

1 Oliver B. Hall
2 CENTER FOR COMPETITIVE DEMOCRACY
3 1835 16th Street NW, #5
4 Washington, DC 20009
5 D.C. Bar No. 976463
6 oliverhall@competitivedemocracy.org
7 202.248.9294

8 Attorney for Plaintiffs Arizona Libertarian Party and Michael Kielsky

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

12 **THE ARIZONA LIBERTARIAN)**
13 **PARTY AND MICHAEL KIELSKY,)**
14 **Plaintiffs,)**
15 **v.)**
16 **MICHELE REAGAN,)**
17 **Defendant.)**

18 **AMENDED COMPLAINT**

19 **Civil Action No. 2:16-cv-01019-DGC**

20 **INTRODUCTION**

21 Plaintiffs Arizona Libertarian Party (“AZLP”) and its Chairman Michael Kielsky
22 (together, “the Libertarians”) bring this action pursuant to 42 U.S.C. § 1983, to vindicate
23 rights guaranteed to them by the First and Fourteenth Amendments to the United States
24 Constitution. The Libertarians specifically challenge the constitutionality of two
25 provisions of Arizona law, A.R.S. §§ 16-321 and 16-322, which establish the
26 requirements that political parties must meet to place their candidates on Arizona’s
27 primary election ballot. These provisions formerly enabled candidates to appear on the
28 primary ballot by submitting nomination petitions with a number of signatures defined as

1 a percentage of their party’s qualified registered voters in the relevant jurisdiction. In
2 2015, however, the provisions were amended, such that they now define the signature
3 requirements as a percentage of all “qualified signers” in the relevant jurisdiction – a pool
4 defined to include independent and unaffiliated voters. As applied to the Libertarians –
5 though not to the major parties – this drastically increased the number of signatures
6 required. In general, the new requirements for the Libertarians are at least 20 times
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8 greater than the old ones, depending on the office, and in many cases much greater.
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10 Sections 16-321 and 16-322, as amended, violate the Libertarians’ First
11 Amendment rights on several grounds. First, they impose unconstitutionally severe
12 signature requirements under the settled precedent of the Supreme Court of the United
13 States. Second, they violate the Libertarians’ freedom of association, because they
14 compel AZLP, as a practical matter, to rely on non-members for purposes of nominating
15 its own partisan candidates. And third, they violate the Libertarians’ right to establish and
16 develop a new political party, by thwarting AZLP’s ability to perform its core function of
17 choosing candidates and placing them before the electorate.
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20 Sections 16-321 and 16-322 also violate the Libertarians’ Fourteenth Amendment
21 right to equal protection of the law. The provisions are facially neutral, in that they apply
22 to all political parties that qualify for continued representation on Arizona’s ballot – a
23 status currently held only by the Republican, Democratic and Libertarian parties – but the
24 severe burdens they impose fall on AZLP alone. Because the Republican and Democratic
25 parties are much older, they have many times more members than AZLP (or any other
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27 minor party in Arizona), and their candidates are easily able to satisfy the signature
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1 requirements by relying entirely on their own members. Consequently, the signature
2 requirements are not unconstitutionally severe as applied to the major parties; they do not
3 compel the major parties to associate with non-members; and they do not interfere with
4 the major parties' ability to perform their core functions. These severe burdens fall on the
5 Libertarians alone. In fact, the amendments to Sections 16-321 and 16-322 generally
6 decreased, or increased only slightly, the signature requirements for major party
7 candidates, while making them practically insurmountable for the Libertarians. Had the
8 Legislature specifically intended to enact legislation that would impose severe and
9 unequal burdens on the Libertarians alone, it could hardly improve upon its amendments
10 to Sections 16-321 and 16-322.

11 In this action, the Libertarians seek declaratory relief and injunctive relief as
12 necessary to enjoin enforcement of Sections 16-321 and 16-322 on a permanent basis.
13 They assert their claims against the Defendant, Secretary of State of Arizona Michele
14 Reagan ("Secretary Reagan"), in her official capacity only.

15 **PARTIES**

16 1. Plaintiff Arizona Libertarian Party is the state party affiliate of the national
17 Libertarian Party, which was founded in 1971 and is the third largest political party in the
18 nation. AZLP promotes a comprehensive platform that addresses issues of importance to
19 all Arizonans, based upon the Libertarian Party's fundamental commitments to a free-
20 market economy, civil liberties and personal freedom, and a foreign policy of non-
21 intervention, peace and free trade. AZLP's business address is 4635 South Lakeshore
22 Drive, Tempe, Arizona, 85282.

1 2. Plaintiff Michael Kielsky is the Chairman of AZLP. In that capacity, his
2 duties include building support for AZLP and recruiting candidates to run as nominees of
3 AZLP. Plaintiff Kielsky has also run for Maricopa County Attorney as the nominee of
4 AZLP, and appeared on Arizona’s general election ballot in 2008, 2010 and 2012. In both
5 2010 and 2012, Plaintiff Kielsky received more than 25 percent of the vote in the general
6 election. Plaintiff Kielsky’s business address is 4635 South Lakeshore Drive, Tempe,
7 Arizona, 85282.
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10 3. Defendant Michele Reagan is Secretary of State of Arizona. As such,
11 Defendant Reagan serves as Chief Election Officer for Arizona, with the statutory duty to
12 enforce Arizona election law, including the provisions challenged herein. Defendant
13 Reagan is named in her official capacity only. Her business address is Office of the
14 Secretary of State, Elections Division, 1700 West Washington Street, 7th Floor, Phoenix,
15 Arizona, 85007-2808.
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18 **JURISDICTION AND VENUE**

19 4. Venue is proper in this Court because all Plaintiffs are residents of Arizona,
20 and the Defendant is a state official who maintains offices in Phoenix, Arizona. This
21 Court has personal jurisdiction over the Defendant because she is a public official of the
22 state of Arizona, and because she is a resident of Arizona.
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24 5. This Court has subject matter jurisdiction over this matter pursuant to 28
25 U.S.C. § 1331, because Plaintiffs’ claims arise under the First and Fourteenth
26 Amendments to the United States Constitution and 42 U.S.C. § 1983.
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FACTUAL BACKGROUND

The Arizona Election Code

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6. Arizona provides one method for a political party to become qualified to place its candidates on the general election ballot. The party must submit a nomination petition signed by a number of qualified electors equal to not less than one and one-third percent of the total votes cast for governor at the last preceding general election. *See* A.R.S. § 16-801(A). The qualified electors must be registered in at least five different counties, and at least ten per cent of the required total number of them must be registered in counties with populations of less than five hundred thousand persons. *See id.*

7. A political party that successfully submits such a petition becomes qualified and is entitled to its own official party ballot at the primary election, as well as a ballot column at the succeeding general election. *See* A.R.S. § 16-801(B). The party remains so qualified through the next two regularly scheduled elections. *See id.* Thereafter, the party is ineligible for the ballot unless it qualifies for continued representation pursuant to A.R.S. § 16-804. *See id.* If it fails to qualify pursuant to Section 16-804, the party must file a new petition for recognition under Section 16-801. *See id.*

8. Section 16-804 provides that a political party qualifies for continued representation on the official ballot if in the preceding general election for governor, presidential electors, county attorney or mayor, whichever applies, it received at least 5 percent of the total votes cast for that office. *See* A.R.S. § 16-804(A). Alternatively, such a party qualifies for continued representation on the official ballot if, by October 1 of the year immediately preceding a general election for state or county offices, or 155 days

1 prior to a primary election for city or town offices, its registered members comprise at
2 least two-thirds of one percent of the total registered electors in the relevant jurisdiction.
3 *See* A.R.S. § 16-804(B).

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5 9. A political party that is qualified to place its candidates on the official ballot
6 must do so through the primary election process. *See* A.R.S. § 16-301. If the party fails to
7 do so, it may not place its candidates on the general election ballot, *see* A.R.S. § 16-302,
8 and consequently, it cannot qualify for continued representation pursuant to Section 16-
9 804(A).

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11 10. To appear on a party's primary election ballot, a candidate must timely
12 submit a nomination paper that provides the candidate's name, address, partisan
13 affiliation, office sought and related information. *See* A.R.S. § 16-311. The candidate also
14 must submit a nomination petition containing the required number of signatures of
15 qualified electors. *See* A.R.S. § 16-314.

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18 **The Challenged Provisions: Sections 16-321 and 16-322**

19 11. Section 16-321 establishes the requirements and restrictions that govern
20 who may sign a nomination petition. *See* A.R.S. § 16-321. Section 16-322 establishes the
21 number of signatures that nomination petitions must include for each office. *See* A.R.S. §
22 16-322.

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24 12. Prior to its amendment in 2015, Section 16-321 provided that nomination
25 petitions must be signed by "qualified electors," subject to certain other restrictions. It did
26 not otherwise define a "qualified signer" of a nomination petition.

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28 13. Prior its amendment in 2015, Section 16-322 defined the number of

1 signatures a candidate's nomination petition must include as a percentage of the total
2 voter registration of the candidate's party in the relevant jurisdiction. For example,
3 pursuant to Section 16-322(A)(1), a candidate for United States Senator or a statewide
4 office was required to submit signatures from "a number of qualified electors who are
5 qualified to vote for the candidate whose nomination petition they are signing equal to at
6 least one-half of one percent of the voter registration of the party of the candidate in at
7 least three counties in the state, but not less than one-half of one percent nor more than
8 ten percent of the total voter registration of the candidate's party" (emphasis added).
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11 14. The other sub-parts of Section 16-322(A), sub-parts (2) through (12), which
12 specify the signature requirements for candidates for representative in Congress, the state
13 legislature and various local offices, similarly defined the number of signatures required
14 based on the size of a party's membership in the relevant jurisdiction. For example,
15 Section 16-322(A)(2) required that a candidate for representative in Congress submit
16 signatures from "a number of qualified voters who are qualified to vote for the candidate
17 whose nomination petition they are signing equal to at least one percent but not more
18 than ten percent of the total voter registration of the party of the candidate in the district
19 from which such representative shall be elected" (emphasis added). Similarly, Section
20 16-322(A)(3) defined the number of signatures required of a candidate for the state
21 legislature as "equal to at least one percent but not more than three percent of the total
22 voter registration of the party designated in the district from which the member of the
23 legislature may be elected" (emphasis added).
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28 15. As amended in 2015, Section 16-321 now defines a "qualified signer" of a

1 political party's nomination petitions as a member of that party, a member of another
2 party not qualified for continued representation on the ballot under Section 16-804, or a
3 qualified independent or unaffiliated elector. *See* A.R.S. § 16-321(F).

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5 16. As amended in 2015, Section 16-322 now defines the signature
6 requirements for each office not as a percentage of a party's registered voters in the
7 relevant jurisdiction, but as a percentage of all "qualified signers" in the relevant
8 jurisdiction. *See* A.R.S. § 16-322(A).

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10 17. A copy of H.B. 2608, the legislation that enacted the foregoing
11 amendments, which tracks the changes it made to Sections 16-321 and 16-322, is
12 attached hereto as Exhibit A.

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14 18. In March 2016, Secretary Reagan published the signature requirements that
15 now apply to partisan candidates pursuant to Sections 16-321 and 16-322, following their
16 amendment in 2015. Secretary Reagan updated these signature requirements on May 18,
17 2016. The new signature requirements, as updated in May 2016, are available on the
18 Secretary of State's website at <http://www.azsos.gov/elections/running-office>, and
19 attached hereto as Exhibit B.

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22 19. Taken together, the 2015 amendments to Sections 16-321 and 16-322
23 drastically increased the signature requirements these provisions impose on the
24 Libertarians. For example, prior to its amendment in 2015, Section 16-322 required that a
25 Libertarian candidate for United States Senate or statewide office in 2014 submit a
26 nomination petition with 133 signatures. That requirement has now increased to 3,034
27 signatures in 2016 – a burden 22.81 times greater than the prior requirement. *See* Ex. B.
28

1 20. Under Section 16-322 prior to its amendment in 2015, Libertarian
2 candidates for Congress were required to submit between 24 and 43 signatures in 2014.
3 Under that provision as amended, such candidates were required to submit between 575
4 and 785 signatures in 2016. *See* Ex. B.

6 21. Libertarian candidates for the state legislature also face drastically
7 increased signature requirements. For example, under Section 16-322 prior to its
8 amendment, the Libertarian candidate in Legislative District (“LD”) 1 was required to
9 submit 11 signatures in 2014, but that same candidate was required to submit 235
10 signatures in 2016 – a burden 21.36 times greater than the prior requirement. In LD 5, the
11 Libertarian candidate needed 7 signatures in 2014, but 243 signatures in 2016 – a burden
12 34.71 times greater than the prior requirement. These increased burdens are typical of
13 those that all Libertarian legislative candidates now face. *See* Ex. B.

16 22. Libertarian candidates for countywide office face similarly drastic
17 increases. In Maricopa County, for example, to appear on the primary election ballot,
18 such a candidate was required to submit 72 signatures in 2012 and 87 signatures in 2014,
19 but was required to submit 1,881 signatures in 2016. These signature requirements, which
20 are available on the Maricopa County Recorder’s website at
21 <http://recorder.maricopa.gov/elections/signatures.aspx>, are attached hereto as Exhibit C.

24 23. The increased signature requirements for Libertarian candidates in
25 Maricopa County are typical of those that Libertarian candidates now face in all Arizona
26 counties. In Coconino County, for example, a Libertarian candidate for countywide office
27 was required to submit 16 signatures in 2014, but was required to submit 238 signatures
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1 to appear on the primary election ballot in 2016. *See Signature Requirements, 2016*
2 *Election, Coconino County, Arizona*, available at
3 <http://www.coconino.az.gov/DocumentCenter/View/12008>. In Pima County, the
4 requirement increased from 19 signatures in 2014 to 409 signatures in 2016. *See Partisan*
5 *Signature Requirements, Primary Election – August 30, 2016*, available at
6 [http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/elections/Candidat](http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/elections/Candidates%20and%20PACs/Combined%20Signature%20Req.pdf)
7 [es%20and%20PACs/Combined%20Signature%20Req.pdf](http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/elections/Candidates%20and%20PACs/Combined%20Signature%20Req.pdf).
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10 24. Libertarian candidates for local offices also face exponential increases in
11 the signature requirements they must meet. *See Ex. C*.

12 **The Disparate Impact of the New Signature Requirements on the Libertarians**

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14 25. As of August 30, 2016, AZLP had 26,653 registered voters, while the
15 Democratic Party of Arizona had 1,019,050, and the Republican Party of Arizona had
16 1,185,023. *See State of Arizona Registration Report – 2016 Primary Election, August*
17 *30, 2016*, available at <http://apps.azsos.gov/election/voterreg/2016-08-01.pdf>. Because
18 the Democrats and Republicans have so many registered voters, compared to the
19 Libertarians, the amendments to Sections 16-321 and 16-322 typically caused only a
20 slight increase, if any, to the signature requirements imposed on their candidates.
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23 26. In 2014, Section 16-322 required a Democratic candidate for United States
24 Senate or statewide office to submit 4,804 signatures, and in 2016 it required that
25 candidate to submit 5,352 signatures – an increase of only 10.24 percent. A Republican
26 candidate for United States Senate or statewide office was required to submit 5,651
27 signatures in 2014, and was required to submit 5,801 signatures in 2016 – an increase of
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1 only 2.59 percent. *See* Ex. B; *see also* 2014 Election, *Number of Signatures Required for*
2 *Statewide Offices Based on Partisan Voter Registration Totals Statewide on March 1,*
3 *2014*, available at

4 http://apps.azsos.gov/election/2014/Info/Statewide_Partisan_Signature_Requirements.pdf.

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6 27. Major party candidates for Congress also face only slight increases, if any,
7 in their signature requirements under Section 16-322. For example, a Democratic
8 candidate in Congressional District (“CD”) 1 was required to submit 1,395 signatures in
9 2014, and now must submit 1,326 – a slight decrease. A Republican candidate for
10 Congress in CD 1 was required to submit 1,117 signatures in 2014, and now must submit
11 1,198 signatures – an increase of only 6.77 percent. These modest changes are typical of
12 the impact of Section 16-322, as amended, on major party candidates in all congressional
13 districts. *See* Ex. B; *see also* *Partisan Signature Requirements for Congressional*
14 *Districts (Based on March 1, 2014 Voter Registration Statistics)*, available at
15 [http://apps.azsos.gov/election/2014/Info/Congressional_Partisan_Signature_Requirement](http://apps.azsos.gov/election/2014/Info/Congressional_Partisan_Signature_Requirements.pdf)
16 [s.pdf](http://apps.azsos.gov/election/2014/Info/Congressional_Partisan_Signature_Requirements.pdf).

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20 28. Major party candidates for state legislature face similarly slight increases,
21 and in many cases decreases, to the signature requirements they must meet under Section
22 16-322 in 2016, as compared to those imposed in 2014. For example, the signature
23 requirements actually decreased under 16-322, as amended, for the Democratic
24 candidates in LD 2, 3, 4, 7, 9, and 10, and decreased for the Republican candidates in LD
25 1, 5, 6, 9, 10, 11, 12, 13, 15, 17, 18, 22, 23, 25 and 28. In only one instance did the
26 signature requirement so much as double for a major party candidate – the Republican in
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1 LD 27. For Libertarian legislative candidates, by contrast, the signature requirement
2 increases ranged from 1292.30 percent in LD 26 (13 signatures required in 2014; 181
3 signatures required in 2016) to 3,371.42 percent in LD 5 (7 signatures required in 2014;
4 243 signatures required in 2016). *See* Ex. B; *see also* *Partisan Signature Requirements*
5 *for Legislative Districts (Based on March 1, 2014 Voter Registration Statistics)*, available
6 at
7
8 http://apps.azsos.gov/election/2014/Info/Legislative_Partisan_Signature_Requirements.pdf.
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10 29. Major party candidates for countywide and local offices likewise face only
11 slight increases, and in many cases, decreases to their signature requirements under
12 Section 16-322 as amended.
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14 30. There is only one other political party that is formally organized under
15 Arizona law – the Arizona Green Party (“AZGP”). AZGP places its candidates on the
16 primary election ballot by submitting a petition to qualify as a new political party
17 pursuant to Section 16-801. As such, AZGP need not comply with the signature
18 requirements that Section 16-322 imposes on the Libertarians. Instead, Section 16-322
19 imposes a separate, and much lower, signature requirement for parties that are not
20 entitled to continued representation pursuant to Section 16-804. *See* A.R.S. § 16-322(C).
21 Under Section 16-322(C), AZGP’s candidates may appear on the primary election ballot
22 by submitting a nomination petition with signatures equal in number to “one-tenth of one
23 percent of the total vote for the winning candidate or candidates for governor or
24 presidential electors at the last general election within the district.” *See id.*, *see also* Ex.
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B.

1 31. Because the 2015 amendments to Sections 16-321 and 16-322 generally
2 created little or no increase to the signature requirements that major party candidates
3 must meet, and do not affect AZGP at all, the severe and unequal burdens they impose
4 fall on the Libertarians alone.
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6 **Injury to Plaintiffs**

7 32. In recent elections, AZLP has routinely placed its candidates for local,
8 county and statewide office on the primary election ballot. The new signature
9 requirements established by Section 16-322 exponentially increase the burdens imposed
10 on these candidates, transforming a formerly reasonable regulation into one that creates a
11 practically insurmountable barrier to ballot access. Such burdens are detailed at length in
12 the First Declaration of Kim Allen, the First Declaration of Ricky T. Fowlkes, the First
13 Declaration of Ernest Hancock, the First Declaration of Jack Heald, the First Declaration
14 of Michael Kielsky, the First Declaration of Christopher Rike, the First Declaration of
15 David Schlosser and the First Declaration of Michael Shoen, which are attached hereto as
16 Exhibit D.
17

18 33. Kim Allen was AZLP's 2012 candidate for U.S. House in CD 1, and
19 received approximately 15,500 votes in the general election, or 7 percent of the total. Mr.
20 Allen wants to run for public office again as a Libertarian, but he cannot qualify for
21 AZLP's primary election ballot in CD 1 in 2016 unless he submits nomination petitions
22 with 638 valid signatures – a requirement equal to 25.84 percent of the 2,469 registered
23 Libertarian voters in CD 1. To run instead as a state legislative candidate in LD 11, Mr.
24 Allen must submit 221 valid signatures – a requirement equal to 24.15 percent of the 915
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1 registered Libertarian voters in LD 11. *See* Allen Dec. ¶¶ 8-10; *State of Arizona*
2 *Registration Report – 2016 Primary Election, August 30, 2016*, available at
3 <http://apps.azsos.gov/election/voterreg/2016-08-01.pdf>.

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5 34. Ricky T. Fowlkes was AZLP’s candidate for Arizona Corporation
6 Commission in 1988, 2004, 2006 and 2010. He wants to run for that office again as
7 AZLP’s nominee, but he cannot qualify for AZLP’s primary election ballot in 2016
8 unless he submits nomination petitions with 3,034 valid signatures – a requirement equal
9 to 11.38 percent of the 26,653 registered Libertarian voters in Arizona. *See* Fowlkes Dec.
10 ¶¶ 3-5; *State of Arizona Registration Report – 2016 Primary Election, August 30, 2016*,
11 available at <http://apps.azsos.gov/election/voterreg/2016-08-01.pdf>.

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14 35. Ernest Hancock has run for several offices as AZLP’s nominee, including
15 Secretary of State, U.S. House, U.S. Senate and Maricopa County Recorder. He wants to
16 run for office again as AZLP’s nominee, but he cannot qualify for AZLP’s primary
17 election ballot as a candidate for statewide office in 2016 unless he submits nomination
18 petitions with 3,034 valid signatures – a requirement equal to 11.38 percent of the 26,653
19 registered Libertarian voters in Arizona. *See* Hancock Dec. ¶ 2; *State of Arizona*
20 *Registration Report – 2016 January Voter Registration*, available at
21 http://www.azsos.gov/sites/azsos.gov/files/2016_january_voter_registration_statistics.pdf.

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24 36. Jack Heald was AZLP’s 2006 nominee for state representative in LD 20,
25 and received 12,857 votes in the general election, or 18.5 percent of the total. Mr. Heald
26 wants to run for public office again as a Libertarian, but he cannot qualify for AZLP’s
27 primary election ballot in 2016 in LD 18 (where he now resides) unless he submits
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1 nomination petitions with 230 valid signatures – a requirement equal to 18.62 percent of
2 the 1,235 registered Libertarian voters in LD 18. To run instead as a candidate for U.S.
3 House in CD 9, Mr. Heald must submit 678 valid signatures – a requirement equal to
4 17.66 percent of the 3,839 registered Libertarian voters in CD 9. *See* Heald Dec. ¶¶ 2-5;
5 *State of Arizona Registration Report – 2016 Primary Election, August 30, 2016*, available
6 at <http://apps.azsos.gov/election/voterreg/2016-08-01.pdf>.
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9 37. Michael Kielsky has run for several offices as AZLP’s nominee, including
10 three separate races when he received more than 25 percent of the vote in the general
11 election (in 2002, as a candidate for Justice of the Peace, West Mesa Precinct, Maricopa
12 County; in 2010, as a candidate for Maricopa County Attorney; and in 2012, as a
13 candidate for Maricopa County Attorney). *See* Kielsky Dec. ¶¶ 9, 12, 13. Mr. Kielsky
14 filed the preliminary papers to run in 2016 as AZLP’s nominee for Maricopa County
15 Attorney – an office for which he received 27.55 percent of the vote in the 2012 general
16 election, and 25.85 percent of the vote in the 2010 general election. *See* Kielsky Dec. ¶¶
17 12-13. To appear on AZLP’s primary election ballot in 2016, however, he must submit
18 1,881 valid signatures – a requirement equal to 10.81 percent of the 17,400 registered
19 Libertarian voters in Maricopa County. *See* Ex. B; *State of Arizona Registration Report*
20 *– 2016 Primary Election, August 30, 2016*, available at
21 <http://apps.azsos.gov/election/voterreg/2016-08-01.pdf>.
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25 38. Christopher Rike was AZLP’s 2010 nominee for Clerk of County in
26 Maricopa County, and received 48,541 votes in the general election, or 5.43 percent of
27 the total. *See General Election, November 2, 2010 Summary Report, Maricopa County*,
28

1 available at

2 <http://recorder.maricopa.gov/electionarchives/2010/11-02-2010%20Final%20Summary>

3 [%20Report.pdf](#). In 2014, he ran as AZLP's nominee for U.S. House in CD 4, and

4 received 7,440 votes in the general election, or 4.25 percent of the 175,179 total votes

5 cast. *See State of Arizona Official Canvass, 2014 General Election*, available at

6 <http://apps.azsos.gov/election/2014/General/Canvass2014GE.pdf>. Mr. Rike wants to run

7 for office again as a Libertarian, but he cannot qualify for AZLP's primary election ballot

8 in 2016 for countywide office in Yavapai County (where he now resides) unless he

9 submits 115 valid signatures – a requirement equal to 12.09 percent of the 951 registered

10 Libertarian voters in Yavapai County. *See Official 2016 Yavapai County Candidate*

11 *Signature Requirements*, available at

12 <http://www.yavapai.us/Portals/26/CandidateSignReqs.pdf?ver=2016-04-15-104751-803;>

13 *State of Arizona Registration Report, 2016 Primary Election (August 30, 2016)*, available

14 at <http://apps.azsos.gov/election/voterreg/2016-08-01.pdf>. To run instead as AZLP's

15 nominee for U.S. House in CD 4 (where he now resides), Mr. Rike must submit 719 valid

16 signatures – a requirement equal to 27.41 percent of the 2,623 registered Libertarian

17 voters in CD 4. *See Rike Dec.* ¶¶ 2-6; *State of Arizona Registration Report, 2016*

18 *Primary Election (August 30, 2016)*, available at

19 <http://apps.azsos.gov/election/voterreg/2016-08-01.pdf>.

20 39. David Schlosser was AZLP's 2006 nominee for U.S. House in CD 1, and

21 received 9,802 votes, or 4.80 percent of the 204,139 total vote in the general election.

22 *See State of Arizona Official Canvas, 2014 General Election*, available at

1 <http://apps.azsos.gov/election/2014/General/Canvass2014GE.pdf>. To appear on AZLP's
2 primary election ballot in 2016 in CD 1, Mr. Schlosser would be required to submit 638
3 valid signatures – a requirement equal to 25.49 percent of the 2,503 registered Libertarian
4 voters in CD 1. *See* Schlosser Dec. ¶¶ 2-3; Ex. B; *State of Arizona Registration Report,*
5 *2016 Primary Election (August 30, 2016)*, available at
6 <http://apps.azsos.gov/election/voterreg/2016-08-01.pdf>.

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9 40. Michael Shoen was AZLP's nominee for U.S. House in CD 3 in 2008,
10 when he received 10,602 votes, or 3.85 percent of the 275,161 total votes in the general
11 election, and in 2010, when he received 10,478 votes, or 5.04 percent of the 208,071
12 total votes in the general election. Mr. Shoen wants to run for office again as a
13 Libertarian, but he cannot qualify for AZLP's primary election ballot in 2016 as a
14 candidate for U.S. House in CD 6 (where he now resides) unless he submits 785 valid
15 signatures – a requirement equal to 21.66 percent of the 3,624 registered Libertarians in
16 CD 6. *See* Shoen Dec. ¶¶ 2-4; Ex. B; *State of Arizona Registration Report, 2016 Primary*
17 *Election (August 30, 2016)*, available at [http://apps.azsos.gov/election/voterreg/2016-08-](http://apps.azsos.gov/election/voterreg/2016-08-01.pdf)
18 [01.pdf](http://apps.azsos.gov/election/voterreg/2016-08-01.pdf).

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22 41. The excessive signature requirements that Section 16-322 now imposes on
23 the Libertarians, standing alone, present barriers to AZLP's primary election ballot that
24 Libertarian candidates will be unable to meet, despite their prior success in achieving
25 ballot access in prior elections. *See* Allen Dec. ¶ 6; Fowlkes Dec. ¶ 4; Hancock Dec. ¶ 4;
26 Heald Dec. ¶¶ 3, 6; Kielsky Dec. ¶ 19; Rike Dec. ¶ 4; Schlosser Dec. ¶ 4; Shoen Dec. ¶¶
27 3, 5.
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1 42. The increased signature requirements established by Section 16-322 are
2 especially onerous because AZLP's candidates cannot, as a practical matter, comply with
3 them unless they obtain signatures from non-members, who have little reason or
4 incentive to help Libertarian candidates obtain ballot access. *See* Allen Dec. ¶ 7; Fowlkes
5 Dec. ¶ 4; Hancock Dec. ¶ 4; Heald Dec. ¶ 3; Kielsky Dec. ¶¶ 5-6; Rike Dec. ¶¶ 3, 7 ;
6 Schlosser Dec. ¶ 4; Shoen Dec. ¶ 5.
7

8 43. Despite non-members' lack of reason or incentive to support AZLP's
9 candidates, the higher signature requirements under Section 16-322 give them far more
10 influence over AZLP's nomination process. Non-members now play a decisive role in
11 determining whom the Libertarians may nominate as their own partisan candidates. *See*
12 Kielsky Dec. ¶¶ 4-7.
13

14 44. The Libertarians have previously needed to defend their party against state
15 efforts to compel their association with non-members for purposes of choosing AZLP's
16 nominees. *See Arizona Libertarian Party v. Bayless*, 351 F.3d 1277 (9th Cir. 2003)
17 (holding Arizona's primary system unconstitutional because it allowed non-members to
18 choose AZLP's precinct committeemen). On remand from the Court of Appeals' decision
19 in *Bayless*, the District Court held that Arizona's entire primary election system was
20 unconstitutional because it allowed non-members to participate in AZLP's process for
21 choosing its own partisan nominees. *See Arizona Libertarian Party v. Brewer*, No. 02-
22 144-TUC-RCC (D. Az. Sept. 27, 2007) (unpublished order).
23

24 45. The Libertarians continue to oppose efforts by the state to compel their
25 association with non-members for purposes of choosing AZLP's nominees. *See* Allen
26
27
28

1 Dec. ¶ 7; Fowlkes Dec. ¶ 5; Hancock Dec. ¶ 5; Heald Dec. ¶ 7; Kielsky Dec. ¶ 5; Rike
2 Dec. ¶ 7 ; Schlosser Dec. ¶ 5.

3 46. Failure to comply with the increased signature requirements under Section
4 16-322 will effectively terminate the Libertarians' participation in Arizona's electoral
5 process. Although AZLP will continue to qualify for continued representation pursuant to
6 Section 16-804(B), by virtue of the number of its registered voters, it will be unable to
7 place its candidates before the electorate in the general election, because they will not
8 meet the requirements for appearing on the primary election ballot. This will prevent the
9 Libertarians from building and developing their party, and frustrate AZLP's core purpose
10 of disseminating the Libertarian philosophy to the electorate. *See* Kielsky Dec. ¶¶ 3-4.

11 47. Because AZLP qualifies for continued representation on the ballot pursuant
12 to 16-804(B), by virtue of its number of registered voters, the Libertarians cannot instead
13 petition for ballot access as a new party pursuant to Section 16-801. Even if they could,
14 becoming a "new" party that no longer qualifies for continued representation on
15 Arizona's ballot would negate all the time, effort and resources the Libertarians have
16 expended to build AZLP as a viable party to date. Further, the burden that a new party
17 must bear to comply with Section 16-801 is itself onerous, and significantly diminishes
18 the party's ability to engage in electioneering and other party-building activity. *See* First
19 Declaration of Angel Torres (attached as Exhibit E).

20 **The 2016 Primary Election**

21 48. Arizona held its 2016 primary election on August 30, 2016. The official
22 canvas of that election is attached hereto as Exhibit F.
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1 49. No Libertarian candidate for state or federal office appeared on the primary
2 election ballot in 2016. *See* Ex. F.

3 50. Write-in candidates may run in AZLP's primary election, and are permitted
4 to appear on the general election ballot provided that they receive more votes than any
5 other candidate in their race, and provided that the number of votes they receive is equal
6 to or greater than the number of signatures they would have been required to submit on a
7 nomination petition for that office pursuant to Section 16-322. *See* A.R.S. § 16-645(E).
8

9 51. At least 14 Libertarian write-in candidates ran for state or federal office in
10 the 2016 primary election, including the following: Merissa Hamilton, U.S. Senate; Kim
11 Allen, CD 1; Ed Tilton, Jr., CD 2; Mike Ross, CD 3; Jeffery Daniels, CD 4; Nolan
12 Daniels, CD 5; Michael Shoen, CD 6; Joe Cobb, CD 7; Mike Shipley, CD 9; Barry
13 Keaveney, LD 7 (State Senate); Chris Will, LD 26 (State Senate); Kevin McCormick, LD
14 15 (State Representative); Robert Pepiton, LD 27 (State Representative); Bill Barker, LD
15 29 (State Representative). *See* Ex. F.
16
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19 52. All 14 of the candidates identified in paragraph 51 received more votes than
20 any other candidate in their respective races for the AZLP nomination (each ran
21 unopposed), but none received the minimum number of votes required by Section 16-
22 322, as incorporated by Section 16-645(E). *See* Ex. F. Consequently, no Libertarian
23 candidates for state or federal office will appear on Arizona's general election ballot in
24 2016.
25

26 53. AZGP ran at least 10 ballot-qualified or write-in candidates for state and
27 federal office in the 2016 primary election. *See* Ex. F. Because AZGP is considered a
28

1 “new party” under Section 16-801, its write-in candidates are not subject to the minimum
2 vote requirement set forth in Section 16-645(E). Instead, AZGP’s write-in candidates
3 need only receive a “plurality” of the votes cast for their respective offices. *See* A.R.S.
4 16-645(D). Consequently, all 10 AZGP primary election candidates won their respective
5 races and will appear on Arizona’s general election ballot in 2016.

7 54. Libertarian Merissa Hamilton received 1,286 write-in votes for U.S. Senate.
8 Green Gary Swing received 238 write-in votes for that office. Hamilton will not appear
9 on Arizona’s general election ballot in 2016, but Swing will. *See* Ex. F.

11 55. Libertarian Kim Allen received 144 write-in votes in CD 1. Green Ray
12 Parrish received 66 write-in votes for that office. Allen will not appear on Arizona’s
13 general election ballot in 2016, but Parrish will. *See* Ex. F.

15 56. Libertarian Ed Tilton, Jr. received 164 write-in votes in CD 2. Green Gary
16 Swing received 38 write-in votes. Tilton will not appear on Arizona’s general election
17 ballot in 2016, but Swing will. *See* Ex. F.

19 **COUNT I**

20 **VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH**
21 **AMENDMENTS**

22 **(Request for Declaratory Judgment Holding Signature Requirements Imposed By**
23 **A.R.S. §§ 16-321 and 16-322 Unconstitutional As Applied – Impermissible Burden)**

24 57. Plaintiffs reassert each preceding allegation as if set forth fully herein.

25 58. Sections 16-321 and 16-322, as applied to Plaintiffs, establish signature
26 requirements that exceed the constitutional limitations established by Supreme Court
27 precedent.
28

1 59. Sections 16-321 and 16-322, as applied, violate Plaintiffs’ freedoms of
2 speech, petition, assembly and association for political purposes, as guaranteed by the
3 First and Fourteenth Amendments.

4
5 60. Such violations injure Plaintiffs.

6 **COUNT II**

7 **VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH**
8 **AMENDMENTS**

9 **(Request for Declaratory Judgment Holding Signature Requirements Imposed By**
10 **A.R.S. §§ 16-321 and 16-322 Unconstitutional As Applied – Freedom of Association)**

11 61. Plaintiffs reassert each preceding allegation as if set forth fully herein.

12 62. Sections 16-321 and 16-322 practically compel Plaintiffs to associate with
13 non-members for purposes of nominating their own partisan candidates.

14 63. Sections 16-321 and 16-322, as applied, violate Plaintiffs’ freedoms of
15 speech, petition, assembly and association for political purposes, as guaranteed by the
16 First and Fourteenth Amendments.
17

18 64. Such violations injure Plaintiffs.
19

20 **COUNT III**

21 **VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH**
22 **AMENDMENTS**

23 **(Request for Declaratory Judgment Holding Signature Requirements Imposed By**
24 **A.R.S. §§ 16-321 and 16-322 Unconstitutional As Applied – Right to Form Political**
25 **Party)**

26 65. Plaintiffs reassert each preceding allegation as if set forth fully herein.

27 66. Sections 16-321 and 16-322 prevent Plaintiffs from placing their candidates
28

1 on the ballot, thereby denying them any opportunity to build support for their party and
2 advance their political agenda among the electorate.

3 67. Sections 16-321 and 16-322, as applied, violate Plaintiffs' right to form and
4 build support for their political party, as guaranteed by the First and Fourteenth
5 Amendments.
6

7 68. Such violations injure Plaintiffs.
8

9 **COUNT IV**

10 **VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH**
11 **AMENDMENTS**

12 **(Request for Declaratory Judgment Holding Signature Requirements Imposed By**
13 **A.R.S. §§ 16-321 and 16-322 Unconstitutional As Applied – Equal Protection)**

14 69. Plaintiffs reassert each preceding allegation as if set forth fully herein.

15 70. Sections 16-321 and 16-322, as amended, exponentially increase the
16 signature requirements imposed on Plaintiffs, while generally imposing only slight
17 increases, if any, on the major political parties' candidates.
18

19 71. Because the major parties have so many more members, their candidates
20 can comply with those signature requirements easily, without relying on non-members
21 for support.
22

23 72. Minor political parties that qualify for the ballot pursuant to Section 16-801
24 need not comply with the signature requirements imposed on Plaintiffs by Section 16-
25 322(A), but rather comply with the much less onerous signature requirement imposed by
26 Section 16-322(C).
27

28 73. The severe burdens that Sections 16-321 and 16-322 impose fall on

1 Plaintiffs only, while the provisions continue to impose slight burdens on major party
2 candidates.

3 74. Sections 16-321 and 16-322, as applied, violate Plaintiffs' right to equal
4 protection of the law, as guaranteed by the Fourteenth Amendment.
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6 75. Such violations injure Plaintiffs.
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PRAYER FOR RELIEF

- 1
- 2 76. WHEREFORE, Plaintiffs respectfully request that the Court:
- 3 A. Enter a declaratory judgment holding A.R.S. §§ 16-321 and 16-322
- 4 unconstitutional as applied to Plaintiffs;
- 5 B. Enter an injunction permanently enjoining Secretary Reagan, her
- 6 successors and agents from enforcing A.R.S. § 16-322 as applied to
- 7 Plaintiffs;
- 8 C. Award such other and further relief as the Court deems proper;
- 9 D. Award attorneys' fees and litigation costs pursuant to 42 U.S.C. § 1988.
- 10

11

12 Dated: September 30, 2016

Respectfully submitted,

13

14

15 s/Oliver B. Hall

16 Oliver B. Hall

(Admitted Pro Hac Vice)

17 D.C. Bar No. 976463

CENTER FOR COMPETITIVE DEMOCRACY

18 1835 16th Street NW #5

19 Washington, D.C. 20009

20 (202) 248-9294

OLIVERHALL@COMPETITIVEDEMOCRACY.ORG

21 *Counsel for Plaintiffs*

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