No. 13-16254

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Arizona Libertarian Party; Arizona Green Party; James March; Kent Solberg; Steve Lackey, Plaintiffs-Appellants, v. Ken Bennett, Arizona Secretary of State, Defendant-Appellee.	On appeal from the United States District Court for the District of Arizona No. CV11-00856-TUC-CKJ

ANSWERING BRIEF OF APPELLEE ARIZONA SECRETARY OF STATE KEN BENNETT

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INTRODUCTION

Contrary to the unsupported allegations in Appellants' Opening Brief, this is not a case in which the Arizona Legislature acted with a discriminatory intent in revising Arizona Revised Statutes ("A.R.S.") § 16-152(A)(5) to preclude minority political parties, such as the Arizona Green Party or the Arizona Libertarian Party, from being given equal access to continued representation on Arizona ballots. The Arizona statute at issue in this case is not even part of Arizona's statutory provisions governing continued representation on the state ballot. And, in revising A.R.S. § 16-152(A)(5), the Arizona Legislature did not preclude or make it more difficult for qualified voters to designate any political party preference when registering to vote.

Instead, this case solely involves the Arizona Legislature's amendment of the appearance of a single box on one of Arizona's voter registration forms—the political party preference designation—to enable more-efficient processing of voter registration, to simplify the registration form itself, and to encourage political stability through a healthy two-party system. Previously, the form provided voters with a blank write-in line designating his or her party preference; the new voter registration form includes checkboxes for the two largest political parties in Arizona (as of the most-recent general election) and the same blank write-in line for designation of any other political party. Plaintiffs-Appellants Arizona

Libertarian Party, Arizona Green Party, James March, Kent Solberg, and Steve Lackey (collectively, the "Minority Parties") allege this single modification to the Arizona voter registration form violates their right to equal protection despite the fact that it still allows voters to register with any political party. Because Minority Parties failed to demonstrate that the modified voter registration form burdens their constitutional rights, the district court properly granted summary judgment to the Defendant-Appellee Arizona Secretary of State Ken Bennett (the "Secretary").

JURISDICTIONAL STATEMENT

The Secretary agrees with Minority Parties' jurisdictional statement.

ISSUE PRESENTED FOR REVIEW

The U.S. Supreme Court has developed a unique standard of review for determining whether a state election law is unconstitutional, under which the level of scrutiny is based on a balancing of any burden imposed on constitutional rights by the state law with the government interest advanced by the law. Under A.R.S. §16-152(A)(5), a qualified Arizona voter may designate any political party preference on the Arizona voter registration form by writing the name of the party on a blank line. Did the district court properly apply the balancing standard to uphold the constitutionality of A.R.S. § 16-152(A)(5) where (a) there was no evidence that A.R.S. § 16-152(A)(5)'s write-in requirement burdened Minority Parties' equal protection rights, (b) A.R.S. § 16-152(A)(5)'s write-in requirement

furthers the State's interests in efficiency and political stability, and (c) A.R.S. § 16-152(A)(5) does not invidiously discriminate against Minority Parties?

STATEMENT OF THE CASE

On December 29, 2011, Minority Parties filed a lawsuit in the district court against the Secretary. (Defendant-Appellee's Supplemental Excerpts of Record ("SER") 1-5.) Minority Parties alleged that by implementing A.R.S. § 16-152(A)(5), the Secretary violated their First and Fourteenth Amendment rights to associate and equal protection of the laws in violation of 42 U.S.C. § 1983. *Id.* Minority Parties sought preliminary and permanent injunctive relief. (SER 4.)

The Parties filed cross motions for summary judgment. (Dkt. 15, 17.) After briefing and oral argument (Dkt. 18-21), the district court denied Minority Parties' motion for summary judgment in its entirety and granted the Secretary's motion for summary judgment (Dkt. 25). The district court entered final judgment in favor of the Secretary and dismissed Minority Parties' Complaint. (Dkt. 26.)

Pursuant to Fed. R. Civ. P. 59(e), Minority Parties moved the district court to amend its judgment to clarify a position taken by Minority Parties' expert regarding voter registration forms in Connecticut and Florida. (Dkt. 27.) On May 13, 2013, the district court granted the Minority Parties' Rule 59(e) motion and vacated its prior order. (Dkt. 30.) On May 22, 2013, the Court entered its revised

order. (Plaintiffs-Appellants Excerpts of Records ("ER") 1-15.) Minority Parties filed their notice of appeal on June 14, 2013. (ER 20-21.)

STATEMENT OF FACTS

In Arizona, a qualified voter may register to vote in one of three ways: (1) submit an online voter registration application using the EZ Voter Registration process, available at the Arizona Department of Transportation's service website[1]; (2) register in person at Arizona Motor Vehicle Division offices by filling out a section of the form for a driver's license or renewal indicating a desire to register to vote[2] (SER 16); or (3) obtain, fill out, and submit a printed Arizona voter registration form (the "Arizona Voter Registration Form") to the county recorder in which the voter is a legal resident (ER 16-19).[3] Any qualified voter that registers by filling out the Arizona Voter Registration Form may submit the form by mail or in person to the appropriate county recorder's office.

The content of the Arizona Voter Registration Form is governed by A.R.S. § 16-152. Pursuant to A.R.S. § 16-152(E), however, the content requirements of

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[1] The Arizona Department of Transportation's authorized service website is found at http://www.servicearizona.com.

[2] A separate Arizona statute governs voter registration through the Arizona Department of Transportation. *See* A.R.S. § 16-112(A). Appellants do not challenge this statute.

[3] This list is exclusive of the National Mail Voter Registration Form or any other method of voter registration authorized by federal law.

the Arizona Voter Registration Form do not apply to the online or written voter registration forms utilized by the Arizona Department of Transportation.

One requirement for the Arizona Voter Registration Form is that a registrant be allowed to indicate political party preference. In 2011, the Arizona Legislature amended A.R.S. § 16-152(A)(5) to read as follows:

> A. The form used for the registration of electors shall contain:
>
> 5. The registrant's party preference. The two largest political parties that are entitled to continued representation on the ballot shall be listed on the form in the order determined by calculating which party has the highest number of registered voters at the close of registration for the most recent general election for governor, then the second highest. The form shall allow the registrant to circle, check or otherwise mark the party preference and shall include a blank line for other party preference options.

Prior to the Arizona Legislature's 2011 amendment, A.R.S. § 16-152(A)(5) solely required a blank space on the form for "[t]he registrant's party preference." A.R.S. §16-152(A)(5) (2010) (amended 2011).

The Secretary is responsible for ensuring that the Arizona Voter Registration Form complies with Arizona law. A.R.S. § 16-152(C). As a result of the Arizona Legislature's revision to A.R.S. § 16-152(A)(5), the Secretary updated Box #14 of the Arizona Voter Registration Form to (1) allow a registrant to indicate his or her party preference in one of the two largest political parties as of the last general

election—currently the Republican and Democratic parties—by checking a box, or (2) indicate a registrant's preference to be affiliated with any other political party by writing the name of the party on a blank write-in line. (ER 16.)

Additionally, the Arizona Voter Registration Form contains written instructions about Box #14. In the "General Information" section of the Arizona Voter Registration Form, the Secretary included instructions that instruct a registrant to do as follows:

> Fill in your political party preference in box 14. If you leave this box blank as a first time registrant in your county, your party preference will be "Party Not Designated". If you leave this box blank and you are already registered in the county, your current party preference will be retained. Please write full name of party preference in box.

(ER 19.)

SUMMARY OF THE ARGUMENT

Minority Parties challenge the district court's conclusion that the amendment to A.R.S. § 16-152(A)(5) does not violate Minority Parties' equal protection rights. The amendment to § 16-152(A)(5) modified a single box on one of Arizona's voter registration forms that allows registrants to designate political party preference. Whereas the prior form merely contained a blank write-in line for a registrant to write in his or her party preference, the revised voter registration form now includes checkboxes for the two largest political parties in Arizona (as of the most-

recent general election), and a write-in line for designation of any other political party.

Minority Parties argue that A.R.S. § 16-152(A)(5) should be reviewed with strict scrutiny because Minority Parties believe that the statute unreasonably discriminates against minor political parties. In doing so, Minority Parties ask this Court to ignore binding case precedent that requires the Court to review state election laws and regulations by balancing (1) the burden, if any, imposed by the law on Minority Parties' constitutional rights and (2) the government interests behind the enactment of the law.

Under the balancing standard of review, Minority Parties' claim that A.R.S. § 16-152(A)(5) violates their constitutional rights to equal protection fails. First, Minority Parties failed to meet their burden of demonstrating that A.R.S. § 16-152(A)(5) imposed a significant burden on the rights of the Arizona Green Party and Arizona Libertarian Party to affiliate with individuals registering to vote in Arizona. Second, any miniscule burden imposed by A.R.S. § 16-152(A)(5) is outweighed by the State's important government interests in maintaining a voter registration form that allows for efficient and cost-effective processing of voter registration forms and furthering political stability through a healthy two-party system. Third, the mere differential treatment between having a checkbox on the voter registration form and having to write a party designation on a blank line does

not rise to the level of being discriminatory. The Court should affirm the district court's entry of summary judgment for the Secretary.

ARGUMENT

I. Arizona Revised Statutes § 16-152(A)(5) Does Not Violate the Equal Protection Clause of the Fourteenth Amendment.

A. Standard of Review.

This Court reviews the district court's grant of summary judgment de novo. *Libertarian Party of Wash. v. Munro*, 31 F.3d 759, 761 (9th Cir. 1994). The district court's entry of summary judgment is appropriate if there are no genuine issues of material fact and the moving party was entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011).

Although the party seeking summary judgment shoulders the initial burden of demonstrating that there is no genuine issue of material fact, the moving party has no burden to negate or disprove matters on which the non-moving party will have the burden of proof at trial. *Sluimer v. Verity, Inc.*, 606 F.3d 584, 586 (9th Cir. 2010). The moving party need only point out to the court that there is an absence of evidence to support the non-moving party's case. *Id.* The burden then shifts to the non-moving party to demonstrate that specific, material facts exist that give rise to a genuine issue. *Id.* Conclusory allegations by the non-moving party,

without more, are insufficient to preclude summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

B. The District Court Applied the Appropriate Balancing Standard of Review for Analyzing Constitutional Challenges to State Election Laws.

Minority Parties challenge A.R.S. § 16-152(A)(5) as a violation of their rights to equal protection under the Fourteenth Amendment.[4] In doing so, Minority Parties argue that the district court should have reviewed the constitutionality of A.R.S. § 16-152(A)(5) under strict scrutiny review. (Opening Br. at 4-10.) Equal protection challenges are traditionally reviewed under longstanding forms of scrutiny based on a statute's effect, or lack thereof, on an inherently suspect class or a fundamental constitutional right. The district court in this case, however, properly applied the more flexible balancing standard of review applicable to constitutional challenges to election laws that has been adopted by the Supreme Court and the Ninth Circuit.[5]

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[4] Although Minority Parties alleged in the district court that A.R.S. § 16-152(A)(5) also violated their First Amendment rights, they have not raised this specific issue on appeal, and have thus waived it. *See, e.g., Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 980 n.6 (9th Cir. 2011); *Christian Legal Soc. Chapter of Univ. of Cal. v. Wu*, 626 F.3d 483, 487 (9th Cir. 2010). However, this Court has recognized that a single analytical framework applies to challenges to election regulations under the First Amendment and the Equal Protection Clause. *Dudum v. Arntz*, 640 F.3d 1098, 1106 n.15 (9th Cir. 2011).

[5] In asking the Court to apply strict scrutiny, Minority Parties cite to *United States v. Carolene Products*, 304 U.S. 144, 152 n.4 (1938) and essentially argue

The U.S. Constitution grants the States authority to regulate their own elections. U.S. Const. art. I, § 4, cl. 1; *see also Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (recognizing that Article I, Section 4 of the Constitution allows "States [to] retain the power to regulate their own elections"). Through this authority, States retain the right to pass laws and regulations governing voter registration. *See Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 196 n.17 (1999).

Although state election laws typically impose some burden on individual constitutional rights, the Supreme Court has refused to automatically apply strict scrutiny in reviewing state election laws. *Burdick*, 504 U.S. at 433 (recognizing that because "[e]lection laws will invariably impose some burden upon individual voters, . . . to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest . . . would tie the hands of States seeking to assure that elections are operated equitably and efficiently"). Instead, the Court has created a more flexible balancing standard of review in which the "character and magnitude of the asserted injury" are balanced

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that the language in that case protecting discrete and insular minorities "describes the situation presented here." (Opening Br. at 5.) Minority Parties' theory is incorrect because they are two political parties and three individuals purporting to be members of those parties and are not members of an inherently suspect class under the traditional equal protection analysis. *See Greenville Cnty. Republican Party Exec. Comm. v. South Carolina*, 824 F. Supp. 2d 655, 669 (D.S.C. 2011) (noting the absence of any precedent categorizing political parties as an inherently suspect class).

with the "interests put forward by the State as justifications for the burden." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *see also Burdick*, 504 U.S. at 433 (1992).

Under the balancing standard, "the rigorousness of [the court's] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434. In other words, the level of review is based on the court's determination as to the severity of the burden on constitutional rights. *See Libertarian Party of N.H. v. Gardner*, 638 F.3d 6, 14 (1st Cir. 2011) (defining the balancing standard as *first* requiring "an assessment of the burdens, if any, placed on a plaintiff's constitutionally protected rights," and *then* "an evaluation of the precise interests put forward by the state as justifications for the burdens").

If the court determines that the state election law at issue imposes a "severe burden" on a party's constitutional rights, then the court must exact a form of review akin to strict scrutiny in which the state election law must be "narrowly drawn to advance a state interest of compelling importance" to withstand the constitutional challenge. *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). On the other hand, state election laws that impose burdens on constitutional rights that are not "severe" trigger less-exacting review, under which a state's "important regulatory interests will usually be enough to justify

reasonable, nondiscriminatory restrictions." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (internal quotation marks omitted). This Court has consistently applied the balancing standard in reviewing the constitutionality of state election regulations. *See, e.g., Wash. State Republican Party v. Wash. State Grange*, 676 F.3d 784, 793-94 (9th Cir. 2012); *Nader v. Brewer*, 531 F.3d 1028, 1034 (9th Cir. 2008); *Caruso v. Yamhill Cnty.*, 422 F.3d 848, 855 (9th Cir. 2005); *Munro*, 31 F.3d at 761.

Importantly, under the balancing standard of review, the plaintiff challenging the election law has the initial burden of proof to demonstrate the severity of the burden that the regulation places on his or her constitutional rights. *See, e.g., Wash. State Republican Party*, 676 F.3d at 791 & n.4 ("Under the First Amendment, plaintiffs bear the initial burden of demonstrating that a challenged election regulation severely burdens their First Amendment rights."); *Munro*, 31 F.3d 759, 762 (9th Cir. 1994) (analyzing a Washington law pertaining to ballot access requirements and determining that the plaintiff, a minor political party, had "the initial burden of showing that Washington's ballot access requirements seriously restrict the availability of political opportunity"). Minority Parties argue that the Secretary bears the burden of justifying the State's election laws and regulations (Opening Br. at 10-11); however, the burden does not shift to the

Secretary until *after* Minority Parties demonstrate the specific burden imposed on their constitutional rights by the law.

Minority Parties accept the flexible balancing standard as it pertains to First Amendment challenges to state election laws, but allege that it is not clear from case precedent whether the balancing standard would apply to an equal protection claim. (Opening Br. at 11.) But Minority Parties concede that "in this particular portion of the legal arena, courts apply the same or similar standards for equal protection analysis as they do for First/Fourteenth Amendment analysis." (*Id.* at 4.) More importantly, as the district court properly concluded, the balancing standard applies to constitutional challenges to state election laws, regardless of whether the claim is brought under the First Amendment or the Equal Protection Clause. (ER 12); *see also Dudum*, 640 F.3d 1106 n.15. As a result, the district court correctly began its analysis of the constitutionality of A.R.S. § 16-152(A)(5) under the appropriate balancing standard. (ER 10-12.)

C. The District Court Properly Determined that A.R.S. § 16-152(A)(5) Did Not Severely Burden Plaintiffs' Constitutional Rights.

Minority Parties argue that A.R.S. § 16-152(A)(5) affects the right of the Arizona Green Party and Arizona Libertarian Party to affiliate with Arizona voters and that it affects the parties' right to maintain continued representation on the ballot. Minority Parties fail to meet their initial burden of demonstrating that

A.R.S. § 16-152(A)(5) imposes significant burdens on either right. [6] The district court correctly determined that A.R.S. § 16-152(A)(5) does not impose a significant burden on Minority Parties' rights because the extent of the burden could be essentially characterized as "writing a party name on a line." (ER 13.)

1. A.R.S. § 16-152(A)(5) does not burden Minority Parties' right to continued representation on the Arizona ballot.

Section 16-152(A)(5) solely modifies the political party preference designation section of the Arizona Voter Registration Form. The statute does not modify the political party designation section of Arizona's online voter registration application through the Arizona Department of Transportation's website or the hard-copy form used by the Motor Vehicles Division. *See* A.R.S. § 16-152(E). The revision to the Arizona Voter Registration Form is a simple one. Instead of the political party designation section on the prior form, which solely included a blank line for a registrant to write in his or her political party preference, A.R.S. § 16-152(A)(5) requires that the form (1) "allow the registrant to circle, check or otherwise mark" a party preference in one of the two political parties with the "highest number of registered voters at the close of registration" for the most-

[6] The Secretary does not provide a specific reference to the Opening Brief because Minority Parties do not argue that A.R.S. § 16-152(A)(5) imposes a severe burden on them and, rather than specifically argue that the statute burdens their rights, argue that there is no basis for distinguishing between the two largest parties and other parties. (Opening Br. at 13-14.) Minority Parties have thus waived the burden arguments that are not raised in their Opening Brief. *See Ellis*, 657 F.3d at 980 n.6.

recent gubernatorial election, and (2) include a blank line for the registrant to write in any other political party preference.

Under Arizona law, a political party can maintain continued ballot access by either (a) maintaining a certain percentage of the total registered voters in the State of Arizona who are registered in that political party, A.R.S. § 16-804(B), or (b) having received at the last general election a certain percentage of votes for the party's candidate "for governor or presidential electors or for county attorney or for mayor, whichever applies," A.R.S. § 16-804(A). Political parties without continued ballot access have to submit a petition for recognition on the ballot, which must be signed by a certain number of qualified electors. A.R.S. § 16-801. Even though A.R.S. § 16-152(A)(5) solely pertains to the appearance of the party preference designation section of the Arizona Voter Registration Form, Minority Parties suggest that the statute affects the rights of the Arizona Green Party and the Arizona Libertarian Party to maintain actual ballot access pursuant to § 16-804. (Opening Br. at 13-14.)

Minority Parties did not demonstrate that A.R.S. § 16-152(A)(5) burdens their right to ballot access. The statute does not alter or modify the Arizona statutory requirements for a political party's continued representation on the ballot pursuant to A.R.S. § 16-804. The Arizona Green Party and the Arizona Libertarian Party—just like all other political parties—are subject to the same rights and

requirements under A.R.S. § 16-804 as they were prior to the 2011 amendment to A.R.S. § 16-152(A)(5). Because A.R.S. § 16-152(A)(5) does not in any way alter how major or minor political parties must qualify for the state ballot, it does not severely burden the Minority Parties. *See Wash. State Republican Party*, 676 F.3d at 795 (finding that a state law that precluded a candidate, whether nominated by a major or minor political party, from appearing on a general election ballot unless he or she finished in the top two in the primary did not severely burden minor political parties because the law gave "major- and minor-party candidates equal access").

Moreover, even if a state statute such as A.R.S. § 16-152(A)(5) that modified a political party designation box of a voter registration form could actually affect a political party's ability to register voters and thus maintain ballot access under A.R.S. § 16-804, Minority Parties failed to provide *any* evidence that their ability to register voters in the Arizona Green Party and the Arizona Libertarian Party has been affected any more than any other political party. *See infra* Part I.C.2. Based on such a lack of evidence, Minority Parties have not met their burden of proof.

Additionally, if Minority Parties had demonstrated that A.R.S. § 16-152(A)(5) actually had some minimal effect on their ability to maintain ballot presence through voter registration, the statute would still not severely burden

Minority Parties' rights because they are still given "reasonable access" to the ballot. *See, e.g.*, *Burdick*, 504 U.S. at 438; *Council of Alt. Political Parties v. Hooks*, 179 F.3d 64, 70-71 (3d Cir. 1999). In analyzing the character and magnitude of the burden that state election laws may have on a plaintiff's right to ballot access, "[t]he question is whether 'reasonably diligent' minor party candidates can normally gain a place on the ballot, or if instead they only rarely will succeed." *Munro*, 31 F.3d at 762.

In Arizona, a political party's entitlement to continued ballot access is not based on voter registration alone. Instead, a political party may also maintain ballot access through receiving enough votes in the prior general election. A.R.S. § 16-804(A). Arizona has ensured that Minority Parties have more than reasonable access to the ballot by allowing any Arizona voter to register as a member of the Arizona Green Party or the Arizona Libertarian Party and allowing minor political parties two different vehicles for getting their candidates on the ballot.

2. Minority Parties failed to demonstrate that A.R.S. § 16-152(A)(5) burdens their rights to affiliate with Arizona voters.

To the extent Minority Parties' position is that A.R.S. § 16-152(A)(5) significantly burdens the rights of the Arizona Green Party and the Arizona

Libertarian Party simply to register Arizona voters, they have also failed to meet their burden.

From the outset, it is not clear to what extent Minority Parties have any constitutional right to be specifically listed as a political party on the Arizona Voter Registration Form. Neither the Supreme Court nor the Ninth Circuit has ever recognized a political party's right to be explicitly listed on a voter registration form. In fact, some courts have held that state laws that *completely* preclude registrants from identifying affiliation with certain minor political parties and organizations do not unnecessarily burden those entities. *See Iowa Socialist Party v. Nelson*, 909 F.2d 1175, 1181 (8th Cir. 1990) ("[W]e conclude that Iowa's refusal to permit registrants to designate [the Iowa Socialist Party] on the voter registration form does not unnecessarily burden the opportunity of the citizen or her party to promote minority interests."). The Arizona Voter Registration Form does not in any way preclude registrants from affiliating themselves with the Arizona Green Party or the Arizona Libertarian Party. Instead, § 16-152(A)(5) requires that a registrant simply write a designation in one of those parties on the blank line in the party preference box.

Nonetheless, Minority Parties offer two specific arguments as to how the party preference designation section of the Arizona Voter Registration Form burdens their rights, each of which reflects, at best, an insignificant burden.

First, Minority Parties speculate that a person registering to vote using the Arizona Voter Registration Form "is essentially told that there are two real political parties, and some unnamed 'other' ones." (Opening Br. at 7.) Minority Parties produced *no evidence* in the district court that any voter who used the Arizona Voter Registration Form actually considered the Republican and Democratic parties the only "real political parties" in Arizona or otherwise experienced any voter confusion based on the form. Although Minority Parties' Complaint included an allegation that personnel at the Motor Vehicles Division "refused to allow" Appellant Steve Lackey to register Libertarian as a result of the "belief that 'Other' referred to Independent, and not any third party," (SER 3, ¶ 10), the Complaint was not verified and Minority Parties never factually developed this allegation in the record. More importantly, Lackey's allegation is not persuasive because, under A.R.S. § 16-152(E), the Motor Vehicles Division is exempt from the requirements of A.R.S. § 16-152(A) and therefore uses an entirely different registration form. (SER 16.) Based on the lack of any evidentiary support, Minority Parties' position is too speculative.

In addition, as noted by the district court, other courts have determined that similar forms of differential treatment of political parties on state ballots pass constitutional muster. (ER 12-13) (citing *Green Party of N.Y. State v. N.Y. State Bd. of Elections*, 389 F.3d 411 (2d Cir. 2004)). For example, in *Libertarian Party*

of New Hampshire v. Gardner, 638 F.3d 6, 9 (1st Cir. 2011), the Libertarian Party challenged the New Hampshire 2008 general election ballot as violating the party's rights under the Equal Protection Clause. The New Hampshire ballot contained a row for each political office open for election that year, i.e., President and Vice-President of the United States, Governor of New Hampshire, U.S. Senator, and U.S. Representative. *Id.* The ballot also contained five columns, one with the header, "Offices," which then listed out each office, and four other columns with the headers "Republican Candidates," "Democratic Candidates," "Other Candidates," and "Write-In Candidates." *Id.* at 9-10. Listed vertically in each column were the names of the candidates for each office. For example, "John McCain and Sarah Palin" were listed in the "Republican Candidates" column in the corresponding row for U.S. President and Vice-President, and "Barack Obama and Joe Biden" were listed in the same row under the "Democratic Candidates" column. The "Other Candidates" column included three different sets of nominees for President and Vice-President: (1) "Ralph Nader and 'Matt' Gonzalez," identified as "Independent"; (2) "George Phillies and Christopher Bennett," identified as "Libertarian"; and "Bob Barr and Wayne A. Root" also identified as "Libertarian." *Id.* at 10.

In its opinion, the court primarily focused on the Libertarian Party's challenge to the inclusion on the ballot of "George Phillies and Christopher

Bennett," two candidates who had not received the party's nomination but were identified on the ballot as "Libertarian." *Id.* at 14-18. Nonetheless, in its equal protection analysis, the court held:

> New Hampshire also creates distinctions on the basis of demonstrated support by allowing recognized parties and political organizations to obtain a column for their candidates on the ballot, while providing no such opportunity for candidates who appear on the ballot in their individual capacities. The Libertarian Party does not directly challenge this aspect of New Hampshire's election law, *and in any event, this differentiation is plainly constitutional*.

Id. at 17 (emphasis added). Although *Libertarian Party of New Hampshire* is a ballot access case and not a voter registration form case, its analysis is persuasive. There, the court found that the New Hampshire ballot, which provided certain political parties with their own individual column identifying their candidates while providing other political parties or organizations with only a collective column that included multiple parties' candidates did not violate the Libertarian Party's rights. Here, the party preference designation of the Arizona Voter Registration Form is similar to the ballot columns on the 2008 New Hampshire ballot. Just as the New Hampshire ballot gave all qualified political parties and organizations a right to place their candidates in the collective column but gave the Republican and Democratic Parties their own column, the Arizona Voter

Registration Form allows a registrant to designate any party affiliation by writing it on a blank line but includes checkboxes for the two largest parties in the State.

Not only have other courts approved forms of ballots that incorporate some minor differential treatment between political parties, but other States continue to use voter registration forms with nearly identical party preference designation boxes. The States of Connecticut and Florida use voter registration forms that list the Democratic and Republican parties along with a blank for indicating affiliation with some other party. (SER 122-25.) Both States have recognized several other smaller political parties. The fact that other States utilize identical forms of voter registration applications indicates that A.R.S. § 16-152(A)(5) does not impose a significant burden on smaller political parties.

Minority Parties also argue that A.R.S. § 16-152(A)(5) discourages registration in the Arizona Green Party and the Arizona Libertarian Party because the length of the blank line on the Arizona Voter Registration Form for designating other political parties is only "approximately 0.9 [inches] long." (Opening Br. at 12.) According to Minority Parties, the blank is "too short to contain even 'Libertarian,' so the registrant must invent an abbreviation, and hope that the registrar understands that." (Opening Br. at 12-13.) Minority Parties do not cite any authority to support their position that the size of the blank line on the Arizona

Voter Registration Form is so inadequate that it creates an unconstitutional burden on Minority Parties' rights and common sense indicates otherwise.

Although Minority Parties point out that the blank line itself is "approximately 0.9 [inches]," the party preference box is approximately one inch wide, and a registrant clearly can utilize the entire space to write out their political party affiliation. (ER 16.) The one-inch-wide party preference box is nearly the exact same size as the blank write-in party preference section of the form used by the Motor Vehicles Division, which applies to all parties. (SER 16.) Minority Parties' complaint about the length of the "Other" line on the Arizona Voter Registration Form is undercut by the fact that Minority Parties do not challenge, nor have they ever challenged, the length of the party preference write-in space on the Motor Vehicle Division's form.

Not only have the Minority Parties failed to articulate exactly how the Arizona Voter Registration Form burdens their rights, but they also failed to provide any of their own evidence supporting actual loss of voter registrants. In the district court, Minority Parties solely relied on statistics attached to the Secretary's motion for summary judgment to argue that voter registration for the Arizona Green Party and the Arizona Libertarian Party had declined. (Dkt. 19.) Minority Parties do not argue on appeal that they presented sufficient evidence on any actual loss of voter registrants and have therefore waived it. *See Ellis*, 657

F.3d at 980 n.6. As a result, Minority Parties failed to demonstrate that A.R.S. § 16-152(A)(5) causes them any significant burden in affiliating with Arizona registered voters.

D. The State's Interests Behind A.R.S. § 16-152(A)(5) Justify the Insignificant Burden to Minority Parties' Constitutional Rights.

Because Minority Parties failed to demonstrate that A.R.S. § 16-152(A)(5) creates a significant burden, much less a severe burden, on their rights to register voters, this Court should apply a "less-exacting review" under the balancing standard. *See Dudum*, 640 F.3d at 1106. Under this form of review, Arizona's interests need not be compelling, but only related to important government interests. The State offered multiple important government interests that justified the insignificant burden placed on the Minority Parties.

One of the State's interests behind A.R.S. § 16-152(A)(5) is maintaining the stability of Arizona's political system through a healthy two-party system, which constitutes an important government interest. *See, e.g.*, *Timmons*, 520 U.S. at 367; *Council of Alt. Political Parties v. Hooks*, 121 F.3d 876, 884 (3d Cir. 1997) (Scirica, J., dissenting); *Green Party of Ark. v. Daniels*, 733 F. Supp. 2d 1055, 1064 (E.D. Ark. 2010); *S.C. Green Party v. S.C. State Election Comm'n*, 647 F. Supp. 2d 602, 616 (D.S.C. 2009). Contrary to Minority Parties' suggestion (Opening Br. at 13), the fact that A.R.S. § 16-152(A)(5) favors the traditional two-party system does not cause the statute to be unconstitutional.

In *Timmons*, the Supreme Court considered a Minnesota statute that prohibited candidates from appearing on a ballot as a candidate from more than one political party, i.e., a "fusion" ban. 520 U.S. at 356-57. Thus, if a particular candidate accepted the nomination of one political party, and subsequent to accepting, another political party wanted to endorse the same individual as its candidate, the Minnesota statute precluded the subsequent party from doing so. *Id.* at 354. A minor political party, the Twin Cities Area New Party, filed a lawsuit alleging that Minnesota's statute violated the party's right to freely associate with the candidate of its choosing. *Id.* at 359. The petitioner argued that fusion-based alliances aided minor political parties in thriving in the political arena. *Id.* at 361.

One of the interests offered by Minnesota in support of its fusion ban was its interest in the stability of its political system. *Id.* at 366. The Court recognized that the "states . . . have a strong interest in the stability of their political systems," and this interest "permits [the states] to enact reasonable election regulations that may, in practice, favor the traditional two-party system." *Id.* at 367. In fact, the Court went as far as to say that "The Constitution permits the Minnesota Legislature to decide that political stability is best served through a healthy two-party system." *Id.* The Court clarified, however, that "the perceived benefits of a stable two-party system will not justify unreasonably exclusionary restrictions." *Id.*

In the past thirty-eight years, the Republican and Democratic parties have continued to be stable while other political parties have come and gone. (SER 6-11, 17-121.) Minor political parties who have qualified at one point or another in the last thirty-eight years for continued ballot access include the Socialist Labor Party, the Arizona Independence Party, the Socialist Worker's Party, the American Party, the American Independent Party, the Restoration Party, the United American Party, the Citizens Party, the Communist Party, the Workers World Party, the New Alliance Party, the Populist Party, the Natural Law Party, the Reform Party, the Maverick Democrat Party, and the U.S. Taxpayers Party. *Id.*

Arizona has a strong governmental interest in ensuring that election officials correctly register applicants who wish to designate one of the two largest and most stable parties as their party preference. This in turn ensures the registrant's ability to participate in that party's primary. *See* A.R.S. § 16-467. Although election officials also have an interest in correctly registering applicants who wish to designate smaller political parties as a party preference, there are countervailing concerns about checkboxes for smaller political parties that are not present with the two largest parties. First, because of the instability of the smaller political parties, the Secretary would be required to change the Arizona Voter Registration Form each year that a smaller party either obtains or loses qualification for continued

representation on the ballot.[7] In contrast, the Republican and Democratic parties have remained stable over a long period of time. Second, requiring registrants to write in their preference for smaller political parties ensures that the registrant is at least aware of the party's name and presumably aware of the party's platform and not just randomly selecting a party. In contrast, the Republican and Democratic party platforms are well publicized in the press.

Using the checkboxes for the two largest political parties also furthers the efficiency of the State's voter registration tabulation and processing system. States have an important governmental interest in ensuring that all aspects of their election processes, including administration, tabulation, and organization of state voter registration, operate efficiently and cost-effectively. *See, e.g.*, *Timmons*, 520 U.S. at 364 ("States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials."); *Libertarian Party v. D.C. Bd. of Elections and Ethics*, 768 F. Supp. 2d 174, 188 (D.D.C. 2011) (finding that the District of Columbia had a "reasonable,

[7] In fact, during the pendency of this appeal, the Arizona Green Party failed to retain sufficient voter registration numbers to qualify for continued representation on the Arizona ballot. *See Arizona's Green Party Loses Recognized Status*, Press Release by the Arizona Secretary of State's Office, Nov. 20, 2013, *available at* http://www.azsos.gov/releases/2013/pressrelease31.htm. The Court can take judicial notice of the official voter registration results presented in the government press release and posted on the Secretary's official website. *See, e.g.*, *Dudum*, 640 F.3d at 1101 n.6; *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

legitimate interest" in "efficiency and cost-effective election administration" such that a statute that allowed the election board to not have to hand count write-in votes unless it the votes would be determinative).

As the Secretary argued before the district court, the State has an important government interest in using checkboxes for the two largest political parties to ensure efficient and cost-effective processing of voter registration forms. *See* Dec. 3, 2012 Transcript, at 12:5-18, attached as Exhibit A to Defendant-Appellee's Unopposed Motion to Supplement the Record on Appeal. By requiring checkboxes on the Arizona Voter Registration Form for the two largest political parties, a substantial number of the forms submitted will include a party preference designation that is easily readable and can be processed quickly.

Minority Parties argue that the Secretary failed to present any justification for A.R.S. § 16-152(A)(5) other than "the advancement of the two major parties at the cost of all other parties." (Opening Br. at 13.) The district court recognized that the Secretary had raised the argument that the State had a government interest in enacting such a "clerical simplification." (ER 13.) And, to the extent Minority Parties attempt in their reply brief to argue that there is insufficient evidence in the record to support the Secretary's position that the revised Arizona Voter Registration Form would have a significant effect on the efficiency of voter registration processing, Minority Parties have waived this issue by not raising

issues of insufficiency of evidence in their Opening Brief. *See Ellis*, 657 F.3d at 980 n.6; *see also Constitution Party of Kan. v. Kobach*, 695 F.3d 1140, 1146 (10th Cir. 2012) (holding that appellants waived their right to assert that there was no evidentiary basis for the State's interest in support of the challenged law by not raising it in the opening brief).

E. Section 16-152 Does Not Invidiously Discriminate Against Minority Parties.

Minority Parties argue that the Court should apply strict scrutiny to A.R.S. § 16-152(A)(5) because the flexible standard of review is "only applicable to genuinely non-discriminatory regulations" and A.R.S. § 16-152(A)(5) is "patently discriminatory." (Opening Br. at 8, 10.) Minority Parties are incorrect in asserting that the statute is discriminatory. In fact, on its face, it does not favor any one political party. Moreover, even if the statute treats political parties that receive the highest number of votes in the prior general election differently than other minor political parties, mere differential treatment does not rise to the level of unconstitutional invidious discrimination unless the treatment severely burdens the minor political parties.

As the district court properly determined, A.R.S. § 16-152(A)(5) is not discriminatory because it is facially neutral. (ER 12.) It does not discriminate against any specific political party. Instead, A.R.S. § 16-152(A)(5) provides that the two largest political parties based on the "number of registered voters at the

close of registration for the most recent general election for governor" shall be listed on the Arizona Voter Registration Form with a checkbox. The statute does not preclude any party—including Minority Parties—from qualifying under the statute to be listed on the form with a checkbox. Moreover, the statute in no way precludes a potential registrant from indicating his or her political party preference, even if it is not one of the two largest political parties.

Minority Parties argue that, despite the facial neutrality of the statute, it is still discriminatory because "[a] statute which gives advantage to the two largest parties is a statute which rewards the Democratic and Republican Parties, and every legislator voting for it knew that." (Opening Br. at 9.) There is no evidence in the record that the members of the Arizona legislature passed A.R.S. § 16-152(A)(5) with any intent to discriminate.

More importantly, even if the Court determines that the statute is not facially neutral, the statute is not per se discriminatory merely because it treats certain political parties differently than others. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968) ("It is true that this Court has firmly established the principle that the Equal Protection Clause does not make every minor difference in the application of laws to different groups a violation of our Constitution. But we have also held that 'invidious' distinctions cannot be enacted without a violation of the Equal Protection Clause.").

A state election law is only deemed invidiously discriminatory towards a minor political party such that it violates the Equal Protection Clause if the law results in a significant burden on the minor political party's substantive election-related rights that is different than other political parties.

Plaintiffs primarily rely on the Supreme Court's decision in *Williams*, in which the Court analyzed various provisions of Ohio's election statutes that required that in order for new political parties to be placed on the state ballot, they had to (1) obtain signature petitions from qualified electors; and (2) obtain petitions signed by a minimum of 15% of qualified electors based on the total number of electors casting ballots in the prior gubernatorial election. 393 U.S. 23, 24-25. Under the Ohio laws, existing parties only needed to obtain 10% of the votes in the last gubernatorial election and did not need to obtain signature petitions. *Id.* The Court examined the nature of the interests of the minority parties given the facts and circumstances of the case, focusing on the right to ballot access and an equal opportunity to win votes. *Id.* The Court found that minor parties had to jump a much higher hurdle to be even placed on the ballot, while the major parties did not have to do much of anything to stay on the ballot. *Id.* at 32. Moreover, the Court noted that the extremely restrictive provisions of the Ohio law in effect allowed the Republican and Democratic parties to "retain a permanent monopoly on the right to have people vote for or against them." *Id.*

Unlike in *Williams*, the statute at issue here does not create any requirement for ballot access that is different for major and minor political parties. And A.R.S. § 16-152(A)(5) does not create a significant hurdle for registrants to affiliate with minor political parties on the registration form—they simply must write the name of the preferred political party on a blank line.

The Third Circuit's analysis in *Patriot Party of Allegheny County v. Allegheny County Department of Elections*, 95 F.3d 253 (3d Cir. 1996) further illustrates the distinction between invidious discrimination and minor differences. In *Patriot Party*, the Third Circuit analyzed a provision of the Pennsylvania Election Code that expressly allowed major political parties to cross-nominate candidates, but precluded such cross-nomination by minor political parties. *Id.* at 255. Citing to *Williams*, the Third Circuit recognized that "the Equal Protection Clause does not make every minor difference in the application of laws to different groups a violation of our Constitution." *Id.* at 269. The court characterized the Pennsylvania law as "invidious discrimination" because it gave major political parties certain rights that were not granted to minor political parties. According to the court,

> Pennsylvania's decision to ban some consensual political alliances and not others burdens individuals who support a minor party's platform because it forces them to choose among three unsatisfactory alternatives: "wasting" a vote on a minor party candidate with little chance of winning, voting for a second-choice major party candidate, and not voting at all. This

> burden would be assuaged if minor political parties were accorded an equal right to cross-nominate willing major party candidates.

Id. at 269.

Again, A.R.S. § 16-152(A)(5) is not invidious discrimination because it does not give major political parties any election-related substantive right, such as the ability to cross-nominate candidates, that minor political parties are left without.

Contrary to Minority Parties' position, courts have found that state election laws that may favor certain political parties over others are not invidiously discriminatory when the prescribed differential treatment does not equate to a significant burden to the minor political party challenging the statute. *See, e.g.*, *Chamness v. Bowen*, 722 F.3d 1110 (9th Cir. 2013) (holding that a California law that precluded a candidate on the ballot from listing his political party preference as "Independent," despite candidates from other political parties qualified under California's election code to be identified on the ballot, represented a "reasonable, nondiscriminatory restriction"); *Green Party of Ark.*, 733 F. Supp. 2d at 1064 (determining that an Arkansas law that may discriminate "between parties with substantial community support and those without it . . . is neither unreasonable nor invidiously discriminatory").

The district court properly determined that, even if A.R.S. § 16-152(A)(5) required some differential treatment among political parties, it was not

discriminatory. Because A.R.S. § 16-152(A)(5) does not give major political parties in Arizona any actual, substantive right that is different than minor political parties, Minority Parties cannot demonstrate that the statute invidiously discriminates in a way that makes it unconstitutional.

F. Section 16-152(A)(5) Does Not Have to Be Narrowly Tailored to Further the State's Interests.

Finally, Minority Parties contend that, as an alternative to A.R.S. § 16-152(A)(5), the State could have passed a statute that somehow gave "all five parties check boxes on the registration form" (Opening Br. at 14.) Apparently what Minority Parties propose is a law that requires that the Secretary's Arizona Voter Registration Form include a checkbox designation for any party that maintains continuing ballot access pursuant to A.R.S. § 16-804, of which there are currently four—Republican, Democrat, Libertarian, and Americans Elect.

There are numerous problems with Minority Parties' suggestion. First, under the less-exacting review of the balancing standard, the State is not required to have narrowly tailored the law to minimize any interference with Minority Parties' constitutional rights. *See, e.g.*, *Munro*, 31 F.3d at 764 (noting that, under the balancing standard, the State of Washington need not adhere to the plaintiff's suggestion to verify nomination petition signatures in a shorter period of time because "the Constitution does not require Washington to adopt a system that is the most efficient possible; it need only adopt a system that is rationally related to

achieving its goals"); *Green Party of Ark.*, 733 F. Supp. 2d at 1062 (finding that, under the balancing standard, "Arkansas's statutes need not be narrowly drawn to minimize the interference with the Green Party's constitutional rights").

Second, the State has an interest in preventing unnecessary administrative and financial burdens in designing and administering its voter registration system and procedures. *See Iowa Socialist Party*, 909 F.2d at 1179. In the past thirty-eight years at least sixteen minor political parties have qualified at one point or another for continued ballot access in Arizona. *See supra* Part I.D. If the State had to revise its Arizona Voter Registration Form each election cycle to reflect any political parties that have qualified, or failed to qualify, for continued ballot access, it would incur substantial financial costs and administrative burdens.

CONCLUSION

For the foregoing reasons, Secretary Bennett urges the Court to affirm the district court's entry of summary judgment in his favor.

Respectfully submitted this 22nd day of November, 2013.

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Defendant-Appellee states that it is not aware of any related cases pending in the Ninth Circuit.

s/ Michele L. Forney
Michele L. Forney
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 8,223 words, excluding the parts of the brief that Fed. R. App. P. 32(a)(7)(B)(iii) exempts.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in fourteen-point Times New Roman type style.

Dated this 22nd day of November, 2013.

s/ Michele L. Forney
Michele L. Forney
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that on November 22, 2013, I electronically filed the foregoing with the Clerk of the Court for the United Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

United States Court of Appeals
Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: s/ Maureen Riordan

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ADDENDUM

Effective: July 20, 2011

Arizona Revised Statutes Annotated Currentness
Title 16. Elections and Electors (Refs & Annos)
Chapter 1. Qualification and Registration of Electors (Refs & Annos)
Article 4. Forms (Refs & Annos)
§ 16-152. Registration form

A. The form used for the registration of electors shall contain:

1. The date the registrant signed the form.

2. The registrant's given name, middle name, if any, and surname.

3. The complete address of the registrant's actual place of residence, including street name and number, apartment or space number, city or town and zip code, or such description of the location of the residence that it can be readily ascertained or identified.

4. The registrant's complete mailing address, if different from the residence address, including post office address, city or town, zip code or other designation used by the registrant for receiving mail. The form shall also include a line for the registrant's e-mail address (optional to registrant).

5. The registrant's party preference. The two largest political parties that are entitled to continued representation on the ballot shall be listed on the form in the order determined by calculating which party has the highest number of registered voters at the close of registration for the most recent general election for governor, then the second highest. The form shall allow the registrant to circle, check or otherwise mark the party preference and shall include a blank line for other party preference options.

6. The registrant's telephone number, unless unlisted.

7. The registrant's state or country of birth.

8. The registrant's date of birth.

9. The registrant's occupation.

10. The registrant's Indian census number (optional to registrant).

11. The registrant's father's name or mother's maiden name.

12. One of the following identifiers for each registrant:

(a) The Arizona driver license number of the registrant or nonoperating identification license number of the registrant that is issued pursuant to § 28-3165.

(b) If the registrant does not have an Arizona driver license or nonoperating identification license, the last four digits of the registrant's social security number.

(c) If the registrant does not have an Arizona driver license or nonoperating identification license or a social security number and the registrant attests to that, a unique identifying number consisting of the registrant's unique identification number to be assigned by the secretary of state in the statewide electronic voter registration data- base.

13. A statement as to whether or not the registrant is currently registered in another state, county or precinct, and if so, the name, address, county and state of previous registration.

14. The question to the registrant "Are you a citizen of the United States of America?", appropriate boxes for the registrant to check "yes" or "no" and a statement instructing the registrant not to complete the form if the registrant checked "no".

15. The question to the registrant "Will you be eighteen years of age on or before election day?", appropriate boxes for the registrant to check "yes" or "no" and a statement instructing the registrant not to complete the form if the registrant checked "no".

16. A statement that the registrant has not been convicted of treason or a felony, or if so, that the registrant's civil rights have been restored.

17. A statement that the registrant is a resident of this state and of the county in which the registrant is register- ing.

18. A statement that executing a false registration is a class 6 felony.

19. The signature of the registrant.

20. If the registrant is unable to sign the form, a statement that the affidavit was completed according to the registrant's direction.

21. A statement that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

22. A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

23. A statement that the applicant shall submit evidence of United States citizenship with the application and that the registrar shall reject the application if no evidence of citizenship is attached.

B. A duplicate voter receipt shall be provided with the form that provides space for the name, street address and city of residence of the applicant, party preference and the date of signing. The voter receipt is evidence of valid registration for the purpose of casting a provisional ballot as prescribed in § 16-584, subsection B.

C. The state voter registration form shall be printed in a form prescribed by the secretary of state.

D. The county recorder may establish procedures to verify whether a registrant has successfully petitioned the court for an injunction against harassment pursuant to § 12-1809 or an order of protection pursuant to § 13-3602 and, if verified, to protect the registrant's residence address, telephone number or voting precinct number, if appropriate, from public disclosure.

E. Subsection A of this section does not apply to registrations received from the department of transportation pursuant to § 16-112.

CREDIT(S)

Added by Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980. Amended by Laws 1984, Ch. 214, § 3; Laws 1990, Ch. 321, § 1, eff. Nov. 19, 1990; Laws 1991, Ch. 310, § 13, eff. Jan. 1, 1992; Laws 1991, 3rd S.S., Ch. 4, § 1; Laws 1994, Ch. 378, § 10, eff. Jan. 1, 1995; Laws 1995, Ch. 95, § 1. Laws 2003, Ch. 260, § 5, eff. Dec. 1, 2003; Laws 2004, Ch. 184, § 2. Approved election Nov. 2, 2004, effective Dec. 8, 2004. Amended by Laws 2005, Ch. 98, § 3; Laws 2011, Ch. 339, § 1.

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

HISTORICAL AND STATUTORY NOTES