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11 *Attorneys for Arizona Secretary of State Katie Hobbs*

12
13 **ARIZONA SUPERIOR COURT**

14 **MARICOPA COUNTY**

15 KATIE HOBBS, in her capacity as the) No.
Secretary of State of Arizona,)
16 Plaintiff,) **COMPLAINT FOR DECLARATORY**
AND INJUNCTIVE RELIEF
17 and)
18 MARK BRNOVICH, in his official capacity as)
Arizona Attorney General; State of Arizona, a)
19 body politic,)
20 Defendants.)

21 Plaintiff Arizona Secretary of State Katie Hobbs (“Secretary”) alleges as follows:

22 **Introduction**

23 1. This is an action to stop Arizona Attorney General Mark Brnovich (“AG”) from
24 pursuing unfounded and unprecedented enforcement action against the Secretary. The AG is
25 threatening the Secretary with criminal prosecution for performing her duties as the State’s Chief
26 Elections Officer.

1 2. For the last decade, the Secretary’s office has been operating a secure online
2 nomination petition portal known as “E-Qual.” Arizona law requires the Secretary to provide E-
3 Qual to certain candidates, and requires that E-Qual allow only eligible signers to sign
4 candidates’ nomination petitions.

5 3. To verify that registered voters are eligible to sign a petition for a candidate in a
6 particular district, E-Qual must interface with Arizona’s voter registration database and its
7 complex mapping software that ties registered voters to electoral districts and precincts.

8 4. Because Arizona just adopted new legislative and congressional district maps, the
9 counties must update the voter registration database using the new boundaries. To accommodate
10 the update, the Secretary must temporarily take E-Qual offline for legislative and congressional
11 candidates to allow the counties to do their work.

12 5. This planned maintenance of E-Qual is uncontroversial. Last time Arizona’s
13 congressional and legislative maps changed, then-Secretary Ken Bennett took E-Qual offline to
14 allow counties to update voters’ districts in the voter registration system. And when the
15 Legislature required the Secretary to extend E-Qual to certain local candidates in 2016, then-
16 Secretary Michele Reagan didn’t update E-Qual for the two remaining years of her
17 administration because of challenges that came with updating the system to verify voter
18 eligibility in local boundaries.

19 6. Yet the AG claims the Secretary will violate Arizona law – and face civil and
20 criminal liability – if she takes E-Qual offline for approximately three weeks to allow Arizona’s
21 counties to implement the new maps.

22 7. This threat against the Secretary is not only legally baseless, but also dangerous. It
23 is part of a larger systematic effort to undermine election officials’ ability to oversee and
24 administer elections in the wake of the 2020 election. Election officials across the country have
25 faced unprecedented harassment – and demands to be locked up or worse – simply for doing
26 their jobs.

1 15. The bill required that the internet portal the Secretary creates “shall ensure that
2 only those registered voters who are eligible to sign petitions for that particular candidate may
3 sign the petitions and qualification forms for a candidate and shall provide a method for the
4 registered voter’s identity to be properly verified.” *Id.*

5 16. That is, the electronic portal must be able to properly verify the voter’s identity,
6 voter registration status, and electoral districts.

7 17. The bill was passed in consultation with then-Secretary of State Ken Bennett’s
8 office, including the state elections director who testified about the program to the House
9 Judiciary Committee.

10 18. The elections director explained that the electronic portal was “in its infancy,” but
11 the Secretary’s office “believe[d] that this could work.” H. Jud. Comm., Feb. 10, 2011, beginning
12 at 23:54, <https://www.azleg.gov/videoplayer/?eventID=2011021340&startStreamAt=26> (last
13 visited Feb. 1, 2022). She explained that they would “need to work out some kinks,” but they
14 “wanted authority to try to move forward with it and try to make something work” using the
15 Secretary’s “own technology” and existing voter registration database to create a system with
16 the functionality to allow only eligible signers to sign online petitions. *Id.* She also made clear
17 that the Secretary’s office would need to “try to perfect it and make sure it will work” before
18 implementing and expanding it. *Id.*

19 19. The next year, the Secretary’s office launched the electronic portal authorized
20 under this bill, known as “E-Qual.” <https://apps.azsos.gov/equal/>.

21 20. Eligible candidates may choose to use E-Qual together with or in place of
22 collecting signatures on hard-copy petition sheets.

23 **E-Qual and the Statewide Voter Registration Database**

24 21. To use E-Qual, eligible candidates must create their online petition in the E-Qual
25 system through the Secretary’s Candidate Portal.

1 22. Then, the candidate can circulate the weblink to voters to sign the petition, or the
2 voter can go directly to the E-Qual website and view the petitions for which the voter is eligible
3 to sign.

4 23. To sign a petition in E-Qual, a registered voter must first authenticate their identity
5 by entering their name, date of birth, and either: (i) their driver’s license number, or (ii) their
6 voter identification number and the last four digits of their Social Security number.

7 24. The E-Qual system interfaces with the statewide voter registration system to verify
8 that the information the voter entered in E-Qual matches the voter’s registration record. If the
9 information does not match, the voter cannot sign petitions in E-Qual.

10 25. The current statewide voter registration system is called the Arizona Voter
11 Information Database (“AVID”). Prior to November 2019, the State used the Power Profile
12 system for its voter registration database and E-Qual interfaced with Power Profile to verify
13 voter data.

14 26. In addition to verifying the voter’s identifying information, E-Qual also interfaces
15 with AVID to ensure the voter is eligible to sign specific candidates’ petitions by verifying the
16 voter’s registration status and assigned districts. If the user is not registered to vote or if they are
17 registered in a district that does not qualify them to sign any available E-Qual petitions, the
18 system won’t allow the user to sign for any candidates.

19 27. Because the law requires that E-Qual verify the voter’s eligibility to sign a petition,
20 E-Qual’s ability to interface with AVID is necessary for it to function in compliance with the
21 law.

22 28. While the Secretary maintains AVID as the statewide voter registration system,
23 each of Arizona’s fifteen counties must maintain and update the voter registration information
24 and records for voters in their county. In other words, the Secretary has no ability or authority to
25 update voter registration information in AVID—that action must be taken by the appropriate
26 County Recorder.

The 2012 Redistricting Maps

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2 29. After the 2010 census, the Arizona Independent Redistricting Commission
3 (“AIRC”) certified new redistricting maps in late 2011 for the 2012 election cycle.

4 30. In the Spring of 2012, shortly after E-Qual launched, the Secretary’s Office had to
5 temporarily take it offline to allow counties the time to update the voter registration database to
6 reassign voters to their new districts.

7 31. The Secretary’s Office notified candidates that E-Qual would be offline for some
8 time to allow counties to update the voter registration database so that E-Qual could properly
9 verify voters’ eligibility to sign petitions, as required by statute.

10 32. Temporarily taking a system offline is nothing new. In fact, every system operated
11 by government agencies must sometimes be temporarily taken down when necessary for
12 maintenance or updates.

13 33. For example, in early 2020, the Arizona Department of Transportation Motor
14 Vehicle Division had to temporarily shut down its computer system and replace it with a new
15 MVDNow system. During that time, the online voter registration system was temporarily
16 unavailable, but individuals could register to vote using paper registration forms. Ariz. Sec’y
17 State, Press Release, April 15, 2020, [https://azsos.gov/about-office/media-center/press-](https://azsos.gov/about-office/media-center/press-releases/1164)
18 [releases/1164](https://azsos.gov/about-office/media-center/press-releases/1164).

19 34. For E-Qual in particular, if the system is not able to access a voter’s district
20 information in AVID (*e.g.*, because of an outage or maintenance requirements for the AVID
21 system), then E-Qual cannot comply with the statutory requirement that it allow only eligible
22 signers to sign a petition.

23 35. In those limited circumstances, it is necessary to temporarily take E-Qual offline,
24 either for some or all candidates, until AVID can be accessed to properly verify voter data.

Expanding E-Qual

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2 36. In 2014, the Legislature decided to extend the E-Qual pilot program and make the
3 E-Qual system a permanent statutory provision for statewide and legislative candidates. HB
4 2107, 51st Leg., 2nd Reg. Sess. (Ariz. 2014) (adopting A.R.S. § 16-316 (the Secretary “shall
5 provide a system for qualified electors to sign a nomination petition and to sign and submit a
6 citizens clean elections five dollar contribution qualification form for a candidate by way of a
7 secure internet portal”)).

8 37. Like the pilot program, the permanent statute requires that E-Qual “shall allow
9 only those qualified electors who are eligible to sign a petition for a particular candidate to sign
10 the petition and only those qualified electors who are eligible to give a qualifying contribution
11 to that candidate to do so and shall provide a method for the qualified elector’s identity to be
12 properly verified.” A.R.S. § 16-316(A).

13 38. In 2016, the Legislature passed laws requiring the Secretary to extend E-Qual to
14 congressional candidates, A.R.S. § 16-318, and certain candidates for local offices, A.R.S. § 16-
15 317.

16 39. Even though these laws became effective in August 2016, then-Secretary of State
17 Michele Reagan did not make E-Qual available to eligible local candidates.

18 40. After Secretary Hobbs took office in 2019, she began working to extend E-Qual
19 to include local offices, a complex process that took significant planning to accommodate the
20 political boundaries at the various levels of government. *Id.*

21 41. Despite this statutory mandate, the AG neither threatened nor brought any civil or
22 criminal action against Secretary Reagan when she failed to make E-Qual available to eligible
23 local candidates for over two years.

The 2022 Redistricted Maps

24
25 42. After completion of the 2020 census, the AIRC created new congressional and
26 legislative district maps for the 2022 election cycle.

1 43. On January 24, 2022, the AIRC transmitted and certified the 2022 congressional
2 and legislative maps to the Secretary of State’s Office under article IV, part 2, section 1(17) of
3 the Arizona Constitution.

4 44. For months prior to certification, county election officials have been preparing to
5 implement the new maps in AVID in order to reassign voters to their 2022 legislative and
6 congressional districts.

7 45. AVID uses a geographic information system (“GIS”)-based address management
8 software that defines each voter’s address as a “point address.” A “point address” is a location
9 on a computerized map using the latitude and longitude of the location.

10 46. The counties upload files with precinct map “layers” in the software, which are
11 displayed to separate the map into distinct polygons for each precinct.

12 47. These distinct polygons are tied to a set of electoral districts. Point addresses
13 become a member of a specific precinct part polygon, which determines the voter’s assigned
14 voting districts.

15 48. Only one set of legislative and congressional district boundary definitions can be
16 in AVID at one time.

17 49. The processes and timelines necessary to implement the new redistricted maps in
18 AVID are multifaceted, involve multiple stakeholders, and vary by county.

19 50. Counties are now reviewing the certified 2022 maps and determining whether
20 existing precinct boundaries need to be revised based on the updated maps.

21 51. Arizona law requires that precinct lines be included within congressional and
22 legislative district lines, A.R.S. § 16-411(A), so some counties must significantly adjust precinct
23 boundaries, while others will have minimal or no changes to precinct boundaries.

24 52. New precinct lines must then be approved by the County Board of Supervisors
25 (“BOS”). *See id.*

26 53. After BOS approval, counties must work with GIS specialists to create and define

1 GIS shape files with the updated precinct part layers.

2 54. Some counties have their own GIS departments with staff to do this work, while
3 other counties will need to obtain external support.

4 55. Once the updated precinct part layer files are created, counties must conduct
5 extensive testing and quality control in AVID's redistricting test environment to ensure that all
6 precinct parts are correctly defined and associated with the correct electoral districts.

7 56. After ensuring the electoral districts and corresponding precinct part layers are
8 accurate and correctly defined in the system, counties can begin importing the updated files into
9 the production environment in AVID to reassign voters to their 2022 congressional and
10 legislative districts.

11 57. Then, counties must complete a series of quality control steps to ensure voters have
12 been assigned to their correct updated electoral districts.

13 58. Counties also must account for 2022 March and May election processes and
14 deadlines when implementing the new maps.

15 59. Some counties have an election on March 8, 2022 for which they started sending
16 ballots to military and overseas voters on January 22, 2022 and for which early voting starts on
17 February 9, 2022.

18 60. These counties cannot reassign voters to new districts while an election is live in
19 their election management system and AVID, and they must wait until the March elections close
20 before they can start reassigning voters in AVID.

21 61. Other counties have elections on May 17, 2022 for which they must send ballots
22 to military and overseas voters by April 2, 2022 and for which early voting starts on April 20,
23 2022.

24 62. These counties must implement the redistricted maps far enough before April 2,
25 2022 so they can send updated voter registration cards to voters and conduct the May 2022
26 elections using the updated precinct assignments.

1 in AVID, E-Qual cannot properly verify that only eligible signers can sign specific petitions.

2 72. Thus, while reassigning voters to their 2022 districts is a county function over
3 which the Secretary ultimately has no control, the Secretary has coordinated closely with
4 counties to ensure that all counties begin importing updated precinct part layer files into AVID
5 at the same time.

6 73. The Secretary did so to minimize the time that E-Qual must be offline, while also
7 ensuring that the counties can accurately implement redistricting without interfering with other
8 necessary election functions, including for the March or May elections.

9 74. All told, the Secretary plans to take E-Qual offline for approximately three weeks.

10 75. When the E-Qual pilot program was adopted, then-Secretary Ken Bennett's office
11 took several months to launch the system, and his office had to temporarily shut the system down
12 to incorporate the 2011 redistricting maps.

13 76. And when E-Qual was required for certain local office candidates, then-Secretary
14 Michele Reagan's office never expanded E-Qual to those local candidates during her remaining
15 two years in office.

16 77. Until E-Qual is temporarily taken offline in early March, voters and candidates
17 remain assigned to their 2020 congressional and legislative districts, and congressional and
18 legislative candidates can collect E-Qual signatures from voters eligible to vote in those 2020
19 congressional and legislative districts. *See* SB 1107, 55th Leg., 1st Reg. Sess. § 2 (Ariz. 2021).

20 78. On January 11, 2022, the Secretary notified candidates about how redistricting will
21 impact E-Qual, including notifying congressional and legislative candidates to expect E-Qual to
22 be unavailable beginning around early March, and announcing the dates and times of webinars
23 where candidate filing staff would explain this information and answer any questions from
24 candidates.

1 **The AG’s Threats of Enforcement**

2 79. The planned redistricting updates in AVID and its impact on E-Qual has been
3 criticized by some candidates and the Arizona Republican Party, and there have been several
4 inaccurate reports that E-Qual is “broken” or “collapsing” and needs to be “fixed.” *E.g.*, Press
5 Release, Gaynor for Governor, *Total Collapse: Hobbs Shuts Down Candidate Qualification*
6 *System*, Jan. 13, 2022, [https://gaynorforgovernor.com/total-collapse-hobbs-shuts-down-](https://gaynorforgovernor.com/total-collapse-hobbs-shuts-down-candidate-qualification-system/)
7 [candidate-qualification-system/](https://gaynorforgovernor.com/total-collapse-hobbs-shuts-down-candidate-qualification-system/); Jeremy Duda, *Ariz. Mirror*, *Secretary of State’s online*
8 *signature-gathering system breaks after redistricting*, Jan. 5, 2022 6:30 a.m.,
9 [https://www.azmirror.com/2022/01/05/secretary-of-states-online-signature-gathering-system-](https://www.azmirror.com/2022/01/05/secretary-of-states-online-signature-gathering-system-breaks-after-redistricting/)
10 [breaks-after-redistricting/](https://www.azmirror.com/2022/01/05/secretary-of-states-online-signature-gathering-system-breaks-after-redistricting/).

11 80. Shortly after this misinformation about E-Qual started to spread, the AG’s Office
12 decided to capitalize on the conflict. On January 14, 2022, his office sent the Secretary a letter
13 demanding that the Secretary “fix the system.”

14 81. The AG claimed that the Secretary will violate Arizona law if she temporarily
15 takes E-Qual offline (even though doing so is necessary to allow counties to update voters’ new
16 districts), warned her that “knowingly” doing so is “either a class 6 felony or class 3
17 misdemeanor” under A.R.S. §§ 16-1009 and 1010, and threatened to initiate “civil and criminal
18 actions” against her. *Id.*

19 82. The AG’s threat of criminal prosecution against an election official for simply
20 doing her job is unfounded and unprecedented.

21 **COUNT I**

22 **(Declaratory Judgment)**

23 83. The Secretary incorporates all previous allegations as if set forth here.

24 84. Under Arizona law, the Secretary “shall provide a system for qualified electors to
25 sign a nomination petition and to sign and submit a citizens clean elections five dollar
26 contribution qualification form for a candidate by way of a secure internet portal. The system

1 shall allow only those qualified electors who are eligible to sign a petition for a particular
2 candidate to sign the petition and only those qualified electors who are eligible to give a
3 qualifying contribution to that candidate to do so and shall provide a method for the qualified
4 elector's identity to be properly verified.” A.R.S. §§ 16-316(A), 317(A), 318(A).

5 85. The Secretary maintains and provides E-Qual, a secure internet portal that
6 complies with these statutes.

7 86. E-Qual must allow only qualified electors who are eligible to sign a petition for a
8 particular candidate to sign the petition, and only qualified electors who are eligible to give a
9 qualifying contribution to that candidate to contribute. A.R.S. §§ 16-116(A), 117(A), 118(A).

10 87. To be eligible to sign a legislative or congressional candidate's nomination
11 petition, a signer must reside in the particular district where the candidate is seeking to run. *See*
12 A.R.S. § 16-321(B).

13 88. Now that Arizona has adopted new legislative and congressional district
14 boundaries, AVID must be updated to incorporate these new boundaries and assign voters to
15 their new districts and precincts. *See, e.g.*, SB 1107, 55th Leg., 1st Reg. Sess. § 2 (Ariz. 2021);
16 A.R.S. § 16-411(A).

17 89. While the counties are updating AVID to incorporate the new congressional and
18 legislative districts, AVID will not be able to interface with E-Qual to ensure that only eligible
19 voters can sign specific petitions. Therefore, during that time, E-Qual must be taken offline for
20 congressional and legislative petitions.

21 90. The Secretary has complied with A.R.S. §§ 16-316 and 318 by providing E-Qual
22 to statewide, legislative, and congressional candidates.

23 91. Temporarily taking E-Qual offline to perform necessary maintenance in AVID to
24 incorporate new district boundaries does not violate A.R.S. §§ 16-316 or 318.

25
26

1 enforcement actions against her.

2 99. Unless the Court enters an injunction, the Secretary will suffer irreparable harm
3 because the AG has threatened her with unlawful criminal prosecution that affects her livelihood
4 and her ability to perform other constitutional and statutory duties in an important election year.

5 100. The balance of hardships and public interest both favor the Secretary, who seeks
6 to perform her duties as Arizona's Chief Elections officer, ensure that eligible voters can sign
7 nomination petitions for candidates of their choice in the correct districts, and ensure that
8 Arizona's 2022 election cycle is carried out efficiently and uniformly in Arizona's counties.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Secretary respectfully requests the following relief against
11 Defendants and their agents:

12 A. For declaratory judgment declaring that the Secretary:

13 i) has complied with A.R.S. §§ 16-316 and 318 by providing E-Qual
14 to statewide, legislative, and congressional candidates;

15 ii) does not violate A.R.S. §§ 16-316 or 318 by temporarily taking E-
16 Qual offline for legislative and congressional petitions to allow counties to incorporate the new
17 legislative and congressional district maps; and

18 iii) does not "knowingly fail[] or refuse[] to perform" a legal duty under
19 A.R.S. §§ 16-1009 or 1010 by temporarily taking E-Qual offline to allow counties to incorporate
20 the new legislative and congressional district maps;

21 B. For a preliminary and permanent injunction preventing Defendants and
22 their agents from investigating or initiating civil or criminal actions against the Secretary for
23 temporarily taking E-Qual offline to allow counties to incorporate the new legislative and
24 congressional district maps;

25 C. For an order awarding the Secretary her taxable costs under A.R.S. §§ 12-
26 341 and 12-1840; and

