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9
 10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF ARIZONA**

12 Arizonans for Fair Elections (AZAN), an
 13 Arizona nonprofit corporation; Arizonans
 Fed Up with Failing Healthcare (Healthcare
 14 Rising AZ), an Arizona nonprofit
 15 corporation; and Randi L. Turk, an
 individual,

16 Plaintiffs,

17 vs.

18
 19 Katie Hobbs, Arizona Secretary of State, et
 20 al.

21 Defendants.
 22
 23

No. CV-20-00658-PHX-DWL

**RESPONSE OF ARIZONA
 SECRETARY OF STATE KATIE
 HOBBS TO MOTION FOR
 TEMPORARY RESTRAINING
 ORDER AND PRELIMINARY
 INJUNCTION**

24 **INTRODUCTION**

25 In light of the current public health emergency, Katie Hobbs, in her official capacity
 26 as Arizona Secretary of State, does not oppose the narrow relief sought by Plaintiffs for
 27 this election year: access to the E-Qual system to electronically collect signatures for
 28 statewide initiative petitions, just as some candidates already do for nomination petitions.

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1 Indeed, the Secretary believes that such relief would further the public interest by
2 protecting public health while facilitating the continuity of democratic processes—here,
3 Arizonans’ fundamental constitutional right to legislate by initiative—in the midst of an
4 unprecedented global pandemic. Should the Court grant the relief that Plaintiffs request,
5 the Secretary stands ready to begin implementing the necessary modifications to the E-
6 Qual system to allow qualified voters to electronically sign statewide initiative petitions
7 but requests that the Court place certain limitations on the relief to minimize administrative
8 burden under the current circumstances.

9 **FACTUAL BACKGROUND**

10 **I. The Initiative Process in Arizona.**

11 Arizona’s Constitution grants its citizens the power to propose laws and
12 constitutional amendments through initiative. Ariz. Const. art. IV, Pt. 1 § 1(1). Statewide
13 initiative petitions must be filed with the Arizona Secretary of State no later than four
14 months before the election at which the measure will be voted upon. *Id.* § 1(4). Initiative
15 petitions for statutory changes must be signed by at least ten percent of the total number of
16 all votes cast in the most recent gubernatorial election, and petitions for constitutional
17 amendments must be signed by at least 15 percent. *Id.* § 1(2). This year, the signature
18 minimums are 237,645 and 356,467, respectively, and the deadline to submit petitions is
19 July 2, 2020. *See* <https://azsos.gov/elections/initiative-referendum-and-recall>.

20 To begin the process of circulating petitions, an initiative proponent must file with
21 the Secretary a statement of organization to register as a political committee and an
22 application for a petition serial number, including with the application a copy of the text of
23 the measure and a 100-word summary of its principal provisions. A.R.S. § 19-111(A).
24 Upon receipt of these materials, the Secretary assigns an official serial number to the
25 petition, which must appear on the lower right-hand corner of each copy of the petition.
26 A.R.S. § 19-111(B).

27 Signature sheets, a template of which is provided by the Secretary, must be printed
28 on legal-sized paper and must include a descriptive title of the initiative, a 100-word

1 summary, the petition serial number, and an indication whether the circulator is paid or is
2 a volunteer. A.R.S. §§ 19-102, 19-121(A). The signature sheets must be attached at all
3 times during circulation to a full and correct copy of the title and text of the measure.
4 A.R.S. § 19-112(B). Only qualified electors may sign and must do so in the presence of
5 the circulator. A.R.S. § 19-112(A). The circulator must sign an affidavit (printed on the
6 back of the signature sheet) before a notary public, subscribing and swearing that: (i) each
7 of the names on the sheet was signed and the name and address were printed by the elector
8 on the date indicated; (ii) in his or her belief, each signer was a qualified elector of the
9 applicable county on the date indicated; and (iii) at all times during circulation of the
10 signature sheet, a copy of the title and text was attached to the signature sheet. A.R.S. § 19-
11 112(C).

12 Once signature circulation is complete, the initiative proponent files the petition
13 sheets by tendering them to the Secretary, who then issues a receipt indicating the estimated
14 number of purported signatures and sheets. A.R.S. § 19-121(B). Once a receipt is issued,
15 no additional petition sheets may be accepted for filing. *Id.*

16 Upon filing of the petition, the Secretary has 20 days to conduct a review and to
17 remove in their entirety any deficient petition sheets (*e.g.*, those not attached to a copy of
18 the title and text of the measure) and strike through any individual signatures missing any
19 accompanying required information (*e.g.*, an address or date). A.R.S. § 19-121.01(A). The
20 Secretary must then randomly select 5% of the total signatures for verification by the
21 County Recorders. A.R.S. § 19-121.01(B). Once the Secretary sends the random samples
22 to the County Recorders, the Recorders have 15 days to verify the signatures and the
23 electors' eligibility and then certify to the Secretary which signatures were disqualified,
24 along with the overall disqualification rate. A.R.S. § 19-121.02. The Secretary then has
25 72 hours to determine the total number of valid signatures based on the Secretary's initial
26 review and the County Recorders' signature verification. A.R.S. § 19-121.04(A). If the
27 remaining valid signatures equal or exceed the minimum amount required by the
28 Constitution, the Secretary notifies the proponent committee and the Governor that the

1 initiative will be placed on the ballot. A.R.S. § 19-121.04(B). If the remaining valid
 2 signatures do not satisfy the constitutional minimum, the Secretary notifies the proponent
 3 that the initiative will not be placed on the ballot. A.R.S. § 19-121.04(C).

4 **II. The E-Qual System.**

5 Candidates for public office in Arizona must submit nomination petitions with a
 6 required number of signatures from qualified electors. A.R.S. § 16-314(B). The Secretary
 7 is statutorily vested with the authority to create a secure internet portal by which state and
 8 federal candidates can create, use, and submit petitions in electronic form for qualified
 9 electors to sign electronically. A.R.S. §§ 16-316, 16-318.¹ Those statutes require that the
 10 system provide a method to verify the identity and eligibility of qualified electors who sign
 11 a petition. *Id.*

12 Pursuant to these statutes, the Secretary has developed an electronic platform for
 13 signature collection called E-Qual. The E-Qual system allows for qualified voters to sign
 14 nomination petitions for federal, statewide, and legislative candidates through a secure
 15 internet portal that properly verifies the voter's identity and eligibility to sign a particular
 16 petition. *Dul Decl.* at 2 ¶¶ 3, 8-10. Candidates may choose to use E-Qual instead of
 17 collecting signatures on hard-copy petition forms or as a supplement to their hard-copy
 18 signatures. *Id.* at 2 ¶ 3. In order to use E-Qual to collect signatures electronically,
 19 candidates must first create an account in the Secretary of State's Candidate Portal. *Id.* at
 20 3 ¶ 5. Candidate Portal enables candidates to create an E-Qual petition, upload nomination
 21 paperwork, and populate their online profile, which will be displayed on the Secretary of
 22 State's elections website once the candidate qualifies for the ballot. *Id.* When a candidate
 23 clicks "Create E-Qual Petition" in Candidate Portal, the candidate is prompted to review
 24 and approve the information in the petition caption. *Id.*

25 Once a candidate has created their E-Qual petition, the candidate can circulate the

26 ¹ The Secretary also is tasked with making the electronic system available to local
 27 candidates, but that system is still under development due to the logistical complexities of
 28 accommodating numerous jurisdictions' election systems and providing the necessary
 training and administrative support for local filing officers and candidates. A.R.S. § 16-
 317; *Dul Decl.* at 5 ¶ 4.

1 weblink to voters to sign the petition. *Id.* at 3 ¶ 6. An eligible voter may also access a
2 candidate’s E-Qual petition by going directly to the E-Qual website and viewing the
3 petitions available for that voter to sign. *Id.* When a candidate is ready to file their
4 nomination paperwork, the candidate will log in to their Candidate Portal account, “close
5 out” their E-Qual petition, print the petition, and sign the cover page which contains a
6 circulator statement. *Id.* at 3 ¶ 7. The printed E-Qual petition lists each signer’s printed
7 name, actual residence address, date of signing, and voter identification number and enters
8 “/S/” followed by the voter’s first name and last name into the signature field. *Id.* at 3–4
9 ¶ 7. The candidate must print and file the E-Qual petition and signed cover page with the
10 Secretary’s office by the filing deadline for their E-Qual signatures to apply to their total
11 signature count. *Id.* at 4 ¶ 7.

12 Registered voters who wish to sign a petition electronically through E-Qual must
13 first authenticate their identity by entering into the log-in screen the voter’s name and date
14 of birth, and either the voter’s: (i) Arizona driver’s license number, *or* (ii) voter
15 identification number and last four digits of the voter’s Social Security number. *Id.* at 4
16 ¶ 8. The information provided must match the voter’s registration record in order for the
17 voter to log in to E-Qual and sign petitions electronically. *Id.*

18 In addition to verifying the voter’s identity by authenticating the voter’s identifying
19 information at log-in, E-Qual interfaces with the statewide voter registration system—the
20 Arizona Voter Information Database (AVID)—to verify the voter’s registration status and
21 assigned districts, and to determine the petitions the voter is eligible to sign. *Id.* at 4 ¶ 9.
22 If E-Qual is unable to authenticate eligibility to sign because the person is not registered to
23 vote or their registration status does not make them a qualified signer, a notification
24 message is displayed and the user will not be able to access the system. *Id.* Because E-
25 Qual verifies that a person is properly registered, resides in the correct district to be
26 qualified to sign a particular petition, and is otherwise eligible to sign that petition, E-Qual
27 signatures are generally counted as valid without further review by the filing officer or the
28 County Recorder unless a court challenge is filed and the specific signature is challenged.

1 *Id.* at 4 ¶ 10.

2 **III. Feasibility of Making E-Qual Available to Statewide Initiative Measures.**

3 If the Court were to order that the Secretary allow Plaintiffs to use the E-Qual system
 4 to electronically collect signatures for statewide initiative petitions this year, the
 5 Secretary's office estimates that it could develop and implement such functionality in about
 6 four weeks' time. *Id.* at 4 ¶ 11. It is feasible to create a statewide initiative petition in E-
 7 Qual, the layout of which would be populated with the necessary data about the initiative—
 8 including the serial number and full title and text of the measure—that is already captured
 9 in the Secretary's systems and is displayed on the Secretary's website. *Id.* at 5 ¶ 12. An
 10 initiative committee could be provided with credentials to manage its E-Qual petitions
 11 similar to how candidates manage their nomination petitions in the system. *Id.* at 5 ¶ 13.
 12 The committee could share a weblink to the petition with electors who could then access
 13 and sign the petition electronically after providing identifying information that verifies
 14 their identity and is checked against AVID to verify their eligibility to sign the E-Qual
 15 petition. *Id.* When the initiative committee is ready to file the petition, it would simply
 16 close out the E-Qual petition, at which point the system will generate a circulator
 17 coversheet and PDF list or CSV file of the first and last name, residential address, date of
 18 signing, and voter identification number for each voter who signed the petition. *Id.*

19 The list of E-Qual signers and signed circulator coversheet could then be filed with
 20 the Secretary's Office along with any signatures collected on hard-copy petition sheets. *Id.*
 21 Once the petition is closed out and the PDF list or CSV file of signers is created, voters can
 22 no longer sign the petition, nor can the petition be re-opened. *Id.*

23 **ARGUMENT**

24 **I. The Secretary Does Not Oppose the Narrow Relief Plaintiffs Seek and Can
 25 Implement Necessary Changes to E-Qual If Ordered by the Court.**

26 The COVID-19 pandemic has necessitated drastic adjustments to many facets of
 27 life in Arizona over the last several weeks, and these adjustments will likely continue for
 28 at least the next several months. In light of the unprecedented challenges created by the
 current public health emergency and the known risks inherent to in-person interactions, the

1 Secretary does not oppose Plaintiffs’ request that they be permitted to electronically collect
2 signatures for statewide initiative petitions through E-Qual in advance of the July 2, 2020
3 filing deadline. Rather, the Secretary believes that such relief would further the public
4 interest by protecting public health while facilitating the continuity of democratic
5 processes—here, Arizonans’ constitutional right to legislate by initiative.

6 Should the Court grant the relief that Plaintiffs request, the Secretary can implement
7 the necessary modifications to the E-Qual system to allow qualified voters to electronically
8 sign statewide initiative petitions this year. As detailed above, the E-Qual system is
9 currently available for federal, statewide, and legislative candidates to electronically collect
10 nomination petition signatures. Expanding E-Qual to allow for electronic signature
11 collection for statewide initiatives can be accomplished in approximately four weeks. Dul
12 Decl. at 4 ¶ 11. Because the E-Qual system interfaces with the statewide voter registration
13 database to verify voter identity and eligibility to sign a given petition, the system obviates
14 the need to manually verify the identity and registration status of those who sign an E-Qual
15 petition. *Id.* For these reasons, the Secretary does not oppose Plaintiffs’ requested relief.

16 **II. If the Court Grants Plaintiffs’ Request, the Secretary Requests Three**
17 **Limitations to Limit Administrative Burden and Protect the Safety of the**
18 **Secretary’s Staff.**

19 While the Secretary does not oppose Plaintiffs’ request to be allowed to use E-Qual
20 to collect signatures for statewide initiatives in light of the extraordinary circumstances
21 created by the current public health emergency, the Secretary respectfully requests that, if
22 the Court were to order such relief, it impose three limitations to avoid imposing undue
23 administrative burden on the Secretary’s office and help protect the safety of the
24 Secretary’s staff. The Court has “broad latitude in fashioning equitable relief,” *High Sierra*
25 *Hikers Ass’n v. Blackwell*, 390 F.3d 630, 641 (9th Cir 2004) (internal quotation marks
26 omitted), and can provide a remedy that is “no more burdensome to the [Secretary] than
27 necessary to provide complete relief to the plaintiffs before the court.” *L.A. Haven*
28 *Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011) (internal quotation marks
omitted).

1 Specifically, for the reasons detailed below, if the Court were to grant Plaintiffs'
2 requested relief, the Secretary requests that the Court's order: (i) limit relief to those
3 initiatives that have already applied for a petition serial number as of the filing of this
4 lawsuit; (ii) require initiative committees to submit, upon the creation of their E-Qual
5 petition, all signatures collected on paper petition sheets up to that date, and allow those
6 committees one supplemental filing, including E-Qual and/or traditional signatures, by the
7 July 2, 2020 deadline; and (iii) specify whether the 5% sample of signatures required by
8 A.R.S. § 19-121.01(B) to be randomly drawn from all signatures submitted for a petition
9 should include E-Qual signatures or only those signatures submitted on a hard-copy
10 petition sheet.

11 **A. Limiting Relief to Already-Active Initiative Measures.**

12 While implementing the necessary technical functionality to make E-Qual available
13 to initiative measures would be a one-time requirement that is feasible, maintaining and
14 supporting a large number of individual E-Qual petitions for statewide initiative measures
15 could present significant workload and infrastructure challenges. *Dul Decl.* at 6 ¶ 15. The
16 number of signatures at issue for even a few statewide initiative measures could dwarf that
17 for all candidate petitions historically handled by the system by several orders of
18 magnitude. For example, in the 2020 candidate filing period that just ended, 226 candidates
19 filed nomination petitions with the Secretary's office and qualified for the ballot. *Id.* Over
20 half of those candidates filed fewer than 1,000 signatures and, altogether, the 226
21 candidates filed approximately 338,000 signatures, only about 17% of which were E-Qual
22 signatures. *Id.* By comparison, a single statewide statutory initiative measure requires
23 237,645 signatures to qualify for the ballot; a constitutional measure requires 356,467
24 signatures. *Id.*

25 The Secretary anticipates needing to bring on additional webserver to support the
26 expanded workload, and the system would need to support additional workload for each
27 additional statewide measure that is allowed to collect signatures on E-Qual. *Id.* In
28 addition to the infrastructure demands, each additional statewide initiative with an E-Qual

1 account will require staff time to on-board the new initiative committee and provide
2 troubleshooting and support as issues arise with specific petitions. *Id.* The more initiative
3 petitions there are with E-Qual accounts, the higher the demands for such support will be,
4 and the higher the burden for the Secretary's staff. *Id.*

5 As a result, an order that the Secretary make E-Qual available to statewide initiative
6 measures should be limited to those initiative measures that have applied for a petition
7 serial number as of the filing of this lawsuit. Doing so would enable the Secretary to
8 develop and implement the necessary systems feasibly while limiting accommodation to a
9 discrete number of measures (encompassing each Plaintiff in this case) and avoiding the
10 administrative burden of onboarding and supporting currently unknown numbers of new
11 initiative measures. Such a limit would also ensure fairness by making relief available to
12 Plaintiffs and those committees that have been active in, and expended resources on,
13 collecting signatures and could not have anticipated or planned for the exigencies of the
14 COVID-19 pandemic.

15 **B. Requiring Submission of Paper Petitions Upon Creating an E-Qual**
16 **Petition.**

17 In addition, if the Court were to grant Plaintiffs' requested relief, the Secretary
18 respectfully requests the Court also require initiative measures that wish to utilize the E-
19 Qual system to submit, upon their creation of their E-Qual petition, all signatures collected
20 on paper petitions up to that date, and allow those committees to submit one supplemental
21 filing, including E-Qual signatures and any additional traditional signatures gathered after
22 creation of the E-Qual petition, by the July 2, 2020 filing deadline. This would be
23 notwithstanding A.R.S § 19-121(B), which provides that an initiative petition is deemed
24 filed once petition sheets are tendered to the Secretary and may not thereafter be
25 supplemented with additional petition sheets.

26 Providing for such staggered submission, and having the final, supplemental filing
27 or the filing deadline (whichever is earlier) trigger the start of the 20-day period for the
28 Secretary to complete her processing duties, would enable the Secretary's staff to process
the paper petition sheets in a manner that complies with current public health

1 recommendations on social distancing and allow them to complete initial processing in a
2 timely manner despite reduced staffing in the office due to COVID-19. Indeed, in light of
3 public health directives and recommendations, most of the Secretary's staff have been
4 transitioned to teleworking, particularly those most vulnerable or with caretaker or
5 childcare needs. Dul Decl. at 7 ¶ 17.

6 Once a statewide initiative proponent files its petition and the hundreds of thousands
7 of necessary signatures, the Secretary ordinarily would have only 20 days to process the
8 petition sheets and conduct the initial review required by Arizona law. A.R.S. § 19-
9 121.01(A). During this process, the Secretary's staff must: receive the hard-copy petitions,
10 de-staple each petition sheet from the title and text of the measure, conduct an initial review
11 of petition sheets for deficiencies that disqualify an entire sheet, separate wholly
12 disqualified petition sheets from the sheets that need to be scanned into the petition review
13 software for review of individual signature lines, bates-number all sheets, and scan all
14 sheets into the system. Dul Decl. at 7 ¶ 18. These are all time- and labor-intensive tasks
15 that cannot be done remotely. *Id.* And this is all before each individual signature can be
16 reviewed through a petition review software. If all petition sheets were filed at once on or
17 near the July 2, 2020 deadline, the Secretary anticipates needing up to 60 staff, including
18 temporary staff, in the office at once—in close proximity to one another and contrary to
19 public health recommendations—to timely process the petitions within the statutory 20-
20 day period. *Id.*

21 **C. Specifying Whether 5% Sample Shall Include E-Qual Petitions.**

22 Finally, the Secretary notes that, following the 20-day initial review period for filed
23 initiative petitions, she must randomly select 5% of the total signatures for verification by
24 the County Recorders, who then have 15 days to verify the identity and eligibility of signers
25 in the samples they receive. A.R.S. §§ 19-121.01(B), 19-121.02(A). As discussed above,
26 the E-Qual system, by interfacing with the statewide voter registration database, verifies
27 the identity and eligibility of voters who sign an E-Qual petition, obviating the need to
28 verify those signatures again after the fact. Still, the Secretary takes no position on whether

1 the 5% sample should be selected from all signatures (including those collected through E-
2 Qual) or only those collected through traditional paper means.

3 In any event, the Secretary asks that any order from this Court address how the
4 sample is to be taken to avoid any ambiguity or dispute on this matter in the future. Indeed,
5 County Recorders have already indicated differing views on this: the Pinal County
6 Recorder's response suggests that E-Qual petitions need not be verified by the County
7 Recorder because the E-Qual system already verifies identity and eligibility to sign (Doc.
8 65), while the Maricopa County Recorder's response suggests that it remains within the
9 province of County Recorders to verify E-Qual petition signatures (Doc. 62).

10 CONCLUSION

11 To protect public health while ensuring the continuity of democratic processes in
12 the face of the extraordinary circumstances created by COVID-19, the Secretary does not
13 oppose the narrow relief sought by Plaintiffs for this election year and can implement
14 necessary modifications to the E-Qual system if ordered by the Court. If the Court grants
15 the relief sought by Plaintiffs, however, the Secretary asks that the Order provide:

- 16 • That relief is available only to Plaintiffs and those initiative measures that
17 have already applied for a petition serial number by the filing of this lawsuit;
- 18 • That, notwithstanding A.R.S § 19-121(B), initiative measures electing to use
19 E-Qual must submit their paper signature sheets upon their creation of an E-
20 Qual petition, and may supplement their signatures once before the July 2,
21 2020 filing deadline, with the supplemental filing or the filing deadline
22 (whichever is earlier) triggering the 20-day period for the Secretary to
23 process the petition and submit a 5% random sample to the County Recorder
24 for verification; and
- 25 • Clarification whether the 5% sample required under A.R.S. § 19-121.01(B)
26 is to be randomly drawn from all signatures submitted for a petition
27 (including E-Qual signatures) or only those submitted on a paper signature
28 sheet.

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RESPECTFULLY SUBMITTED this 10th day of April, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2020, I electronically transmitted the foregoing document to the U.S. District Court for the District of Arizona Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/s/ Javaughn Salas

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