 F.3d at 1104, but on this record that interest does not justify the minimal  
17 burdens imposed by the challenged deadline.

18 In the Secretary’s judgment, there is no meaningful difference between an unsigned  
19 ballot envelope and one with a perceived mismatched signature. The voter’s signature is a  
20 means of identity verification and in both scenarios the voter’s identity cannot be verified.  
21 (Pl. Exh. 26 at 5.) The Secretary also views VBM ballots in unsigned envelopes as  
22 functionally equivalent to conditional provisional ballots cast by in-person voters without  
23 identification, the latter of which benefit from a post-election cure period. (*Id.*) Contrary  
24 to the State’s litigation position, the Secretary believes that a uniform cure period for all  
25 three of these identification issues would promote the orderly administration of elections  
26 by reducing voter confusion and ensuring that more eligible voters have their ballots  
27 counted. (*Id.* at 5-6.) The Court gives great weight to the Secretary’s judgment, given her  
28 role as Arizona’s chief election officer.

1           The State insists there is a meaningful difference between unsigned envelopes and  
2 those with perceived mismatched signatures. For example, the State emphasizes that an  
3 unsigned envelope is almost always the result of voter error. In contrast, a poll worker  
4 determines whether an envelope contains a mismatched signature, and that determination  
5 easily can be erroneous because signature matching is not an exact science, poll workers  
6 are not handwriting experts, people's signatures change over time, and the quality of a  
7 signature can vary depending on external factors, such as the writing surface or instrument.  
8 (Doc. 85-1 at 26-27.) This is true. But the State does not contend that the shorter deadline  
9 for curing unsigned envelopes is intended to penalize voters for their errors. Moreover, the  
10 differences between envelopes with missing and perceived mismatched signatures do not  
11 explain Arizona's different and better treatment of conditional provisional ballots cast by  
12 in-person voters without identification. Failure to bring identification to the polls is  
13 generally an error of the voter not a poll worker. Yet, Arizona permits those in-person  
14 voters to cure the problem up to five days after an election.

15           The State's position is further undermined by Arizona's generous interpretation of  
16 what constitutes a signature. No uniform policy governs whether a mark qualifies as a  
17 signature triggering an entitlement to the post-election cure period, but the State encourages  
18 election officials to take a broad view. (Doc. 112 at 54:15-16, 55:13-15.) For example,  
19 Pima County officials are instructed that any mark could be a signature. (Pl. Exh. 28 at 4.)  
20 A system in which a voter who makes even the most minimal of marks receives the benefit  
21 of a post-election cure period while a voter who makes no mark does not is unreasonable.

22           Indeed, this differential treatment makes Arizona an outlier. According to Professor  
23 Atkeson, not all states rely on signatures or signatures alone to verify voters' identities, and  
24 of those that do, not all provide cure periods. Among the states that provide cure periods,  
25 there is no consensus on the appropriate duration. Some states require voters to cure  
26 signature issues by Election Day, others permit post-election curing. Some have more  
27 generous cure periods than Arizona's, and others less. But Arizona currently is the only  
28 state that sets a different deadline for curing a missing signature than a perceived

1 mismatched signature. (St. Exh. 101 at 9-10, Table 1.) Arizona's outlier status in these  
2 cross-state comparisons suggests that setting different deadlines for curing these two  
3 identification problems is not rational or orderly.

4 On this record, treating unsigned envelopes worse than those with perceived  
5 mismatched signatures or in-person conditional provisional ballots undermines, rather than  
6 serves, the State's interest in the orderly administration of elections. The Court therefore  
7 finds that the State's interest does not justify the minimal burdens imposed by the  
8 challenged law.

#### 9 **iv. Promoting Voter Participation and Turnout**

10 The State's interest in promoting voter participation and turnout is important,  
11 *Tedards v. Ducey*, 951 F.3d 1041, 1067 (9th Cir. 2020), but that interest is not served by  
12 the challenged law, nor does it justify the minimal burdens imposed. There is no credible  
13 evidence or empirical support for the proposition that a post-election cure period will  
14 reduce cure rates. The State relies on Professor Atkeson's report. (Doc. 85-1 at 34.) But  
15 Professor Atkeson's empirical analysis is inadmissible and her opinion that voters might  
16 not be motivated to cure ballot defects after an election is given little weight. Further, the  
17 State's contention is undermined by the accommodations Arizona provides for ballots in  
18 envelopes with perceived mismatched signatures and conditional provisional ballots cast  
19 by in-person voters without identification. In these situations, the State is willing to tolerate  
20 the risk that voters will forego curing their ballots after an election. Yet the State offers no  
21 cogent explanation for why this highly speculative risk justifies differential treatment of  
22 unsigned envelopes. The State's litigation position also is undermined by its chief election  
23 officer, who believes a uniform post-election cure period for all VBM signature issues will  
24 result in more eligible voters having their votes counted. (Pl. Exh. 26 at 6.) Accordingly,  
25 on this record, the State's voter participation interest is not reasonably served by the  
26 challenged law and does not justify the minimal burdens imposed.

#### 27 **3. Conclusion**

28 Because a signature is Arizona's method of verifying that a person who returns a

1 ballot is the person to whom that ballot belongs, it necessarily follows that Arizona may  
2 set a deadline by which voters must provide that signature. Deadlines come with an  
3 inherent arbitrariness, *see United States v. Locke*, 471 U.S. 84, 94 (1985), but that does not  
4 shield them from judicial review, *see, e.g., Anderson*, 460 U.S. at 805-06 (invalidating a  
5 state deadline for filing nominating petitions); *Nader v. Brewer*, 531 F.3d 1028, 1039 (9th  
6 Cir. 2008) (same). *Anderson* and *Nader* involved more burdensome deadlines, but even at  
7 its most deferential, the *Anderson/Burdick* framework is not a rubber stamp. Layers of  
8 minimal burdens can compound and, in the aggregate, prevent or deter otherwise eligible  
9 citizens from successfully voting. *Anderson/Burdick* therefore directs the Court in all cases  
10 to consider the extent to which a state’s regulatory interests make it necessary to impose  
11 additional burdens on voting rights. On the facts of this case, the challenged deadline fails  
12 to withstand the most deferential level of scrutiny. The Court therefore finds in favor of  
13 Plaintiffs on Count I.

#### 14 **C. Denial of Procedural Due Process**

15 The Fourteenth Amendment prohibits state governments from depriving people of  
16 “life, liberty, or property without due process of law.” U.S. CONST. amend. XIV, § 1. To  
17 succeed on a procedural due process claim, a plaintiff must establish “(1) a deprivation of  
18 a constitutionally protected liberty . . . interest, and (2) a denial of adequate procedural  
19 protections.” *Franceschi v. Yee*, 887 F.3d 927, 935 (9th Cir. 2018) (internal quotation and  
20 citation omitted).

21 As an initial matter, the State argues that Plaintiffs may not bring a procedural due  
22 process challenge to an election regulation outside the *Anderson/Burdick* framework.  
23 (Doc. 85-1 at 19-20.) True, the Ninth Circuit has noted that First Amendment, equal  
24 protection, and due process claims are each “folded into the *Anderson/Burdick* inquiry.”  
25 *Soltysik v. Padilla*, 910 F.3d 438, 449 n.7 (9th Cir. 2018). But the Ninth Circuit made these  
26 remarks in cases that did not involve procedural due process claims. *See, e.g., Id.; Ariz.*  
27 *Libertarian Party v. Reagan*, 798 F.3d 723, 729 n.7 (9th Cir. 2015); *Dudum v. Arntz*, 640  
28 F.3d 1098, 1106 n.15 (9th Cir. 2011). Multiple district courts, both within and outside the

1 Ninth Circuit, have considered procedural due process challenges to election regulations  
2 under ordinary procedural due process principles. *See, e.g., Saucedo*, 335 F. Supp. 3d at  
3 214-17; *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1337-1340 (N.D. Ga. 2018); *Zessar v.*  
4 *Helander*, No. 05 C 1917, 2006 WL 642646, at \*6-9 (N.D. Ill. Mar. 13, 2006); *Raetzel v.*  
5 *Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1355-58 (D. Ariz. 1990). The  
6 cases cited by the State, then, might be best understood as placing all *substantive* due  
7 process and equal protection challenges to election regulations under the *Anderson/Burdick*  
8 framework.

9       Regardless, the Court does not need to resolve this legal question. If procedural due  
10 process claims are analyzed under the *Anderson/Burdick* framework, as the State argues,  
11 then Plaintiffs prevail for the reasons discussed in Part III(B) of this decision. If, as  
12 Plaintiffs argue, ordinary procedural due process principles apply, then Plaintiffs prevail  
13 for the reasons discussed below.

### 14                   **1. Constitutionally Protected Liberty Interest**

15       Voting is a fundamental right, *Reynolds v. Sims*, 377 U.S. 533, 560-562 (1964), and  
16 the right to vote necessarily includes the right to have one’s legitimately cast vote counted,  
17 *see Lee*, 915 F.3d at 1315. There is no corresponding right to vote absentee. *See McDonald*  
18 *v. Bd. of Election Comm’rs of Chi.*, 394 U.S. 802, 807-08 (1969); *Crawford*, 553 U.S. at  
19 209 (Scalia, J., concurring in the judgment); *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th  
20 Cir. 2004). “But once the State permits voters to vote absentee, it must afford appropriate  
21 due process protections . . . before rejecting an absentee ballot.” *Zessar*, 2006 WL 642646,  
22 at \*5; *see also Saucedo*, 335 F. Supp. 3d at 217 (“Having induced voters to vote by absentee  
23 ballot, the State must provide adequate process to ensure that voters’ ballots are fairly  
24 considered and, if eligible, counted.”); *Martin*, 341 F. Supp. 3d at 1338 (“Having created  
25 an absentee voter regime through which qualified voters can exercise their fundamental  
26 right to vote, the State must now provide absentee voters with constitutionally adequate  
27 protection.”); *Raetzel*, 762 F. Supp. at 1358 (concluding that the privilege of absentee  
28 voting, once granted, is “deserving of due process”). Accordingly, the Court finds that

1 Plaintiffs—specifically, the ADP member voters on whose behalf Plaintiffs sue—have a  
2 constitutionally protected liberty interest in having their ballots counted.

### 3 **2. Adequacy of Procedural Protections**

4 The Court assess the adequacy of Arizona’s procedural protections by balancing  
5 three factors:

6 First, the private interest that will be affected by the official  
7 action; second, the risk of an erroneous deprivation of such  
8 interest through the procedures used, and the probable value, if  
9 any, of additional or substitute procedural safeguards; and  
10 finally, the Government’s interest, including the function  
11 involved and the fiscal and administrative burdens that the  
12 additional or substitute procedural requirement would entail.

13 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

14 The first factor favors Plaintiffs. “[T]he private interest at issue implicates the  
15 individual’s fundamental right to vote and is therefore entitled to substantial weight.”  
16 *Martin*, 341 F. Supp. 3d. at 1338; *see also Saucedo*, 335 F. Supp. 3d. at 218 (according  
17 “significant weight” to the plaintiffs’ interest in having their absentee ballots counted).

18 The second factor is mixed. “[P]rocedural due process rules are shaped by the risk  
19 of error inherent in the truthfinding process as applied to the generality of cases, not the  
20 rare exceptions.” *Mathews*, 424 U.S. at 344. Only 0.10% of total ballots were disqualified  
21 for lacking signatures in the 2018 General Election, a figure that stays roughly consistent  
22 from election to election. Generally, then, the risk that one’s ballot will be rejected because  
23 of a missing signature is low. *See, e.g., Veterans for Common Sense v. Shinseki*, 678 F.3d  
24 1013, 1035-36 (9th Cir. 2012) (agreeing that “the risk of error was low” where “only 4%  
25 of veterans who filed for benefits claims are affected”). Moreover, unlike signature  
26 matching, which can be fraught with error, the risk that a poll worker will erroneously  
27 conclude that a ballot envelope is unsigned is negligible.

28 On the other hand, Arizona does not require a signature for its own sake; the  
signature serves as a means of identity verification. The risk that election officials will  
erroneously conclude that a ballot in an unsigned envelope was not, in fact, cast by the  
person to whom that ballot belongs is more significant, as most of these ballots likely are

1 returned by eligible voters rather than impostors. For these voters, a post-election cure  
2 period likely would be valuable. For example, although there is no statewide data on cure  
3 rates, available county-level data suggests that some (though not all) voters who receive  
4 adequate pre-election notice of a missing signature correct the problem. (*See, e.g.*, Pl.  
5 Exhs. 7 at 2, 8 at 3, 19 at 4.) It is reasonable to expect such trends to continue after the  
6 election. Further, voters who return their ballots too close to Election Day, especially those  
7 without phone numbers who must be notified of a problem via mail, often do not receive  
8 adequate pre-election notice of a missing signature or a meaningful opportunity to cure. A  
9 post-election cure period would increase the likelihood that such voters learn of and fix  
10 such deficiencies.

11 The final factor favors Plaintiffs. For reasons explained in Part III(B)(2) of this  
12 decision, the State's interests in maintaining its Election-Day deadline for curing unsigned  
13 envelopes are weak. There is no reason to believe that an Election-Day cure deadline is  
14 any better at preventing fraud (to the extent it exists) than the post-election cure deadlines  
15 applicable to envelopes with perceived mismatched signatures or conditional provisional  
16 ballots cast by in-person voters without identification. The State's abstract voter  
17 participation concerns are speculative, equivocal, and lacking in empirical support. A post-  
18 election cure period would not impose meaningful administrative burdens on election  
19 officials. And Arizona's chief election officer believes that a uniform cure period would  
20 promote the orderly administration of elections.

### 21 **3. Conclusion**

22 Because the second *Matthews* factor is mixed, Plaintiffs' procedural due process  
23 claim largely comes down to balancing the ADP member voters' interest in having their  
24 ballots counted against the State's interest in preserving its Election-Day cure deadline.  
25 The balance might be different if implementing a post-election cure period would impose  
26 significant administrative burdens or otherwise impair important state interests. But no  
27 such showing has been made by the State here. The Court therefore finds in favor of  
28 Plaintiffs on Count II.



1           **D. Equitable Factors**

2           In every election, the ballots of some otherwise eligible voters inevitably will be  
3 rejected due to missing signatures, and some of those voters certainly will be members of  
4 the ADP. This is more likely to occur if those voters return their ballots close to or on  
5 Election Day. The loss of one's vote constitutes an irreparable harm for which there is no  
6 adequate remedy available at law, and which could be mitigated with the implementation  
7 of post-election cure procedures. The State argues that Plaintiffs' delay in bringing this  
8 lawsuit implies a lack of irreparable harm (Doc. 85-1 at 39), but it was not until the EPM  
9 was finalized near the end of 2019 that the State's unjustified differential treatment of  
10 unsigned ballot envelopes became apparent. Though Plaintiffs could have brought this suit  
11 sooner than they did, the Court does not find their delay so substantial as to undermine the  
12 harms alleged.

13           Given the weightiness of the rights at stake and the negligible administrative  
14 burdens a post-election cure period would impose on the State, the balance of equities  
15 favors injunctive relief. The evidence does not support the State's argument that an  
16 injunction would "divert scarce resources at a time when they are sorely needed for  
17 tabulation." (Doc. 85-1 at 39.) The challenged deadline impacts a fraction of a percent of  
18 voters, and only a subset of those voters would likely take advantage of a post-election cure  
19 period. Election officials therefore are not likely to be overwhelmed with additional post-  
20 election cure duties if the Court were to issue an injunction.

21           Nor would an injunction disserve the public interest. The evidence demonstrates  
22 that a post-election cure period would better achieve the orderly administration of elections  
23 and likely result in more eligible voters having their ballots counted, all without imposing  
24 meaningful burdens on election officials. Citing *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006),  
25 the State argues that an injunction altering election rules this close to an election diserves  
26 the public interest by confusing voters. (Doc. 85-1 at 40.) But Plaintiffs are not asking  
27 election officials to devise new rules out of whole cloth. They are asking those officials to  
28 continue applying the same procedures they have in place now, but for a little longer. This

1 change is not likely to confuse voters, especially when the injunction would replace  
2 arbitrary differential treatment with uniformity, and when the change is welcomed by  
3 Arizona's chief election officer.

4 **E. Conclusion**

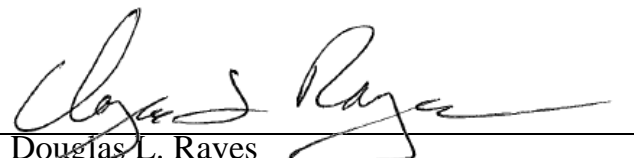
5 On the facts of this case, Arizona's Election-Day deadline for curing unsigned ballot  
6 envelopes imposes minimal but unjustifiable burdens on the right to vote and is an  
7 inadequate procedural safeguard, particularly for voters who return their ballots too close  
8 to Election Day to receive adequate pre-election notice of a missing signature and an  
9 opportunity to cure. Plaintiffs have succeeded on the merits of their claims and shown that  
10 the equities favor injunctive relief. Accordingly,

11 **IT IS ORDERED** that Plaintiffs' motion to preclude certain opinions of Professor  
12 Atkeson (Doc. 101) is **GRANTED IN PART** and **DENIED IN PART** as explained in  
13 Part II of this order.

14 **IT IS FURTHER ORDERED** that Plaintiffs' motion for a preliminary and  
15 permanent injunction (Doc. 2) is **GRANTED**. Defendants, their respective agents,  
16 officers, employees, and successors, and all persons acting in concert with each or any of  
17 them, must allow voters who are determined to have submitted an early ballot (referred to  
18 in this order as a VBM ballot) in an envelope without a signature the opportunity to correct  
19 the missing signature until 5:00 p.m. on the fifth business day after a primary, general or  
20 special election that includes a federal office or the third business day after any other  
21 election.

22 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment in  
23 favor Plaintiffs and against Defendants and terminate this case.

24 Dated this 10th day of September, 2020.

25  
26  
27   
28 Douglas L. Rayes  
United States District Judge