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8 *Arizona Green Party and Claudia Ellquist*

9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF ARIZONA**

11 Arizona Green Party, an Arizona political ) No.  
12 party; and Claudia Ellquist, an individual, )  
13 )  
14 Plaintiffs, ) **MOTION FOR TEMPORARY**  
15 ) **RESTRAINING ORDER AND**  
16 v. ) **PRELIMINARY INJUNCTION**  
17 ) **(WITH NOTICE)**  
18 Ken Bennett, in his official capacity as )  
19 Secretary of State for the State of Arizona; )  
20 et al., ) (Expedited Oral Argument Requested)  
21 )  
22 Defendants. )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

19 Pursuant to Fed. R. Civ. P. 65(a), the Arizona Green Party (“AGP”) and Claudia  
20 Ellquist request that the Court temporarily restrain and preliminarily enjoin the Arizona  
21 Secretary of State, County Boards of Supervisors, and County Recorders (collectively,  
22 “the Governmental Defendants”) from issuing certificates of nomination or, if such  
23 certificates have already been issued, from accepting the certificates, and from printing  
24 the names of the following sham Green candidates on the official ballot for the  
25 November 2, 2010 general election: Ryan Blackman, Andrew Blischak, Christopher  
26 Campbell, Clint Clement, Theodore Gomez, Anthony Goshorn, Richard Grayson,  
27 Michelle Lochmann, Thomas Meadows, Benjamin Percy, and Mathew Shusta  
28 (collectively, the “Sham Candidates”).

**MEMORANDUM**

1  
2 This is a case about corruption of the political process, leading to violation of  
3 Plaintiffs' rights under the First and Fourteenth Amendments, 42 U.S.C. § 1983,  
4 Article 7, Section 12 of the Arizona Constitution and A.R.S. §§ 16-1006 and 1013.  
5 Arizona's election statutes have permitted fraudulent activity designed to mislead voters  
6 and rig the election process thereby violating the Plaintiffs' constitutional rights.

7 First, Arizona's election statutes force the AGP to publicly associate with  
8 candidates who the AGP never nominated, who will distort the AGP's political message  
9 and agenda, and who intentionally seek to confuse the voting public with respect to the  
10 ideology of the AGP and its adherents.

11 Second, the Arizona Republican Party has taken advantage of Arizona's statutes  
12 governing political party affiliation, registration, and write-in candidates for parties not  
13 qualified for continued representation on the official ballot and has developed a scheme  
14 to violate the AGP's association rights, confuse the voting public and exert unlawful  
15 control over the election process.

16 As alleged in Plaintiffs' Verified Complaint (at ¶¶ 76-77), the Defendant County  
17 Recorders are currently preparing the ballot for the November 2, 2010 general election to  
18 include the names of the Sham Candidates. Within a matter of days, most likely by  
19 September 9, 2010, they will send the final ballot to the printers and then begin mailing  
20 ballots unless restrained by this Court.

21 In light of the imminent printing of the ballots by the Defendant County  
22 Recorders, and for the reasons that follow, the Court should enter immediately a TRO  
23 enjoining the Governmental Defendants from canvassing the Sham Candidates, issuing to  
24 them certificates of nomination, and printing their names on the official ballot for the  
25 general election. In addition, the Court should set a hearing for Plaintiffs' request for a  
26 preliminary injunction and order the parties to conduct expedited discovery pursuant to  
27 Plaintiffs' Motion for Expedited Discovery filed concurrently herewith.  
28

## FACTUAL BACKGROUND

### **I. Political Party Recognition and Representation on the Ballot in Arizona**

In Arizona, not all political parties are entitled to continued representation on the ballot at every election. Pursuant to A.R.S. § 16-804(A), a political party is qualified for continued representation to appear on the official general election ballot if “[a] political organization that at the last preceding general election cast for governor or presidential electors[,] . . . whichever applies, not less than five per cent of the total votes cast for governor or presidential electors, in the state.” Alternatively, under A.R.S. § 16-804(B), “a political organization is entitled to continued representation as a political party on the official ballot . . . if . . . such party has registered electors in the party equal to at least two-thirds of one per cent of the total registered electors in such jurisdiction.”

The Arizona Democratic Party, the Arizona Republican Party, and the Arizona Libertarian Party are the only three political parties in Arizona that are entitled to continued representation on the ballot. Pursuant to A.R.S. § 16-803(A), a political party that is not entitled to continued representation may gain ballot access and be represented at an upcoming election if it files a petition for recognition not less than 140 days before the primary election.

### **II. The AGP and its Access to the Official Ballot in Arizona**

The AGP failed to obtain the requisite number of votes in the 2008 general election to be entitled to continued representation. However, the AGP filed a petition, as required by A.R.S. § 16-803(A), and qualified as a recognized political party with ballot access for the 2010 election.

The AGP is the state affiliate of the national Green Party. As of April 2009, 4,210 Arizona voters were registered as Green. The AGP has “ten key values,” which include grassroots democracy, social justice and equal opportunity, ecological wisdom, non-violence, decentralization, community-based economic and economic justice, feminism and gender equity, respect for diversity, personal and global responsibility, and future focus and sustainability. [See <http://azgp.org/content/ten-key-values>.] The AGP is

1 working to renew democracy through community-based organizing without the support  
2 of corporate donors.

### 3 **III. Arizona's Dual System for Write-In Candidates**

4 There are two ways for political party candidates to run in a primary election in  
5 Arizona. A candidate may obtain the requisite number of nomination petition signatures  
6 pursuant to A.R.S. § 16-322 to appear on the primary ballot, or a candidate may run as a  
7 write-in candidate pursuant to A.R.S. § 16-645.

8 Under A.R.S. § 16-645(D), the State of Arizona permits a write-in candidate for a  
9 party not qualified for continued representation to become the party's nominee and to  
10 appear on the general election ballot by obtaining a plurality of the votes of the party for  
11 the office for which he or she is a candidate. This means that anyone who runs  
12 unopposed as a Green write-in candidate needs only one vote to appear on the general  
13 election ballot as the AGP's official nominee. In contrast, an unopposed major party  
14 candidate must obtain write-in votes equal to "the same number of signatures required by  
15 § 16-322 for nominating petitions for the same office." A.R.S. § 16-645(E). Thus,  
16 because it does not have continued representation on the ballot, the AGP is subject to a  
17 different scheme for write-in candidates than the major parties.

18 The effect of the different requirements for majority and minority party write-in  
19 candidates is that an uncontested Green write-in candidate is able to qualify for the  
20 general election by virtue of a single vote, whereas Democrat, Republican, and  
21 Libertarian write-in candidates are required to obtain significantly more votes to qualify  
22 for the general election. For example, in the 2010 primary election, an unopposed  
23 Republican write-in candidate for statewide office needed 5,609 votes. [See Ex. 34 to  
24 Verified Complaint] An unopposed AGP write-in candidate, in contrast, might need only  
25 to vote for himself to win the AGP nomination and advance to the general election.  
26 Thus, A.R.S. § 16-645(D) creates the perfect opportunity for these Sham Candidates to  
27 manipulate the electoral process and hijack the AGP for their own purposes.  
28

1 **IV. The Conspiracy to Create Sham Candidates in an Effort to Control the**  
2 **Outcome of the 2010 Election**

3 Certain individuals – most of whom were recently registered as members of the  
4 Republican party – have used A.R.S. § 16-645(D) to gain easy access to Arizona’s 2010  
5 general election ballot, writing themselves in as AGP candidates to confuse voters and  
6 influence the outcome of the election. This is not the first time that Arizona’s statutory  
7 scheme for write-in candidates, which treats majority party candidates and minority party  
8 candidates differently, has been used to deceive voters. In 2008, several individuals  
9 tested the effectiveness of the minority party write-in provision to divert votes from  
10 majority party candidates. [See Letter dated 8/30/2010, “Request for Investigation of  
11 Possible Voter Fraud” attached hereto as Ex. A; *see also* Exs. 30 and 31 to Verified  
12 Complaint.] After achieving the desired result in 2008 – splitting votes to defeat  
13 Democratic candidates – even more Sham Candidates filed to run as Green write-in  
14 candidates for the 2010 primary election.

15 Sixteen Green candidates filed paperwork to run in the August 24, 2010 primary  
16 election. Of those sixteen, the AGP endorsed only three candidates. Of the remaining  
17 thirteen, none was a member of the AGP more than just days before declaring themselves  
18 candidates – many of them registered as party members on the same day they filed to be  
19 write-in candidates; none has any actual affiliation with the AGP; and none has sought to  
20 establish any ties to the party. [See ¶¶ 42-52; 55-57 of Verified Complaint.] Thus, the  
21 following thirteen Sham Candidates used § 16-645(D) to hijack the AGP:

22 Christopher Campbell (“Campbell”): Defendant Campbell changed his party  
23 affiliation from Republican to Green on July 15, 2010, the last day to do so to become a  
24 write-in candidate. On the same day, he filed his papers to be a write-in candidate for the  
25 AGP. With *one* vote in the primary, he became the AGP nominee for Arizona Senate  
26 District 10, as allowed by A.R.S. § 16-645(D). Majority party write-in candidates would  
27 had to have received significantly more votes to become their party’s nominee. Campbell  
28 admits he was approached by members of the Republican Party to run as a Green

1 candidate in District 10 with the specific intent of taking votes away from the Democratic  
2 nominee, not to win the election or promote the AGP's values or platform. In a recorded  
3 telephone call, Campbell admitted his true intent:

4 **Caller:** Okay, so this will help Linda Gray [Republican nominee], then?

5 **Campbell:** Yes, it will. .... But just having my name on the ballot is going to  
6 take votes away from the Democrats.

7 **Caller:** Okay, I just want to make sure I'm not going to actually help  
8 somebody pushing Green Party issues to win.

9 **Campbell:** Not a problem.

10 **Campbell:** ... I was approached by Republicans to basically say, hey do you  
11 mind running to get your name out even if you aren't Green Party. Because honestly, I'm  
12 more Libertarian than I am Green, period. But I'm just trying to get, more or less I'm  
13 taking votes away from the Democrats.

14 [Exs. 22 and 23 to Verified Complaint.]

15 Defendant Ryan Blackman: Defendant Blackman ran as a Green write-in  
16 candidate for the U.S. House of Representatives in District 5. Blackman registered to  
17 vote for the first time on July 13, 2010. He registered as a Green. Blackman filed as a  
18 write-in candidate on that same day, and secured the AGP nomination with only *four*  
19 votes. Majority party write-in candidates would had to have received significantly more  
20 votes to become their party's nominee. (Republican – 739 votes; Democrat – 559 votes;  
21 Libertarian – 17 votes).

22 Defendant Richard Grayson: Defendant Grayson ran as a Green write-in  
23 candidate for the U.S. House of Representatives in District 6. He switched his political  
24 party from Republican to Green in 2009 and filed as a write-in candidate on May 28,  
25 2010. Grayson secured the AGP nomination with only *three* votes. Majority party write-  
26 in candidates would had to have received significantly more votes to become their party's  
27 nominee. (Republican – 1,055 votes; Democrat – 601 votes; Libertarian – 17 votes).

28 Defendant Anthony Goshorn: Defendant Goshorn ran as a Green write-in  
candidate for State Senator in District 17. He switched his political party from  
Libertarian to Green on May 17, 2010 when he attempted to gather sufficient signatures

1 to qualify for the ballot as an AGP candidate for State Representative in District 17.  
2 Having failed to qualify, Goshorn filed as a write-in candidate for State Senator on  
3 July 15, 2010. Goshorn secured the AGP nomination with only *four* votes. Majority  
4 party write-in candidates would had to have received significantly more votes to become  
5 their party's nominee. (Republican – 264 votes; Democrat – 312 votes; Libertarian –  
6 12 votes).

7 Defendant Matthew Shusta: Defendant Shusta ran as a Green write-in candidate  
8 for State Senator in District 23. He changed his political party from Democrat to Green  
9 on or about July 1, 2010 and filed as a write-in candidate on July 15, 2010. Shusta  
10 secured the AGP nomination with only *five* votes. Majority party write-in candidates  
11 would had to have received significantly more votes to become their party's nominee.  
12 (Republican – 441 votes; Democrat – 522 votes; Libertarian – 10 votes).

13 Defendant Clint Clement: Defendant Clement ran as a Green write-in candidate  
14 for State Representative in District 17. He changed his political party from Republican to  
15 Green on July 13, 2010 and filed as a write-in candidate that same day. Clement secured  
16 the AGP nomination with only *two* votes. Majority party write-in candidates would had  
17 to have received significantly more votes to become their party's nominee. (Republican  
18 – 264 votes; Democrat – 312 votes; Libertarian – 12 votes).

19 Defendant Andrew (“Drew”) Blischak: Defendant Blischak ran as a Green write-  
20 in candidate for State Representative in District 20. He changed his political party from  
21 Republican to Green on July 13, 2010 and filed as a write-in candidate that same day.  
22 Blischak secured the AGP nomination with only *one* vote. Majority party write-in  
23 candidates would had to have received significantly more votes to become their party's  
24 nominee. (Republican – 264 votes; Democrat – 312 votes; Libertarian – 12 votes).

25 Defendant Michelle Lochmann: Defendant Lochmann ran as a Green write-in  
26 candidate for Secretary of State. She changed her political party from Republican to  
27 Green on July 15, 2010 and filed as a write-in candidate that same day. Lochmann  
28 secured the AGP nomination with only *17* votes. Majority party write-in candidates

1 would had to have received significantly more votes to become their party’s nominee.  
2 (Republican – 5,609 votes; Democrat – 5,124 votes; Libertarian – 124 votes).

3 Defendant Thomas Meadows: Defendant Meadows ran as a Green write-in  
4 candidate for State Treasurer. He registered to vote for the first time on July 15, 2010  
5 and filed as a Green write-in candidate that same day. Meadows secured the AGP  
6 nomination with only **21** votes. Majority party write-in candidates would had to have  
7 received significantly more votes to become their party’s nominee. (Republican – 5,609  
8 votes; Democrat – 5,124 votes; Libertarian – 124 votes).

9 Defendant Theodore Gomez: Defendant Gomez ran as a Green write-in candidate  
10 for Corporation Commissioner. He registered to vote for the first time on July 14, 2010  
11 and filed as a Green write-in candidate the very next day. Gomez secured the AGP  
12 nomination with only **13** votes. Majority party write-in candidates would had to have  
13 received significantly more votes to become their party’s nominee. (Republican – 5,609  
14 votes; Democrat – 5,124 votes; Libertarian – 124 votes).

15 Defendant Benjamin Percy: Defendant Percy ran as a Green write-in candidate  
16 for Corporation Commissioner. He changed his political party from Republican to Green  
17 on July 14, 2010 and filed as a write-in candidate the very next day. Percy secured the  
18 AGP nomination with only **11** votes. Majority party write-in candidates would had to  
19 have received significantly more votes to become their party’s nominee. (Republican –  
20 5,609 votes; Democrat – 5,124 votes; Libertarian – 124 votes).

## 21 **LEGAL ARGUMENT**

22 Plaintiffs meet the standard for obtaining a temporary restraining order and  
23 preliminary injunction because their Constitutional rights have been violated. “A  
24 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the  
25 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
26 the balance of equities tips in his favor, and that an injunction is in the public interest.”  
27 *Alliance for the Wild Rockies v. Cottrell*, \_\_ F.3d \_\_, 2010 WL 2926463, \*3 (9th Cir.  
28 2010) (quotation omitted). The test is a sliding scale – “the elements of the test are



1 balanced, so that a stronger showing of one element may offset a weaker showing of  
2 another.” *Id.* at \*4, 7 (reversing denial of preliminary injunction where, short of likely  
3 success on the merits, “serious questions going to the merits were raised and the balance  
4 of hardships tips sharply in the plaintiff’s favor”).

5 **I. Plaintiffs Are Likely To Succeed On The Merits.**

6 **A. First Cause of Action – Violation of First Amendment.<sup>1</sup>**

7 Plaintiffs will likely prevail on their claim that A.R.S. § 16-645(D) violates their  
8 freedom of association guaranteed by the First Amendment.

9 The Supreme Court has “vigorously affirm[ed] the special place the First  
10 Amendment reserves for, and the special protection it accords, the process by which a  
11 political party selects a standard bearer who best represents the party’s ideologies and  
12 preferences.” *California Democratic Party, et al. v. Jones*, 530 U.S. 567, 575 (2000)  
13 quoting *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 224  
14 (1989). “In no area is the political association’s right to exclude more important than in  
15 its candidate-selection process.” *Id.* Any law that severely burdens a party’s choice of  
16 candidates is unconstitutional unless the state demonstrates the law is narrowly tailored to  
17 advance a compelling state interest. *Id.* at 581-82. A.R.S. § 16-645(D) violates  
18 Plaintiffs’ right of free association, both on the statute’s face and as applied.

19 In *Jones*, the Court considered California’s blanket primary system under which  
20 voters, regardless of party, could vote in any party’s primary. The Court first found that,  
21 because the law created a “clear and present danger” that outside forces could influence  
22 political parties’ candidate selection (*id.* at 578), the law severely burdened the parties’  
23 associative rights (*id.* at 581-82). The Court then applied strict scrutiny to find that, in  
24 light of the vital importance of a political party’s freedom of association, the state’s  
25 proffered interests, though important, could not justify the threat to that freedom.

26 \_\_\_\_\_  
27 <sup>1</sup> The First and Fourteenth Amendments to the United States Constitution are  
28 enforceable in a civil action where, as here, (1) the conduct complained of was committed  
under color of state law and (2) the conduct deprived the plaintiff of rights, privileges, or  
immunities secured by the Constitution. *See* 42 U.S.C.A § 1983 (1996).

1 Here, the severity of the burden on the AGP is even greater. Under the current  
2 statutory scheme, the AGP is forced to take on candidates who may *nominate themselves*,  
3 who have no ties to the party, whose ideas and motivations are antithetical to the party,  
4 who have no support from party members, and who actually are using the party to  
5 deceive AGP voters. As in *Jones*, this is forced association, and it “has the likely  
6 outcome ... of changing the part[y]’s message.” *Id.* at 581-82. In this circumstance, the  
7 Court found it “could think of no heavier burden on a political party’s associational  
8 freedom.” *Id.*; see also *Arizona Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277, 1282  
9 (9th Cir. 2003) (noting that minor parties are at even greater risk).<sup>2</sup>

10 Given the severity of the burden on the AGP, the state must establish that the law  
11 is narrowly tailored to serve a compelling interest. *Id.* at 581-82. In *Jones*, the state  
12 offered seven interests it claimed justified the intrusion into parties’ candidate selection –  
13 producing elected officials who better represent the electorate, expanding candidate  
14 debate, giving effect to electors in “safe districts” whose votes would otherwise have  
15 little meaning, fairness, affording voters greater choice, increasing voter participation and  
16 protecting privacy. *Id.* at 582-86. None, alone or together, could justify the potential for a  
17 minority party to be “hijacked” by outsiders. *Id.*; see also *Democratic Party of United*  
18 *States v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 126 (1981) (finding state’s interests  
19 could not justify forced association); *Kusper v. Pontikes*, 414 U.S. 51 (1973) (“[A]  
20 significant encroachment upon associational freedom cannot be justified upon a mere  
21 showing of a legitimate state interest.”) (citations omitted).

22 Any asserted interest in making it easier for minor parties to appear on the ballot is  
23 not properly served by A.R.S. § 16-645(D) – getting on the ballot has no value if the

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24 <sup>2</sup> In *Bayless*, the Ninth Circuit held that Arizona’s semi-closed primary system violated  
25 the First Amendment freedom of association by allowing nonmembers to select  
26 Libertarian Party precinct committee members. See 351 F.3d at 1281-82. The Ninth  
27 Circuit remanded the matter to this court to resolve “serious constitutional concerns” over  
28 letting party outsiders influence candidate selection. See *id.* at 1281. On remand, this  
court applied the *Jones* analysis to hold the system unconstitutionally burdened the  
party’s right to freely associate. See Order filed 09/27/07 at Document No. 61 in Case  
No. 4:02-cv-00144-RCC (Hon. Raner Collins). The court enjoined the state from  
applying the system to the Libertarian Party. See *id.*

1 party is exploited by imposters and has no control over selecting its candidates. “[A]  
2 single election in which the party nominee is selected by nonparty members could be  
3 enough to destroy the party.” *Jones*, 530 U.S. at 579.

4 **B. Second Cause of Action – Violation of Equal Protection.**

5 The AGP does not need to show likely success on all its claims, just one claim.  
6 *See Alliance for the Wild Rockies*, 2010 WL 2926463 at \*11. However, the AGP also  
7 will likely prevail on its second claim, that Arizona’s dual system for write-in candidates  
8 violates its right to equal protection under the Fourteenth Amendment.

9 The equal protection clause provides that “[n]o State shall ... deny to any person  
10 within its jurisdiction the equal protection of laws.” U.S. Const. amend XIV § 1. The  
11 central mandate of the equal protection guarantee is that the sovereign may not draw  
12 distinctions between individuals based solely on differences that are not sufficiently  
13 justified by a strong government interest. *See Williams v. Rhodes*, 393 U.S. 23, 30-31  
14 (1968). The equal protection clause is a direction that all persons similarly situated  
15 should be treated alike. *Id.* If a state law treats similarly situated groups differently with  
16 respect to a fundamental right, the law violates the equal protection clause unless the state  
17 shows the law is narrowly tailored to advance a compelling interest. *Id.*

18 The AGP and its larger counterparts are political parties vying for elected office;  
19 they are similarly situated and are treated as such for purposes of equal protection  
20 analysis. *See, e.g., id.* Yet Arizona’s dual system for write-in candidates treats minor  
21 parties differently from major parties. Under A.R.S. § 16-645(D), minor parties are  
22 forced to associate with self-nominated candidates with no party ties or support. In  
23 contrast, under A.R.S. § 16-645(E), write-in candidates for the larger parties must receive  
24 substantial support before being nominated – a write-in Republican candidate for  
25 statewide office in the 2010 primary needed a minimum of 5,609 signatures or votes to be  
26 nominated in contrast to the one vote needed to become the AGP’s candidate. Thus,  
27 unopposed write-in candidates for major parties have a fair measure of support before  
28 being nominated but the same protection is not afforded to minor parties. Last, the law

1 burdens a fundamental right, the freedom of association. *See Williams*, 393 U.S. at 31-32  
2 (applying strict scrutiny where freedom of association was implicated); *see also*  
3 *Anderson v. Celebrezze*, 460 U.S. 780, 793-94 (1983) (“A burden that falls unequally on  
4 new or small political parties or on independent candidates impinges, by its very nature,  
5 on associational choices protected by the First Amendment.”). Thus, the state must  
6 establish that A.R.S. § 16-645(D) is narrowly tailored to advance a compelling interest.  
7 *See Williams*, 393 U.S. at 31-32.

8 As in the First Amendment context, the State cannot justify this disparate  
9 treatment. *See Burson v. Freeman*, 504 U.S. 191, 211 (1992) (noting that a regulation  
10 rarely survives strict scrutiny); *Jones*, 530 U.S. at 583-86 (upholding freedom of  
11 association over state’s multiple interests); *Kusper v. Pontikes*, 414 U.S. 51, 58-59 (“[A]  
12 significant encroachment upon associational freedom cannot be justified upon a mere  
13 showing of a legitimate state interest.”) (citations omitted); *La Follette*, 450 U.S. at 126  
14 (similar); *Williams*, 393 U.S. at 32-34 (similar); *Bayless*, 351 F.3d at 1282 (similar).

### 15 **C. Third Cause of Action – Violation of Substantive Due Process.**

16 Likewise, Plaintiffs will prevail in establishing a violation of their due process  
17 rights guaranteed by the Fourteenth Amendment. The Fourteenth Amendment provides  
18 that no state shall deprive any person of life, liberty, or property without due process of  
19 law. “[I]t is beyond debate that freedom to engage in association for the advancement of  
20 beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process  
21 Clause of the Fourteenth Amendment.” *Anderson*, 460 U.S. at 787 (cited omitted). The  
22 right of voters “to cast their votes effectively” is “among our most precious freedoms.”  
23 *Id.* (citing *Williams*, 393 U.S. at 30-31 (“Other rights, even the most basic, are illusory if  
24 the right to vote is undermined.”)).

25 Plaintiffs have established at least two due process violations. First, Arizona’s  
26 dual write-in system deprives the AGP of its right to free association. Second, the Sham  
27 Candidates’ appearance in the general election undermines party members’ right to vote  
28 by leading them to falsely believe that Sham Candidates are their candidate of choice.

1 In evaluating a due process challenge, the court must weigh “the character and  
2 magnitude of the asserted injury to the rights protected by the First and Fourteenth  
3 Amendments” against “the precise interests put forward” to justify the burden imposed  
4 upon those rights. *Anderson*, 460 U.S. at 789; *see also Jones v. Bates*, 127 F.3d 839, 857  
5 (9th Cir. 1997) (noting that when the burden is “severe,” the court must assess the  
6 proposed justifications with “great care”).

7 As described above, the restriction on freedom of association in this case is severe,  
8 and restrictions on that right rarely withstand scrutiny. And there can be no justification  
9 for the Sham Candidates’ deceptive acts, which, if not corrected, will have the intended  
10 effect of causing voters to cast meaningless, possibly antithetical votes.

11 **D. Fourth Cause of Action – Violation of Ariz. Const. Art. 7, § 12.**

12 Plaintiffs also are likely to prevail on the merits of their claim that the Sham  
13 Candidates violated Article 7, Section 12 of the Arizona Constitution, which requires that  
14 the laws of the State secure the purity of elections. That provision, titled “Registration  
15 and other laws,” states in its entirety:

16 There shall be enacted registration and other laws to secure the purity of  
17 elections and guard against abuses of the elective franchise.

18 The Arizona Supreme Court has held that, “[t]he courts must be alert to preserving  
19 the purity of elections and its doors must not be closed to hearing charges of deception  
20 and fraud that in any way impede the exercise of a free elective franchise.” *Griffin v.*  
21 *Buzard*, 86 Ariz. 166, 173, 342 P.2d 201, 205-206 (1959). Indeed, a party may bring a  
22 cause of action for violation of Article 7, Section 12 of the Arizona Constitution where  
23 the Secretary of State’s actions are “attributable to the failure of the legislature ... to  
24 enact necessary laws to secure the purity of elections.” *Chavez v. Brewer*, 222 Ariz. 309,  
25 319, 214 P.3d 397, 407 (App. 2009) (explaining that Article 7, Section 12 “is a direction  
26 to the legislature to enact appropriate laws to secure the purity of elections and guard  
27 against electoral abuses”).  
28

1 Here, A.R.S. § 16-645(D) permits Sham Candidates to advance to the general  
2 election, purportedly as AGP candidates, by obtaining significantly fewer votes than is  
3 required of majority party write-in candidates. By enacting § 16-645(D), the Legislature  
4 failed to enact “laws to secure the purity of elections and guard against abuses of the  
5 elective franchise.” Indeed, this provision invites corruption by majority parties  
6 contending for an elected seat who can sabotage an opponent by enlisting a sham  
7 candidate to siphon votes. [*See, e.g.* Ex. 21 to Verified Complaint.]

8 Further, the Legislature failed to enact any limiting provision as to § 16-645(D) to  
9 safeguard against the abuse associated with allowing write-in candidates of certain parties  
10 to advance to the general election with much greater ease than write-in candidates of  
11 other parties. Because the Legislature is charged with enacting appropriate laws to guard  
12 against electoral abuses, the enactment of § 16-645(D) constitutes a violation of Article 7,  
13 Section 12.

14 **E. Fifth Cause of Action – Violation of A.R.S. §§ 16-1006, 16-1013.**

15 Plaintiffs are likely to prevail on their claims under A.R.S. §§ 16-1006, 16-1013.  
16 Those statutes specifically prohibit fraudulent or deceptive conduct with respect to the  
17 elective franchise. Specifically, A.R.S. § 16-1006 states: “It is unlawful for a person  
18 knowingly by force, threats, menaces, bribery or any corrupt means, either directly or  
19 indirectly: (1) [t]o attempt to influence an elector in casting his vote or to deter him from  
20 casting his vote[;] . . . [and] (3) [t]o defraud an elector by deceiving and causing him to  
21 vote for a different person for an office . . . then he intended or desired to vote for.”

22 In addition, A.R.S. § 16-1013 states: “It is unlawful for a person knowingly . . .  
23 [b]y . . . fraudulent device or contrivance whatever, to impede, prevent or otherwise  
24 interfere with the free exercise of the elective franchise of any voter, or to compel, induce  
25 or to prevail upon a voter either to cast or refrain from casting his vote at an election, or  
26 to cast or refrain from casting his vote for any particular person or measure at an  
27 election.”

28

1 In *Griffin v. Buzard*, the Arizona Supreme Court explained that “courts have  
2 consistently frowned upon the fraudulent device or contrivance of running a diversionary  
3 candidate.” 86 Ariz. at 173, 342 P.2d at 205. In that case, which was brought as a  
4 primary election contest, qualified electors of the State of Arizona challenged the  
5 nomination of A.P. (Jack) Buzard as the Democratic candidate for Arizona Corporation  
6 Commission. They alleged, among other things, that Buzard acted fraudulently and  
7 deceptively by recruiting an individual named William A. (Bill) Brooks to run in the  
8 primary election against Buzard and the incumbent candidate, William T. (Bill) Brooks,  
9 with the intent to confuse voters and siphon votes. *Id.* at 172, 342 P.2d at 205. Although  
10 the statement of contest alleged claims under Arizona’s penal provisions relating to the  
11 conduct of elections, the Court explained that, “[i]t is not uncommon to find allegations  
12 in civil action complaints that charge defendants with a violation of a criminal statute.”  
13 The Court held that it was proper to consider those statutes to determine whether  
14 Buzard’s name should be stricken from the ballot. *Id.*

15 Here, like in *Griffin*, the Sham Candidates contrived a scheme to confuse and  
16 deceive the voting public. The Sham Candidates changed their political party affiliation  
17 at the last moment to run as Green write-in candidates for the purpose of confusing voters  
18 and siphoning votes in direct violation of A.R.S. §§ 16-1006 and 16-1013.

## 19 **II. Plaintiffs Are Likely To Suffer Irreparable Harm In The Absence Of** 20 **Preliminary Relief.**

21 Plaintiffs can easily show they will likely suffer irreparable harm. “The Supreme  
22 Court has made clear that ‘the loss of First Amendment freedoms, for even minimal  
23 periods of time, unquestionably constitutes irreparable injury’ for purposes of the  
24 issuance of a preliminary injunction.” *Sammartano v. First Judicial Dist. Court*, 303  
25 F.3d 959, 973 (9th Cir. 2002) quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also  
26 *Brown v. Cal. Dep’t. of Transp.*, 321 F.3d 1217, 1226 (9th Cir. 2003) (same); *Krestan v.*  
27 *Deer Valley Unified Sch. Dist. No. 97 of Maricopa Cnty.*, 561 F.Supp.2d 1078, 1084 (D.  
28 Ariz. 2008) (finding that “[b]ecause the possibility of irreparable harm is clear in this

1 First Amendment case, the Court must grant preliminary injunctive relief if Plaintiff has  
2 established a probability of success on the merits.”). Plaintiffs’ loss of First Amendment  
3 rights alone establishes irreparable harm.

4 “Under the law of this circuit, a party seeking preliminary injunctive relief in a  
5 First Amendment context can establish irreparable injury sufficient to merit the grant of  
6 relief by demonstrating the existence of a colorable First Amendment claim.”  
7 *Sammartano*, 303 F.3d at 973 (citation and quotations omitted). “Because the test for  
8 granting a preliminary injunction is a continuum in which the required showing of harm  
9 varies inversely with the required showing of meritoriousness, when the harm claimed is  
10 a serious infringement on core expressive freedoms, a plaintiff is entitled to an injunction  
11 even on a lesser showing of meritoriousness.” *Id.* at 973-74 (citation and quotations  
12 omitted). There is more than a colorable First Amendment claim here, which also itself  
13 establishes irreparable harm.

14 In addition, Plaintiffs will suffer irreparable harm if the Sham Candidates’ names  
15 are printed on the official ballot for the November 2, 2010 general election. Once their  
16 names appear on the general election ballot, even if A.R.S. § 16-645(D) is declared  
17 unconstitutional and their candidacy is declared improper at some later date, the damage  
18 is done. Voters will assume that the sham Green candidates represent the AGP, some  
19 will vote for the Sham Candidates, and it will be impossible to determine the true,  
20 unadulterated result of the election.

### 21 **III. The Balance Of Equities Tips Strongly In Plaintiffs’ Favor.**

22 Sham Candidates will suffer no harm in being removed from the general election  
23 ballot. Their appearance on the ballot is meant only to distract and deceive. As described  
24 above, Plaintiffs, and voters who will be misled by the Sham Candidates’ conduct, will  
25 suffer substantial harm if the injunction is not granted. *See, e.g., Jones*, 530 U.S. at 579  
26 (“A single election in which the party nominee is selected by nonparty members could be  
27 enough to destroy the party.”).

28



1 **IV. An Injunction Is In The Public Interest.**

2 “Courts considering requests for preliminary injunctions have consistently  
3 recognized the significant public interest in upholding First Amendment principles.”  
4 *Sammartano*, 303 F.3d at 974 (citing cases). Likewise, there is a very strong public  
5 interest in maintaining the integrity of the electoral process. *See, e.g.*, Ariz. Const. Art. 7,  
6 § 12 (guarding against election abuses); A.R.S. § 16-1006 ((prohibiting deceptive  
7 conduct in elections), A.R.S. § 16-1013 (similar); *see also Jones*, 530 U.S. at 578-79  
8 (discussing the dire effects of “party raiding” on political discourse); *Bayless*, 351 F.3d at  
9 1282 (similar). The requested relief will serve these vital public interests.

10 **CONCLUSION**

11 Arizona’s dual write-in system and the illegal conduct of certain individuals taking  
12 advantage of that system have created a very serious distortion of the election process,  
13 infringing on Plaintiffs’ rights guaranteed by the United States Constitution and the  
14 Arizona Constitution. A temporary restraining order and preliminary injunction keeping  
15 the Sham Candidates off the November 2, 2010 general election ballot are appropriate  
16 and necessary to prevent further substantial harm.

17 RESPECTFULLY SUBMITTED this 6th day of September, 2010.

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