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13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

14 **IN AND FOR THE COUNTY OF MARICOPA**

15
16 KATIE HOBBS, in her official capacity as
17 Secretary of State of Arizona,

18 Plaintiff,

19 and

20 MARK BRNOVICH, in his official capacity
21 as Arizona Attorney General; STATE OF
22 ARIZONA, a body politic,

23 Defendants

Case No: CV2022-001546

24 **STATE’S RESPONSE OPPOSING**
25 **PLAINTIFF’S MOTION FOR A**
26 **PRELIMINARY INJUNCTION**

Oral Argument: February 23, 2022 at
11:00am

(Assigned to the Hon. Joan Sinclair)

1
2 **INTRODUCTION**

3 After supporting legislation (“S.B. 1107”) *a year ago* that allows 2022 legislative and
4 congressional candidates to obtain signatures from eligible voters based on the 2020 and 2022
5 maps, Secretary of State Katie Hobbs (“Secretary”) recently realized that the statewide voter
6 registration system (“AVID”) cannot simultaneously handle two maps, and this system is
7 necessary for operation of the online signature-gathering system (“E-Qual”). Instead, AVID can
8 only replace the 2020 information with the 2022 information. According to the Secretary, this
9 lack of functionality will create a time crunch for county recorders to upload 2022 data into
10 AVID, and when they do, it will replace the 2020 data.

11 In her Motion for Preliminary Injunction (“PI Motion”), the Secretary seeks to leverage
12 the inability of AVID to handle two maps to ask *this Court* to bless her shutting down the
13 system entirely for the last *three to four weeks* of the signature-gathering period. In other
14 words, whatever necessary maintenance must be performed due to the inability to handle two
15 maps, what the Secretary is asking for here is to be able to accelerate that maintenance up to the
16 signature-gathering period and to be able to shut down the signature gathering period for an
17 extended period of time while this happens.

18 The Court should reject the Secretary’s PI Motion for a number of reasons. To begin,
19 Arizona law bars the issuance of an injunction “[t]o prevent enforcement of a public statute by
20 officers of the law for the public benefit” or “[t]o prevent the exercise of a public or private
21 office in a lawful manner by the person in possession.” A.R.S. § 12-1802(4), (6). But that is
22 exactly what the Secretary would have the Court do here. She also lacks standing to seek a
23 preliminary injunction based on hardships she claims will be imposed on county recorders, who
24 are not party to this action. She does not have standing to assert their claims.

25 The Secretary’s sole legal argument—that the Court cannot interpret Arizona law as
26 preventing her from taking down E-Qual for the last *three to four weeks* of the signing period—

1 fails badly.¹ The Secretary repeatedly admits that she has a statutory duty under A.R.S. § 16-
2 316 and -318 to provide legislative and congressional candidates an online platform to collect
3 signatures for their nominating petitions, which is a vital tool for candidates to access the ballot.
4 For the 2022 election cycle, candidates have until April 4, 2022 to collect the requisite number
5 of signatures to appear on the primary election ballot in August of 2022. But the Secretary plans
6 to take E-Qual “offline” in “early March” and her *2022 Candidate Redistricting Guide –*
7 *Updated January 11, 2022* sets the date as March 5. The Secretary bogs down the PI Motion
8 with technical details, but the reality is she is seeking advance judicial blessing to deprive
9 candidates of a functioning E-Qual system during the final *four weeks* of signature gathering.

10 As to the remaining factors for an injunction, the Secretary cannot establish that she, as
11 Secretary, will suffer irreparable harm if the State and AG are not enjoined from requiring her to
12 do what she is already doing. Nor can the Secretary show any harm from waiting until after
13 April 4 to perform maintenance, which allegedly will affect two elections in two counties, will
14 outweigh the harm to the State and candidates from shutting down the E-Qual system statewide
15 for the final weeks of the signature-gathering period. Finally, the Secretary cannot show that
16 preemptively enjoining the State and AG from enforcing Arizona law will further the public
17 interest in the slightest (to the contrary, it would cause significant public harm). The Secretary
18 is also barred by estoppel and the *Purcell* doctrine from obtaining equitable relief.

19 **FACTUAL BACKGROUND**

20 **I. E-Qual Started As A Pilot Program In 2011 And Became Mandatory In 2014.**

21 Over a decade ago, the Legislature authorized the Secretary of State to administer a pilot
22 program to allow candidates to collect nominating petition signatures online by adding the
23 following provision to A.R.S. § 16-314: “[T]he secretary of state *may* establish a method for
24 registered voters to sign a nomination petition and a citizens clean elections five dollar donation
25 qualification form for a candidate by way of a secure internet portal for petitions for statewide
26

¹ The Secretary should not be permitted to make new arguments or submit new evidence with her reply brief.

1 and legislative offices.” 2010 Ariz. Legis. Serv. Ch. 284 (S.B. 1422) (emphasis added).

2 After a successful pilot program, the Legislature enacted A.R.S. § 16-316 in 2014, which
3 provides as follows:

4 A. Notwithstanding any other statute in this title, the secretary of state *shall* provide a
5 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 secure internet portal. . . .

7 B. This section applies only to candidates for statewide and legislative offices.

8 2014 Ariz. Legis. Serv. Ch. 45 (H.B. 2107) (emphasis added).

9 The statute was amended in 2016 to expand E-Qual to apply to “candidates for the office
10 of the United States senator or representative in congress.” *See* A.R.S. § 16-318. As of May
11 2020, E-Qual became fully functional for candidates collecting signatures for federal, statewide,
12 legislative, municipal, county, and precinct committee offices.²

13 **II. Statutory Provisions Outline the Candidate Nominating Process with a Statutory**
14 **Deadline of April 4, 2022 to Submit Nominating Papers and Petitions.**

15 Before a candidate may begin collecting signatures on nominating petitions, a candidate
16 must file a statement of interest. A.R.S. §§ 16-311(H), - 341(I). Once the candidate files a
17 statement of interest with the Secretary of State for federal, statewide, or legislative offices,
18 candidates may begin collecting petition signatures on E-Qual.³ Between 150 days and 120
19 days before an election, “traditional” candidates for the primary ballot must file nominating
20 papers and nominating petitions with the filing officer. A.R.S. §§ 16-311(A), -314(A). In 2022,
21 the earliest a “traditional” candidate may file is March 5, 2022 and the latest is 5:00 p.m. on
22 April 4, 2022.⁴ For “participating” candidates, they may begin filing as early as January 1, 2022.

23 _____
24 ² *See* <https://azsos.gov/about-office/media-center/press-releases/1175>. This court may take
25 judicial notice of records that are publicly available on government websites. *See* Ariz. R. Evid.
26 201; *Pederson v. Bennett*, 230 Ariz. 556, 559, ¶ 15 (2012).

³ *Running for Public Office – A Candidate Guide*, Secretary of State’s Office, February 21,
2020, at 10, available at https://azsos.gov/sites/default/files/2.21.2020_Running_for_Office_%20Handbook.pdf.

⁴ <https://azsos.gov/elections/elections-calendar-upcoming-events>.

1 *Id.*⁵ To appear on the ballot, a candidate must obtain a minimum number of signatures for the
2 office they are seeking, which can range from a few hundred to tens of thousands.⁶ *See* A.R.S. §
3 16-322(A).

4 For “participating” candidates who forgo private contributions and opt instead to use
5 funding from the Citizens Clean Elections Fund, in addition to the petition requirements, the
6 candidate must also obtain a minimum number of qualifying contributions. A.R.S. § 16-950(D).
7 Candidates may also use E-Qual to collect qualifying contributions. A.R.S. § 16-316(A).

8 Once nominating papers and petitions are submitted to the filing officer, the filing officer
9 confirms the candidate completed all of the necessary forms, submitted at least the bare
10 minimum number of signatures, met the statutory deadline for filing, is not seeking more than
11 one office at the same time, and is not currently financially liable for campaign finance
12 violations.⁷

13 Unless nominating papers or petitions are facially inadequate, the filing officer must
14 accept the materials as submitted. *See Sims Printing Co. v. Frohmiller*, 47 Ariz. 561, 568
15 (1936). Any elector, however, may file a court action challenging the nomination of a
16 candidate, specifying the “petition number, line number and basis for the challenge for each
17 signature being challenged.” A.R.S. § 16-351(A). Once a challenge is made, the county
18 recorder or other officer in charge of elections (“Recorder”) is obligated to perform petition
19 signature verifications, but is only required to look at challenged signatures. A.R.S. § 16-
20 351(E); *see also McKenna v. Soto*, 250 Ariz. 469 (2021) (“The Recorder... is not obligated to
21

22 ⁵ A “traditional” candidate is one who is not participating in the Clean Funding program and
23 raise private funds. A “participating” candidate is a candidate who is participating in the Clean
24 Funding program to receive funding from the Citizens Clean Election Fund, and forgo private
25 donations. *See* <https://www.azcleelections.gov/run-for-office> (last accessed February 9,
2022).

26 ⁶ <https://azsos.gov/elections/running-office> (last accessed Feb. 15, 2022).

⁷ *Cf.* Arizona Secretary of State, *2019 Elections Procedures Manual*, Dec. 19, 2019, at 109, 119,
available at [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES
MANUAL_APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf). There is no Election Procedures Manual currently in effect in
Arizona for the 2022 elections.

1 search for defects other than those asserted by the challenger.” (cleaned up)).

2 Because redistricting occurred in the middle of the petition gathering process for
3 candidates running for office in 2022, the Legislature passed a safe-harbor bill allowing
4 candidates to collect signatures in the candidate’s district as used in the 2020 election, in a
5 redistricting plan adopted by the 2021 independent redistricting commission, or in a redistricting
6 plan ordered for use in the 2022 election by a court of competent jurisdiction. 2021 Ariz. Legis.
7 Serv. Ch. 155 (S.B. 1107). Accordingly, in any challenge alleging a specific elector does not
8 reside in the candidate’s district, Recorders will necessarily have to review both the old and new
9 district boundaries to confirm the elector’s eligibility to sign a particular petition, and that is true
10 regardless of whether the Secretary takes E-Qual down to update the boundaries.

11 Challengers have ten business days after nominating paperwork is due to file an action
12 challenging nominating petition signatures, and the court has ten days from the date of filing to
13 hold a hearing and render a decision. A.R.S. § 16-351(A). Based on the statutory deadlines, the
14 challenge and trial court decision period in 2022 will end on or around April 28.

15 **III. The Secretary Failed to Anticipate the Impact of Redistricting on E-Qual, But the**
16 **March and May Local Elections Are No Reason To Shutter E-Qual Before April 4.**

17 **A. The Evidence Strongly Supports That The Secretary Failed To Prepare For**
18 **E-Qual Needing To Accommodate Two Maps Simultaneously.**

19 Redistricting is not new, nor is the issue of legislative and congressional candidates
20 needing to collect signatures in the first cycle following the adoption of new maps. In 2012, the
21 Legislature passed a safe-harbor bill allowing candidates to collect signatures from the old
22 (2010) or new (2012) districts for the 2012 cycle. 2011 Ariz. Leg. Serv. Ch. 332 §30 (H.B.
23 2304). In early 2021, the Legislature again adopted a safe-harbor bill (S.B. 1107), allowing
24 candidates to collect signatures from the old (2020) or new (2022) districts for the 2022 cycle,
25 which the Secretary of State expressly supported. Exh. F attached to Decl. of Jennifer Wright
26 (“Wright Decl.”) (attached hereto as Exh. 1). The Secretary did not raise any technological
impossibility arguments at the Legislature regarding E-Qual accommodating two maps

1 simultaneously. Wright Decl. ¶12.

2 Ten months then elapsed. In Late December, the Secretary published the *2022 Candidate*
3 *Redistricting Guide* (“December Guide”). Secretary of State, *2022 Candidate Redistricting*
4 *Guide*, Dec. 29, 2021 (Wright Decl. Exh. B). Nothing in the December Guide suggested that
5 candidates must select their old LD to participate in E-Qual; in fact, it stated “[i]f a candidate
6 running for Congressional or State Legislative office is redistricted, the candidate should update
7 their district in Candidate Portal to the 2022 district as soon as possible[,]” suggesting the
8 system was in fact designed to accommodate the new LD boundaries. *Id.* at 9. The December
9 Guide also unequivocally stated, “E-Qual will allow voters to sign for candidates **throughout**
10 **the filing process.**” *Id.* at 4 (emphasis added). Nothing in the 18-page December Guide hinted
11 or suggested that E-Qual would need to go offline—let alone for **three to four weeks**—during
12 the final critical weeks of signature gathering. *Id.*

13 Following AIRC’s certification to the Secretary of new legislative and congressional
14 maps in December 2021, *see* Ariz. Const. art. IV, pt. 2, § 1(17), candidates began submitting
15 statements of interest to run in the newly formed districts. *See* Jeremy Duda, Ariz. Mirror,
16 *Secretary of State’s online signature-gathering system breaks after redistricting*, Jan. 5, 2022
17 6:30a.m., (“Mirror Article”, Wright Decl. Exh. A). Representative Jake Hoffman, currently
18 representing LD 12, reportedly filed to run in the newly formed LD 15 on December 28. *Id.*
19 After being contacted by the *Arizona Mirror*, Rep. Hoffman discovered that between December
20 28 and January 5, he only obtained one signature on E-Qual from a voter living 50 miles outside
21 of the new LD 15, but squarely within the old LD 15. *Id.* When questioned about Hoffman’s E-
22 Qual petitions accepting signatures from voters in the old LD, the Secretary’s Office indicated
23 that E-Qual was not designed to accept signatures from voters living in the new district and
24 “would require essentially a brand new system to be created.” *Id.*

25 Just six days after the Mirror Article, which the Secretary characterizes as
26 “misinformation about E-Qual” (PI Motion at 9), the Secretary did an about face and published
the *2022 Candidate Redistricting Guide – Updated January 11, 2022* (“January Guide”),

1 warning for the first time that candidates should “plan on E-Qual no longer being available for
2 Congressional and Legislative candidates beginning on [March 5], and likely through the
3 remainder of the filing period.” Wright Decl., Exh. C at 4. These major changes to the
4 Secretary’s December guide suggests the decision to take E-Qual offline was made only after
5 the E-Qual issues came to light.

6 In a January 11, 2022 email to candidates, the Secretary encouraged them to “select your
7 district based on the 2020 maps” and “[i]f you have already designated your 2022 district, you
8 may use the ‘Change District’ function to update to your 2020 district.” PI Motion Exh. 1 at 1.
9 Thus, rather than allowing candidates to collect signatures in either the 2020 or 2022 districts, E-
10 Qual can be used to collect signatures in a candidate’s 2020 district, which while sub-optimal, at
11 least allows candidates to continue collecting signatures through the signature gathering period.
12 But then on top of this, the Secretary now asks to take E-Qual down completely.

13 **B. Special Elections Do Not Require Taking Down E-Qual Before April 4.**

14 The Secretary’s purported justification for taking down E-Qual during the critical final
15 weeks of candidate signature-gathering—accommodating the March and May consolidated
16 election dates—falls apart under even the slightest scrutiny. The Arizona Legislature enacted
17 A.R.S. §16-204 to require all elections to be held on consolidated election dates in March, May,
18 August, or November. There is a gap between April 4 (when nominating petitions are due for
19 the August primary elections) and April 20 (when early ballots are mailed for the May election).
20 The Secretary never explains why the maintenance cannot be performed during this period, or
21 any other period following April 4—as is her burden as the party seeking the preliminary
22 injunction.

23 **1. March 8, 2022 Jurisdictional Elections Are Underway**

24 The March election period is currently underway, with four jurisdictions holding all--mail
25 ballot elections in four different counties: City of Douglas (Cochise County), City of Tempe
26 (Maricopa County), Timberland Acres Special Road District (Navajo County), and Town of
Dewey-Humboldt (Yavapai County). As these are all jurisdictional elections, counties *may*

1 administer the election through an intergovernmental agreement, but are not required to do so.
2 A.R.S. §16-205(C). All four of these elections are all-mail ballot elections so voting is not
3 precinct-based; rather, the jurisdiction must establish a centralized ballot-replacement center.
4 A.R.S. §16-558.02. For Maricopa County, there is one ballot replacement center for the Tempe
5 election. Ballots of military and overseas voters (known as “UOCAVA” voters) were mailed or
6 delivered electronically on January 22, early voting began/ballots were mailed February 9, and
7 the last day to vote is March 8. *See* A.R.S. §§16-543(A), -542(D), -544(F), -204(F)(1).⁸

8 **2. May 17, 2022 Jurisdictional Elections**

9 Based on a review of all county elections websites, there are two jurisdictions holding
10 elections in two different counties in May 2022. The City of Litchfield Park⁹ is holding a
11 special election administered by Maricopa County.¹⁰ If necessary, Maricopa County will
12 administer an all-mail ballot run-off election for Tempe. Coconino County Community College
13 District is holding a special election under A.R.S. §42-17056 administered by Coconino County
14 through an intergovernmental agreement.¹¹ Ballots for UOCAVA voters will need to be mailed
15 or delivered electronically on April 2, early ballots will be mailed starting April 20, and the last
16 day to vote is May 17.¹² *See* A.R.S. §§16-543(A), -542(A),(C), -544(F), -204(F)(2).¹³

17 According to County Recorder Patty Hansen, “precincts determine the number of ballot
18 styles, candidate names’ rotation, election results reporting, voter registration statistics, and
19 number of precinct committee members.” PI Motion, Exh. B at ¶ 7. In reality, there are no
20

21 ⁸ *See also* <https://www.azcleanelections.gov/voting>.

22 ⁹ Currently, the entire City of Litchfield Park is contained within the voting precinct of Wigwam
23 in Maricopa County and has only one voting location. Compare
24 https://recorder.maricopa.gov/Maps2/Voting_Precincts/Current/P0730.pdf with
<https://www.litchfield-park.org/ImageRepository/Document?documentID=8111>.

25 ¹⁰ *See* <https://recorder.maricopa.gov/elections/electioncalendar.aspx>.

26 ¹¹ *See* <https://www.coconino.az.gov/195/Elections>.

¹² According to reports for the 2020 November General Election, Coconino County mailed only
102 ballots to UOCAVA voters. *See EAVS Datasets Version 1.1 (Released October 8, 2021)*
available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

¹³ *See also* <https://recorder.maricopa.gov/elections/electioncalendar.aspx>.

1 district or precinct related issues on Coconino County’s May 2022 ballot; instead all county
2 voters will consider just one ballot proposition.¹⁴ Similarly, all ballots for the City of Litchfield
3 Park will pose the same issues to all voters¹⁵ and if the City of Tempe requires a run-off
4 election, the candidates run citywide, not by geographic district.¹⁶

5 Although a handful of UOCAVA ballots must be mailed by April 2 (the majority of
6 which will be delivered electronically), the first day to mail ballots to all other electors is April
7 20. And, as identified in §II, nominating petitions are due April 4. Accordingly, there is a gap
8 between April 4 and April 20 when nominating petitions are due and early ballots must be
9 mailed. The Secretary never explains why the maintenance cannot be performed then.

10 **3. August 2, 2022 Statewide Primary Election**

11 After completion of the jurisdictional elections in May, 2022, the next election is the
12 Statewide Primary scheduled for August 2, 2022. *See* A.R.S. § 16-201. Prior to the Statewide
13 Primary, all counties must incorporate the map approved by the 2021 Arizona Independent
14 Redistricting Commission (“AIRC”) as voters will be nominating political party candidates in
15 the legislative or congressional districts adopted by the AIRC – and every aspect of voting –
16 from where to vote to who a voter is eligible to vote for – will depend on the new district
17 boundaries. Ballots for UOCAVA voters will need to be mailed or delivered electronically on
18 June 18, early voting will begin/ballots will be mailed on July 6, and the last day to vote is
19 August 2. *See* A.R.S. §§ 16-543(A), -542(A),(C), -544(F), -201.

20 **IV. The AG Advises the Secretary that Taking Down E-Qual During The Signature- 21 Gathering Period (i.e., Before April 4) Will Violate Arizona Law.**

22 After candidates started trying to collect signatures using E-Qual with the new district
23 numbers, the Attorney General’s Office (“AGO”) began receiving concerns from elected
24

25 ¹⁴ *See* [https://www.coconino.edu/resources/files/pdfs/presidents-office/12082021-dgb-regular-](https://www.coconino.edu/resources/files/pdfs/presidents-office/12082021-dgb-regular-minutes.pdf)
26 [minutes.pdf](https://www.coconino.edu/resources/files/pdfs/presidents-office/12082021-dgb-regular-minutes.pdf) at 3 (last accessed Feb. 11, 2022).

¹⁵ *See* <http://www.litchfield-park.org/ArchiveCenter/ViewFile/Item/4720>.

¹⁶ *See* [https://www.tempe.gov/government/city-clerk-s-office/meet-your-city-council-](https://www.tempe.gov/government/city-clerk-s-office/meet-your-city-council-candidates)
[candidates](https://www.tempe.gov/government/city-clerk-s-office/meet-your-city-council-candidates).

1 officials and candidates that E-Qual was not working as expected. *See* Wright Decl. at ¶ 5. A
2 few days later, elected officials and candidates notified AGO that the Secretary’s Office had
3 notified candidates that E-Qual would be taken offline on or around March 5 through the end of
4 the statutory filing period, April 4. Wright Decl. at ¶ 6. AGO thereafter notified the Secretary
5 that taking E-Qual offline would be “contrary to the law” and that she should “take all steps
6 necessary to continue the E-Qual system *during the remainder of the candidate filing period*[.]”
7 *See* Wright Decl., Exh. D (emphasis added). The Secretary filed this action as a result.

8 **ARGUMENT**

9 **I. The Court Lacks Jurisdiction To Issue The Requested Preliminary Injunction.**

10 The Court lacks jurisdiction to issue a preliminary injunction preventing the State,
11 through the AG, from investigating and enforcing violations of Arizona election law. Under
12 Arizona law, courts may not issue an injunction “[t]o prevent enforcement of a public statute by
13 officers of the law for the public benefit” or “[t]o prevent the exercise of a public or private
14 office in a lawful manner by the person in possession.” A.R.S. § 12-1802(4),(6). The “obvious
15 purpose” of those provisions is “to prevent interference by the judicial branch of the government
16 with the enforcement of laws by the executive branch through the use of the power of
17 injunction.” *Hislop v. Rodgers*, 54 Ariz. 101, 113 (1939).

18 The Secretary does not dispute that the Legislature has provided the AG, in the exercise
19 of his public office, with statutory authority to enforce provisions of Arizona election law
20 contained in Title 16 of the Arizona Revised Statutes. *See* A.R.S. § 16-1021 (“In any election
21 for state office, members of the legislature, justices of the supreme court, judges of the court of
22 appeals or statewide initiative or referendum the attorney general may enforce the provisions of
23 this title through civil and criminal actions.”). The Secretary repeatedly admits, including
24 through her own declarant, that Title 16, specifically §§ 16-316 and -318, “requires the
25 Secretary of State to provide a system for qualified electors to sign nomination petitions for
26 federal, statewide, legislative, county, city/town, and precinct committeeman candidates through
a secure internet portal.” PI Motion Exh. A ¶ 2. The Secretary does not dispute that statutory

1 provisions granting ballot access through electronic signature collection are public statutes for
2 the public benefit. Thus, enjoining the AG as requested would violate § 12-1802.

3 None of the judicially-created exceptions to §§ 12-1802(4) or (6) apply here. As to § 12-
4 1802(4), the Secretary does not argue that §§ 16-316 or -318 are unconstitutional or that the AG
5 is exceeding his power to enforce those statutes under § 16-1021. Thus, the Secretary’s
6 requested injunction is barred under § 12-1802(4). *See Boruch v. State ex rel. Halikowski*, 242
7 Ariz. 611, 617 ¶ 18 (2017) (§ 12-1802(4) is only inapplicable when “the requesting party is
8 seeking to enjoin conduct that goes beyond the officer’s statutory power”). As to § 12-1802(6),
9 the Secretary also has not alleged that the AG has acted arbitrarily or unreasonably. In fact, the
10 AG has not acted at all, other than to send the Secretary a letter informing her that taking down
11 E-Equal for the last four weeks of the candidate signature period would violate state law. The
12 State’s Chief Legal Officer does not act arbitrarily or capriciously when he informs other state
13 officials that threatened future conduct would violate state law and may have legal
14 consequences. To the contrary, such action is entirely appropriate to prevent a violation of the
15 law from occurring. Preemptively enjoining the State, through the AG, from taking any further
16 action—regardless of what hardships the Secretary believes would otherwise result—would
17 violate § 12-1802 and the separation of powers principles inherent therein. *See State ex rel.*
18 *Berger v. Myers*, 108 Ariz. 248, 249 (1972) (“It is not sufficient to clothe the court with
19 jurisdiction to say simply that, unless the court extends its restraining hand, hardships will
20 follow, or irreparable damage will ensue, because the officer delegated to execute such law may
21 act unwisely or injuriously to the party seeking relief.”).

22 **II. The Secretary Fails To Satisfy The Factors For Granting A Preliminary Injunction.**

23 To obtain a preliminary injunction, the Secretary must show: “(1) a strong likelihood of
24 success at trial on the merits, (2) the possibility of irreparable injury not remediable by damages,
25 (3) a balance of hardships in its favor, and (4) public policy favoring the injunction.” *Apache*
26 *Produce Imports, LLC v. Malena Produce, Inc.*, 247 Ariz. 160, 164 (App. 2019). The Secretary
fails to satisfy any of these factors for granting a preliminary injunction.

1 **A. The Secretary Has Not Established A Likelihood Of Success.**

2 **1. The Secretary Lacks Standing To Request Injunctive Relief.**

3 The Secretary has not established standing here. To establish standing, “plaintiff must
4 have suffered from an injury in fact ... [that is] distinct and palpable such that the plaintiff has a
5 personal stake in the outcome of the controversy.” *Aegis of Arizona, L.L.C. v. Town of Marana*,
6 206 Ariz. 557, 562 ¶18 (App. 2003) (cleaned up). As a general rule, a party cannot establish
7 standing by asserting the rights of another. *See Town of Wickenburg v. State*, 115 Ariz. 465, 469
8 (App. 1977).

9 The Secretary does not allege that she will suffer a distinct or palpable injury if
10 required—as she claims to have done for the last three years—to maintain E-Qual through the
11 end of the signature gathering period (April 4) and perform the maintenance after that date.
12 Rather, she claims that certain non-parties—namely, the Coconino and Maricopa County
13 recorders—will be inconvenienced in updating AVID around their other duties unless permitted
14 to do so between early March and early April, regardless of whatever harm might befall those
15 seeking public office.

16 Whatever administrative inconvenience certain non-party county recorders might
17 experience from having to wait past the candidate signature deadline (April 4) does not confer
18 standing on the Secretary to challenge the statutory requirement that she maintain E-Qual. And
19 that administrative inconvenience is largely due to the Secretary maintaining a system that is
20 apparently unable to accommodate more than one set of maps at a time, which is going to be an
21 issue in 2022 regardless of when the system is taken down.

22 Moreover, if certain recorders are claiming that they fear enforcement by the Attorney
23 General, it would be up to them to assert their own rights. And the Secretary cannot claim to
24 have been injured by the AG’s letter simply informing her that she is statutorily required to
25 continue to maintain E-Qual at least through the end of the candidate signature period. *See*
26 *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134 (9th Cir. 1999) (“[N]either the

1 mere existence of a proscriptive statute nor a generalized threat of prosecution” establishes
2 Article 3 standing.).

3 **2. There Is No Legal Impossibility Preventing The Secretary From**
4 **Maintaining E-Qual Until After April 4.**

5 The Secretary admits to having a *mandatory duty* to “provide a system for qualified
6 electors to sign a nomination petition” for legislative and congressional candidates “by way of a
7 secure internet portal.” She argues, however, that the statutes imposing that duty should have a
8 different meaning for the four weeks between early March and early April 2022 because
9 interpreting the statute to require her to maintain E-Qual during the last four weeks of the
10 candidate signing period would result in an impossibility or absurdity. But the only absurdity at
11 issue here is the Secretary’s litigation position and timing. Indeed, the Secretary’s Own
12 December Guide stated, “E-Qual will allow voters to sign for candidates *throughout the filing*
13 *process.*” Wright Decl., Exh. B at 4 (emphasis added).

14 The Secretary provides no support for the proposition that a court’s legal interpretation of
15 statutory text can vary over time based on whether such interpretation will result in hardship to
16 non-parties. And no support exists for the proposition that statutory mandates ebb and flow
17 based on an elected official’s administrative abilities. Regardless, there is nothing impossible or
18 absurd about interpreting Arizona law to require the Secretary to continue to do what she claims
19 to have done since entering office three years ago—maintain E-Qual. In fact, not only is the
20 Secretary’s impossibility argument belied by the fact that she has maintained E-Qual for three
21 years now, it is directly contradictory to the statutory language. After all, the Legislature did not
22 just require the Secretary to maintain a secure internet portal, it required her to do so
23 “[n]otwithstanding any other statute in this title.” A.R.S. § 16-316 (emphasis added). The
24 Legislature was aware of the other statutory responsibilities county recorders have in general
25 election years, and yet it chose to use language making clear that the Secretary’s statutory
26 mandate applies nonetheless.

1 The Secretary misinterprets AGO’s letter to suggest “the Secretary can never temporarily
2 take E-Qual offline.” PI Motion at 10. In reality, AGO only objected to the Secretary taking E-
3 Qual offline “during the remainder of the candidate filing period” as it would “deprive
4 candidates of their statutory right to obtain online nomination signatures.” Wright Decl., Exh. D.

5 While the Court need not get bogged down with the facts underlying the Secretary’s
6 legally flawed argument, it bears noting that those facts do not support the Secretary’s premise.

7 **Signature Verification.** The Secretary claims that county recorders will be unable to
8 update their election systems after the candidate signature deadline because they will then have
9 to review candidate signatures. But updating the E-Qual system will not reduce the county’s
10 workload. Candidates are currently able to obtain signatures from 2020 districts using E-Qual
11 and 2020 and 2022 districts through paper signature. Even if county recorders are able to use E-
12 Qual to verify signatures submitted through E-Qual prior to revising the system to reflect 2022
13 districts (and the Secretary does not say this will be possible), county recorders will still be
14 required to manually verify any challenged paper signatures, which might derive from electors
15 in the old or new districts. As explained, county recorders will only be required to verify those
16 signatures actually challenged, and the Secretary submits no evidence as to the expected volume
17 of such challenges based on residence. But, in any event, county recorders can quickly verify
18 signatures challenged based on the residence of an elector manually by using the interactive
19 maps available on the AIRC website, which takes only a few seconds per address to review. *See*
20 Wright Decl. at ¶ 10. The Secretary’s argument that county recorders will be unable to confirm
21 signatures post-deadline without taking down E-Qual pre-deadline is a red herring.

22 **Jurisdictional Elections.** The Secretary also claims that county recorders will be unable
23 to make changes to AVID after the signature period because they will be administering
24 jurisdictional elections occurring in May. But, as explained, there are only two such elections,
25 one for Litchfield Park in Maricopa County and one for Coconino County Community Colleges
26 occurring in May; both elections are ballot measures common to all voters irrespective of

1 precinct or district boundaries. Even if AVID needed to be updated for these elections, early
2 ballots are not required to be mailed out until April 20. Again, a red herring.

3 **Voter Registration Reports.** Under A.R.S. § 16-168, county recorders must create
4 certain voter registration reports. Although county recorders must provide a count of “registered
5 voters by political party by precinct, legislative district and congressional district” as of April 1,
6 this moment-in-time report simply provides general voter registration statistics; there is nothing
7 in the law requiring the statistics to reflect the 2022 boundaries. A.R.S. § 16-168(G)(1)(b).
8 Further, the report is not due on April 1; county recorders must submit it “as soon as is
9 practicable following [April 1]” to the Secretary. According to the Secretary’s *Draft 2021*
10 *Elections Procedures Manual*, April 1 marks the date to “[b]egin compiling county-provided
11 April 1, 2022 Voter Registration Report.”¹⁷ Accordingly, there is nothing in the law that
12 prevents the reports from being created after April 1, so long as it reflects voters registered on or
13 before April 1, 2022. Ironically, the Secretary would create new work for county recorders as a
14 means to establish that they are just too busy after the candidate signature period.

15 It is far from clear, therefore, that, factually speaking, county recorders cannot update
16 AVID after the candidate signing period has ended, let alone that doing so is *impossible*.

17 **B. The Secretary Will Not Suffer Irreparable Harm.**

18 The Secretary asks the Court to enjoin the State, through the AG, from even
19 contemplating enforcement of a duly-enacted, facially-valid, constitutionally-sound election
20 law. As explained, however, she does not genuinely attempt to establish that being required to
21 maintain E-Qual during the remaining candidate signature period will cause her harm, let alone
22 irreparable harm. Instead, she claims that, unless E-Qual comes down in early March, certain
23 county recorders may not be able to comply with all of their statutory requirements.

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¹⁷ Arizona Secretary of State, *2021 Elections Procedures Manual – October 1, 2021 Submission*
 (“*Draft 2021 EPM*”), October 1, 2021, at A15, available at [https://azsos.gov/sites/default/files/
2021_EPM_October_1_Submission.pdf](https://azsos.gov/sites/default/files/2021_EPM_October_1_Submission.pdf); see also Wright Decl., Exh. E.

1 The Secretary also claims that the AG’s letter informing her that taking E-Qual down
2 would violate Arizona law caused her irreparable harm, but in each case the Secretary relies
3 upon for that argument, the constitutionality of the underlying laws were challenged. In *City of*
4 *Glendale v. Betty*, the court noted that when a “plaintiff ... [is] threatened with being criminally
5 prosecuted ... under an ordinance null and void as in conflict with the Constitution of the state”
6 the court may issue an injunction; but the court ultimately found the ordinance was
7 constitutional and refused to enjoin enforcement. 45 Ariz. 327, 331-32 (1935). In *Cueviello v.*
8 *City of Vallejo*, an injunction was granted after the court determined the ordinance challenged
9 violated the first amendment and criminal sanctions would chill free speech rights. 944 F.3D
10 816, 833 (2019). The Secretary, therefore, cannot be irreparably harmed when advised that her
11 proposed course of action will violate a constitutionally-valid law. Furthermore, the Secretary
12 can avoid any harm by simply complying with the law and maintaining E-Qual through April 4.

13 **C. The Balance of the Equities And Public Interest Strongly Weigh Against**
14 **Taking Down E-Qual Statewide Before April 4.**

15 The Secretary requests the Court to enjoin the State from enforcing an important
16 provision of its election law ensuring ballot access to candidates for public office. It is well-
17 established that “a state suffers irreparable injury whenever an enactment of its people or their
18 representatives is enjoined.” *Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th
19 Cir. 1997). Undoubtedly, the State will suffer irreparable harm if it is unable, through the AG,
20 to enforce a duly-enacted election law. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (an
21 “injunction[] barring the State from conducting this year’s elections pursuant to a statute enacted
22 by the Legislature . . . would seriously and irreparably harm the State”).

23 Not only will the Secretary’s requested injunction harm the State, it will harm prospective
24 candidates attempting to appear on the ballot in the primary and general elections. The
25 requested injunction would be imposed during the worst possible time for candidates, in the last
26 four weeks when they are making the final push to obtain as many signatures as possible.
Moreover, restricting E-Qual in the final three to four weeks of signature collection hurts

1 announced candidates, including the Secretary, the least, and it would likely preclude late
2 entrants. While the Secretary seems to suggest that only legislative and congressional
3 candidates may be impacted, 26 times in the PI Motion the Secretary mentions taking E-Qual
4 “offline” and not once does she say it will be a partial shutdown.

5 The requested injunction will also harm every citizen of Arizona who would prefer the
6 ease of signing candidate petitions online, rather than having to track down circulators or
7 candidates to provide a paper signature. The Secretary is no doubt cognizant of this harm given
8 that she has previously taken the position that, due to COVID, extending E-Qual beyond
9 candidate signatures to initiative signatures would serve the public interest. *See Second Chances*
10 *v. Hobbs*, 249 Ariz. 396, 428 ¶129 (2020) (Bolick, J., dissenting from the grant of jurisdiction).
11 Taking E-Qual down during the signing period could subject the State to legal challenge from
12 candidates or voters.

13 Finally, the Secretary is also barred by estoppel and the *Purcell* doctrine from obtaining
14 equitable relief. The Secretary’s own manual as late as December 29, 2021 said that the E-Qual
15 system would be available through the candidate filing period. Wright Decl., Exh. B at 4 (“E-
16 Qual will allow voters to sign for candidates *throughout the filing process.*”) (emphasis added).
17 Candidates and the public are able to rely on this official, written statement of an official with
18 authority. *See Valencia Energy Co. v. ADOR*, 191 Ariz. 565, 576 ¶35 (1998) (identifying
19 elements of estoppel). Moreover, the Secretary’s attempt to change the State’s election system
20 at this late date is barred under the *Purcell* doctrine, which prohibits courts from entering
21 injunctive relief changing a state’s election system close to the election. *See, e.g., Merrill v.*
22 *Milligan*, No. 21-1086, 2022 WL 354467, at *3 (U.S. Feb. 7, 2022) (Kavanaugh, J., concurring)
23 (“[T]he *Purcell* principle requires that we stay the District Court’s injunction with respect to the
24 2022 elections.”).

25 CONCLUSION

26 The Secretary has failed to demonstrate that she is entitled to injunctive relief. The Court
should, therefore, deny the Secretary’s PI Motion.

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RESPECTFULLY SUBMITTED this 17th day of February, 2022.

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