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7

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF MARICOPA
10

11 SAVE OUR VOTE, OPPOSING C-03-
2012, an unincorporated Arizona political
12 committee, LISA GRAY, a qualified
elector and taxpayer of the State of Arizona,
13 JAIME A. MOLERA, a qualified elector
and taxpayer of the State of Arizona,
14 BARRY HESS, a qualified elector and
taxpayer of the State of Arizona, and the
15 LEAGUE OF WOMEN VOTERS OF
ARIZONA, an Arizona non-profit
16 corporation,

17 Plaintiffs,

18 v.

19 KEN BENNETT, in his official capacity as
Secretary of State of the State of Arizona,
20

21 Defendant,

22 and

23 OPEN GOVERNMENT COMMITTEE
SUPPORTING C-03-2012, an
24 incorporated Arizona political committee,

25 Real Party in Interest.
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27
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No. CV 2012-010717

**FIRST AMENDED VERIFIED
COMPLAINT**

(Assigned to the Hon. Mark Brain)

(A.R.S. § 19-122(C) Challenge to
Sufficiency of Initiative Petition)

**(Entitled to Immediate Trial Pursuant
to A.R.S. § 19-122(C))**

1 For their First Amended Verified Complaint, Plaintiffs allege as follows:

2 **PRELIMINARY STATEMENT**

3 1. This is a challenge to the legal sufficiency of an initiative measure known as
4 the “Open Elections/Open Government Act” (the “Initiative”) and designated with the
5 serial number C-03-2012 by Defendant Arizona Secretary of State, the application for
6 which was filed on or about September 26, 2011. An accurate copy of the Initiative is
7 attached hereto as Exhibit A.

8 2. The Initiative’s stated purpose is to “ensure that every person qualified to
9 vote, including those not affiliated with any political party, has the right to vote at any
10 election for any candidate, regardless of the voter’s or the candidate’s party affiliation or
11 lack of party affiliation.” Initiative at 1 § 2.A The Initiative contains multiple operative
12 provisions, including without limitation:

13 a. repealing the part of the Arizona Constitution that establishes the
14 direct primary system for electing candidates to office, Initiative at 1 § 3;

15 b. repealing the part of the Arizona Constitution that enables
16 Independent and party-not-designated voters to select which party primary election that
17 they will vote in, *id.*;

18 c. repealing the existing law for selecting general election candidates
19 for all federal, state, county, and local elective offices except for non-partisan elections
20 and elections for President and Vice President of the United States, and replacing it with a
21 new primary-general election procedure, *id.* at 2;

22 d. amending existing law to permit voters to vote for any candidate in
23 the primary election by way of eliminating partisan primaries and requiring all candidates
24 for a particular office to run in one primary election, *id.* at 3;

25 e. amending existing law to require that “the two candidates who
26 receive the most votes in the primary election shall compete in the general election” and
27 that “the number of candidates who compete in the general election shall be the number of
28 candidates to be elected times two,” *id.* (all cap formatting omitted);

1 f. amending the existing voter registration law to allow voters to
2 declare a “party preference (if any) in their own words on their voter registration form,”
3 *id.*;

4 g. repealing the existing requirements for nomination signature
5 gathering and leaving it to the legislature to establish a new signature requirement by law,
6 except that “signature requirements . . . shall be the same for all candidates for that office,
7 regardless of party affiliation or lack thereof,” *id.* (all cap formatting omitted);

8 h. repealing the existing requirements for party identification and
9 allowing candidates “to declare his or her party preference (if any) as it is stated on their
10 voter registration form, up to a maximum of 20 characters,” *id.* (all cap formatting
11 omitted);

12 i. repealing the existing requirements for petition signature sheet forms
13 by changing the identification of party preference statements, column headings, and
14 prefatory text, *id.*;

15 j. repealing the existing law for electing precinct committee members
16 for political parties.

17 k. amending existing law to require a disclaimer on ballots that “the
18 party registration (if any) stated with the candidates’ names on this ballot is not an
19 indication that a candidate has been nominated or endorsed by that party, but only reflects
20 the registration (if any) of the candidate,” *id.* (all cap formatting omitted);

21 l. generally stating that nothing in the Initiative restricts the right of
22 individuals to join or organize political parties nor restricts the right of political parties to
23 support candidates for office, and permitting political parties to establish procedures for
24 various functions, *id.*;

25 m. generally stating that all qualified voters and candidates should be
26 treated equally,

27 n. prohibiting the use of taxpayer dollars to fund primary elections and
28 elections for party offices, including precinct committee;

- 1 o. exempting presidential elections from the effects of the Initiative; and
- 2 p. exempting nonpartisan elections from the effects of the Initiative.
- 3 3. In addition, the Initiative consists of a legion of amendments to Arizona law
- 4 by imposing constitutional principles that nullify or supersede scores of existing
- 5 constitutional, statutory, and code provisions, and regulations dealing generally with
- 6 elections and, more specifically, relating to:
- 7 a. the conduct of primary elections;
- 8 b. the conduct of general elections;
- 9 c. nomination procedures for having a candidate's name placed on the
- 10 primary ballot;
- 11 d. nomination procedures for candidates by political parties;
- 12 e. traditional campaign finance regulation;
- 13 f. campaign finance regulation under the Citizens Clean Elections Act;
- 14 g. the federal Voting Rights Act of 1965 and the ability of minority
- 15 voters to elect candidates of their choice;
- 16 h. the ability of independent and third-party candidates to appear on the
- 17 general election ballot;
- 18 i. voter registration methods;
- 19 j. election of precinct committeemen;
- 20 k. access to the statewide voter database;
- 21 l. the number of petition signatures required by each candidate for
- 22 office to qualify for the ballot;
- 23 m. the cost of paying for primary and general elections;
- 24 n. how vacancies in public office are filled;
- 25 o. designation of party affiliation on ballots; and
- 26 p. the organization of political parties.
- 27 4. As is explained in this Complaint, these amendments to Arizona law
- 28 constitute several different subjects that, when presented in one initiative, violate the

1 Arizona Constitution's separate amendment rule.

2 5. Moreover, the Initiative was circulated among the electorate, and gained
3 support from voters, under false pretenses. Namely, the summary of the Initiative that the
4 Real Party in Interest provided to voters was incomplete, materially misleading, and
5 subjective and persuasive rather than objective and informative. An accurate copy of the
6 petition signature sheet summary for the Initiative is included on the Application for
7 Initiative or Referendum Petition Serial Number, which is attached hereto as Exhibit B.

8 PARTIES

9 6. Plaintiff Save Our Vote, opposing C-03-2012 ("Save Our Vote") is a
10 political committee organized under the laws of the State of Arizona and registered with
11 the Defendant Secretary of State as a ballot measure committee. Save Our Vote is
12 committed to preserving the democratic process in Arizona and advocating in opposition
13 to election schemes such as those proposed in the Initiative.

14 7. Plaintiff Lisa Gray is a qualified elector and a taxpayer in the State of
15 Arizona who supports fair elections and preserving Arizona's democratic process.
16 Plaintiff Gray votes in primary and general elections for federal, state, and local
17 candidates. Plaintiff Gray has voluntarily contributed funds to candidates for public office
18 and has participated in politics as a precinct committeeman, state committeeman, and
19 legislative district chair.

20 8. Plaintiff Jaime A. Molera is a qualified elector and a taxpayer in the State of
21 Arizona who supports fair elections and preserving Arizona's democratic process.
22 Plaintiff Molera votes in primary and general elections for federal, state, and local
23 candidates. Plaintiff Molera previously served as Arizona's Superintendent of Public
24 Instruction and was a candidate for the Republican nomination for that office in 2002.

25 9. Plaintiff Barry Hess is a qualified elector and a taxpayer in the State of
26 Arizona who supports fair elections and preserving Arizona's democratic process.
27 Plaintiff Hess is an active member of the Libertarian Party of Arizona and, among other
28 things, he was the Libertarian Party's nominee for governor in 2002 and 2010.

1 10. Plaintiff League of Women Voters of Arizona (the “League”) is an Arizona
2 non-profit corporation. The League is a nonpartisan political organization encouraging
3 informed and active participation in government. It influences public policy through
4 education and advocacy. As part of its educational activities, the League reviews
5 proposed initiatives and provides its analysis to the voting public. In the case of the
6 Initiative, the League is concerned that its multiple provisions force the public to choose
7 between more than one substantive amendments that should have been submitted to the
8 voters separately.

9 11. Each of these Plaintiffs have a strong interest in preserving Arizona’s
10 democratic process for electing candidates for political office and maintaining the
11 constitutional requirement that distinct amendments to the Arizona Constitution be
12 submitted to the voters separately. Each Plaintiff would suffer injury if the Initiative is
13 approved as a constitutional amendment.

14 12. Defendant Ken Bennett is the Arizona Secretary of State (the “Secretary of
15 State”), a public officer of this State, and is named as a defendant in this action solely in
16 his official capacity. The Secretary of State is the public officer responsible for the
17 conduct of statewide elections, including elections on, and the canvassing of votes for,
18 statewide ballot measures, Ariz. Const. art. 4, pt. 1, § 1(9)-(11), and is charged with
19 submitting “proposed amendment or amendments to the vote of the people at the next
20 general election,” *id.* art. 21 § 1.

21 13. Upon information and belief, the Real Party in Interest, Open Government
22 Committee Supporting C-03-2012, is an incorporated association and a political
23 committee organized under the laws of the State of Arizona. Upon information and belief,
24 it is the primary promoter and sponsor of the Initiative. Real Party in Interest was
25 responsible for drafting and proposing the substantive language that was filed with the
26 Secretary of State and circulated by petition to the public.

27 **JURISDICTION AND VENUE**

28 14. This Court has jurisdiction and venue pursuant to Article 6 § 14 of the
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1 Arizona Constitution and A.R.S. §§ 12-123, 12-1801, 12-1831, and 19-122(D).

2 15. Because this Complaint challenges the sufficiency of an initiative petition,
3 Plaintiffs are entitled to an immediate trial under A.R.S. § 19-122(C).

4 GENERAL ALLEGATIONS

5 The Initiative

6 16. On July 5, 2012, Open Government Committee submitted signatures and
7 petition signature sheets that it purports to exceed the 259,213 signature threshold
8 required for a constitutional amendment initiative to appear on the November 2012
9 general election ballot.

10 17. Upon information and belief, the Secretary of State has not yet completed
11 his review of the petition signature sheets for the Initiative to determine whether it has
12 qualified for the ballot.

13 18. On information and belief, each petition signature sheet contains the
14 following summary of the Initiative, which was printed on the Application for Initiative
15 filed with the Secretary of State:

16 This measure will allow all Arizonans, regardless of party
17 affiliation, to vote in a single open primary for the candidates
18 of their choice. The two candidates who receive the most
19 votes in the primary will compete in the general election.
20 There will be a level playing field for all voters and
21 candidates, and the current system of taxpayer-funded partisan
22 primaries will be abolished. This reform will promote open
23 government and encourage the election of candidates who will
24 work together for the good of the state.

21 19. The summary fails to address or mention many of the Initiative's
22 substantive provisions.

23 20. The Initiative's stated purpose is to "ensure that every person qualified to
24 vote, including those not affiliated with any political party, has the right to vote at any
25 election for any candidate, regardless of the voter's or the candidate's party affiliation or
26 lack of party affiliation." Initiative at 1 § 2.A.

27 21. To accomplish this objective of "provid[ing] more choice to all voters and
28 candidates in Arizona," the Initiative purports to:

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(1) Abolish[] the existing system of taxpayer-funded primary elections to select nominees for political parties.

(2) Create[] in its place an Open “Top Two” Primary Election, in which all candidates running for an office appear together on the same ballot and all qualified voters (regardless of party affiliation or lack thereof); are able to vote for the candidate of their choice. The two candidates receiving the highest vote totals for each office would then go on to face each other in the general election. [*Id.* at 1 § 2.B]

22. As set forth above, the Initiative’s operative provisions propose a multitude of amendments to Arizona law that constitute separate amendments to the Arizona Constitution.

Repeal of Arizona’s Direct Primary Law and Open Primary for Independents and No Party Preference Voters

23. The Arizona Constitution and Title 16 of the Arizona Revised Statutes establish a two-tier election system for most public offices: the primary and general election.

24. Since statehood, the Arizona Legislature has enacted legislation regulating the primary system for nominating candidates who will appear on the general election ballot. *See* Ariz. Const. art VII § 10 (West-Historical Notes); A.R.S. § 16-201 (West-Historical and Statutory Notes). The stated goal of the Initiative is to shift this authority out of the Legislature’s purview and confine it to the language embodied in the Initiative.

25. In 1998, Arizona voters enacted Proposition 103, an amendment to the Arizona Constitution that permits “[a]ny person who is registered as no party preference or independent as the party preference or who is registered with a political party that is not qualified for representation on the ballot may vote in the primary election of any one of the political parties that is qualified for the ballot.” Ariz. Const. art. 7 § 10.

26. Under Proposition 103, Arizona electors registered as independent, no party preference, or with a party not qualified to appear on the ballot have the right to vote in the partisan primary of their choice.

27. As a result of Proposition 103, for a voter who is registered as an

1 Independent, or no party preference, or as a member of a political party that is not entitled
2 to continued representation on the ballot, the voter in a primary election is allowed “to
3 designate the ballot of only one of the political parties that is entitled to continued
4 representation on the ballot and the judge of election shall give the elector only that
5 political party’s ballot.” A.R.S. § 16-467(B).

6 28. To a large extent, primary elections determine which candidates make the
7 general election ballot. In fact, pursuant to A.R.S. §§ 16-301 and 302, if a major party
8 candidate (e.g., Democrat or Republican) wants to make the general election ballot, he or
9 she must be “nominated in the primary election for a particular office.” If no candidate
10 from a major political party is nominated, then no candidate for that office for that party
11 may appear on the general election ballot except as it pertains to candidates for the office
12 of presidential electors who are nominated through state party committees.

13 29. A candidate who is not a registered member of a political party that is
14 recognized pursuant to Title 16 of the Arizona Revised Statutes (e.g., Independent) “may
15 be nominated as a [general election] candidate for public office otherwise than by primary
16 election or by party committee pursuant to” A.R.S. § 16-341. These candidates must be
17 nominated through nomination petition process set forth in A.R.S. § 16-341.

18 30. The Initiative proposes repealing both Arizona’s existing (a) direct primary
19 election system and general election system for nominating candidates for public office
20 and (b) open primary for Independent voters, voters registered with no party preference,
21 and voters of a political party that is not entitled to continued representation on the ballot.

22 31. The proposed repeal of Proposition 103 is not topically related to, nor is it
23 sufficiently interrelated to constitute a consistent and workable whole with, the proposed
24 establishment of a top-two primary system.

25 **Repeal of General Election Ballot Access**
26 **for Independents and Third Parties**

27 32. Following a primary election, candidates for public office are selected at a
28 general election. The general election ballot consists of candidates (a) nominated by

1 political parties that meet the qualification for ballot access and (b) “[a]ny qualified
2 elector who is not a registered member of a political party that is recognized pursuant to
3 [Title 16, A.R.S.]” that is nominated pursuant to the steps established in A.R.S. § 16-
4 341(A).

5 33. The general election ballot consists of candidates from as many political
6 parties that have qualified for ballot access under law (provided that such political parties
7 have nominated candidates for that office) and as many candidates who are registered
8 “Independent” or with no party identification who can qualify for ballot access under law.

9 34. In instances where one office is to be filled under present law, there may be
10 several candidates from various political parties and or whom are registered as
11 Independents listed on the general election ballot. For example, in the 2010 general
12 election (selected races):

13 a. for the office of United States Senator, candidates from the
14 Democratic Party, Green Party, Libertarian Party, Republican Party, and seven write-in
15 candidates were on the general election ballot;

16 b. for the office of United States Representative in Congress, District
17 No. 7, candidates from the Democratic Party, Libertarian Party, Republican Party, and an
18 Independent/Nonpartisan candidate were on the general election ballot;

19 c. for the office of Governor, candidates from the Democratic Party,
20 Green Party, Libertarian Party, Republican Party, and three write-in candidates were on
21 the general election ballot;

22 d. for the office of State Treasurer, candidates from the Democratic
23 Party, Green Party, Libertarian Party, and Republican Party were on the general election
24 ballot; and

25 e. for the office of State Senator, District No. 28, candidates from the
26 Democratic Party, Republican Party, and two Independent candidates were on the general
27 election ballot.

28 35. Under the Initiative, only two candidates for public office, including without
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1 limitation each of the foregoing offices, would be named on the general election ballot.

2 36. Under existing law, Independents, Libertarians, and Green Party members
3 may access the general election ballot under the party nominating procedures provided by
4 law without regard to votes cast for candidates of other political parties. The Initiative's
5 provisions would indirectly repeal Arizona's ballot access law and statistically prevent
6 third-party candidates and Independents from appearing on the general election ballot. In
7 the Initiative's primary election, Independents and third parties such as Libertarians and
8 Green Party members, due to their substantially fewer registration numbers compared to
9 the other major political parties, would be statistically disqualified from appearing on the
10 general election ballot.

11 37. The proposed indirect elimination of general election ballot access for
12 Independents and third parties such as Libertarians and Green Party members is not
13 topically related to nor is it sufficiently interrelated to constitute a consistent and workable
14 whole with the proposed establishment of a top-two primary system.

15 **Amendment Impacting the Voting Rights Act**
16 **and Majority-Minority Districts**

17 38. Section 2 of the federal Voting Rights Act protects the ability of voters in
18 majority-minority districts to elect the candidates of their choice.

19 39. Creation of a majority-minority district protects against vote dilution to
20 minority voting strength and, in Arizona, often involves protection of Hispanic and Native
21 American voters.

22 40. Under the Initiative, the two candidates who receive the most votes for a
23 particular office in minority-majority districts will advance to the general election.

24 41. In a minority-majority district, the presence of several minority candidates
25 on a primary election ballot will dilute the voting strength of minority voters such that
26 non-minority voters can coalesce behind two non-minority candidates. Under these
27 conditions, the comparative voting strength of the non-minority voters can overcome the
28 voting strength of minority voters, sending two non-minority candidates to the general

1 election ballot. Such a scenario directly interferes with federal law and policy designed to
2 protect against vote dilution among minorities.

3 42. The Initiative's proposed "top-two" amendments that will conflict with the
4 federal Voting Rights Act and are not topically related to nor are they sufficiently
5 interrelated to constitute a consistent and workable whole with the proposed establishment
6 of a top-two primary system.

7 **Repeal of Citizens Clean Elections Act's** 8 **Majority-Dominant District Fund Shifting**

9 43. In 1998, Arizona voters enacted the Citizens Clean Elections Act, a ballot
10 measure that established a system of public financing for statewide and legislative
11 political campaigns.

12 44. The Citizens Clean Elections Act was designed to provide adequate funding
13 for candidates in both primary and general elections. In so doing, the Citizens Clean
14 Elections Act provides a limited amount of base level funding for statewide and
15 legislative candidates who agree to forgo traditional fund raising approaches. Funding is
16 distributed to candidates in both the primary and general election at differing levels.

17 45. The Initiative's proposed open primary system is fundamentally
18 inconsistent with the current system of campaign finance regulation as it creates two "de
19 facto" general elections under a public campaign finance system that is specifically
20 designed for both a partisan primary and a general election.

21 46. Without complete integration of the two systems, the Initiative creates
22 structural inequities that will advantage one party over others without providing a clear
23 mechanism to remedy these inequities. This is especially problematic because under
24 Article 4, Part 1, § 6 of the Arizona Constitution (the Voter Protection Act), the Citizens
25 Clean Elections Act can only be modified by the Legislature with a 3/4 vote and in a
26 manner that furthers the purpose of the Act. The Citizens Clean Elections Act was created
27 specifically with partisan primaries in mind and its public financing system reflects that
28 intent.

1 47. One example is found in the relationship between the Citizens Clean
2 Elections system and the financing of candidates in one-party dominant districts. This
3 finance system intentionally creates structural advantages for majority parties in majority-
4 dominant districts. Under the Act, a majority-dominant district is one in which the voter
5 registration numbers of one major political party far exceed the registration numbers for
6 the other major political party such that the general election result is, for the most part,
7 decided in the dominant party's primary election.

8 48. A.R.S. § 16-952(D) provides that, “[u]pon applying for citizen funding
9 pursuant to § 16-950, a participating candidate for the legislature in a one-party dominant
10 legislative district, who is qualified for clean campaign funding *for the party primary*
11 *election of the dominant party* may choose to reallocate a portion of funds from the
12 general election period to the primary election period.” (Emphasis added.) According to
13 this statute, candidates of the “dominant” party are provided a special benefit by allowing
14 them to reallocate a portion of their anticipated general elections funds (up to 50%) for
15 use in the primary election. For the 2012 election cycle, candidates for the Legislature in
16 one-party dominant districts will receive up to \$21,533 for the primary compared to
17 \$14,355 for non-dominant party candidates, as non-dominant party candidates are not
18 allowed such an allocation.

19 49. This feature does not permit shifting of funds for Independent candidates in
20 single-party dominant districts nor for political party candidates other than those
21 registered with the dominant party. Under the Citizens Clean Elections Act, Independents
22 receive no Clean Elections funds until the general election.

23 50. The Initiative requires that all candidates be treated equally under the law.
24 Initiative at 3 (proposed subsection H: “Level Playing Field”). The Initiative proposes to
25 indirectly repeal a provision of law by prohibiting the use of public funds in a manner
26 established by the Citizens Clean Elections Act to fund political candidates and campaigns
27 in the same manner that was invalidated by the Supreme Court of Arizona in *Clean*
28 *Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 99 P.3d 570 (2004).

1 51. The proposed amendments to the Citizens Clean Elections Act are not
2 topically related to, nor are they sufficiently interrelated to constitute a consistent and
3 workable whole with, the proposed establishment of a top-two primary system.

4 **Repeal of the Law Establishing the Political Party System**

5 52. Arizona law authorizes the formation of political parties for the nomination
6 of candidates for the general election.

7 53. Present law establishes requirements for ballot qualification for political
8 parties and for separate ballot qualification methods for those unaffiliated with political
9 parties including, without limitation, nominating petition format and minimum signature
10 requirements. The minimum signature requirements vary among the different political
11 parties based on party registration numbers. A.R.S. § 16-322.

12 54. The Initiative proposes to repeal this method for calculating signatures
13 required for nominating petitions and replace it with an undefined method that must “be
14 the same for all candidates for that office, regardless of party affiliation or lack thereof.”

15 55. The Initiative proposes to repeal the legal authorization for political party
16 organization by permitting candidates to declare any party label on the ballot.

17 56. The Initiative proposes to replace the nominating petition format with new
18 requirements for the identification of party preference statements, column headings, and
19 prefatory text.

20 57. These amendments to the political party nominating system are not topically
21 related to, nor are they sufficiently interrelated to constitute a consistent and workable
22 whole with, the proposed establishment of a top-two primary system.

23 **Amendment of Existing Voter Registration Law**

24 58. Arizona’s voter registration forms permit electors to designate their political
25 party preference as, without limitation, one of the two largest political parties entitled to
26 continuous representation on the ballot, Independent, and any existing party label of the
27 voter’s choice.

28 59. Under current law, a registration form with an unorganized party or a party
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1 not recognized for representation on the ballot will be recorded by elections officials as
2 follows: (a) on the registration card, the party designation is “NONE”, (b) in the voter file,
3 the party designation is “PND” or “Party Not Defined, and (c) in the polling place, the
4 party designation is “OTHER”.

5 60. The Initiative proposes to repeal these procedures and replace them with a
6 system whereby voters may designate any party label on their registration.

7 61. The proposed amendment to the voter registration law is not topically
8 related to, nor is it sufficiently interrelated to constitute a consistent and workable whole
9 with, the proposed establishment of a top-two primary system.

10 **Repealing Elections for Precinct Committee**

11 62. Arizona law provides for the election of a political party’s precinct
12 committee member on the primary election ballot.

13 63. Where an election for precinct committee member is held, only members of
14 that candidate’s political party may vote for that office. For example, only electors
15 registered as Democrats may vote for the office of Democratic precinct committee
16 member in that elector’s precinct.

17 64. The Initiative proposes amendments to this law by (a) allowing any elector
18 to run for any office, including that of Republican or Democratic precinct committee
19 member regardless of that elector’s party affiliation and (b) allowing every elector to vote
20 in every election, including precinct committee, regardless of that elector’s party
21 registration.

22 65. The proposed repeal of the existing law for electing precinct committee
23 members is not topically related to, nor is it sufficiently interrelated to constitute a
24 consistent and workable whole with, the proposed establishment of a top-two primary
25 system.

26 **Other Separate Amendments**

27 66. Other separate amendments proposed by the initiative include, but are not
28 limited to:

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- 1 a. requiring sweeping amendments to traditional campaign finance
- 2 regulation;
- 3 b. changing existing law to allow expansive access to the voter
- 4 registration database that is not permitted under existing law;
- 5 c. requiring a new approach to redistricting based on past electoral
- 6 performance for legislative and congressional districts;
- 7 d. changing the procedures by which vacancies in public office are
- 8 filled; and
- 9 e. changing the procedures by which municipalities, including charter
- 10 and home rule cities, conduct elections for municipal office.

11 67. These proposed amendments are not topically related to, nor are they

12 sufficiently interrelated to constitute a consistent and workable whole with, the proposed

13 establishment of a top-two primary system.

14 **FIRST CLAIM FOR RELIEF**

15 **Violation of Art. 21 § 1 of the Arizona Constitution (Separate Amendment Rule)**

16 68. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of

17 this Complaint as if fully set forth herein.

18 69. Article 21 § 1 of the Arizona Constitution provides that, “[i]f more than one

19 proposed amendment shall be submitted at any election, such proposed amendments shall

20 be submitted in such a manner that the electors may vote for or against such proposed

21 amendments separately.”

22 70. The Separate Amendment Rule requires “that voters must be allowed to

23 express their separate opinion as to each proposed constitutional amendment.” *Clean*

24 *Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 244, 99 P.3d 570, 573 (2004).

25 71. As described in detail throughout this Complaint, the multitude of

26 amendments proposed by the Initiative are such that they are not all topically related to

27 one another and that they are not sufficiently interrelated so as to form a consistent and

28 workable proposition.

1 ballots cast by many voters will be less influential than the ballots cast by other voters,
2 due to uncompetitive districting, disparities in party registration within a given district,
3 disparities in population between districts, disparities in voter registration between
4 districts, disparities in voter participation between districts, and other factors.

5 d. The summary falsely states that if the Initiative is passed “the current
6 system of taxpayer-funded partisan primaries will be abolished.” *In truth*, even if the
7 Initiative is adopted, the Citizens Clean Elections Act will continue to publicly fund
8 primary election activities. Additionally, because candidates in the primary elections can
9 and will run as affiliates of their respective political parties, the public funding of
10 “partisan” primaries will persist.

11 e. The summary falsely implies that it will affect “all voters and
12 candidates.” *In truth*, the Initiative would have no effect on the most visible elections
13 (*i.e.*, presidential elections) or non-partisan elections.

14 f. The summary falsely states, “[t]he two candidates who receive the
15 most votes in the primary will compete in the general election.” *In truth*, in presidential
16 elections, the two candidates receiving the most votes in Arizona presidential preference
17 election(s) will not necessarily compete in the general election. And in elections to fill
18 more than one opening, more than two candidates will move on from the primary election
19 to compete in the general election.

20 77. The description on the Initiative’s petition signature sheets is also invalid
21 because it is subjective and persuasive, rather than objective and informative. In
22 particular, by stating that “[t]his reform will promote open government and encourage the
23 election of candidates who will work together for the good of the state,” the summary
24 engages in impermissible advocacy. By including subjective arguments and advocating
25 for the Initiative, rather than neutrally informing voters of the contents and effects of the
26 Initiative, the 100-word description violated the requirements of A.R.S. § 19-102(A).

27 78. Under A.R.S. § 19-121(A)(1), when initiative petitions signature sheets
28 contain an improper description of the proposed initiative, all signatures on the
LIBURDMS\SWDMS\15526480

1 accompanying signature sheets are invalid.

2 79. Upon information and belief, all the petition signature sheets submitted in
3 support of the Initiative contained the offending language, and therefore all signatures on
4 those petitions are invalid.

5 REQUEST FOR RELIEF

6 WHEREFORE, Plaintiffs pray for:

7 A. A declaration that the Initiative violates Article 21 § 1 of the Arizona
8 Constitution.

9 B. A declaration that the signatures on the petition sheets containing the
10 summary of the Initiative described herein are invalid as incomplete, misleading, and
11 unobjective false or misleading under A.R.S. §§ 19-102(A) and 19-121(A)(1).

12 C. An injunction pursuant to A.R.S. § 19-122(C) prohibiting Defendant
13 Secretary of State from certifying and placing the Initiative on the ballot for the
14 forthcoming general election in the State of Arizona for the year 2012 because (1) the
15 Initiative violates Article 21 § 1 of the Arizona Constitution and (2) the petition sheets
16 containing the summary of the Initiative described herein are invalid as incomplete,
17 misleading, and unobjective false or misleading under A.R.S. §§ 19-102(A) and 19-
18 121(A)(1).

19 D. In the alternative, should this case not be resolved prior to the 2012 general
20 election ballot printing deadline, an injunction prohibiting Defendant Secretary of State
21 from counting and canvassing the votes cast on the Initiative.

22 E. An order awarding Plaintiffs' attorney's fees and nontaxable expenses
23 incurred in this action under:

24 1. the private attorney general doctrine as established in *Arnold v.*
25 *Arizona Department of Health Services*, 160 Ariz. 593, 775 P.2d 521 (1989), because the
26 rights sought to be vindicated here (a) benefit a large number of people, (b) require private
27 enforcement, and (c) are of societal importance; and

28 2. any other applicable law authorizing the award of attorney's fees and

1 nontaxable expenses to Plaintiffs.

2 F. An order awarding Plaintiffs their taxable costs and such other and further
3 relief as may be appropriate.

4 DATED this 25th day of July, 2012.

5 SNELL & WILMER L.L.P.

6
7 By: Michael T. Liburdi

8 Michael T. Liburdi
9 Adam E. Lang
10 One Arizona Center
11 400 E. Van Buren, Suite 1900
12 Phoenix, Arizona 85004-2202

13 *Attorneys for Plaintiffs*

14 COPY of the foregoing mailed and
15 e-mailed this 25th day of July, 2012, to:

16 Michele Forney
17 THOMAS C. HORNE
18 ARIZONA ATTORNEY GENERAL
19 1275 West Washington
20 Phoenix, Arizona 85007-2997
21 Attorney for Ken Bennett, Arizona
22 Secretary of State

23 Kimberly A. Demarchi
24 LEWIS AND ROCA
25 40 North Central Avenue
26 Phoenix, Arizona 85004-4429
27 Attorney for Real Party in Interest
28 Open Government Committee

s/ Cindy Tassielli

EXHIBIT "A"

AN INITIATIVE MEASURE

2011 SEP 26 PM 4:10

CREATING AN OPEN PRIMARY GIVING ALL QUALIFIED VOTERS THE RIGHT TO VOTE FOR THE CANDIDATES OF THEIR CHOICE, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VII OF THE CONSTITUTION OF ARIZONA RELATING TO DIRECT PRIMARY ELECTION LAW

TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the State of Arizona:

Section 1. Title. This initiative amendment shall be known as the "Open Elections/Open Government Act."

Section 2. Purpose.

A. This initiative will ensure that every person qualified to vote, including those not affiliated with any political party, has the right to vote at any election for any candidate, regardless of the voter's or the candidate's party affiliation or lack of party affiliation.

B. To provide more choice to all the voters and candidates of Arizona, this proposition:

(1) Abolishes the existing system of taxpayer-funded primary elections to select nominees for political parties.

(2) Creates in its place an Open "Top Two" Primary Election, in which all candidates running for an office appear together on the same ballot and all qualified voters (regardless of party affiliation or lack thereof) are able to vote for the candidate of their choice. The two candidates receiving the highest vote totals for each office would then go on to face each other in the general election.

C. This proposition applies to all Arizona elections in which a candidate's party affiliation, registration, or preference may appear on the ballot. It does not apply to elections in which no party affiliation, registration, or preference appears on the ballot, and it also does not apply to the system for the election of President and Vice President of the United States.

Section 3. Article VII section 10, Constitution of Arizona, is amended by repealing section 10 and replacing it as follows:

~~§ 10. Direct primary election law~~

~~Section 10. The Legislature shall enact a direct primary election law, which shall provide for the nomination of candidates for all elective State, county, and city offices, including candidates for United States Senator and for Representative in Congress. Any person who is registered as no party preference or independent as the party preference or who is registered with a political party that is not qualified for representation on the ballot may vote in the primary election of any one of the political parties that is qualified for the ballot.~~

REGISTRATION (IF ANY) STATED WITH THE CANDIDATES' NAMES ON THIS BALLOT IS NOT AN INDICATION THAT A CANDIDATE HAS BEEN NOMINATED OR ENDORSED BY THAT PARTY, BUT ONLY REFLECTS THE PARTY REGISTRATION (IF ANY) OF THE CANDIDATE."

G. RIGHTS OF POLITICAL PARTIES. NOTHING IN THIS SECTION SHALL RESTRICT THE RIGHT OF INDIVIDUALS TO JOIN OR ORGANIZE INTO POLITICAL PARTIES OR IN ANY WAY RESTRICT THE RIGHT OF PRIVATE ASSOCIATION OF POLITICAL PARTIES. NOTHING IN THIS SECTION SHALL RESTRICT THE PARTIES' RIGHT TO CONTRIBUTE TO, ENDORSE, OR OTHERWISE SUPPORT OR OPPOSE CANDIDATES FOR ELECTIVE OFFICE. POLITICAL PARTIES MAY ESTABLISH SUCH PROCEDURES AS THEY SEE FIT TO ELECT PARTY OFFICERS, ENDORSE OR SUPPORT CANDIDATES, OR OTHERWISE PARTICIPATE IN ALL ELECTIONS, BUT NO SUCH PROCEDURES SHALL BE PAID FOR OR SUBSIDIZED USING PUBLIC FUNDS.

H. LEVEL PLAYING FIELD. ALL QUALIFIED VOTERS AND CANDIDATES SHALL BE TREATED EQUALLY BY STATUTES AND REGULATIONS GOVERNING ELECTIONS REGARDLESS OF THEIR PARTY AFFILIATION OR LACK THEREOF. TO THE EXTENT THAT ANY PRIVILEGES OR PROCEDURES ARE MADE AVAILABLE TO CANDIDATES OR POLITICAL PARTIES, THEY SHALL BE MADE EQUALLY AVAILABLE TO ALL CANDIDATES OR POLITICAL PARTIES, REGARDLESS OF PARTY AFFILIATION, RECOGNITION, OR LACK THEREOF.

Section 4. Severability

If any provision of this initiative is held invalid for any reason, the remaining portions of this initiative will be severed from the void portion and given the fullest possible force and application. The people of Arizona declare their intention that the provisions of this initiative are severable.

Section 5. Submission to voters

The Secretary of State shall submit this proposition to the voters at the next general election as provided by Article XXI, Section 1, Constitution of Arizona.

Section 6. Effective date and implementation by Legislature

If approved by the voters, this Constitutional Amendment shall apply to all elections occurring after January 1, 2014, and shall supersede any existing state statutes, regulations, and elections procedures to the extent that they are inconsistent with this Constitutional Amendment. The Legislature, Secretary of State and local officials shall promptly make such changes in and additions to state statutes, regulations, and elections procedures as are necessary to fully implement the provisions of this Constitutional Amendment in time for the open primary election in 2014 and for every open primary and general election thereafter. Legislation, regulations, and elections procedures implementing this amendment must be consistent with and further the purpose of this amendment to permit and encourage all qualified voters in Arizona to vote in primary and general elections for the candidates of their choice, regardless of the political affiliation of voters and candidates.

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SECRETARY OF STATE

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EXHIBIT "B"


APPLICATION FOR INITIATIVE OR REFERENDUM PETITION SERIAL NUMBER

Secretary of State
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007

The undersigned intends to circulate and file an INITIATIVE or a REFERENDUM (circle the appropriate word) petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Pursuant to Arizona Revised Statutes § 10-111, attached hereto is the full text, in no less than eight point type, of the MEASURE or CONSTITUTIONAL AMENDMENT (circle appropriate word) intended to be INITIATED or REFERRED (circle appropriate word) at the next general election.

SUMMARY: A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be circulated.

This measure will allow all Arizonans, regardless of party affiliation, to vote in a single open primary for the candidates of their choice. The two candidates who receive the most votes in the primary will compete in the general election. There will be a level playing field for all voters and candidates, and the current system of taxpayer-funded partisan primaries will be abolished. This reform will promote open government and encourage the election of candidates who will work together for the good of the state.



Signature of Applicant
Paul Johnson

Printer Name of Applicant
11811 N. Tatum Blvd., Suite 1051

Address
Phoenix, AZ 85028

City State Zip
602-413-8785

Telephone Number

Open Government Committee

Name of Organization (if any)
5125 N. 16th St., Suite B226

Address
Phoenix, AZ 85016

City State Zip
602-684-3143

Telephone Number
Paul Johnson, Chairman

Name of Officer and Title
11811 N. Tatum Blvd., Suite 1051

Address
Phoenix, AZ 85028

City State Zip
602-413-8785

Telephone Number
Paulina Morris, Treasurer

Name of Officer and Title
2525 E. Biltmore Circle A-212

Address
Phoenix, AZ 85016

City State Zip
602-505-7228

Telephone Number

| | |
|----------------------|---------------------------|
| Date of Application | <u>September 26, 2011</u> |
| Signatures Required | <u>259, 213</u> |
| Deadline for Filing | <u>July 5, 2012</u> |
| Serial Number Issued | <u>C-03-2012</u> |
| FOR OFFICE USE ONLY | |

Revised 11/92

CFID# 201200145

2011 SEP 26 PM 4:10
SECRETARY OF STATE

Tassielli, Cindy

From: TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Wednesday, July 25, 2012 8:52 AM
To: DOCKET; Tassielli, Cindy
Subject: AZTurboCourt E-Filing Courtesy Notification

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #588065 has been DELIVERED to Maricopa County Superior Court.

You will be notified when these documents have been processed by the court.

Here are the filing details:

Case Number: CV2012-010717 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)

Case Title: Save Our Vote Opposing C-03-2012, Et.Al. Vs. Benne

Filed By: Michael T Liburdi

AZTurboCourt Form Set: #588065

Keyword/Matter #: 99999.0000

Delivery Date and Time: Jul 25, 2012 8:46 AM MST

Forms:

Summary Sheet (This summary sheet will not be filed with the court. This sheet is for your personal records only.)

Attached Documents:

Amended Complaint: First Amended Verified Complaint

Exhibit/Attachment (Supporting): Exhibits A and B

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SAVE OUR VOTE, OPPOSING C-03-2012,
an unincorporated Arizona political
committee, LISA GRAY, a qualified elector
and taxpayer of the State of Arizona, JAIME
A. MOLERA, a qualified elector and
taxpayer of the State of Arizona, and the
LEAGUE OF WOMEN VOTERS OF
ARIZONA, an Arizona non-profit
corporation,

Plaintiffs,

v.

KEN BENNETT, in his official capacity as
Secretary of State of the State of Arizona,

Defendant,

and

OPEN GOVERNMENT COMMITTEE
SUPPORTING C-03-2012 , an incorporated
Arizona political committee,

Real Party in Interest.

No. CV 2012-010717

VERIFICATION

(Assigned to the Hon. Mark Brain)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

1. I, Jaime A. Molera, am a qualified elector and taxpayer in the State of Arizona.
2. I have read the First Amended Verified Complaint in this matter, know the contents thereof, and state that it is true based on my own knowledge, except as to the

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matters alleged therein upon information and belief, and that as to those matters, I believe them to be true.

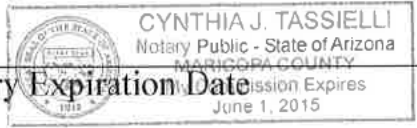
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 25th day of July, 2012.


Jaime A. Molera

SUBSCRIBED AND SWORN to before me on July 25, 2012.


Notary Public


Notary Public - State of Arizona
MARICOPA COUNTY
Commission Expires June 1, 2015

Tassielli, Cindy

From: TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Wednesday, July 25, 2012 9:47 AM
To: DOCKET; Tassielli, Cindy
Subject: AZTurboCourt E-Filing Courtesy Notification

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #587785 has been DELIVERED to Maricopa County Superior Court.

You will be notified when these documents have been processed by the court.

Here are the filing details:

Case Number: CV2012-010717 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)

Case Title: Save Our Vote Opposing C-03-2012, Et.Al. Vs. Benne

Filed By: Michael T Liburdi

AZTurboCourt Form Set: #587785

Keyword/Matter #: 99999.0000

Delivery Date and Time: Jul 25, 2012 9:46 AM MST

Forms:

Summary Sheet (This summary sheet will not be filed with the court. This sheet is for your personal records only.)

Attached Documents:

Miscellaneous: Signed Verification to First Amended Verified Complaint