

## ARIZONA SUPREME COURT

THOMAS HANSEN, an individual;  
CHARLOTTE COSTELLO, an individual;  
CARRIE GOODE, an individual;  
ALEXANDER CARDONA, an individual;  
RICHARD DELLA PORTA, an individual;  
SUZANNE DISTASO, an individual;  
CARMEN FRANCIS, an individual; IRA  
GOODE, an individual; CELESTE IRONS,  
an individual; JANA ROSE OCHS, an  
individual; and DANIEL O'NEAL, an  
individual.

Plaintiffs/Appellants,

v.

REP. MARK FINCHEM, a candidate for  
Secretary of State; REP. PAUL GOSAR, a  
candidate for Congress; REP. ANDREW  
BIGGS, a candidate for Congress; KATIE  
HOBBS, in her official capacity as  
Secretary of State; APACHE COUNTY  
BOARD OF SUPERVISORS; LARRY  
NOBLE, in his official capacity as  
Recorder of Apache County; COCHISE  
COUNTY BOARD OF SUPERVISORS;  
DAVID W. STEVENS, in his official  
capacity as Recorder of Cochise County;  
COCONINO COUNTY BOARD OF  
SUPERVISORS; PATTY HANSEN, in her  
official capacity as Recorder of Coconino  
County; GILA COUNTY BOARD OF  
SUPERVISORS; SADIE JO BINGHAM,  
in her official capacity as Recorder of Gila  
County; GRAHAM COUNTY BOARD  
OF SUPERVISORS; WENDY JOHN, in  
her official capacity as Recorder of Graham  
County; GREENLEE COUNTY BOARD  
OF SUPERVISORS; SHARIE  
MILHEIRO, in her official capacity as  
Recorder of Greenlee County; LA PAZ  
COUNTY BOARD OF SUPERVISORS;  
RICHARD GARCIA, in his official  
capacity as Recorder of La Paz County;

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Arizona Supreme Court  
No. CV-22-0099-AP/EL

Maricopa County Superior Court  
No. CV 2022-004321

MOHAVE COUNTY BOARD OF SUPERVISORS; KRISTI BLAIR, in her official capacity as Recorder of Mohave County; NAVAJO COUNTY BOARD OF SUPERVISORS; MICHAEL SAMPLE, in his official capacity as Recorder of Navajo County; SANTA CRUZ COUNTY BOARD OF SUPERVISORS; SUZANNE SAINZ, in her official capacity as Recorder of Santa Cruz County; YAVAPAI COUNTY BOARD OF SUPERVISORS; LESLIE HOFFMAN, in her official capacity as Recorder of Yavapai County; YUMA COUNTY BOARD OF SUPERVISORS; ROBYN STALLWORTH POQUETTE, in her official capacity as Recorder of Yuma County; MARICOPA COUNTY BOARD OF SUPERVISORS; STEPHEN RICHER, in his official capacity as Recorder of Maricopa County; PIMA COUNTY BOARD OF SUPERVISORS; GABRIELLA CAZARES-KELLY, in her official capacity as Recorder of Pima County; PINAL COUNTY BOARD OF SUPERVISORS; and VIRGINIA ROSS, in her official capacity as Recorder of Pinal County;

Defendants/Appellees.

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## APPELLANTS' APPENDIX PART I

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HONORABLE CHRISTOPHER COURY

CLERK OF THE COURT  
L. Gilbert  
Deputy

THOMAS HANSEN, et al.

JAMES E BARTON II

v.

MARK FINCHEM, et al.

JOHN DOUGLAS WILENCHIK

JOSHUA D BENDOR  
COLLEEN CONNOR  
RYAN N DOOLEY  
RYAN ESPLIN  
WILLIAM J KEREKES  
JOSEPH EUGENE LA RUE  
KORY A LANGHOFER  
JASON MOORE  
WILLIAM P RING  
CHRISTINE J ROBERTS  
JEAN A ROOF  
LAURA ROUBICEK  
ROGER W STRASSBURG JR.  
JEFFERSON R DALTON  
DANIEL JURKOWITZ  
SCOTT M JOHNSON  
JOHN S BULLOCK  
CELESTE MARIE ROBERTSON  
ROBERT DOUGLAS GILLILAND  
CRAIG C CAMERON  
JACQUELINE MENDEZ SOTO  
TIMOTHY A LASOTA  
COURT ADMIN-CIVIL-ARB DESK  
DOCKET-CIVIL-CCC  
JUDGE COURY

## UNDER ADVISEMENT RULING

The Court has reviewed and considered the following:

- A. *Defendant Mark Finchem's Motion to Dismiss*, filed April 11, 2022.
- B. Congressman Paul Gosar's *Motion to Dismiss*, filed April 11, 2022, and *Rep. Gosar's Notice of Supplemental Authority*, filed April 14, 2022.
- C. *Congressman Biggs's Motion to Dismiss*, filed April 11, 2022.
- D. Plaintiffs' *Opposition to Defendant Finchem's Motion to Dismiss*, filed April 14, 2022.
- E. Plaintiffs' *Opposition to Defendant Gosar's Motion to Dismiss*, filed April 14, 2022.
- F. Plaintiffs' *Opposition to Defendant Biggs's Motion to Dismiss*, filed April 14, 2022.
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- H. *Congressman Gosar's Reply in Support of Motion to Dismiss*, filed April 18, 2022.
- I. *Congressman Biggs's Reply in Support of Motion to Dismiss*, filed April 18, 2022.
- J. *Plaintiffs' Notice of Supplemental Authority*, filed April 18, 2022.
- K. Congressman Gosar's *Response to Plaintiffs' Notice of Supplemental Authority*, filed April 19, 2022.
- L. *Congressman Biggs's Response to Notice of Supplemental Authority*, filed April 19, 2022.
- M. The *Verified Complaint* in each of the original three cases filed.
- N. The authorities and arguments presented at the oral argument held on April 20, 2022.

Plaintiffs have filed complaints seeking to disqualify United States Congressman Paul Gosar (“Rep. Gosar”), United States Congressman Andy Biggs (“Rep. Biggs”) and Arizona Representative Mark Finchem (“Rep. Finchem”) from the ballot of the primary election. (In this ruling, Rep. Gosar, Rep. Biggs and Rep. Finchem shall collectively be referred to, at times, as the “Candidates”.) Plaintiffs argue that the Candidates are not qualified to hold office because each has been disqualified pursuant to federal law – specifically, Section 3 of the Fourteenth Amendment to the United States Constitution (the “Disqualification Clause”). Based on the lack of qualifications to appear on the ballot, Plaintiffs seek injunctive relief barring the appearance of the Candidates on the ballot for the 2022 primary election.

In the pending motions, the Candidates seek dismissal of Plaintiffs’ Complaints. The Candidates argue that they are not disqualified from serving by the Disqualification Clause and, therefore, they should not be enjoined from appearing on the ballot for the 2022 primary election.

This Court has jurisdiction to consider the election challenge.

**THE COURT FINDS** as follows:

1. Each of the Candidates has filed a motion to dismiss pursuant to Rule 12(b)(6), *Arizona Rules of Civil Procedure*, arguing that the respective Verified Complaint against that Candidate fails to state a claim upon which relief may be granted. Dismissal under Rule 12(b)(6), *Arizona Rules of Civil Procedure* is appropriate only if “as a matter of law plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Verduzco v. American Valet*, 240 Ariz. 221 (App. 2016). In considering such a motion, all material allegations of the complaint are taken as true and read in the light most favorable to the Plaintiffs. *Logan v. Forever Living Products Intern., Inc.*, 203 Ariz. 191 (2002).
2. A.R.S. § 16-351(B) provides: “Any elector may challenge a candidate for any reason relating to qualifications for the office sought as prescribed by law, including age, residency, professional requirements or failure to fully pay fines, penalties or judgments as prescribed in sections 16-311, 16-312 and 16-341, if applicable.”
3. Under Arizona law, the grounds for the issuance of preliminary injunctive relief are as follows: “The party seeking a preliminary injunction is obligated to establish four traditional equitable criteria:
  - a) A strong likelihood that he will succeed at trial on the merits;

- b) The possibility of irreparable injury to him not remediable by damages if the requested relief is not granted;
- c) A balance of hardships favors himself; and
- d) Public policy favors the injunction.”

*Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990).

4. Under Arizona law, permanent injunctive relief is available only when “the plaintiff [is able to] show a likelihood that the defendant will in the future engage in the conduct sought to be enjoined.” *State ex rel. Babbitt v. Goodyear Tire & Rubber Co.*, 128 Ariz. 483, 487 (App. 1981). “[T]he standard for issuing a permanent injunction is substantially the same as that applied to a request for preliminary injunctive relief, except that the plaintiff must prove *actual* success on the merits rather than the *likelihood* of success on the merits.” 42 Am. Jur. 2d Injunctions § 10 (Supp. 2008) (emphasis added).
5. Plaintiffs argue that the Candidates are disqualified from holding office. Plaintiffs rely exclusively on federal law for this proposition – specifically, the Disqualification Clause in Section 3 of the Fourteenth Amendment of the United States Constitution – as the sole legal basis for arguing that the Candidates are disqualified from serving in the respective offices that each seeks to hold. The Disqualification Clause provides as follows: “No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.”
6. The Candidates raise numerous arguments as to why, as a matter of law, they are not disqualified from serving in elective office by the Disqualification Clause.

**A. Does A Private Right of Action Exist to Enforce the Disqualification Clause?**

7. The Candidates argue that no private right of action exists to enforce the Disqualification Clause.
8. There are few cases which have interpreted Disqualification Clause. The seminal case considering the Disqualification Clause, one written shortly after its enactment, is *In Re Griffin*, 11 F. Cas. 7 (C.C.D. Va. 1869).<sup>1</sup>
9. In *Griffin*, squarely at issue before the court was the construction of the Disqualification Clause. The court<sup>2</sup> concluded that “[t]he object of the amendment is to exclude from certain offices a certain class of persons. Now it is obviously impossible to do this by a simple declaration, whether in the constitution or in an act of congress, that all persons included within a particular description shall not hold office. For, in the very nature of things, it must be ascertained what particular individuals are embraced by the definition, before any sentence of exclusion can be made to operate. To accomplish this ascertainment and ensure effective results, proceedings, evidence decisions, and enforcement of decisions, more or less formal, are indispensable; **and these can only be provided for by congress.**” *Id.* at 26 (emphasis added).
10. The court in *Griffin* went on to emphasize that it was imperative upon the United States Congress to pass legislation to enforce the Disqualification Clause, stating: “Now, the necessity of this is recognized by the [Fourteenth] amendment itself, in its fifth and final section, which declares that ‘congress shall have power to enforce, by appropriate legislation, the provision[s] of this article.’ There are, indeed, other sections than the [Disqualification Clause], to the enforcement of which legislation is necessary; but there is no one which more clearly requires legislation in order to give effect to it. The fifth section [of the Fourteenth Amendment] qualifies the [Disqualification Clause] to

<sup>1</sup> *In re Griffin* involved a *habeas corpus* challenge by a former slave (Caesar Griffin) of his conviction for assault with intent to kill. Griffin is emblematic of a number of challenges by former slaves to confederate judges who presided over their trials and convictions. See C. Ellen Connally, *The Use of the Fourteenth Amendment by Salmon P. Chase in the Trial of Jefferson Davis*, 42 AKRON L. REV. 1165, 1189–90 (2009).

<sup>2</sup> *Griffin* was written by Hon. Salmon J. Chase, the Chief Justice of the United States Supreme Court at the time.



the same extent as it would if the whole amendment consisted of these two sections.”  
*Id.*

11. The court in *Griffin* then summarized how the Disqualification Clause was intended to operate: “Taking the [Disqualification Clause] then, in its completeness with this final clause, ***it seems to put beyond reasonable question the conclusion that the intention of the people of the United States, in adopting the fourteenth amendment***, was to create a disability, to be removed in proper cases by a two-thirds vote, ***and to be made operative in other cases by the legislation of congress in its ordinary course.***” *Id.* (emphasis added).
12. The conclusion in *Griffin* mirrors the express language of Section 5 of the Fourteenth Amendment to the United States Constitution, which provides: “The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.”
13. The use of the term “the Congress” differs from use of the term “State” in Section 1 of the Fourteenth Amendment. This plainly demonstrates an intention that the United States Congress, and not individual states, would be responsible for creating legislation to enforce the terms of the Fourteenth Amendment.
14. Since the ratification of the Disqualification Clause, Congress has passed some legislation enforcing the Disqualification Clause. Congress enacted the First Ku Klux Klan Act (also known as the Enforcement Act of 1870). Ch. 114, 16 Stat. 140 (1870). Section 15 of this Act provided: “And be it further enacted, ***that any person who shall hereafter knowingly accept or hold any office under the United States, or any state to which he is ineligible under the third section of the fourteenth article of amendment of the constitution of the United States, or who shall attempt to hold or exercise the duties of any such office, shall be deemed guilty of a misdemeanor against the United States***, and, upon conviction thereof before the circuit or district court of the United States, shall be imprisoned not more than one year, or fined not exceeding one thousand dollars, or both, at the discretion of the court.” *See U.S. v. Powell*, 65 N.C. 709, at n.1 (Circuit Court, D. N.C. 1871) (emphasis added). This authority was repealed in the 1940s. Gerard N. Magliocca, *Amnesty and Section Three of the Fourteenth Amendment*, 365 Const. Comment. 87, 108 n.112 (2021).
15. Congress ***has acted*** to create a private right of action to enforce other provisions of the Fourteenth Amendment. *See, e.g.*, 42 U.S.C. § 1983.

16. Congress **has not** created a civil private right of action to allow a citizen to enforce the Disqualification Clause by having a person declared to be “not qualified” to hold public office.
17. Congress is presently considering legislation to enforce the Disqualification Clause. H.R. 1405 was introduced in the 117<sup>th</sup> Congress on February 26, 2021. The purpose of H.R. 1405 is “[t]o provide a cause of action to remove and bar from holding office certain individuals who engage in insurrection or rebellion against the United States . . . .” This proposed legislation would apply to members of Congress as well as holders of state office. Notably, however, this proposed legislation does not create a private right of action; rather, the legislation proposes that “The Attorney General of the United States may bring a civil action for declaratory judgment and relief . . . .” The claim would need to be brought in federal court, and be “heard and determined by a district court of three judges . . . .” A heightened burden of proof – clear and convincing evidence – would be required. H.R. 1405 has not been enacted at this time.
18. Congress has enacted a criminal statute prohibiting rebellion or insurrection (18 U.S.C. § 2383). Although the Court declines to express whether this is the exclusive criminal offense Congress has enacted to enforce the Disqualification Clause,<sup>3</sup> the fact that the statute is a criminal one demonstrates an intention that **only the government**, and not private citizens, must be the party initiating the action.<sup>4</sup>
19. None of the Candidates has been charged with or convicted of any state or federal crime that relates to insurrection or rebellion.
20. The Court notes that its conclusion that no private right of action exists is consistent with, and supported by, the analysis in the recent decision by the United States District Court in *Greene v. Raffensperger*, 2022 WL 1136729, No. 1:22-cv-01294-AT (N.D.

<sup>3</sup> The Court need not address whether the Disqualification Clause would be deemed to be enforced by convictions for various federal crimes, including obstructing congressional proceedings (18 U.S.C. § 1505), entering and remaining in a restricted building (18 U.S.C. § 1752(a)(1)), or disorderly and disruptive conduct in a restricted building (18 U.S.C. § 1752(a)(2)). None of the Candidates has been charged or convicted of any of these crimes.

<sup>4</sup> The Court declines the invitation from Rep. Finchem to opine as to whether only a criminal conviction is required to enforce the Disqualification Clause. The Court need not reach this issue.

Ga., Apr. 18, 2022). In *Greene*, the court cited well-established law to conclude that Congress did not create a private remedy in favor of candidates who wish to assert alleged violations of the Amnesty Act of 1872. *Id.* at \*8-9. Indeed, in *Greene*, the court concluded that “[i]n circumstances where a plaintiff asserts a claim directly under a federal statute and that statute does not afford a private right of action, federal courts have explained that they lack jurisdiction.” *Id.* at \*9 (citing *Acara v. Banks*, 470 F.3d 569, 572 (5<sup>th</sup> Cir. 2006) (no private cause of action under HIPAA); *Abner v. Mobile Infirmary Hosp.*, 149 F.App’x 857, 858-859 (11<sup>th</sup> Cir. 2005) (no private right of action under Medicare Act)). The court in *Greene* concluded that “[u]ltimately, ‘where the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action.’” *Id.*, at \*9 (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 286 (2002)).

21. The express language of the United States Constitution controls this issue. The Disqualification Clause creates a condition where someone can be disqualified from serving in public office. However, the Constitution provides that legislation enacted by Congress is required to enforce the disqualification pursuant to the Disqualification Clause. Aside from criminal statutes dealing with insurrection and rebellion which Congress has enacted (lawsuits which require the government, not private citizens, to initiate), Congress has not passed legislation that is presently in effect which enforces the Disqualification Clause against the Candidates. Legislation that proposes to enforce the Disqualification Clause currently is pending in the United States Congress, but has not yet been enacted. Therefore, given the current state of the law and in accordance with the United States Constitution, Plaintiffs have no private right of action to assert claims under the Disqualification Clause.

**B. Does Arizona Law Create A Private Right of Action in A.R.S. § 16-351(B)?**

22. Plaintiffs argue that federal legislation is unnecessary to create a private right of action to enforce the Disqualification Clause. Plaintiffs argue that the private right of action is created by A.R.S. § 16-351(B).
23. Assuming *arguendo* that the Arizona could create a private right of action notwithstanding the express language of Section 5 of the Fourteenth Amendment and the holding in *In Re Griffin*, the Court does not agree that A.R.S. § 16-351(B) creates the private right of action to enforce the Disqualification Clause.

24. “Election contests ‘are purely statutory and dependent upon statutory provisions for their conduct.’” *Pacion v. Thomas*, 225 Ariz. 168, 170 (2010)(quoting *Van Arsdell v. Shumway*, 165 Ariz. 289, 291 (1990)).
25. A.R.S. § 16-351(B) provides in pertinent part: “Any elector may challenge a candidate for any reason relating to **qualifications for the office sought as prescribed by law . . .**” (Emphasis added.)
26. This statute uses the word “prescribed” – which commonly means “to lay down a rule; to specify with authority.” Merriam-Webster.com Dictionary (2022). A.R.S. § 16-351(B) does not use the word “proscribed” – which commonly means “to condemn or forbid as harmful or unlawful” and “prohibit.” Merriam-Webster.com Dictionary (2022).
27. Election challenge statutes of other states historically have included provisions that proscribed candidates from holding office if certain conditions existed. For example, immediately after the Civil War, North Carolina had a statute providing: “no person prohibited from holding office by section 3 of the Amendment to the Constitution of the United States, known as Article XIV, shall qualify under this act or hold office in this State.” North Carolina Acts of 1868 ch. 1. sec. 8; *see also Worthy v. Barrett*, 63 N.C. 199, 200 (N.C. 1869).
28. A.R.S. § 16-351(B) addresses only “qualifications for the office sought as **prescribed** by law . . .” (Emphasis added.) This statute does not address candidates who may be “proscribed,” or prohibited, from holding office if certain conditions exist. To expand the inquiry to include disqualifications – or who is proscribed from holding office – would re-write the applicable statute and create a cause of action and remedy in a statutorily-created body of law. This would be contrary to established precedent. Arizona’s courts “decline to infer a statutory remedy into . . . statutes that the legislature eschewed.” *Pacion*, 225 Ariz. at 170 (declining to apply A.R.S. § 16-351 to alleged violations of campaign finance laws).<sup>5</sup>

<sup>5</sup> The Court notes that Arizona has enacted a framework to assert that a person holds or exercises public office unlawfully. This is the *quo warranto* procedure. A.R.S. § 12-2041, *et seq.* Although a *quo warranto* is to be brought by the Arizona Attorney General or by a County Attorney (if the Attorney General does not act), Arizona’s statutory framework allows a private person to request leave of court to file suit if public officials do not bring such a claim. A.R.S. § 12-2043.

29. The United States Supreme Court has declined to hold that the Disqualification Clause creates a “qualification” for office. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).<sup>6</sup>
30. With respect to Rep. Gosar and Rep. Biggs, as discussed *infra.*, the qualifications for Members of Congress are exclusively determined by each House of Congress. Article 1, Section 5 of the United States Constitution provides in pertinent part: “Each House shall be the Judge of the . . . Qualifications of its own Members.”
31. With respect to Rep. Finchem, Article 5, Section 2 of the Arizona Constitution establishes the following qualifications for officials in the Executive Branch of Arizona government: “No person shall be eligible to any of the offices mentioned in section 1 of this article except a person of the age of not less than twenty-five years, who shall have been for ten years next preceding his election a citizen of the United States, and for five years next preceding his election a citizen of Arizona.”
32. In sum, even assuming *arguendo* that the Court were to accept Plaintiffs’ argument that Arizona (and not just Congress) had the power to create a private right of action to enforce the Disqualification Clause, A.R.S. § 16-351(B) does not do this. Although it creates a private right of action allowing citizens to bring independent actions to establish that a person has not met the requirements *prescribed by law*, the plain language of this statute does not create a private right of action to argue that a candidate

<sup>6</sup> In *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), the United States Supreme Court expressly declined to resolve the question about whether the Disqualification Clause established a “qualification” to hold office. The Court noted: “***It has been argued that [the Disqualification Clause], as well as the Guarantee Clause of Article IV and the oath requirement of Art. VI, cl. 3, is no less a ‘qualification’ within the meaning of Art. I, § 5, than those set forth in Art. I, § 2.*** *Powell v. McCormack*, 395 U.S. 486, 520, n. 41, 89 S.Ct. 1944, 1963, n. 41, 23 L.Ed.2d 491 (1969) (emphasis added). In *Powell*, we saw no need to resolve the question whether those additional provisions constitute ‘qualifications,’ because ‘both sides agree that *Powell* was not ineligible under any of these provisions.’ *Ibid.* ***We similarly have no need to resolve that question today:*** Because those additional provisions are part of the text of the Constitution, they have little bearing on whether Congress and the States may add qualifications to those that appear in the Constitution.” *U.S. Term Limits*, 514 U.S. at n.2 (emphasis added).

is *proscribed by law* from holding office. In sum, a private right of action to enforce the Disqualification Clause was not created by A.R.S. § 16-351(B).<sup>7</sup>

**C. Does the Amnesty Act of 1872 Bar Enforcement of the Disqualification Clause?**

33. The Candidates argue that the Amnesty Act of 1872 (the “Act”) “forecloses” enforcement of the Disqualification Clause.
34. The Act provides, in pertinent part: “all political disabilities imposed by the third section of the fourteenth article of amendments of the Constitution of the United States are hereby removed from all persons whomsoever, except Senators and Representatives of the thirty-sixth and thirty-seventh Congresses, officers in the judicial, military, and naval service of the United States, heads of departments, and foreign ministers of the United States.”
35. There has been little federal case law discussing the interplay between the Act and the Disqualification Clause. Two recent cases – each considering the events of January 6, 2021 – arrived at exactly the opposite conclusions. In both of these cases, a candidate sought injunctive relief to prohibit the enforcement of a state statute allowing citizens to challenge the qualifications of a candidate to appear on a ballot.
36. In the first case – *Cawthorn v. Circosta*, \_\_\_ F. Supp. 3d \_\_\_, 2022 WL 738073 (E.D.N.C. Mar. 10, 2022) – the court ruled that the Act was not ambiguous, and applied the plain language of the Act. The court concluded that the Act was intended to apply prospectively, and ruled as follows: “By the plain language of Section 3 and the 1872 Act, Congress removed all of [the Disqualification Clause’s] disabilities from all person whomsoever who were not explicitly excepted.” *Id.* at \*12. The Court in *Cawthorn* granted injunctive relief in favor of the candidate, and stayed the state election challenge proceeding. *Id.* at \*14. *Cawthorn* is on appeal. The United States Court of Appeals for the Fourth Circuit declined to stay the decision, and has oral argument set for May 3, 2022. (see [internetcalMay032022ric.pdf \(uscourts.gov\)](#))

<sup>7</sup> The Court notes that because of the procedural posture of the case in *Greene*, the issue of the existence of a private right of action was not ripe for consideration in that case. In addition, the language used in the election challenge statutes in Arizona and Georgia differs. Thus, while at first blush the cases may appear nearly identical, there are important differences that the Court must consider.

37. In the second case – *Greene v. Raffensperger*, 2022 WL 1136729 (N.D. Ga. Apr. 18, 2022) – the court held the Act of 1872 did not apply prospectively, and applied only retroactively, because its removal language is phrased in the past tense, and “Congress can[not] ‘remove’ something that does not yet exist.” *Id.* at \*23. The court declined to grant injunctive relief in favor of the candidate, and allowed the Georgia administrative proceedings to continue. *Id.* at \*28. Given the recency of this opinion at the time of oral argument on April 20, 2022, this Court was not informed about whether an appeal had been taken.
38. Given the procedural posture of *Cawthorne* and *Greene*, whether a private right of action existed to bring suit pursuant to the Disqualification Clause was not at issue in those cases. The candidates were seeking injunctive relief to stop state court proceedings against them, as opposed to defending against injunctive relief (as is the case here).
39. *Cawthorn* and *Greene* are persuasive, but not binding on this Court. The Court notes, however, that these are two well-reasoned decisions which reach diametrically opposite conclusions. Each was written by a distinguished federal judge. At this time, no clarity exists as to how this federal issue will ultimately be decided by the federal courts.
40. Because this Court has concluded, *supra.*, that no private right of action exists under the United States Constitution or Arizona law, the Court raises this issue for appellate purposes, but declines to decide this issue as it is unnecessary for the resolution of the pending motions.
41. The current uncertainty in the federal courts about the prospective applicability of the Act to the Disqualification Clause precludes the issuance of injunctive relief here as a matter of law. Given the state of the law, Plaintiffs cannot demonstrate a strong likelihood of success on the merits that is required for the issuance of injunctive relief. *See* discussion *infra*.

**D. Does the Constitution of the United States Reserve Determination of the Qualifications of Members of Congress Exclusively to the U.S. House of Representatives?**

42. Rep. Gosar and Rep. Biggs raise the additional argument that only the United States Congress has the constitutional right and power to judge the qualifications of its

- members. Again, Article 1, Section 5 of the United States Constitution provides in pertinent part: “Each House shall be the Judge of the . . . Qualifications of its own Members.” Rep. Gosar and Rep. Biggs assert that the Verified Complaints against them must be dismissed, essentially arguing that this Court lacks jurisdiction to determine the qualifications of Members of Congress due to the express terms of the United States Constitution.
43. Plaintiffs argue that the States have the right to regulate congressional elections and candidacies pursuant to the authority conferred by Article 1, Section 4 of the United States Constitution. This section of the Constitution affords the States the authority and control of the time, place and manner of elections.
  44. Plaintiffs rely on two cases – *Hassan v. Colorado*, 495 Fed. Appx. 947 (10<sup>th</sup> Cir. 2012), and *Lindsay v. Bowen*, 750 F3d 1061, 1065 (9<sup>th</sup> Cir. 2014) – for the proposition that the the States have authority to judge of the qualifications of members of Congress. These cases, however, are inapposite. Both *Hassan* and *Lindsay* involved qualifications of candidates for ***Presidential elections***, not elections for Congress. The Constitution does not expressly identify who would be the judge of the qualifications of candidates for President. By contrast, the Constitution expressly provides that each House of Congress “shall be ***the*** Judge” of the “Qualifications of its own Members.” (Emphasis added.)
  45. The text of the Constitution is mandatory. It sets forth the single arbiter of the qualifications of members of Congress; that single arbiter is Congress.<sup>8</sup> It would contradict the plain language of the United States Constitution for this Court to conduct any trial over the qualifications of a member of Congress. Moreover, a state judicial trial relating to the qualifications of Rep. Biggs and Rep. Gosar arguably implicates the doctrines of federalism and separation of powers between the branches of the government (as this state judicial branch ultimately would be entering a judgment relating to a power reserved and assigned exclusively to the federal legislative branch of government).

<sup>8</sup> This further supports the conclusion reached, *supra.*, that legislation by Congress is necessary to enforce the Disqualification Clause. With such legislation, Congress would be delegating its exclusive power to assess whether members of Congress were disqualified pursuant to the Disqualification Clause.



**E. Are the Lawsuits Barred by the Doctrine of Laches?**

46. Finally, Rep. Gosar and Rep. Biggs argue that the election challenges against them are barred by the doctrine of laches.

47. Laches is an equitable doctrine that bars claims brought with unreasonable delay. *League of Ariz. Cities & Towns v. Martin*, 219 Ariz. 556, 558, ¶ 6 (2009). In determining whether a delay was unreasonable, courts must “examine the justification for delay, including the extent of plaintiff’s advance knowledge of the basis for challenge.” *Harris v. Purcell*, 193 Ariz. 409, 412, ¶ 16 (1998). The unreasonable delay “must also result in prejudice, either to the opposing party or to the administration of justice, which may be demonstrated by showing injury or a change in position as a result of the delay.” *Martin*, 219 Ariz. at 558, ¶ 6 (citation omitted).

48. The Candidates’ reliance on laches arguments are misplaced in the pending motions. To invoke such a laches defense, the Candidates necessarily must introduce factual evidence indicating prejudice to each of them.<sup>9</sup> That would convert the purely legal motion before the Court to a motion for summary judgment requiring consideration of evidence.

49. In the exercise of judicial restraint, the Court believes the doctrine of laches should be considered at one time – both in the context of prejudice to the Candidates and of prejudice to the administration of justice. However, because the issue of prejudice to the Candidates requires a factual determination,<sup>10</sup> the Court declines further consideration and application of the laches defense at this time.

<sup>9</sup> Laches also can be applied in instances where “delay has prejudiced the administration of justice.” *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 923 (D. Ariz. 2016). When determining whether delay has prejudiced the administration of justice, “a court considers prejudice to the courts, candidates, citizens who signed petitions, election officials, and voters.” *Id.* (citing *Sotomayor v. Burns*, 199 Ariz. 81, 83, ¶ 9 (2000); *Mathieu v. Mahoney*, 174 Ariz. 456, 460 (1993)). Although likely applicable, *see discussion infra.*, the Candidates have not argued this theory of laches at this juncture.

<sup>10</sup> The Court likewise declines to consider the arguments as to whether the factual allegations relating to the Candidates meet the technical definition of “insurrection” or “rebellion.” Because of the very expedited time constraints in issuing this ruling, and because this is a motion to dismiss testing the legal sufficiency of the pleadings, this ruling is based only upon on the legal arguments raised.

**F. Have Plaintiffs Satisfied Arizona’s Legal Standards for Injunctive Relief?**

50. Assuming *arguendo* that Plaintiffs had stated a claim upon which relief could be granted, Plaintiffs request for injunctive relief still fails as a matter of law.
51. As to the first requirement for injunctive relief, the foregoing analysis reveals that there is not a reasonable likelihood for success on the merits by Plaintiffs. Plaintiffs have failed to cite persuasive legal authority or even include a developed legal argument about how they have a private right of action. There is an outright split of legal authority on the interplay between the Disqualification Clause and the Amnesty Act of 1872. And, with respect to Rep. Gosar and Rep. Biggs, proceeding with this lawsuit would contradict the express terms of the United States Constitution, and undermine the notion of separation of powers. “Circumstances involving resolution of relatively undeveloped body of law or novel factual settings make a determination of success on the merits difficult to forecast.” *Greene*, at 71 (quoting *Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel*, 640 F. 2d 560, 569-70 (5<sup>th</sup> Cir. 1981)). “[W]here there are novel or complex issues of law or fact that have not been resolved a preliminary injunction should be denied.” *Greene*, at p. 71 (quoting *Cincinnati Bengals, Inc. v. Bergey*, 453 F. Supp. 129, 145 (S.D. Ohio 1974)). “There can be no substantial likelihood of success, if there are complex issues of law and fact, resolution of which is not free from doubt.” *Greene*, at p. 71 (quoting *Miller v. Am. Tel. & Tel. Corp.*, 344 F. Supp. 344, 349 (E.D. Pa. 1972)).
52. As to the second requirement for injunctive relief, the foregoing analysis reveals that there is not a showing of irreparable injury if the injunctive relief is not granted. If any of the Candidates are wrongfully enjoined from appearing on the ballot, the Candidate suffers the prejudice as they must be excluded from office. If, however, the Candidate appears on the ballot, and it is subsequently determined that the Candidate was disqualified, Arizona law has mechanisms in place to replace candidates who no longer are able to serve in office.
53. As to the third requirement, the foregoing analysis reveals that Plaintiffs have not made a sufficient showing that the balance of the hardships favors the issuance of injunctive relief.

54. Plaintiffs have failed to demonstrate the necessary elements for the issuance of a preliminary injunction. Plaintiffs have failed to state a claim upon which relief can be granted in this action. Dismissal is warranted.

**G. Should an Advisory Trial Proceed Despite the Dismissal?**

55. Plaintiffs have requested that, even if the pending motions to dismiss are granted, the Court still conduct an “advisory” evidentiary hearing.

56. In Arizona, election challenges are some of the most expedited proceedings in the court system. Courts are required to hear and render a decision within days after a matter is filed. A.R.S. § 16-351(A).

57. Issues of whether a person has participated in “insurrection” or “rebellion” often are, by their nature, detailed matters which involve the interplay between legal and constitutional rights. Moreover, facts involved in the adjudication of these claims can be detailed and particularly involute. This case illustrates the point:

- a. During oral argument, counsel for Rep. Gosar raised legitimate constitutional rights, issues and legal defenses that would need to be considered and decided. These include the rights to free speech and assembly under both the United States Constitution and Arizona Constitution.
- b. Factually, even though ten (10) Requests for Production are the presumptive limit pursuant to Rule 26.2, *Arizona Rules of Civil Procedure*, Plaintiffs have requested leave to serve more than twice the presumptive limit: Plaintiffs have requested to serve 25 Requests for Production to Rep. Finchem, 23 Requests for Production to Rep. Gosar, and 21 Requests for Production to Rep. Biggs. In Arizona’s courts, such expansive requests appear only in the most complex of cases.
- c. Plaintiffs first disclosed the identity and scope of their expert testimony one week before the evidentiary hearing.
- d. One federal court has described the interplay of the events of January 6, 2021 and the Disqualification Clause as “novel and complex constitutional issues of public interest and import.” *Greene*, at \*1.

58. In *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920 (D. Ariz. 2016) the United States District Court for the District of Arizona aptly described the prejudicial effect of waiting until an election challenge to assert detailed claims that could have been litigated sooner. The Court noted: “More importantly, Plaintiffs’ delay has prejudiced the administration of justice. Plaintiffs’ delay left the Court with only 18 days before the . . . deadline to obtain briefing, hold a hearing, evaluate the relevant constitutional law, rule on Plaintiffs’ motion, and advise the Secretary [of State] and the candidates [of the Court’s decision].” *Id.*, at 924.
59. “The real prejudice caused by delay in election cases is to the quality of decision making in matters of great public importance.” *Id.* (quoting *Sotomayor v. Burns*, 199 Ariz. 81, 83, ¶ 9). “Unreasonable delay can prejudice the administration of justice ‘by compelling the court to steamroll through . . . delicate legal issues in order to meet’ election deadlines.” *Id.* (quoting *Lubin v. Thomas*, 213 Ariz. 496, 497–98, ¶ 10 (2006)). Delaying the filing of lawsuits works to “deprive judges of the ability to fairly and reasonably process and consider the issues . . . and rush appellate review, leaving little time for reflection and wise decision making.” *Mathieu*, 174 Ariz. at 460; accord *Ariz. Libertarian Party*, 189 F. Supp. 3d at 923.
60. Delay exists here in filing suit to obtain a judicial determination that the Candidates are disqualified from holding office by the Disqualification Clause. The Disqualification Clause applies to both candidates *and sitting public officials*. Each of the Candidates holds public office. The events in question occurred in January 2021. Plaintiffs have asked this Court to take judicial notice of numerous media stories and social media postings involving the Candidates – most are dated between **January 2021 and June 2021**. See *Plaintiffs’ Motions in Limine and Request for Judicial Notice*, filed April 11, 2022, April 12, 2022 and April 14, 2022. Because each of the Candidates is a public official, litigation about whether each participated in an insurrection or rebellion, and whether each was disqualified under the Disqualification Clause, could have been filed much earlier than April 2022. The importance of the events of January 6, 2021, and the legal and constitutional issues associated with a judicial inquiry of these events, compels a deliberate and reasoned judicial inquiry.
61. The federal courts handling disputes relating to the events of January 6, 2021 have taken measured approaches, declining to act both in the absence of developed legal argument and where unnecessary. In *Greene*, the court declined to grant relief (issuing an injunction) due, in part, to the plaintiffs “failure to cite persuasive legal authority or

even include a developed legal argument” supporting their position. *Greene* at p. 71. Likewise, in *Cawthorn*, the court declined to allow the parties to develop the factual underpinnings of their claims and defenses when the legal rulings precluded a trial on the merits. The court in *Cawthorn* stated: “Should the court’s statutory interpretation prove incorrect, it will of course engage in the factual development necessary and give these arguments full consideration.” *Cawthorn*, \_\_ F. Supp. 3d \_\_ at n.7.

62. This Court will follow the restrained and judicious lead of the federal courts. Arizona’s election challenge framework is ill-suited for the detailed analysis of the complex constitutional, legal and factual issues presented in this case. Plaintiffs have not cited persuasive authority or presented a developed legal argument suggesting that an advisory trial in this expedited framework must occur, and the Court declines the invitation to transform this election challenge into something for which it was not intended. The request to conduct an advisory trial on an expedited basis is declined.<sup>11</sup>

**LET THE RECORD REFLECT** that this ruling neither validates nor disproves Plaintiffs’ allegations against the Candidates. The Court expressly is not reaching the merits of the factual allegations in this case.

Good cause appearing,

**IT IS ORDERED** granting *Defendant Mark Finchem’s Motion to Dismiss*, filed April 11, 2022, and dismissing the *Verified Complaint* filed in CV 2022-004321.

**IT IS FURTHER ORDERED** granting Congressman Paul Gosar’s *Motion to Dismiss*, filed April 11, 2022, and dismissing the *Verified Complaint* originally filed in CV 2022-004325.

**IT IS FURTHER ORDERED** granting *Congressman Biggs’s Motion to Dismiss*, filed April 11, 2022, and dismissing the *Verified Complaint* originally filed in CV 2022-004327.

<sup>11</sup> To be clear, it is a mistake to conclude that the Court is opining that the Candidates’ involvement in the events of January 6, 2021 never can be subject to any judicial review. This decision should not be misconstrued in this way. Indeed, there may be a different time and type of case in which the Candidates’ involvement in the events of that day appropriately can and will be adjudicated in court. However, the special, statutorily-created, limited and expedited lawsuit simply is not designed for such an adjudication. And, irrespective of this decision, there ultimately will be a different trial for each Candidate: one decided by Arizona voters who will have the final voice about whether each Candidate should, or should not, serve in elective office.

**IT IS FURTHER ORDERED** declining to conduct an evidentiary hearing.

**IT IS FURTHER ORDERED** vacating all future court hearings, including all trial settings in this matter.

**IT IS FURTHER ORDERED** denying as moot all other remaining motions.

**IT IS FURTHER ORDERED** directing that all parties shall bear their own respective costs and attorneys' fees incurred.

**IT IS FURTHER ORDERED** that because no further matters remain pending, this is a final judgment entered pursuant to Rule 54(c), *Arizona Rules of Civil Procedure*.

DATED: April 21, 2022

/s/ Christopher A. Coury

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Christopher A. Coury  
Superior Court Judge

JEFF FINE  
 Clerk of the Superior Court  
 By Fawn Fowler, Deputy  
 Date 04/07/2022 Time 10:08:10

Description	Amount
----- CASE# CV2022-004321	-----
ELECTION CONTEST=NEW	333.00
-----	-----
TOTAL AMOUNT	333.00
Receipt# 28712444	

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 7  
 8 MARICOPA COUNTY

9 THOMAS HANSEN, an individual;  
 ALEXANDER CARDONA, an  
 individual; CHARLOTTE COSTELLO,  
 10 an individual; RICHARD DELLA  
 PORTA, an individual; SUZANNE  
 11 DISTASO, an individual; CARMEN  
 FRANCIS, an individual; CARRIE  
 12 GOODE, an individual; IRA GOODE,  
 an individual; CELESTE IRONS, an  
 13 individual; JANA ROSE OCHS, an  
 individual; and DANIEL O'NEAL, an  
 14 individual;

Case No.:  
 CV 2022-004321

**VERIFIED COMPLAINT**  
  
**(Election Case/Candidate Challenge**  
 Per A.R.S. § 16-351)

15 Plaintiffs,

16 v.

17 REP. MARK FINCHEM, a candidate  
 for Secretary of State; KATIE HOBBS,  
 18 in her official capacity as Secretary of  
 State; APACHE COUNTY BOARD  
 19 OF SUPERVISORS; LARRY NOBLE,  
 in his official capacity as Recorder of  
 Apache County; COCHISE COUNTY  
 20 BOARD OF SUPERVISORS; DAVID  
 21 W. STEVENS, in his official capacity  
 as Recorder of Cochise County;

1 COCONINO COUNTY BOARD OF  
2 SUPERVISORS; PATTY HANSEN, in  
3 her official capacity as Recorder of  
4 Coconino County; GILA COUNTY  
5 BOARD OF SUPERVISORS; SADIE  
6 JO BINGHAM, in her official capacity  
7 as Recorder of Gila County; GRAHAM  
8 COUNTY BOARD OF  
9 SUPERVISORS; WENDY JOHN, in  
10 her official capacity as Recorder of  
11 Graham County; GREENLEE  
12 COUNTY BOARD OF  
13 SUPERVISORS; SHARIE  
14 MILHEIRO, in her official capacity as  
15 Recorder of Greenlee County; LA PAZ  
16 COUNTY BOARD OF  
17 SUPERVISORS; RICHARD GARCIA,  
18 in his official capacity as Recorder of  
19 La Paz County; MARICOPA COUNTY  
20 BOARD OF SUPERVISORS;  
21 STEPHEN RICHER, in his official  
capacity as Recorder of Maricopa  
County; MOHAVE COUNTY BOARD  
OF SUPERVISORS; KRISTI BLAIR,  
in her official capacity as Recorder of  
Mohave County; NAVAJO COUNTY  
BOARD OF SUPERVISORS;  
MICHAEL SAMPLE, in his official  
capacity as Recorder of Navajo County;  
PIMA COUNTY BOARD OF  
SUPERVISORS; GABRIELLA  
CAZARES-KELLY, in her official  
capacity as Recorder of Pima County;  
PINAL COUNTY BOARD OF  
SUPERVISORS; and VIRGINIA  
ROSS, in her official capacity as  
Recorder of Pinal County; SANTA  
CRUZ COUNTY BOARD OF  
SUPERVISORS; SUZANNE SAINZ,  
in her official capacity as Recorder of  
Santa Cruz County; YAVAPAI  
COUNTY BOARD OF



1 SUPERVISORS; LESLIE HOFFMAN,  
2 in her official capacity as Recorder of  
3 Yavapai County; YUMA COUNTY  
4 BOARD OF SUPERVISORS; and  
5 ROBYN STALLWORTH  
6 POQUETTE, in her official capacity as  
7 Recorder of Yuma County;

8 Defendants.

9 This is a challenge, pursuant to Arizona Revised Statutes, § 16-351, to the  
10 candidacy of Mark Finchem who is running for Secretary of State.

11 **PARTIES, VENUE, AND JURISDICTION**

12 1. Plaintiff Thomas Hansen is a qualified elector in Arizona. He resides in  
13 Mohave county.

14 2. Plaintiff Richard Della Porta is a qualified elector in Arizona.

15 3. Plaintiff Charlotte Costello is a qualified elector in Arizona.

16 4. Plaintiff Carmen Francis is a qualified elector in Arizona.

17 5. Plaintiff Celeste Irons is a qualified elector in Arizona.

18 6. Plaintiff Alexander Cardona is a qualified elector in Arizona.

19 7. Plaintiff Suzanne Distaso is a qualified elector in Arizona.

20 8. Plaintiff Carrie Goode is a qualified elector in Arizona.

21 9. Plaintiff Ira Goode is a qualified elector in Arizona.

10. Plaintiff Jana Rose Ochs is a qualified elector in Arizona.

11. Plaintiff Daniel O'Neal is a qualified elector in Arizona.

1           12.       Defendant Mark Finchem is a candidate for Secretary of State, a statewide  
2 office. He currently serves as a member of the Arizona House of Representatives. He  
3 resides in Pima County.

4           13.       Defendant Katie Hobbs is the Arizona Secretary of State, a public officer,  
5 and is named as a defendant in this action in her official capacity. The Secretary of State  
6 is the officer with whom the petitions are required to be filed and is named as an  
7 indispensable party. A.R.S. § 16-351(C)(2).

8           14.       The following Defendants are referred to collectively as the “County  
9 Defendants.”

10          15.       Defendants Board of Supervisors for Apache, Cochise, Coconino, Gila,  
11 Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz,  
12 Yavapai, and Yuma counties are named as indispensable parties pursuant to A.R.S. § 16-  
13 351(C)(3).

14          16.       Defendant Larry Noble is the Apache County Recorder, a public officer of  
15 Apache County, and is named as a defendant in this action in his official capacity. He is  
16 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

17          17.       Defendant David W. Stevens is the Cochise County Recorder, a public  
18 officer of Cochise County, and is named as a defendant in this action in his official  
19 capacity. He is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

1           18.       Defendant Patty Hansen is the Coconino County Recorder, a public officer  
2 of Coconino County, and is named as a defendant in this action in her official capacity.  
3 She is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

4           19.       Defendant Sadie Jo Bingham is the Gila County Recorder, a public officer  
5 of Gila County, and is named as a defendant in this action in her official capacity. She is  
6 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

7           20.       Defendant Wendy John is the Graham County Recorder, a public officer of  
8 Graham County, and is named as a defendant in this action in her official capacity. She is  
9 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

10          21.       Defendant Sharie Milheiro is the Greenlee County Recorder, a public  
11 officer of Greenlee County, and is named as a defendant in this action in her official  
12 capacity. She is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

13          22.       Defendant Richard Garcia is the La Paz County Recorder, a public officer  
14 of La Paz County, and is named as a defendant in this action in his official capacity. He is  
15 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

16          23.       Defendant Stephen Richer is the Maricopa County Recorder, a public  
17 officer of Maricopa County, and is named as a defendant in this action in his official  
18 capacity. He is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

19          24.       Defendant Kristi Blair is the Mohave County Recorder, a public officer of  
20 Mohave County, and is named as a defendant in this action in her official capacity. She is  
21 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

1           25.       Defendant Michael Sample is the Navajo County Recorder, a public officer  
2 of Navajo County, and is named as a defendant in this action in his official capacity. He  
3 is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

4           26.       Defendant Gabriella Cazares-Kelly is the Pima County Recorder, a public  
5 officer of Pima County, and is named as a defendant in this action in her official capacity.  
6 She is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

7           27.       Defendant Virginia Ross is the Pinal County Recorder, a public officer of  
8 Pinal County, and is named as a defendant in this action in her official capacity. She is  
9 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

10          28.       Defendant Suzanne Sainz is the Santa Cruz County Recorder, a public  
11 officer of Santa Cruz County, and is named as a defendant in this action in her official  
12 capacity. She is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

13          29.       Defendant Leslie Hoffman is the Yavapai County Recorder, a public officer  
14 of Yavapai County, and is named as a defendant in this action in her official capacity.  
15 She is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

16          30.       Defendant Robyn Stallworth Poquette is the Yuma County Recorder, a  
17 public officer of Yuma County, and is named as a defendant in this action in her official  
18 capacity. She is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

19          31.       Venue is proper in this Court because defendants reside in, or hold office  
20 in, different counties. Ariz. Stat. §§ 12-401(7), (16); *McClung v. Bennett*, 235 P.3d 1037  
21 (Ariz. 2010).



1 prominent House Members, Senators, and the incumbent President, led directly,  
2 intentionally, and foreseeably to the insurrectionists' violent assault on the Capitol.<sup>1</sup>

3 36. Finchem was engaged in efforts to intimidate Congress and the Vice  
4 President into rejecting valid electoral votes and to subvert the essential constitutional  
5 function of an orderly and peaceful transition of power. Finchem was engaged with the  
6 January 6 attack by being in close contact with the planners of the Wild Protest, including  
7 throughout the day on January 6, and by participating in the attack with the advance  
8 knowledge that it was substantially likely to lead to the attack.

9 37. Finchem promoted the events of January 6 ahead of time. He coordinated  
10 many of his effortst with U.S. Representatives Paul Gosar and Andrew Biggs, and agreed  
11 with them on a plan to first delegitimatize, then challenge, and finally overturn the 2020  
12 presidential election.

13 38. The planners of the "Save America" demonstration at the Ellipse in  
14 Washington, D.C. on January 6 (hereafter "Ellipse Demonstration") report that U.S.  
15 Representatives Paul Gosar and Andrew Biggs met with them beforehand. Gosar offered  
16 "blanket pardons" to the organizers of that demonstration in connection with unrelated  
17 criminal investigations.

18 39. The stated goal of the organizers was to pressure Vice President Pence into  
19 disregarding the electoral votes from several states and declaring Trump the winner of the  
20

---

21 <sup>1</sup> This candidacy challenge uses the term "insurrectionists" without prejudice as to whether the events of January 6 may also constitute a "rebellion" within the meaning of the Disqualification Clause.

1 2020 election. The likelihood of violence during the implementation of this plan was  
2 plain to bystanders and equally or more so to those intimately involved. Before the  
3 demonstration, violent groups announced they were going to attend it. Plans for  
4 violence—and specifically occupying the Capitol to prevent the certification vote or  
5 violently influence its outcome—were so prevalent that one reporter has remarked that  
6 “[a]nyone with a Twitter account and an hour of time to kill could have warned about the  
7 potential for violence on Jan. 6—and many did.” Furthermore, the insurrection was, in  
8 part, intended to prevent the certification in order to send false electoral slates to  
9 Congress—an effort Finchem was involved in.

10 40. Finchem publicly supported the insurrection as it was happening.

11 41. Finchem—who later denied or obfuscated his actions of January 6—  
12 advanced with the crowd near to the steps of the Capitol as it was being overrun, took a  
13 picture outside the Capitol among the violent mob just moments after the Capitol was  
14 breached, and Tweeted his support while the insurrection was ongoing. “What happens  
15 when the People feel they have been ignored, and congress refuses to acknowledge  
16 rampant fraud. #stopthesteal,” he wrote.

17 42. Since the insurrection, Finchem has continued to voice his support for the  
18 insurrectionists who stormed the Capitol, describing them as “peaceful patriots,” while  
19 falsely claiming that any violence that might have occurred was perpetrated by “antifa”  
20 infiltrators.

1           43. Finchem’s individual actions, as well as his collective actions taken in  
2 concert with others, as described in detail below, establish that he engaged in the  
3 insurrection of January 6 and is therefore constitutionally disqualified from running for  
4 the Arizona Secretary of State, under the Disqualification Clause of Section Three of the  
5 Fourteenth Amendment.

6                           **CONSTITUTIONAL AND STATUTORY BACKGROUND**

7           44. Under Section Three of the Fourteenth Amendment to the U.S.  
8 Constitution, known as the Disqualification Clause, “No Person shall be a . . .  
9 Representative in Congress . . . or hold any office, civil or military . . . under any State . .  
10 . who, having previously taken an oath, as a member of Congress . . . or as a member of  
11 any State legislature . . . to support the Constitution of the United States, shall have  
12 engaged in insurrection or rebellion against the same.”

13           45. Arizona requires all candidates for primary election to file nomination  
14 papers with the Secretary of State that, among other things, declare “[t]he candidate will  
15 be qualified at the time of election to hold the office the person seeks.” Ariz. Stat. § 16-  
16 311(D).

17           46. To enforce that requirement, “any elector” may challenge a candidate’s  
18 nomination “for any reason relating to qualifications for the office sought as prescribed  
19 by law.” *Id.* § 16-351(B). That includes constitutional qualifications. *Pacion v. Thomas*,  
20 236 P.3d 395, 397 (Ariz. 2010).

21                           **FACTUAL BACKGROUND**



1           47.     Representative Finchem took an oath as an elected member of the Arizona  
2 House of Representatives. Ariz. Stat. § 38-231(E)–(F). That oath included a promise to  
3 “support the Constitution of the United States.” *Id.* § 38-231(E). A record of the oath is  
4 filed with the Secretary of State. *Id.* § 38-233(A).

5           48.     Finchem has a history of incendiary rhetoric and advocating violence  
6 against his political opponents.

7           49.     Finchem was, at one point, the Arizona Coordinator of the Coalition of  
8 Western States (“COWS”), which supported both Cliven Bundy’s violent confrontation  
9 with federal law enforcement in 2014 and the occupation of the Malheur National  
10 Wildlife Refuge in 2016. He also claimed at one point to be a member of the “Oath  
11 Keepers,” a violent far-right militia group.

12           50.     After the 2020 election, Finchem publicly insisted that then-President  
13 Trump had won the election, posting those false claims online consistently from  
14 November 2020 through January 6, 2021. These statements were made in support of a  
15 larger movement, often using the slogan “Stop the Steal,” that advances and promotes the  
16 false claim that Donald Trump won the 2020 election.

17           51.     Paul Gosar, a member of the United States House of Representatives for  
18 Arizona’s fourth congressional district, was a leader of this movement. He helped to  
19 organize some of the earliest rallies and made contacts with both Finchem and a violent  
20 extremist named Ali Alexander. Gosar publicly and consistently coordinated with both  
21 Finchem and Alexander in the weeks leading up to January 6.

1           52.    On November 6, 2020, Gosar was already advocating illegal means to  
2 overturn the election, urging the U.S. Department of Justice to seize voting machines.

3           53.    On November 30, 2020, Finchem advocated that Arizona withhold its  
4 electors. Gosar joined in that call.

5           54.    In late November, Gosar spoke at a meeting of the “Oath Keepers” in  
6 Northern Arizona where he said, “We are in a Civil War, we just haven’t started shooting  
7 yet.”

8           55.    On December 7, Gosar wrote an op-ed arguing Biden’s win amounted to a  
9 “coup.”

10          56.    Finchem took money to advance this narrative. On December 18, the  
11 Trump campaign paid Finchem \$6,037 for “recount: legal consulting” even though  
12 Finchem is not a lawyer. Finchem claimed the money was for security at an event he held  
13 in Phoenix with Rudy Giuliani—an event Finchem and Giuliani used to promote the lie  
14 that Trump won the election.

15          57.    Simultaneously, in November 2020, various persons associated with the  
16 movement attempted to block the certification of President-elect Biden’s victory with  
17 dozens of lawsuits. None succeeded, and all were found to be baseless. After litigation  
18 failed, some within this larger movement accepted that they had exhausted their legal  
19 options for challenging the results of the presidential election.

20                   **The Unconstitutional Scheme to Overturn the 2020 Election Results**

1           58. Others, however, followed Gosar and Finchem’s lead and turned to  
2 extralegal plans.

3           59. They formulated an unconstitutional scheme to subvert the constitutional  
4 process of counting the electoral votes in Congress, preventing President-elect Biden  
5 from being sworn in as President. Leaders of this scheme—including then-President  
6 Trump, certain Members of Congress, including Representative Gosar, and others outside  
7 government—established and promoted a plan to prevent Congress from certifying  
8 President-elect Biden’s victory on January 6, the day Congress counts the presidential  
9 electors’ votes.

10          60. The votes of presidential electors, under the provisions of the Twelfth  
11 Amendment to the U.S. Constitution and the Electoral Count Act, 3 U.S.C. §§ 15 et seq.,  
12 are officially counted as follows. At 1:00 p.m. on January 6 of the year following a  
13 presidential election, the U.S. Senate and the U.S. House of Representatives meet jointly  
14 in the House Chamber, with the Vice President of the United States (in his capacity as  
15 President of the Senate) presiding. Beginning with Alabama, and proceeding  
16 alphabetically, the Vice President opens each state’s certificate of the votes of its electors,  
17 and calls for objections, if any. Any objection must be filed by at least one Senator and at  
18 least one Member of the House. These objections are then voted upon separately by the  
19 House and Senate. 3 U.S.C. § 15; U.S. Const. amend. XII.

20          61. The Electoral Count Act provides that, if a state has submitted only one  
21 return of electoral votes, and if the electoral votes were “regularly given by electors

1 whose appointment has been lawfully certified,” then Congress cannot reject those  
2 electoral votes. 3 U.S.C. § 15.

3         62. The Electoral Count Act provides two scenarios in which, theoretically,  
4 Congress can reject electoral votes. First, “the two Houses concurrently” may reject one  
5 or more electoral votes from a state when both Houses “agree that such vote or votes  
6 have not been so regularly given by electors whose appointment has been so certified.”  
7 Second, if a state submits multiple conflicting returns of its electoral votes, the Act  
8 contains procedures for determining which return prevails. *Id.*

9         63. After the 2020 election, no lawful procedure under the Electoral Count Act  
10 could prevent the counting of electoral votes from the states where President-elect Biden  
11 had won the election. None of those states had submitted multiple competing electoral  
12 tallies to Congress, notwithstanding attempts to create “alternate slates,” described below.  
13 And, as was generally understood at the time, there were insufficient votes in the U.S.  
14 House of Representatives to reject as not “regularly given” the electoral votes from any  
15 state, let alone to reject enough electoral votes to change the outcome to anything other  
16 than a Biden victory.

17         64. Since no lawful procedure under the Electoral Count Act could prevent the  
18 counting of electoral votes from the states where President-elect Biden had won the  
19 election, leaders of the scheme to subvert the counting of the votes developed plans by  
20 which Vice President Pence would refuse to recognize the votes of electors from certain  
21 states that Trump had lost, thus leading to a Trump “victory” in Congress.

1           65.     However, these plans relied on cooperation from sympathetic members of  
2 Congress and, crucially, Vice President Pence. The strategy centered on Pence abusing  
3 the Vice President’s ceremonial duty to “open all the certificates” of state electoral votes  
4 as a pretext to unilaterally reject votes.

5           66.     Key leaders and participants in the larger scheme developed plans to  
6 pressure or intimidate Congress and Pence into cooperating—and, if that failed, to  
7 obstruct the electoral count certification.

8           67.     Obstructing certification would have also delayed the process so as to  
9 facilitate another strategy: to introduce fake electoral votes.

10          68.     In December 2020, Trump and key allies devised a plan to create “alternate  
11 slates” of electors.

12          69.     These “electors” met on the same day as the real electors. The apparent  
13 plan was to introduce them at some point during or after January 6.

14          70.     An “alternate slate” was created in Arizona. Both Finchem and Gosar  
15 promoted the effort to produce “alternate” electors.

16          71.     Finchem has been subpoenaed by the U.S. Congress’s Select Committee to  
17 Investigate the January 6th Attack on the United States Capitol regarding his role in that  
18 effort.

19          72.     This effort to produce “alternate” electors has been described in a recent  
20 brief by that congressional committee as a criminal conspiracy to defraud the United  
21 States.

1           73.    The U.S. District Court for the Central District of California has concluded  
2 that it was “more likely than not” that the overall scheme, of which Finchem’s efforts  
3 were part, constituted a criminal conspiracy to defraud the United States by interfering  
4 with the election certification process, and obstruction of an official proceeding of  
5 Congress. *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM (C.D. Cal. Mar. 28,  
6 2022), 2022 WL 894256.

7           74.    To further their scheme to overturn the presidential election results, in  
8 December 2020 and January 2021, organizers associated with a group called “Women for  
9 America First” planned a demonstration at the Ellipse in Washington, D.C. (the “Ellipse  
10 Demonstration”) on January 6 to coincide with, and seek to block, the certification of  
11 electoral votes. At this demonstration, they planned to push false claims of massive voter  
12 fraud and to pressure Pence to refuse to count slates of electors from states with close  
13 contests.

14           75.    The organizers of the Ellipse Demonstration communicated directly with  
15 White House staff about the demonstration.

16           76.    In addition, the organizers of the Ellipse Demonstration planned and  
17 promoted events that developed into violence in November and December. Specifically,  
18 the group promoted the November 14 “Million MAGA March” in D.C. that left one  
19 person stabbed and several arrested; a demonstration on December 6, 2020 in Des  
20 Moines where a pro-Trump attendee shot into a car of teenage girls; and a December 12  
21 demonstration in D.C. where several were stabbed and one person was arrested.

1           77. Organizers’ plans for January 6 also included a march on the U.S. Capitol  
2 while Congress was counting electoral votes.

3           78. On December 19, 2020, Trump endorsed the demonstration, claiming it  
4 would be “wild.” Trump’s call for a protest was widely understood to be a coded call for  
5 violence by Trump supporters. On social media, his supporters openly called for weapons  
6 to be carried into the District of Columbia, for law enforcement to be murdered if they  
7 interfered, and for supporters to storm the Capitol to prevent the certification of  
8 President-elect Biden’s victory.

9           79. Around this time, Alexander’s allies received a permit to host a separate but  
10 related protest, which Alexander labeled the “Wild Protest,” around the steps of the  
11 Capitol on January 6. Finchem and Gosar were publicized as speakers at the Wild Protest.

12           80. On December 30, 2020, Alexander replied to a tweet by Representative-  
13 elect Marjorie Taylor Greene, a well-known promoter of political violence, promising  
14 that “1776” —the American Revolution and subsequent Revolutionary War— “is  
15 \*always\* an option” if objections to certification were blocked.

16           81. The responses indicate it was understood as a call to storm the Capitol.  
17 Alexander increasingly used references to “1776” between December 30 and January 6 as  
18 a call for violence if Trump was not installed as president for another four years.

19           82. By this time, it was well known that events Alexander planned and  
20 promoted had developed into violence. Indeed, the organizers of the Ellipse  
21

1 Demonstration claim that they warned their congressional contacts about the possibility  
2 of violence at the Wild Protest.

3 83. At about this time, Trump and his associates in the movement to overturn  
4 the 2020 election used extralegal and unlawful tactics, as Trump and Meadows attempted  
5 to intimidate Georgia Secretary of State Raffensperger into fabricating votes and  
6 declaring Trump the winner of Georgia's presidential election.

7 84. On January 5, 2021, Pence informed Trump that he did not have the  
8 authority to unilaterally reject electoral votes and consequently would not do so. This was  
9 widely and publicly reported that same day.

10 85. Finchem spoke at a "pre-rally" organized by Alexander, also on January 5,  
11 where Finchem made false claims of election fraud.

12 **The Events of January 6, 2021**

13 86. At the Ellipse Demonstration, speakers included Trump's lawyer, Rudy  
14 Giuliani, who called for "trial by combat," and U.S. Representative Mo Brooks of  
15 Alabama, who urged the crowd to "start taking down names and kicking ass" and be  
16 prepared to sacrifice their "blood" and "lives" and "do what it takes to fight for America"  
17 by "carry[ing] the message to Capitol Hill," since "the fight begins today."

18 87. Finchem attended the Ellipse Demonstration that morning and claimed he  
19 was in D.C. "to deliver an evidence book and letter to Vice President Pence showing key  
20 evidence of fraud in the Arizona Presidential Election, and asking him to consider  
21 postponing the award of electors" and to "visit with Congressmen from Arizona."



1           88.    On information and belief, these “Congressmen from Arizona” referred to  
2 Gosar and Biggs, and the primary purpose of his visit with them pertained to their joint  
3 efforts to overturn the results of the 2020 presidential election.

4           89.    Around 12:00 pm, then-President Trump began speaking about how “we  
5 will stop the steal.”

6           90.    Seven minutes into his speech, the crowd was chanting “Fight for Trump!”.  
7 About 16 minutes into his speech, he said, “[a]fter this, we’re going to walk down and I’ll  
8 be there with you. We’re going to walk down. We’re going to walk down any one you  
9 want, but I think right here. We’re going walk down to the Capitol, and we’re going to  
10 cheer on our brave senators, and congressmen and women. We’re probably not going to  
11 be cheering so much for some of them because you’ll never take back our country with  
12 weakness. You have to show strength, and you have to be strong.”

13           91.    At about this point, 10,000-15,000 demonstrators began the roughly 30-  
14 minute march to the Capitol, where they joined a crowd of 300 members of the violent  
15 extremist group “Proud Boys.”

16           92.    Around 1:00 p.m.—just as Congress had begun the process of jointly  
17 counting the electoral votes—then-President Trump ordered the remaining crowd to  
18 “walk down Pennsylvania Avenue . . . we are going to the Capitol.”

19           93.    At around that time, Trump supporters attacked police protecting the  
20 barricades surrounding the Capitol. As Trump ended his speech, a large portion of the  
21 crowd began their 30-minute march to the Capitol.

1           94. By 1:30 p.m., law enforcement retreated as insurrectionists scaled the walls  
2 of the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full  
3 body armor; others carried homemade shields. Many used flagpoles, signposts, or other  
4 weapons to attack police officers defending the Capitol.

5           95. Because Gosar and Biggs had filed objections to Arizona’s slate of electors,  
6 by this time the joint counting session had been suspended and the House and Senate  
7 were debating the objections separately.

8           96. Finchem was directly involved in the assault on the Capitol Building.  
9 Finchem’s text messages with Alexander and other planners of the event reveal that  
10 Finchem, after asking “I presume you want me to get as close to the front as I can,” was  
11 warned that “They are storming the capital [sic], I don’t think it [sic] safe.”

12           97. Finchem responded, “I am on the side of the Capitol facing the supreme  
13 Court, is that the right side?”.

14           98. Finchem rushed to the Capitol in a golf cart.

15           99. Contemporaneous photographs show that Finchem was present at the  
16 Capitol.

17           100. By 2:00 p.m., as Gosar was objecting to the certification of the Arizona  
18 election results, the Capitol had been breached by insurrectionists, smashing through  
19 first-floor windows.

1           101. Over the next two hours, hundreds of insurrectionists stormed the Capitol,  
2 attacking police with weapons and pyrotechnics. One police officer was crushed against a  
3 door, screaming in agony as the crowd chanted “Heave, ho!”

4           102. An attacker ripped off the officer’s gas mask, beat his head against the  
5 door, took his baton, and hit his head with it.

6           103. Another officer was pulled into a crowd, beaten and repeatedly Tased by  
7 insurrectionists.

8           104. The insurrectionists demanded the arrest or murder of various other elected  
9 officials who refused to participate in their attempted coup.

10          105. They chanted “hang Mike Pence” and threatened Speaker Pelosi.

11          106. They taunted a Black police officer with racial slurs for pointing out that  
12 overturning the election would deprive him of *his* vote.

13          107. Confederate flags and symbols of white supremacist movements and  
14 notably the insurrection that spawned the need for the Fourteenth Amendment including  
15 Section 3, were widespread.

16          108. At 2:13 p.m., Vice President Pence was removed by the Secret Service; the  
17 House adjourned at 2:20 p.m.

18          109. The insurrectionists had successfully obstructed Congress from certifying  
19 the votes, temporarily blocking the peaceful transition of power from one presidential  
20 administration to the next.

21

1           110. Finchem took a picture of a throng of insurrectionists on the steps of the  
2 Capitol at approximately 2:30 p.m..

3           111. Finchem was also videotaped around this time near the steps of the Capitol.

4           112. At 2:44 p.m., insurrectionists attempted to force their way into the  
5 Speaker's Lobby (adjacent to the House Chamber) as lightly armed security guards tried  
6 to hold the door long enough to evacuate Members of Congress and others.

7           113. Senate staffers took the electoral college certificates with them when they  
8 were evacuated, ensuring they did not fall into the hands of the insurrectionists.

9           114. Shortly after, the House Chamber and Senate Chamber fell.  
10 Insurrectionists, some carrying zip ties and tactical equipment, overtook the defenses of  
11 the United States government and achieved, through force, effective control over the seat  
12 of the United States Congress.

13           115. After 3:00 p.m., DHS, ATF, and FBI agents, and police from Virginia and  
14 Maryland, joined Capitol Police to help regain control of the Capitol.

15           116. At 3:16 p.m. Finchem posted online the picture he had taken of  
16 insurrectionists after the Capitol was breached. He commented, "What happens when the  
17 People feel they have been ignored, and congress refuses to acknowledge rampant fraud.  
18 #stopthesteal."

19           117. Finchem's post of his picture of the insurrectionists and his accompanying  
20 comment constitute support for an ongoing insurrection.

21

1 118. Around 4:30 p.m., insurrectionists attacked officers guarding the Capitol,  
2 beating them with improvised weapons, spraying them with mace, and beating one so  
3 badly he required staples.

4 119. Around 5:20 p.m., the D.C. National Guard began arriving.

5 120. By 6:00 p.m., the insurrectionists had been removed from the Capitol,  
6 though some committed sporadic acts of violence through the night.

7 121. Vice President Pence was not able to reconvene Congress until 8:06 p.m.,  
8 nearly six hours after the process had been obstructed.

9 122. At or about 9 p.m., Trump's counsel John Eastman argued to Pence's  
10 counsel via email that Pence should refuse to certify Biden's victory by not counting  
11 certain states.

12 123. Pence's counsel ignored it. Congress was required under the Electoral  
13 Count Act to debate the objections filed by Senators and Members of Congress to  
14 electoral results from Arizona and Pennsylvania.

15 124. In total, five people died and over 150 police officers suffered injuries,  
16 including broken bones, lacerations, and chemical burns. Four Capitol Police officers on-  
17 duty during January 6 have since died by suicide.

18 **Statements Since the Insurrection**

19 125. On January 11, 2021, Finchem released a press release with false  
20 information about his actions on January 6. He claimed that he walked "at the rear of the  
21 crowd that made its way down Pennsylvania Avenue," arrived at the Capitol around 1:45,

1 stayed there for “about 20 minutes, took a few photos, and left the area,” never getting  
2 within “500 yards” of the Capitol and not learning about the breach until 5:00 p.m. when  
3 he had returned to his hotel. He also repeated the claim that “antifa” was responsible for  
4 any violence.

5 126. Finchem’s *post hoc* denial or obfuscation of his actions on January 6 is  
6 contradicted by contemporary evidence and indicates consciousness of culpability.

7 127. On February 15, 2022, Finchem was subpoenaed by the January 6 Select  
8 Committee to testify and produce documents regarding the insurrection.

9 **CLAIM FOR RELIEF**  
10 **Ineligible for Election Under A.R.S. § 16-351(B); U.S. Const. Amend.14 §3.**

11 128. All preceding allegations are incorporated as if repeated herein.

12 129. Under section Three of the Fourteenth Amendment to the U.S.  
13 Constitution, known as the Disqualification Clause, “No Person shall be a . . .  
14 Representative in Congress . . . or hold any office, civil or military . . . under any State . .  
15 . who, having previously taken an oath, as a member of Congress . . . or as a member of  
16 any State legislature . . . to support the Constitution of the United States, shall have  
17 engaged in insurrection or rebellion against the same.”

18 130. Finchem swore an oath to support the U.S. Constitution as a member of a  
19 state legislature. He is a candidate for the office of Arizona Secretary of State, an “office”  
20 within the meaning of Section Three of the Fourteenth Amendment. *See* Ariz. Const. art.  
21 5, §§ 1, 9; *Citizens in Charge, Inc. v. Husted*, 810 F.3d 437, 442 (6th Cir. 2016).

1           131. The January 6, 2021 attack on the U.S. Capitol, either alone or in  
2 combination with related attempts to prevent a peaceful and legitimate transfer of power,  
3 constituted an “insurrection” or “rebellion” under Section Three of the Fourteenth  
4 Amendment.

5           132. The insurrectionists successfully defied the authority of the United States.

6           133. The demonstration was targeted at intimidating Congress and Vice  
7 President Pence—in particular, to intimidate Pence into violating the Twelfth  
8 Amendment and the Electoral Count Act by ignoring the legal electoral votes for Biden.  
9 And the insurrectionists mounted their violent assault on the U.S. Capitol and the  
10 government officials within for the purpose of preventing the Vice President of the  
11 United States and the United States Congress from fulfilling their constitutional roles in  
12 ensuring the peaceful transition of power. As they attacked, the insurrectionists insisted  
13 that elected officials anoint their preferred candidate the winner—or be murdered.

14           134. This was an attack on the *United States*. The importance of counting the  
15 electoral votes in our constitutional system cannot be overstated. It formalizes a deeper,  
16 bedrock norm in our democracy: the peaceful transition of power. The Electoral Count  
17 Act, as well as the Article II and the Twelfth Amendment, lay out the procedures for  
18 counting votes; together with the Twentieth Amendment, they ensure that transition is  
19 orderly and non-violent. They are essential constitutional functions of the United States  
20 government. An attempt to disrupt those procedures, particularly through violence, is an  
21 attack on our country itself.

1           135. This was no mere riot; it was an attempt to disrupt an essential  
2 constitutional function and illegally prolong Trump’s tenure in office.

3           136. An attack on public authority need not be likely to succeed in order to  
4 constitute an insurrection.

5           137. The January 6 insurrectionists’ violent seizure of the House and Senate  
6 Chambers and key congressional offices did, in fact, obstruct and delay this essential  
7 constitutional procedure. This violent attack on the political system of the United States  
8 in the heart of the nation’s capital is the paradigm of insurrection.

9           138. This analysis of January 6 is consistent with the understanding of Congress,  
10 the U.S. Department of Justice, and federal courts.

11           139. On the evening of January 6, after Congress was finally able to reconvene,  
12 Senator Mitch McConnell of Kentucky, the Senate Majority Leader, described the assault  
13 as a “failed insurrection.”

14           140. He has since confirmed his understanding in response to the attempted  
15 characterization of the insurrection as “legitimate political discourse”: “We saw it  
16 happen. It was a violent insurrection for the purpose of trying to prevent the peaceful  
17 transfer of power after a legitimately certified elections, from one administration to the  
18 next. That’s what it was.”

19           141. In court filings, the U.S. Department of Justice has characterized the attack  
20 on the Capitol as “an insurrection attempting to violently overthrow the United States  
21



1 Government.” *United States v. Chansley*, No. 21-cr-00003 (D. Ariz. filed Jan. 14, 2021),  
2 ECF No. 5, <https://bit.ly/3FJ1LdM>.

3 142. Judge Carl Nichols of the U.S. District Court for the District of Columbia  
4 has issued a ruling in a pending case, describing the attack as an “uprising” that  
5 “target[ed] a proceeding prescribed by the Constitution and established to ensure a  
6 peaceful transition of power.”

7 143. Members of the “Oath Keepers” that stormed the Capitol or organized the  
8 storming have been indicted on seditious conspiracy charges.

9 144. The elements of seditious conspiracy fit the definition of the federal crime  
10 of insurrection. 18 U.S.C. § 2384 (defining the crime as “conspir[ing] to overthrow, put  
11 down, or to destroy by force the Government of the United States . . . or to oppose by  
12 force the authority thereof, or by force to prevent, hinder, or delay the execution of any  
13 law of the United States”).

14 145. Bipartisan majorities of the House and Senate voted for articles of  
15 impeachment describing the attack as an “insurrection.” 167 Cong. Rec. H191 (daily ed.  
16 Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021).

17 146. In the impeachment trial, President Trump’s own defense lawyer stated that  
18 “the question before us is not whether there was a violent insurrection of [sic] the Capitol.  
19 On that point, everyone agrees.” 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021),  
20 <http://bit.ly/EveryoneAgrees>.

1           147. The Senate voted by unanimous consent to award a Congressional Gold  
2 Medal for Capitol Police officer Eugene Goodman by passing a bill that categorized the  
3 January 6 attackers as “insurrectionists.” Congress separately voted to award  
4 Congressional Gold Medals to other Capitol Police, using the same “insurrectionists”  
5 language. 167 Cong. Rec. S694–95 (daily ed. Feb. 12, 2021).

6           148. Recognizing January 6 as an insurrection or rebellion for purposes of  
7 Section Three is also consistent with the intent of the Fourteenth Amendment’s drafters,  
8 who worried that the reelection of the pre-war political class in the South would re-  
9 empower those willing to use violence or otherwise reject the results when their  
10 preferred policies were not enacted, or their preferred candidates were not elected. *See,*  
11 *e.g.,* 69 Cong. Globe, 39th Cong., 1st Sess. 2532 (1866) (statement of Rep. Banks)  
12 (“They do not rely on ideas for success. They govern by force. Their philosophy is  
13 force. Their tradition is force.”). The idea behind Section Three was that politicians who  
14 took an oath to protect the Constitution and then disregarded the norms of peaceful and  
15 lawful political discourse could not be trusted to hold office—that was true then, and it  
16 remains true today.

17           149. Finchem was engaged with the January 6 attack by being in close contact  
18 with the planners of the Wild Protest, including throughout the day on January 6.

19           150. To “engage” in insurrection or rebellion, one must voluntarily and  
20 knowingly aid the insurrection by providing it with something useful or necessary.  
21 *United States v. Powell*, 65 N.C. 709 (C.C.D.N.C. 1871) (holding that “engage” merely

1 required “a voluntary effort to assist the Insurrection . . . and to bring it to a successful  
2 [from insurrectionists’ perspective] termination”); *Worthy v. Barrett*, 63 N.C. 199, 203  
3 (1869) (in Section Three case, interpreting “engage” to mean “[v]oluntarily aiding the  
4 rebellion, by personal service, or by contributions, other than charitable, of any thing that  
5 was useful or necessary”). *Cf. Wells Fargo Bank v. Arizona Laborers, Teamsters &*  
6 *Cement Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 23 (Ariz. 2002) (three  
7 part-test for civil accomplice liability: a legal harm, knowledge of that harm, substantial  
8 assistance or encouragement).

9 151. Finchem admits that he was in Washington, D.C. “to deliver an evidence  
10 book and letter to Vice President Pence showing key evidence of fraud in the Arizona  
11 Presidential Election, and asking him to consider postponing the award of electors.”

12 152. Finchem had been in continuous public coordination with Gosar, had  
13 contacts with Giuliani, was involved in a scheme orchestrated by then-President Trump  
14 to introduce false electors, and was in D.C. to bring that plan to fruition.

15 153. Finchem raced to the Capitol when he heard it was stormed, despite being  
16 warned to stay away. He knew he was racing toward an unlawful act. He approached the  
17 steps as insurrectionists were pouring into the Capitol building, took a picture of them,  
18 and posted it online with words of encouragement.

19 154. Finchem poses precisely the type of ongoing threat to the Republic that  
20 Section Three was written to guard against.

21 **REQUESTED RELIEF**

1           WHEREFORE, the plaintiffs respectfully request that the Court make the  
2 following findings of fact and conclusions of law:

3           A.     Candidate Finchem was involved in planning efforts to intimidate Congress  
4 and the Vice President into rejecting valid electoral votes and subvert the essential  
5 constitutional function of an orderly and peaceful transition of power. He was involved in  
6 either planning the attack on January 6, and/or planning the pre-attack Ellipse  
7 Demonstration, Wild Protest, and/or march on the Capitol, with the advance knowledge  
8 that it was substantially likely to lead to the attack, and otherwise voluntarily aided the  
9 insurrection. Finchem joined the insurrectionists mob outside the Capitol and encouraged  
10 the insurrectionists as they stormed the Capitol in an effort to disrupt an essential  
11 constitutional function and the peaceful transition of power.

12           B.     Candidate Finchem, as a member of the Arizona Legislature, and prior to  
13 the insurrection, took an oath of office to support the Constitution of the United States;

14           C.     Pursuant to Section Three of the Fourteenth Amendment to the Constitution  
15 of the United States, Candidate Finchem shall not hold any office in the State of Arizona;

16           D.     Congress has not by a vote of two-thirds of each House removed this  
17 disability from Candidate Finchem;

18           E.     Pursuant to Section 16-351, Arizona Revised Statutes, subsection(B),  
19 Candidate Finchem is not qualified to hold the office of Secretary of State; and

20           F.     Secretary Hobbs and the County Defendants be ordered to exclude  
21 Finchem's name from the ballot for the 2022 primary.

DATED this 7th of April 2022.

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\* Motions for pro hac vice admission  
forthcoming.

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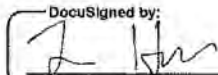
**VERIFICATION**

I, Thomas Hansen, do state and swear under penalty of perjury and as permitted by Rule 80(c), Ariz. R. P. Civ. P., as follows:

I am a plaintiff in this action. I have read the foregoing Verified Complaint and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of April 2022.

DocuSigned by:  
  
8707D452439F414  
Thomas Hansen

JEFF FINE  
Clerk of the Superior Court  
By Fawn Fowler, Deputy  
Date 04/07/2022 Time 10:15:57

Description	Amount
----- CASE# CV2022-004325 ----- ELECTION CONTEST:NEW	333.00
TOTAL AMOUNT	333.00

Receipt# 28712480

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6 ARIZONA SUPERIOR COURT  
 7 MARICOPA COUNTY

8 CHARLOTTE COSTELLO, an  
 9 individual; TOM HANSEN, an  
 10 individual; CARMEN FRANCIS, an  
 11 individual; and CELESTE IRONS, an  
 12 individual;

Plaintiffs,

v.

13 REP. PAUL GOSAR, a candidate for  
 14 office; KATIE HOBBS, in her official  
 15 capacity as Secretary of State; LA PAZ  
 COUNTY BOARD OF  
 16 SUPERVISORS; RICHARD GARCIA,  
 in his official capacity as Recorder of  
 17 La Paz County; MARICOPA COUNTY  
 BOARD OF SUPERVISORS;  
 18 STEPHEN RICHER, in his official  
 capacity as Recorder of Maricopa  
 19 County; MOHAVE COUNTY BOARD  
 OF SUPERVISORS; KRISTI BLAIR,  
 20 in her official capacity as Recorder of  
 Mohave County; YUMA COUNTY  
 BOARD OF SUPERVISORS; and  
 21 ROBYN STALLWORTH

Case No.:

CV 2022-004325

**VERIFIED COMPLAINT**

**(Election Case/Candidate Challenge  
Per A.R.S. § 16-351)**

1 POQUETTE, in her official capacity as  
2 Recorder of Yuma County;  
3 Defendants.

4 This is a challenge, pursuant to Arizona Revised Statutes, § 16-351, to the  
5 candidacy of U.S. Representative Paul Gosar who is running for re-election in  
6 Congressional District 9.

7 **PARTIES, VENUE, AND JURISDICTION**

8 1. Plaintiff Charlotte Costello is a qualified elector in Arizona’s 9th  
9 Congressional District. She lives in Mohave County.

10 2. Plaintiff Carmen Francis, Thomas Hansen, and Celeste Irons are qualified  
11 elector in Arizona’s 9th Congressional District. They live in Mohave County.

12 3. Representative Paul Gosar is a candidate for Arizona’s 9th Congressional  
13 District, which includes parts of La Paz, Mohave, Yuma, and Maricopa Counties. He has  
14 residences in both or either Yavapai and/or Coconino Counties.<sup>1</sup>

15 4. Defendant Katie Hobbs is the Arizona Secretary of State, a public officer,  
16 and is named as a defendant in this action in her official capacity. The Secretary of State  
17 is the officer with whom the petitions are required to be filed and is named as an  
18 indispensable party. A.R.S. § 16-351(C)(2).

19  
20

21 <sup>1</sup> For the purposes of this litigation, whether Gosar resides in Yavapai or Coconino  
County is unimportant.



1           5.       Defendants La Paz County Board of Supervisors are named as defendants  
2 in their official capacities, and are named as indispensable parties pursuant to A.R.S. §  
3 16-351(C)(3).

4           6.       Defendant Richard Garcia is the La Paz County Recorder, a public officer  
5 of La Paz County, and is named as a defendant in this action in his official capacity. He is  
6 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

7           7.       Defendants Maricopa County Board of Supervisors are named as  
8 defendants in their official capacities, and are named as indispensable parties pursuant to  
9 A.R.S. § 16-351(C)(3).

10          8.       Defendant Stephen Richer is the Maricopa County Recorder, a public  
11 officer of Maricopa County, and is named as a defendant in this action in his official  
12 capacity. He is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

13          9.       Defendants Mohave County Board of Supervisors are named as defendants  
14 in their official capacities, and are named as indispensable parties pursuant to A.R.S. §  
15 16-351(C)(3).

16          10.      Defendant Kristi Blair is the Mohave County Recorder, a public officer of  
17 Mohave County, and is named as a defendant in this action in her official capacity. She is  
18 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

19          11.      Defendants Yuma County Board of Supervisors are named as defendants in  
20 their official capacities, and are named as indispensable parties pursuant to A.R.S. § 16-  
21 351(C)(3).



1 including by illegally introducing illegitimate electors as “alternate slates” for Congress  
2 to vote on.

3 17. As described below, the demonstration at the Ellipse and related march on  
4 the U.S. Capitol, as well as the “Wild Protest” at the Capitol and their endorsement by  
5 prominent House Members (including Gosar), Senators, and the incumbent President, led  
6 directly, intentionally, and foreseeably to the insurrectionists’ violent assault on the  
7 Capitol.<sup>2</sup>

8 18. Gosar engaged in efforts to intimidate Congress and the Vice President into  
9 rejecting valid electoral votes and to subvert the essential constitutional function of an  
10 orderly and peaceful transition of power. Gosar engaged in either planning the attack on  
11 January 6, or, alternatively, the planning of the pre-attack demonstration and/or march on  
12 the Capitol with the advance knowledge that it was substantially likely to lead to the  
13 attack, and otherwise voluntarily aided the insurrection.

14 19. Gosar promoted the events of January 6 ahead of time.

15 20. Furthermore, the planners of the “Save America” demonstration at the  
16 Ellipse in Washington, D.C. on January 6 (hereafter “Ellipse Demonstration”) report that  
17 Gosar met with them beforehand.

18 21. Gosar offered “blanket pardons” to the organizers of that demonstration in  
19 connection with unrelated criminal investigations.

20  
21 <sup>2</sup> This candidacy challenge uses the term “insurrectionists” without prejudice as to whether the events of January 6 may also constitute a “rebellion” within the meaning of the Disqualification Clause.

1           22.    The stated goal of the organizers was to pressure Vice President Pence into  
2 disregarding the electoral votes from several states and declaring Trump the winner of the  
3 2020 election. The likelihood of violence during the implementation of this plan was  
4 plain to bystanders and equally or more so to those intimately involved. Before the  
5 demonstration, violent groups announced they were going to attend it. Plans for  
6 violence—and specifically occupying the Capitol to prevent the certification vote or  
7 violently influence its outcome—were so prevalent that one reporter has remarked that  
8 “[a]nyone with a Twitter account and an hour of time to kill could have warned about the  
9 potential for violence on Jan. 6—and many did.” Furthermore, the insurrection was, in  
10 part, intended to prevent the certification in order to send false electoral slates to  
11 Congress—an effort Gosar was involved in.

12           23.    Gosar publicly supported the insurrection as it was happening.

13           24.    While the insurrection was occurring, Gosar posted identical pictures to his  
14 Twitter account and his Parler account of insurrectionists scaling the Capitol walls—  
15 while the former included a disingenuous and unconvincing attempt to disclaim violence,  
16 the latter read “Americans are upset.” Gosar reposted a video of himself urging Pence to  
17 refuse to accept the votes from multiple states. And he made multiple posts defending the  
18 insurrectionists’ motivations without condemning their tactics. When it became clear the  
19 insurrection might fail he shifted tack, falsely claiming that the violence was coming  
20 from “antifa,” intentionally spreading disinformation in a chaotic environment, impeding  
21 the response to the insurrection.

1           25.     Since the insurrection, Gosar has continued to voice his support for the  
2 insurrectionists who stormed the Capitol, describing them as “peaceful patriots,” while  
3 falsely claiming that any violence that might have occurred was perpetrated by “antifa”  
4 infiltrators.

5           26.     Gosar’s individual actions, as well as his collective actions taken in concert  
6 with others, as described in detail below, establish that he engaged in the insurrection of  
7 January 6 and is therefore constitutionally disqualified from running for congressional  
8 office, under the Disqualification Clause.

9                           **CONSTITUTIONAL AND STATUTORY BACKGROUND**

10           27.     Under the Disqualification Clause, “No Person shall be a . . .  
11 Representative in Congress . . . or hold any office, civil or military . . . under any State . .  
12 . who, having previously taken an oath, as a member of Congress . . . or as a member of  
13 any State legislature . . . to support the Constitution of the United States, shall have  
14 engaged in insurrection or rebellion against the same.”

15           28.     Arizona requires all candidates for primary election to file nomination  
16 papers with the Secretary of State that, among other things, declare “[t]he candidate will  
17 be qualified at the time of election to hold the office the person seeks.” Ariz. Stat. § 16-  
18 311(D).

19           29.     To enforce that requirement, “any elector” may challenge a candidate’s  
20 nomination “for any reason relating to qualifications for the office sought as prescribed  
21

1 by law.” *Id.* § 16-351(B). That includes constitutional qualifications. *Pacion v. Thomas*,  
2 236 P.3d 395, 397 (Ariz. 2010).

3 **FACTUAL BACKGROUND**

4 30. Public reports and publicly available evidence support the following.

5 31. Representative Gosar took an oath to support the U.S. Constitution when he  
6 was sworn in as members of the House of Representatives in 2012 and 2016, pursuant to  
7 Article VI of the U.S. Constitution. He took that oath again on January 3, 2019, at the  
8 start of the 11th Congress, and on January 3, 2021, at the start of the 117th Congress.

9 32. Gosar has a history of incendiary rhetoric and advocating violence against  
10 his political opponents.

11 33. After the 2020 election, Gosar publicly insisted that then-President Trump  
12 had won the election, posting those false claims online consistently from November 2020  
13 through January 6, 2021. These statements were made in support of a larger movement,  
14 often using the slogan “Stop the Steal,” that advances and promotes the false claim that  
15 Donald Trump won the 2020 election.

16 34. Gosar was a leader of this movement. He worked with, on the one hand,  
17 other government officials, and on the other hand, violent extremists, on a plan to  
18 delegitimize, challenge, and ultimately overturn the results of the presidential election.

19 35. He helped to organize some of the earliest rallies and made contacts with  
20 both Arizona Representative Mark Finchem and a violent extremist named Ali  
21

1 Alexander. Gosar publicly and consistently coordinated with both Finchem and  
2 Alexander in the weeks leading up to January 6.

3 36. On November 6, 2020, Gosar was already advocating illegal means to  
4 overturn the election, urging the U.S. Department of Justice to seize voting machines.

5 37. Along with Finchem, on November 30, he advocated that Arizona withhold  
6 its electors.

7 38. In late November, Gosar spoke at a meeting of the “Oath Keepers” in  
8 Northern Arizona where he said, “We are in a Civil War, we just haven’t started shooting  
9 yet.” On December 7, Gosar wrote an op-ed arguing Biden’s win amounted to a “coup.”

10 39. Simultaneously, in November 2020, various persons associated with the  
11 movement attempted to block the certification of President-elect Biden’s victory with  
12 dozens of lawsuits. None succeeded, and all were found to be baseless. After litigation  
13 failed, some within this larger movement accepted that they had exhausted their legal  
14 options for challenging the results of the presidential election.

15 **The Unconstitutional Scheme to Overturn the 2020 Election Results**

16 40. Others, however, followed Gosar’s lead and turned to extralegal plans.

17 41. Upon information and belief, they formulated an unconstitutional scheme to  
18 subvert the constitutional process of counting the electoral votes in Congress, preventing  
19 President-elect Biden from being sworn in as President. Leaders of this scheme—  
20 including then-President Trump, certain Members of Congress, including Representative  
21 Gosar, and others outside government—established and promoted a plan to prevent

1 Congress from certifying President-elect Biden's victory on January 6, the day Congress  
2 counts the presidential electors' votes.

3       42. The votes of presidential electors, under the provisions of the Twelfth  
4 Amendment to the U.S. Constitution and the Electoral Count Act, 3 U.S.C. §§ 15 et seq.,  
5 are officially counted as follows. At 1:00 p.m. on January 6 of the year following a  
6 presidential election, the U.S. Senate and the U.S. House of Representatives meet jointly  
7 in the House Chamber, with the Vice President of the United States (in his capacity as  
8 President of the Senate) presiding. Beginning with Alabama, and proceeding  
9 alphabetically, the Vice President opens each state's certificate of the votes of its electors,  
10 and calls for objections, if any. Any objection must be filed by at least one Senator and at  
11 least one Member of the House. These objections are then voted upon separately by the  
12 House and Senate. 3 U.S.C. § 15; U.S. Const. amend. XII.

13       43. The Electoral Count Act provides that, if a state has submitted only one  
14 return of electoral votes, and if the electoral votes were "regularly given by electors  
15 whose appointment has been lawfully certified," then Congress cannot reject those  
16 electoral votes. 3 U.S.C. § 15.

17       44. The Electoral Count Act provides two scenarios in which, theoretically,  
18 Congress can reject electoral votes. First, "the two Houses concurrently" may reject one  
19 or more electoral votes from a state when both Houses "agree that such vote or votes  
20 have not been so regularly given by electors whose appointment has been so certified."  
21



1 Second, if a state submits multiple conflicting returns of its electoral votes, the Act  
2 contains procedures for determining which return prevails. *Id.*

3 45. After the 2020 election, no lawful procedure under the Electoral Count Act  
4 could prevent the counting of electoral votes from the states where President-elect Biden  
5 had won the election. None of those states had submitted multiple competing electoral  
6 tallies to Congress, notwithstanding attempts to create “alternate slates,” described below.  
7 And, as was generally understood at the time, there were insufficient votes in the U.S.  
8 House of Representatives to reject as not “regularly given” the electoral votes from any  
9 state, let alone to reject enough electoral votes to change the outcome to anything other  
10 than a Biden victory.

11 46. Since no lawful procedure under the Electoral Count Act could prevent the  
12 counting of electoral votes from the states where President-elect Biden had won the  
13 election, leaders of the conspiracy to subvert counting of the votes developed schemes by  
14 which Vice President Pence would refuse to recognize the votes of electors from certain  
15 states that Trump had lost, thus leading to a fallacious Trump “victory” in Congress.

16 47. However, these plans relied on cooperation from sympathetic members of  
17 Congress and, crucially, Vice President Pence. The plans centered on Pence abusing the  
18 Vice President’s ceremonial duty to “open all the certificates” of state electoral votes as a  
19 pretext to unilaterally reject votes. U.S. Const. amend. XII.

20 48. Key leaders and participants in the larger scheme developed plans to  
21 pressure or intimidate Congress and Pence into cooperating—and, if that failed, to

1 obstruct the electoral count certification. Obstructing certification would have also  
2 delayed the process so as to facilitate another strategy: to introduce fake electoral votes.

3 49. In December 2020, Trump and key allies devised a plan to create “alternate  
4 slates” of electors.

5 50. These illegitimate “electors” met on the same day as the real electors. The  
6 apparent plan was to introduce them at some point during or after January 6.

7 51. An “alternate slate” was created in Arizona. Gosar promoted the effort to  
8 produce phony “alternate” electors.

9 52. Finchem has been subpoenaed by the U.S. Congress’s Select Committee to  
10 Investigate the January 6th Attack on the United States Capitol regarding his role in that  
11 effort. This effort to produce “alternate” electors has been described in a recent brief by  
12 that congressional committee as a criminal conspiracy to defraud the United States.

13 53. The U.S. District Court for the Central District of California has concluded  
14 that it was “more likely than not” that the overall scheme, of which Gosar’s efforts were  
15 part, constituted a criminal conspiracy to defraud the United States by interfering with the  
16 election certification process, and obstruction of an official proceeding of Congress.

17 *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM (C.D. Cal. Mar. 28, 2022), 2022  
18 WL 894256.

19 54. To further their scheme to overturn the presidential election results, in  
20 December 2020 and January 2021, organizers associated with a group called “Women for  
21 America First” planned a demonstration at the Ellipse in Washington, D.C. (the “Ellipse

1 Demonstration”) on January 6 to coincide with, and seek to block, the certification of  
2 electoral votes. At this demonstration, they planned to push false claims of massive voter  
3 fraud and to pressure Pence to refuse to count slates of electors from states with close  
4 contests.

5 55. Upon information and belief, the organizers of the Ellipse Demonstration  
6 were in close contact with several Members of Congress or their staff during this time  
7 regarding the details of the demonstration, including Gosar or his staff. Those same  
8 organizers were also in touch with White House staff about the demonstration.

9 56. In addition, the organizers of the Ellipse Demonstration had planned and  
10 promoted events that developed into violence in November and December. Specifically,  
11 the group promoted the November 14 “Million MAGA March” in D.C. that left one  
12 person stabbed and several arrested; a demonstration on December 6, 2020 in Des  
13 Moines where a pro-Trump attendee shot into a car of teenage girls; and a December 12  
14 demonstration in D.C. where several were stabbed and one person was arrested.

15 57. To encourage the Women for America First organizers to plan the event on  
16 January 6 in Washington, D.C., Gosar assured the organizers that then-President Trump  
17 would extend them “blanket pardons” in connection with unrelated criminal  
18 investigations.

19 58. Organizers’ plans for January 6 also included a march on the U.S. Capitol  
20 while Congress was counting electoral votes.  
21

1           59.    On December 19, 2020, Trump endorsed the demonstration, claiming it  
2 would be “wild.” Trump’s call for a protest was widely understood to be a coded call for  
3 violence by Trump supporters. On social media, his supporters openly called for weapons  
4 to be carried into the District of Columbia, for law enforcement to be murdered if they  
5 interfered, and for supporters to storm the Capitol to prevent the certification of  
6 President-elect Biden’s victory. On that same day Gosar reported that he had spoken to  
7 Pence and described him as a “true patriot” who was “fighting hard for election integrity  
8 and @realDonaldTrump.”

9           60.    Around this time, Alexander’s allies received a permit to host a separate but  
10 related protest, which Alexander labeled the “Wild Protest,” around the steps of the  
11 Capitol on January 6. Sometime in late December, Alexander posted a video thanking  
12 both Gosar and U.S. Representative Andrew Biggs for their help in planning that protest.  
13 Gosar and Finchem were publicized as speakers at the Wild Protest.

14           61.    On December 30, 2020, Alexander replied to a tweet by Representative-  
15 elect Marjorie Taylor Greene, a well-known promoter of political violence, promising  
16 that “1776 is \*always\* an option” if objections to certification were blocked.

17           62.    The responses indicate it was understood as a call to storm the Capitol.  
18 Alexander increasingly used references to “1776” between December 30 and January 6 as  
19 a call for violence if Trump was not installed as president for another four years.

20           63.    By this time, it was well known that events Alexander planned and  
21 promoted had developed into violence. Indeed, the organizers of the Ellipse

1 Demonstration claim that they warned their congressional contacts about the possibility  
2 of violence at the Wild Protest.

3 64. On December 22, Gosar and Biggs met with Trump and announced they  
4 were working to prevent the “disenfranchisement” of Trump voters, with Gosar tweeting  
5 afterwards, “sedition will be stopped.” On December 23, Gosar publicly advocated for  
6 the plan to subvert the election results: Vice President Pence refusing to accept electoral  
7 slates from certain states.

8 65. Gosar promoted the events of January 6 consistently from December 24 to  
9 January 5. He consistently tagged Alexander, the organizer of the Wild Protest, in his  
10 tweets about these events. Meanwhile, both Gosar and Biggs repeatedly publicized that  
11 they would vote against certification.

12 66. At about this time, Trump and his associates in the movement to overturn  
13 the 2020 election used extralegal and unlawful tactics, as Trump and Meadows attempted  
14 to intimidate Georgia Secretary of State Raffensperger into fabricating votes and  
15 declaring Trump the winner of Georgia’s presidential election. At the time Gosar  
16 defended this blatant and unlawful attempt to “find votes” as a legitimate conversation  
17 about fraud.

18 67. On January 5, 2021, Pence informed Trump that he did not have the  
19 authority to unilaterally reject electoral votes and consequently would not do so. This was  
20 widely and publicly reported that same day.

21 68. Nonetheless, Gosar continued to promote the January 6 demonstrations.



1           74.     Seven minutes into his speech, the crowd was chanting “Fight for Trump!”.  
2 About 16 minutes into his speech, he said, “[a]fter this, we’re going to walk down and I’ll  
3 be there with you. We’re going to walk down. We’re going to walk down any one you  
4 want, but I think right here. We’re going walk down to the Capitol, and we’re going to  
5 cheer on our brave senators, and congressmen and women. We’re probably not going to  
6 be cheering so much for some of them because you’ll never take back our country with  
7 weakness. You have to show strength, and you have to be strong.”

8           75.     At about this point, 10,000-15,000 demonstrators began the roughly 30-  
9 minute march to the Capitol, where they joined a crowd of 300 members of the violent  
10 extremist group “Proud Boys.”

11           76.     Around 1:00 p.m.—just as Congress had begun the process of jointly  
12 counting the electoral votes—then-President Trump ordered the remaining crowd to  
13 “walk down Pennsylvania Avenue . . . we are going to the Capitol.”

14           77.     At around that time, Trump supporters attacked police protecting the  
15 barricades surrounding the Capitol. As Trump ended his speech, a large portion of the  
16 crowd began their 30-minute march to the Capitol.

17           78.     By 1:30 p.m., law enforcement retreated as insurrectionists scaled the walls  
18 of the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full  
19 body armor; others carried homemade shields. Many used flagpoles, signposts, or other  
20 weapons to attack police officers defending the Capitol.

1           79.    Because Gosar and Biggs had filed objections to Arizona’s slate of electors,  
2 by this time the joint counting session had been suspended and the House and Senate  
3 were debating the objections separately.

4           80.    By 2:00 p.m., as Gosar was objecting to the certification of the Arizona  
5 election results, the Capitol had been breached by insurrectionists, smashing through  
6 first-floor windows.

7           81.    Over the next two hours, hundreds of insurrectionists stormed the Capitol,  
8 attacking police with weapons and pyrotechnics. One police officer was crushed against a  
9 door, screaming in agony as the crowd chanted “Heave, ho!”

10          82.    An attacker ripped off the officer’s gas mask, beat his head against the  
11 door, took his baton, and hit his head with it.

12          83.    Another officer was pulled into a crowd, beaten and repeatedly Tased by  
13 insurrectionists.

14          84.    The insurrectionists demanded the arrest or murder of various other elected  
15 officials who refused to participate in their attempted coup.

16          85.    They chanted “hang Mike Pence” and threatened Speaker Pelosi.

17          86.    They taunted a Black police officer with racial slurs for pointing out that  
18 overturning the election would deprive him of *his* vote.

19          87.    Confederate flags and symbols of white supremacist movements were  
20 widespread.

21



1           88. Throughout the insurrection, and the publicly recorded mayhem, both  
2 Representative Biggs and Gosar continued to tweet false allegations of election fraud.

3           89. At 2:13 p.m., Vice President Pence was removed by the Secret Service; the  
4 House adjourned at 2:20 p.m.

5           90. The insurrectionists had successfully obstructed Congress from certifying  
6 the votes, temporarily blocking the peaceful transition of power from one presidential  
7 administration to the next.

8           91. At 2:44 p.m., insurrectionists attempted to force their way into the  
9 Speaker's Lobby (adjacent to the House Chamber) as lightly armed security guards tried  
10 to hold the door long enough to evacuate Members of Congress and others.

11           92. Senate staffers took the electoral college certificates with them when they  
12 were evacuated, ensuring they did not fall into the hands of the insurrectionists.  
13 Simultaneously, Gosar was tweeting a defense of his objection to the certification of  
14 Biden's victory.

15           93. Shortly after, the House Chamber and Senate Chamber fell.  
16 Insurrectionists, some carrying zip ties and tactical equipment, overtook the defenses of  
17 the United States government and achieved, through force, effective control over the seat  
18 of the United States Congress.

19           94. After 3:00 p.m., DHS, ATF, and FBI agents, and police from Virginia and  
20 Maryland, joined Capitol Police to help regain control of the Capitol.

21

1           95.    Around 4:00 p.m. Gosar posted a picture on “Parler” of insurrectionists  
2 scaling the Capitol walls. Parler is a social media site that mirrors Twitter in structure and  
3 functionality, but quickly became a haven for far-right users and proponents of false  
4 claims of voter fraud. It was also a central node in planning the January 6 insurrection.  
5 Due that central role, it was temporarily shut down after the insurrection and all posts  
6 prior to the shutdown are unavailable unless they were reproduced elsewhere, as Gosar’s  
7 post was. In Gosar’s Parler post with the photograph of the insurrectionists scaling the  
8 Capitol walls, he wrote “Americans are upset.” An upload to Twitter of Gosar’s Parler  
9 post shows that it was viewed 92,000 times in the twenty-four minutes after it was  
10 posted.

11           96.    At approximately the same time, however, Gosar posted an identical picture  
12 on Twitter, this time with text condemning the insurrection.

13           97.    Shortly after, around 4:08 p.m., Gosar retweeted a commentator arguing  
14 “Biden lecturing everyone on lawlessness is pretty rich after the summer of 2020.”

15           98.    Around 4:30 p.m., insurrectionists attacked officers guarding the Capitol,  
16 beating them with improvised weapons, spraying them with mace, and beating one so  
17 badly he required staples.

18           99.    At 5:03 p.m. Gosar continued to defend the ongoing insurrection, claiming  
19 that “I’m being a broken record but if the democrats [sic] actually want to uphold the rule  
20 of law they would stop fighting our requests for an election audit. People want  
21 transparency.”

1           100. The contemporaneous replies to Gosar’s 5:03 p.m. tweet, positive and  
2 negative, show that it was understood as support for the insurrection—both from  
3 supporters and opponents—notwithstanding occasional support for Gosar’s inconsistent  
4 and false statements about antifa involvement. There were not any replies that indicated it  
5 meant anything else.

6           101. For example, responses to Gosar’s 5:03 p.m. tweet over the next hour  
7 included:

- 8           a. “if they don’t follow the law why should anyone?!”
- 9           b. “Thank you for standing up for the American people.”
- 10           c. “Thank you, @DrPaulGosar! I’m so disappointed and disgusted with  
11           @Mike\_Pence PLEASE hold the line for us. He promised he would but  
12           apparently sold his soul to Pelosi and McConnell.”
- 13           d. “Exactly. I can take a legitimate loss. I will fight if it was stolen. Only  
14           way to accomplish this. AUDIT.”
- 15           e. “An audit is the only way for peace.”
- 16           f. “Exactly. They attempt to take our lives away by stealing, lying and  
17           cheating and then we are told to be peaceful. I would give my life for  
18           my country.”
- 19           g. “Exactly!!! Is that so much to ask? I don’t get it!! Just let us have a  
20           forensic audit and we will shut up. This is why people are so upset!”
- 21           “No Audit.....No Peace”

- 1 h. "Simple as that! No fraud, prove it."
- 2 i. "You get it. When they shit on our constitution and tell us rules for thee
- 3 and not for me...something is going to break...probably the union itself
- 4 if the constitution means nothing"
- 5 j. "exactly!! Does the Government plan on killing everyone [sic] of us?
- 6 Law and Order? They broke the law and heist the election then the
- 7 government kills an American unarmed woman while they are locked
- 8 behind a door REALLY!!!"
- 9 k. "@DrPaulGosar Stand firm for what is right. The ANTIFA false flag
- 10 crew can't be allowed to further the COUP attempt. As VP wouldn't do
- 11 his job, need either Congress or martial law to address it."
- 12 l. "An election audit is immensely more simple than what is currently
- 13 going on. You can't ignore peoples concerns and just expect them to
- 14 shut up and accept it. If the election was fair, and audit will provide
- 15 answers."

16 102. One minute later, at 5:04 p.m., Gosar shifted tack and became one of the  
17 first elected officials to falsely claim that "antifa" was responsible for the violence. This  
18 claim was widely and quickly picked up by national and local media.

19 103. Three minutes later, at 5:07 p.m., Gosar shifted tack again, retweeting a  
20 since-deleted post by Finchem and writing "Is @katiehobbs satisfied with her  
21

1 obstructionism now? For weeks the people have demanded transparency. Instead they got  
2 lies and cover up.”

3 104. Similar to Gosar’s tweet at 5:03 p.m., the contemporaneous replies to his  
4 5:07 p.m. tweet, positive and negative, show that it was understood as support for the  
5 insurrection notwithstanding occasional support for Gosar’s inconsistent statements about  
6 antifa involvement. There were not any replies that indicated it meant anything else.

7 105. For example, responses to Gosar’s 5:07 p.m. tweet over the next hour  
8 include a call for Vice President Pence to be arrested for calling the National Guard and  
9 quelling the insurrection (something Pence did not in fact do), a statement that “For the  
10 first time the old guard fears the people and they are flipping out!” and thanks from a  
11 supporter who argued that “stealing elections MUST be stopped!”

12 106. Around 5:20 p.m., the D.C. National Guard began arriving.

13 107. By 6:00 p.m., the insurrectionists had been removed from the Capitol,  
14 though some committed sporadic acts of violence through the night.

15 108. At 6:37 p.m., Gosar again defended the insurrectionists, arguing “When  
16 you engage in election fraud and then refuse to allow an audit you @hiral4congress spray  
17 gasoline. This is on you. The people demand transparency.” An hour later, Gosar shifted  
18 tack again, arguing at 7:58 p.m. and 8:05 p.m. that “antifa” was responsible for the  
19 violence.

20 109. Vice President Pence was not able to reconvene Congress until 8:06 p.m.,  
21 nearly six hours after the process had been obstructed.

1 110. At or about 9 p.m., Trump’s counsel John Eastman argued to Pence’s  
2 counsel via email that Pence should refuse to certify Biden’s victory by not counting  
3 certain states.

4 111. Pence’s counsel ignored it. Congress was required under the Electoral  
5 Count Act to debate the objections filed by Senators and Members of Congress to  
6 electoral results from Arizona and Pennsylvania.

7 112. During that debate, Gosar retweeted a video of Representative Gaetz falsely  
8 claiming that antifa was responsible for the violence. Despite six Senators and 121  
9 Representatives (including Gosar and Biggs) voting to reject Arizona’s electoral results,  
10 167 Cong. Rec. H77 (daily ed. Jan. 6, 2021) <http://bit.ly/Jan6CongRec>, and seven  
11 Senators and 138 Representatives (including Gosar and Biggs) voting to reject  
12 Pennsylvania’s electoral results, Biden’s victory was ultimately certified at 3:14 a.m.,  
13 January 7. 167 Cong. Rec. H114–15 (daily ed. Jan. 6, 2021) <http://bit.ly/Jan6CongRec>.

14 113. In total, five people died and over 150 police officers suffered injuries,  
15 including broken bones, lacerations, and chemical burns. Four Capitol Police officers on-  
16 duty during January 6 have since died by suicide.

17 **Statements Since the Insurrection**

18 114. Both Biggs and Gosar asked then-President Trump for pardons for their  
19 roles in the events of January 6. They did not receive pardons.



1           121. The January 6, 2021 attack on the U.S. Capitol, either alone or in  
2 combination with related attempts to prevent a peaceful and legitimate transfer of power,  
3 constituted an “insurrection” or “rebellion” under Section Three of the Fourteenth  
4 Amendment.

5           122. The insurrectionists successfully defied the authority of the United States.

6           123. The January 6 attack meets the definition of an insurrection because the  
7 insurrectionists’ goal was to overthrow or obstruct the U.S. government, “a lawfully  
8 constituted regime.” *Pan Am. World Airways, Inc. v. Aetna Cas. & Sur. Co.*, 505 F.2d  
9 989, 1005 (2d Cir. 1974); *Home Ins. Co. of N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir.  
10 1954) (insurrectionary action must be “specifically intended to overthrow the constituted  
11 government and to take possession of the inherent powers thereof”).

12           124. The demonstration was targeted at intimidating Congress and Vice  
13 President Pence—in particular, to intimidate Pence into violating the Twelfth  
14 Amendment and the Electoral Count Act by ignoring the legal electoral votes for Biden.  
15 And the insurrectionists mounted their violent assault on the U.S. Capitol and the  
16 government officials within for the purpose of preventing the Vice President of the  
17 United States and the United States Congress from fulfilling their constitutional duties in  
18 ensuring the peaceful transition of power. As they attacked, the insurrectionists insisted  
19 that elected officials anoint their preferred candidate the winner—or be murdered.

20           125. This was an attack on the *United States*. The importance of counting the  
21 electoral votes in our constitutional system cannot be overstated. It formalizes a deeper,



1 bedrock norm in our democracy: the peaceful transition of power. The Electoral Count  
2 Act, as well as the Article II and the Twelfth Amendment, lay out the procedures for  
3 counting votes; together with the Twentieth Amendment, they ensure that transition is  
4 orderly and non-violent. They are essential constitutional functions of the United States  
5 government. An attempt to disrupt those procedures, particularly through violence, is an  
6 attack on our country itself.

7 126. This was no mere riot; it was an attempt to disrupt an essential  
8 constitutional function and illegally prolong Trump’s tenure in office.

9 127. An attack on public authority need not be likely to succeed in order to  
10 constitute an insurrection. *Davila*, 212 F.2d at 736 (“An insurrection aimed to accomplish  
11 the overthrow of the constituted government is no less an insurrection because the  
12 chances of success are forlorn.”); *In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill.  
13 1894) (an insurrection does not require “bloodshed” or to be so large “as to insure its  
14 probable success,” only that “the rising be in opposition to the execution of the laws of  
15 the United States, and should be so formidable as *for the time being* to defy the authority  
16 of the United States.”) (emphasis added).

17 128. The January 6 insurrectionists’ violent seizure of the House and Senate  
18 Chambers and key congressional offices did, in fact, obstruct and delay this essential  
19 constitutional procedure. They very nearly succeeded in achieving their aim of  
20 overturning the results of the 2020 presidential election. This violent attack on the  
21

1 political system of the United States in the heart of the nation's capital is the paradigm of  
2 insurrection.

3 129. This analysis of January 6 is consistent with the understanding of Congress,  
4 the U.S. Department of Justice, and federal courts.

5 130. On the evening of January 6, after Congress was finally able to reconvene,  
6 Senator Mitch McConnell of Kentucky, the Senate Majority Leader, described the assault  
7 as a "failed insurrection."

8 131. He has since confirmed his understanding in response to the attempted  
9 characterization of the insurrection as "legitimate political discourse": "We saw it happen.  
10 It was a violent insurrection for the purpose of trying to prevent the peaceful transfer of  
11 power after a legitimately certified elections, from one administration to the next. That's  
12 what it was."

13 132. In court filings, the U.S. Department of Justice has characterized the attack  
14 on the Capitol as "an insurrection attempting to violently overthrow the United States  
15 Government." *United States v. Chansley*, No. 21-cr-00003 (D. Ariz. filed Jan. 14, 2021),  
16 ECF No. 5, <https://bit.ly/3FJ1LdM>.

17 133. Judge Carl Nichols of the U.S. District Court for the District of Columbia  
18 issued a ruling in a pending case, describing the attack as an "uprising" that "target[ed] a  
19 proceeding prescribed by the Constitution and established to ensure a peaceful transition  
20 of power." *United States v. Miller*, No. 21-cr-00119 (D.D.C. Dec. 21, 2021), ECF No. 67,  
21 <https://bit.ly/318NBmX>.

1           134. Members of the “Oath Keepers” that stormed the Capitol or organized the  
2 storming have been indicted on seditious conspiracy charges. *United States v. Rhodes*,  
3 No. 22-cr-00015, ECF No. 1, Indictment, at 8–32 (D.D.C. Jan 12, 2022),  
4 <https://s3.documentcloud.org/documents/21178549/rhodes-complaint.pdf>.

5           135. The elements of seditious conspiracy track the definition of insurrection  
6 almost exactly. 18 U.S.C. § 2384 (Defining the crime as “conspir[ing] to overthrow, put  
7 down, or to destroy by force the Government of the United States . . . or to oppose by  
8 force the authority thereof, or by force to prevent, hinder, or delay the execution of any  
9 law of the United States.”).

10           136. Bipartisan majorities of the House and Senate voted for articles of  
11 impeachment describing the attack as an “insurrection.” 167 Cong. Rec. H191 (daily ed.  
12 Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021).

13           137. In the impeachment trial, President Trump’s own defense lawyer stated that  
14 “the question before us is not whether there was a violent insurrection of [sic] the Capitol.  
15 On that point, everyone agrees.” 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021),  
16 <http://bit.ly/EveryoneAgrees>.

17           138. The Senate voted by unanimous consent to award a Congressional Gold  
18 Medal for Capitol Police officer Eugene Goodman via a bill that categorized the January  
19 6 attackers as “insurrectionists.” 167 Cong. Rec. S694–95 (daily ed. Feb. 12, 2021).  
20 Congress separately voted to award Congressional Gold Medals to other Capitol Police,  
21 using the same “insurrectionists” language. Pub. L. No. 117-32, 135 Stat. 322 (2021).

1           139. Recognizing January 6 as an insurrection or rebellion for purposes of  
2 Section Three is also consistent with the intent of the Fourteenth Amendment’s drafters,  
3 who worried that the reelection of the pre-war political class in the South would re-  
4 empower those willing to use violence or otherwise reject the results when their preferred  
5 policies were not enacted, or their preferred candidates were not elected. *See, e.g.*, 69  
6 Cong. Globe, 39th Cong., 1st Sess. 2532 (1866) (statement of Rep. Banks) (“They do not  
7 rely on ideas for success. They govern by force. Their philosophy is force. Their tradition  
8 is force.”). The idea behind Section Three was that politicians who took an oath to protect  
9 the Constitution and then disregarded the norms of peaceful and lawful political discourse  
10 could not be trusted to hold office—that was true then, and it remains true today.

11           140. Representatives Gosar and Biggs, who were intimately involved in the  
12 plans *inside* the Capitol to reject the electoral votes of several states, were engaged in, at  
13 minimum, the planning and promotion of events that led to the insurrection.

14           141. To “engage” in insurrection or rebellion, one must voluntarily and  
15 knowingly aid the insurrection by providing it with something useful or necessary.  
16 *United States v. Powell*, 65 N.C. 709 (C.C.D.N.C. 1871) (holding that “engage” merely  
17 required “a voluntary effort to assist the Insurrection . . . and to bring it to a successful  
18 [from insurrectionists’ perspective] termination”); *Worthy v. Barrett*, 63 N.C. 199, 203  
19 (1869) (in Section Three case, interpreting “engage” to mean “[v]oluntarily aiding the  
20 rebellion, by personal service, or by contributions, other than charitable, of any thing that  
21 was useful or necessary”). *Cf. Wells Fargo Bank v. Arizona Laborers, Teamsters &*

1 *Cement Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 23 (Ariz. 2002) (three  
2 part-test for civil accomplice liability: a legal harm, knowledge of that harm, substantial  
3 assistance or encouragement).

4 142. Representatives Gosar and Biggs did not promote the event as citizens, but  
5 as a sitting members of Congress, insisting to their supporters that there was a legal route  
6 to install Trump as president for another four years. They did so against a backdrop of  
7 calls from groups, to forcibly prevent the certification of Biden and install Trump as  
8 president for another four years. When those legal plans broke down—as they must have  
9 known they would—their supporters did what he had told them for years they had to do,  
10 and what they had said they would do: fight.

11 143. While violence was still ongoing, Gosar repeatedly supported and  
12 attempted to publicly justify the insurrection. These posts, widely shared, aided the  
13 insurrection, giving it real-time moral justification and encouragement. Furthermore, the  
14 replies to those tweets show that they were understood by both his political supporters  
15 and opponents as supporting the ongoing insurrection.

16 144. Gosar’s re-tweet of his video advocating for Pence to decertify certain  
17 states is even more chilling. At the time of the retweet Pence had been evacuated  
18 separately from the Senators and Representatives. Insurrectionists were stalking the halls  
19 of Congress, looking for him. Gosar’s solution was to encourage Vice President Pence to  
20 give in to their demands and overturn the election. These statements from a sitting  
21

1 member of Congress both encouraged the insurrectionists that their scheme was going  
2 according to plan and sought to leverage the violence to unlawfully overturn the election.

3 145. Gosar posted a picture *of the insurrection* accompanied by words of  
4 encouragement to the insurrectionists—“Americans are upset.” Gosar’s statement,  
5 contextually, cannot be read as anything other than encouragement. Notably, he referred  
6 to the insurrectionists as “Americans.” In Gosar’s usage of social media, every reference  
7 to “Americans” is a reference to his political allies and supporters. When Gosar said  
8 “Americans are upset,” anyone who had listened to him for any length of time—  
9 especially his supporters who were committing an insurrection as he said it—would have  
10 understood he was referring to them as his *allies*. His supporters were upset and storming  
11 the walls.

12 146. Gosar’s promotion of the insurrection on Parler is contrasted with both his  
13 near-simultaneous Twitter post and subsequent disinformation. In the Twitter post, Gosar  
14 claims that he only asked for “an audit” and that things have gotten out of hand. But, in  
15 fact, Gosar claimed that Biden’s win was a “coup” and demanded his “concession  
16 speech.” And later Gosar falsely claimed that violence was committed by “antifa” agents,  
17 not “Americans.” Contextually, the Parler message is one of encouragement to his  
18 political allies. On Twitter, a more mainstream service, he disavowed violence; on Parler,  
19 populated by violent extremists, he spoke candidly to his supporters, including the  
20 insurrectionists.

21



1 aided the insurrection. Gosar encouraged the insurrectionists even as they stormed the  
2 Capitol.

3 B. Candidate Paul Gosar, as a member of the U.S. House of Representatives,  
4 and prior to the insurrection, took an oath of office to support the Constitution of the  
5 United States;

6 C. Pursuant to Section 3 of the Fourteenth Amendment to the Constitution of  
7 the United States, Candidate Gosar shall not hold any public office;


8 D. Congress has not by a vote of two-thirds of each House removed this  
9 disability from Candidate Gosar;

10 E. Pursuant to Section 16-351, Arizona Revised Statutes, subsection(B),  
11 Candidate Gosar is not qualified to hold the office of U.S. Representative;

12 F. Secretary Hobbs and the county defendants be ordered to exclude Gosar's  
13 name from the ballot for the 2022 primary.

14 DATED this 7th of April 2022.

15 BARTON MENDEZ SOTO PLLC

16   
17 James E. Barton II  
18 Jacqueline Mendez Soto

19 Ronald Fein\*  
20 John C. Bonifaz\*  
21 Ben Clements\*  
Courtney Hostetler\*  
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FREE SPEECH FOR PEOPLE



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**VERIFICATION**

I, Charlotte Costello, do state and swear under penalty of perjury and as permitted by Rule 80(c), Ariz. R. P. Civ. P., as follows:

I am a plaintiff in this action. I have read the foregoing Verified Complaint and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of April 2022.

E388D05F6A9A418  
*Charlotte Costello*  
DocuSigned By: Charlotte Costello  
Charlotte Costello

JEFF FINE  
Clerk of the Superior Court  
By Fawn Fowler, Deputy  
Date 04/07/2022 Time 10:21:24

Description	Amount
----- CASE# CV2022-004327 ----- ELECTION CONTEST:NEW	333.00
TOTAL AMOUNT	333.00
Receipt# 28712512	

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6 ARIZONA SUPERIOR COURT  
 7  
 8 MARICOPA COUNTY

9 CARRIE GOODE, an individual;  
 10 ALEXANDER CARDONA, an  
 individual; SUZANNE DISTASO, an  
 11 individual; IRA GOODE, an individual;  
 JANA ROSE OCHS, an individual; and  
 DANIEL O'NEAL, an individual;

12 Plaintiffs,

13 v.

14 REP. ANDREW BIGGS, a candidate  
 for office; KATIE HOBBS, in her  
 15 official capacity as Secretary of State;  
 MARICOPA COUNTY BOARD OF  
 16 SUPERVISORS; STEPHEN RICHER,  
 in his official capacity as Recorder of  
 17 Maricopa County; PINAL COUNTY  
 BOARD OF SUPERVISORS; and  
 18 VIRGINIA ROSS, in her official  
 capacity as Recorder of Pinal County;

19 Defendants.

Case No.: CV 2022-004327

**VERIFIED COMPLAINT**

**(Election Case/Candidate Challenge  
Per A.R.S. § 16-351)**

1 This is a challenge, pursuant to Arizona Revised Statutes, § 16-351, to the  
2 candidacy of U.S. Representative Andrew Biggs who is running for re-election in  
3 Congressional District 5.

4 **PARTIES, VENUE, AND JURISDICTION**

5 1. Plaintiff Carrie Goode is a qualified elector in Arizona's 5th Congressional  
6 District.

7 2. Plaintiff Alexander Cardona is a qualified elector in Arizona's 5th  
8 Congressional District.

9 3. Plaintiff Suzanne Distaso is a qualified elector in Arizona's 5th  
10 Congressional District.

11 4. Plaintiff Ira Goode is a qualified elector in Arizona's 5th Congressional  
12 District.

13 5. Plaintiff Jana Rose Ochs is a qualified elector in Arizona's 5th  
14 Congressional District.

15 6. Plaintiff Daniel O'Neal is a qualified elector in Arizona's 5th  
16 Congressional District.

17 7. Representative Andrew Biggs is a candidate for Arizona's 5th  
18 Congressional District, which is located entirely within Maricopa County. He resides in  
19 Maricopa County.

20 8. Defendant Katie Hobbs is the Arizona Secretary of State, a public officer,  
21 and is named as a defendant in this action in her official capacity. The Secretary of State

1 is the officer with whom the petitions are required to be filed and is named as an  
2 indispensable party. A.R.S. § 16-351(C)(2).

3 9. Defendants Maricopa County Board of Supervisors are named as  
4 defendants in their official capacities, and are named as indispensable parties pursuant to  
5 A.R.S. § 16-351(C)(3).

6 10. Defendant Stephen Richer is the Maricopa County Recorder, a public  
7 officer of Maricopa County, and is named as a defendant in this action in his official  
8 capacity. He is named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

9 11. Defendants Pinal County Board of Supervisors are named as defendants in  
10 their official capacities, and are named as indispensable parties pursuant to A.R.S. § 16-  
11 351(C)(3).

12 12. Defendant Virginia Ross is the Pinal County Recorder, a public officer of  
13 Pinal County, and is named as a defendant in this action in her official capacity. She is  
14 named as an indispensable party pursuant to A.R.S. § 16-351(C)(3).

15 13. Venue is proper in this Court because defendants reside in, or hold office  
16 in, different counties. Ariz. Stat. §§ 12-401(7), (16); *McClung v. Bennett*, 235 P.3d 1037  
17 (Ariz. 2010).

18 14. This Court has jurisdiction pursuant to A.R.S. § 16-351(A).

### 19 INTRODUCTION

20 15. This is a candidacy challenge under Arizona Stat. § 16-351. Plaintiffs,  
21 registered voters in the 5th Congressional District of Arizona, seek a permanent

1 injunction and order to show cause to remove U.S. Representative Andrew Biggs from  
2 the 2022 primary ballot. This candidate should be excluded from the ballot because he is  
3 not constitutionally qualified to hold the offices of U.S. Representative under the  
4 Disqualification Clause, Section Three of the Fourteenth Amendment to the U.S.  
5 Constitution.

6 16. The events of January 6, 2021, in which Defendant Biggs (the “candidate”)  
7 engaged, amounted to an insurrection or a rebellion under Section Three: a violent,  
8 coordinated effort to storm the Capitol to prevent the Vice President of the United States  
9 and the United States Congress from fulfilling their constitutional roles by certifying  
10 President Biden’s victory, and to illegally extend then-President Trump’s tenure in office,  
11 including by illegally introducing illegitimate electors as “alternate slates” for Congress  
12 to vote on.

13 17. As described below, the demonstration at the Ellipse and related march on  
14 the U.S. Capitol, as well as the “Wild Protest” at the Capitol and their endorsement by  
15 prominent House Members (including Biggs), Senators, and the incumbent President, led  
16 directly, intentionally, and foreseeably to the insurrectionists’ violent assault on the  
17 Capitol.<sup>1</sup>

18 18. Biggs was involved in efforts to intimidate Congress and the Vice President  
19 into rejecting valid electoral votes and to subvert the essential constitutional function of  
20

21 <sup>1</sup> This candidacy challenge uses the term “insurrectionists” without prejudice as to whether the events of January 6 may also constitute a “rebellion” within the meaning of the Disqualification Clause.

1 an orderly and peaceful transition of power. Biggs was involved in either planning the  
2 attack on January 6, or, alternatively, the planning of the pre-attack demonstration and/or  
3 march on the Capitol with the advance knowledge that it was substantially likely to lead  
4 to the attack, and otherwise voluntarily aided the insurrection.

5 19. Biggs promoted the events of January 6 ahead of time. He coordinated  
6 many of his efforts with U.S. Representative Paul Gosar and agreed with him on a plan to  
7 first delegitimize, then challenge, and finally overturn the 2020 presidential election.  
8 Furthermore, the planners of the “Save America” demonstration at the Ellipse in  
9 Washington, D.C. on January 6 (hereafter “Ellipse Demonstration”) report that Biggs and  
10 U.S. Representative Paul Gosar met with them beforehand. Gosar offered “blanket  
11 pardons” to the organizers of that demonstration in connection with unrelated criminal  
12 investigations. The stated goal of the organizers was to pressure Vice President Pence  
13 into disregarding the electoral votes from several states and declaring Trump the winner  
14 of the 2020 election. The likelihood of violence during the implementation of this plan  
15 was plain to bystanders and equally or more so to those intimately involved. Before the  
16 demonstration, violent groups announced they were going to attend it. Plans for  
17 violence—and specifically occupying the Capitol to prevent the certification vote or  
18 violently influence its outcome—were so prevalent that one reporter has remarked that  
19 “[a]nyone with a Twitter account and an hour of time to kill could have warned about the  
20 potential for violence on Jan. 6—and many did.” Furthermore, the insurrection was, in  
21

1 part, intended to prevent the certification in order to send false electoral slates to  
2 Congress.

3 20. Since the insurrection, Biggs has continued to voice his support for the  
4 insurrectionists who stormed the Capitol, describing the events of the day as no more  
5 than “disorderly conduct.”

6 21. Biggs’ individual actions, as well as his collective actions taken in concert  
7 with others, as described in detail below, establish that he engaged in the insurrection of  
8 January 6 and is therefore constitutionally disqualified from running for congressional  
9 office, respectively, under the Disqualification Clause.

10 **CONSTITUTIONAL AND STATUTORY BACKGROUND**

11 22. Under the Disqualification Clause, “No Person shall be a . . .  
12 Representative in Congress . . . or hold any office, civil or military . . . under any State . .  
13 . who, having previously taken an oath, as a member of Congress . . . or as a member of  
14 any State legislature . . . to support the Constitution of the United States, shall have  
15 engaged in insurrection or rebellion against the same.”

16 23. Arizona requires all candidates for primary election to file nomination  
17 papers with the Secretary of State that, among other things, declare “[t]he candidate will  
18 be qualified at the time of election to hold the office the person seeks.” Ariz. Stat. § 16-  
19 311(D). To enforce that requirement, “any elector” may challenge a candidate’s  
20 nomination “for any reason relating to qualifications for the office sought as prescribed  
21



1 by law.” Id. § 16-351(B). That includes constitutional qualifications. *Pacion v. Thomas*,  
2 236 P.3d 395, 397 (Ariz. 2010).

### 3 **FACTUAL BACKGROUND**

4 24. Representative Biggs took an oath to support the U.S. Constitution when he  
5 was sworn in as a member of the House of Representatives in 2017 pursuant to Article VI  
6 of the U.S. Constitution. He took that oath again on January 3, 2019, at the start of the  
7 116th Congress, and on January 3, 2021, at the start of the 117th Congress.

8 25. After the 2020 election, Biggs worked with Gosar and others on a plan to  
9 delegitimize, challenge, and ultimately overturn the results of the presidential election.

10 26. Biggs and Gosar publicly insisted that then-President Trump had won the  
11 election, posting those false claims online consistently from November 2020 through  
12 January 6, 2021. These statements were made in support of a larger movement, often  
13 using the slogan “Stop the Steal,” that advances and promotes the false claim that Donald  
14 Trump won the 2020 election.

15 27. Gosar was a leader of this movement. He helped to organize some of the  
16 earliest rallies and made contacts with a violent extremist named Ali Alexander. Gosar  
17 publicly and consistently coordinated with Alexander in the weeks leading up to January  
18 6.

19 28. On November 6, 2020, Gosar was already advocating illegal means to  
20 overturn the election, urging the U.S. Department of Justice to seize voting machines. On  
21 November 30, he advocated that Arizona withhold its electors. In late November, Gosar

1 spoke at a meeting of the “Oath Keepers” in Northern Arizona where he said, “We are in  
2 a Civil War, we just haven’t started shooting yet.”

3 29. On December 7, Gosar wrote an op-ed arguing Biden’s win amounted to a  
4 “coup.”

5 30. Simultaneously, in November 2020, various persons associated with the  
6 movement attempted to block the certification of President-elect Biden’s victory with  
7 dozens of lawsuits. None succeeded, and all were found to be baseless. After litigation  
8 failed, some within this larger movement accepted that they had exhausted their legal  
9 options for challenging the results of the presidential election.

10 **The Unconstitutional Scheme to Overturn the 2020 Election Results**

11 31. Others, however, followed Gosar’s lead and turned to extralegal plans.

12 32. They formulated an unconstitutional scheme to subvert the constitutional  
13 process of counting the electoral votes in Congress, preventing President-elect Biden  
14 from being sworn in as President. Leaders of this scheme—including then-President  
15 Trump, certain Members of Congress, including Representatives Biggs and Gosar, and  
16 others outside government—established and promoted a plan to prevent Congress from  
17 certifying President-elect Biden’s victory on January 6, the day Congress counts the  
18 presidential electors’ votes.

19 33. The votes of presidential electors, under the provisions of the Twelfth  
20 Amendment to the U.S. Constitution and the Electoral Count Act, 3 U.S.C. §§ 15 et seq.,  
21 are officially counted as follows. At 1:00 p.m. on January 6 of the year following a

1 presidential election, the U.S. Senate and the U.S. House of Representatives meet jointly  
2 in the House Chamber, with the Vice President of the United States (in his capacity as  
3 President of the Senate) presiding. Beginning with Alabama, and proceeding  
4 alphabetically, the Vice President opens each state's certificate of the votes of its electors,  
5 and calls for objections, if any. Any objection must be filed by at least one Senator and at  
6 least one Member of the House. These objections are then voted upon separately by the  
7 House and Senate. 3 U.S.C. § 15; U.S. Const. amend. XII.

8       34. The Electoral Count Act provides that, if a state has submitted only one  
9 return of electoral votes, and if the electoral votes were "regularly given by electors  
10 whose appointment has been lawfully certified," then Congress cannot reject those  
11 electoral votes. 3 U.S.C. § 15.

12       35. The Electoral Count Act provides two scenarios in which, theoretically,  
13 Congress can reject electoral votes. First, "the two Houses concurrently" may reject one  
14 or more electoral votes from a state when both Houses "agree that such vote or votes  
15 have not been so regularly given by electors whose appointment has been so certified."  
16 Second, if a state submits multiple conflicting returns of its electoral votes, the Act  
17 contains procedures for determining which return prevails. *Id.*

18       36. After the 2020 election, no lawful procedure under the Electoral Count Act  
19 could prevent the counting of electoral votes from the states where President-elect Biden  
20 had won the election. None of those states had submitted multiple competing electoral  
21 tallies to Congress, notwithstanding attempts to create "alternate slates," described below.

1 And, as was generally understood at the time, there were insufficient votes in the U.S.  
2 House of Representatives to reject as not “regularly given” the electoral votes from any  
3 state, let alone to reject enough electoral votes to change the outcome to anything other  
4 than a Biden victory.

5 37. Since no lawful procedure under the Electoral Count Act could prevent the  
6 counting of electoral votes from the states where President-elect Biden had won the  
7 election, leaders of the scheme to subvert the counting of the votes developed stratagems  
8 by which Vice President Pence would refuse to recognize the votes of electors from  
9 certain states that Trump had lost, thus leading to a Trump “victory” in Congress.

10 38. However, these plans relied on cooperation from sympathetic members of  
11 Congress and, crucially, Vice President Pence. The plans centered on Pence abusing the  
12 Vice President’s ceremonial duty to “open all the certificates” of state electoral votes as a  
13 pretext to unilaterally reject votes. U.S. Const. amend. XII.

14 39. Key leaders and participants in the larger scheme developed plans to  
15 pressure or intimidate Congress and Pence into cooperating—and, if that failed, to  
16 obstruct the electoral count certification.

17 40. Obstructing certification would have also delayed the process so as to  
18 facilitate another strategy: to introduce fake electoral votes.

19 41. In December 2020, Trump and key allies devised a plan to create “alternate  
20 slates” of electors. These “electors” met on the same day as the real electors. The  
21 apparent plan was to introduce them at some point during or after January 6.

1           42.    An “alternate slate” was created in Arizona. Gosar promoted the effort to  
2 produce “alternate” electors. This effort to produce “alternate” electors has been  
3 described in a recent brief by that congressional committee as a criminal conspiracy to  
4 defraud the United States.

5           43.    The U.S. District Court for the Central District of California has concluded  
6 that it was “more likely than not” that the overall scheme, of which these efforts were  
7 part, constituted a criminal conspiracy to defraud the United States by interfering with the  
8 election certification process, and obstruction of an official proceeding of Congress.  
9 *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM (C.D. Cal. Mar. 28, 2022), 2022  
10 WL 894256.

11           44.    To further their scheme to overturn the presidential election results, in  
12 December 2020 and January 2021, organizers associated with a group called “Women for  
13 America First” planned a demonstration at the Ellipse in Washington, D.C. (the “Ellipse  
14 Demonstration”) on January 6 to coincide with, and seek to block, the certification of  
15 electoral votes. At this demonstration, they planned to push false claims of massive voter  
16 fraud and to pressure Pence to refuse to count slates of electors from states with close  
17 contests.

18           45.    The organizers of the Ellipse Demonstration were in close contact with  
19 several Members of Congress or their staff during this time regarding the details of the  
20 demonstration, including Gosar and Biggs or their staff. Those same organizers were  
21 also in touch with White House staff about the demonstration.

1           46. In addition, the organizers of the Ellipse Demonstration had planned and  
2 promoted events that developed into violence in November and December. Specifically,  
3 the group promoted the November 14 “Million MAGA March” in D.C. that left one  
4 person stabbed and several arrested; a demonstration on December 6, 2020 in Des  
5 Moines where a pro-Trump attendee shot into a car of teenage girls; and a December 12  
6 demonstration in D.C. where several were stabbed and one person was arrested.

7           47. To encourage the Women for America First organizers to plan the event on  
8 January 6 in Washington, D.C., Gosar assured the organizers that then-President Trump  
9 would extend them “blanket pardons” in connection with unrelated criminal  
10 investigations.

11           48. Organizers’ plans for January 6 also included a march on the U.S. Capitol  
12 while Congress was counting electoral votes.

13           49. On December 19, 2020, Trump endorsed the demonstration, claiming it  
14 would be “wild.” Trump’s call for a protest was widely understood to be a coded call for  
15 violence by Trump supporters. On social media, his supporters openly called for weapons  
16 to be carried into the District of Columbia, for law enforcement to be murdered if they  
17 interfered, and for supporters to storm the Capitol to prevent the certification of  
18 President-elect Biden’s victory. On that same day Gosar reported that he had spoken to  
19 Pence and described him as a “true patriot” who was “fighting hard for election integrity  
20 and @realDonaldTrump.”

1           50.    Around this time, Alexander's allies received a permit to host a separate but  
2 related protest, which Alexander labeled the "Wild Protest," around the steps of the  
3 Capitol on January 6. Sometime in late December, Alexander posted a video thanking  
4 both Gosar and Biggs for their help in planning that protest. Gosar and Arizoan  
5 Representative Mark Finchem were publicized as speakers at the Wild Protest.

6           51.    On December 30, 2020, Alexander replied to a tweet by Representative-  
7 elect Marjorie Taylor Greene, a well-known promoter of political violence, promising  
8 that "1776 is \*always\* an option" if objections to certification were blocked. The  
9 responses indicate it was understood as a call to storm the Capitol. Alexander  
10 increasingly used references to "1776" between December 30 and January 6 as a call for  
11 violence if Trump was not installed as president for another four years.

12           52.    By this time, it was well known that events Alexander planned and  
13 promoted had developed into violence. Indeed, the organizers of the Ellipse  
14 Demonstration claim that they warned their congressional contacts about the possibility  
15 of violence at the Wild Protest.

16           53.    On December 22, Gosar and Biggs met with Trump and announced they  
17 were working to prevent the "disenfranchisement" of Trump voters, with Gosar tweeting  
18 afterwards, "sedition will be stopped." On December 23, Gosar publicly advocated for  
19 the plan to subvert the election results: Vice President Pence refusing to accept electoral  
20 slates from certain states.





1           58.    Around 12:00 pm, then-President Trump began speaking about how “we  
2 will stop the steal.”

3           59.    Seven minutes into his speech, the crowd was chanting “Fight for Trump!”  
4 About 16 minutes into his speech, he said, “[a]fter this, we’re going to walk down and I’ll  
5 be there with you. We’re going to walk down. We’re going to walk down any one you  
6 want, but I think right here. We’re going walk down to the Capitol, and we’re going to  
7 cheer on our brave senators, and congressmen and women. We’re probably not going to  
8 be cheering so much for some of them because you’ll never take back our country with  
9 weakness. You have to show strength, and you have to be strong.”

10          60.    At about this point, 10,000-15,000 demonstrators began the roughly 30-  
11 minute march to the Capitol, where they joined a crowd of 300 members of the violent  
12 extremist group “Proud Boys.”

13          61.    Around 1:00 p.m.—just as Congress had begun the process of jointly  
14 counting the electoral votes—then-President Trump ordered the remaining crowd to  
15 “walk down Pennsylvania Avenue . . . we are going to the Capitol.”

16          62.    At around that time, Trump supporters attacked police protecting the  
17 barricades surrounding the Capitol. As Trump ended his speech, a large portion of the  
18 crowd began their 30-minute march to the Capitol.

19          63.    By 1:30 p.m., law enforcement retreated as insurrectionists scaled the walls  
20 of the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full  
21

1 body armor; others carried homemade shields. Many used flagpoles, signposts, or other  
2 weapons to attack police officers defending the Capitol.

3 64. Because Gosar and Biggs had filed objections to Arizona's slate of electors,  
4 by this time the joint counting session had been suspended and the House and Senate  
5 were debating the objections separately.

6 65. By 2:00 p.m., as Gosar was objecting to the certification of the Arizona  
7 election results, the Capitol had been breached by insurrectionists, smashing through  
8 first-floor windows.

9 66. Over the next two hours, hundreds of insurrectionists stormed the Capitol,  
10 attacking police with weapons and pyrotechnics. One police officer was crushed against a  
11 door, screaming in agony as the crowd chanted "Heave, ho!" An attacker ripped off the  
12 officer's gas mask, beat his head against the door, took his baton, and hit his head with it.

13 67. Another officer was pulled into a crowd, beaten and repeatedly Tased by  
14 insurrectionists.

15 68. The insurrectionists demanded the arrest or murder of various other elected  
16 officials who refused to participate in their attempted coup.

17 69. They chanted "hang Mike Pence" and threatened Speaker Pelosi. H.R. Rep.  
18 No. 117-2, at 16, 12-13 (2021).

19 70. They taunted a Black police officer with racial slurs for pointing out that  
20 overturning the election would deprive him of *his* vote. Confederate flags and symbols of  
21 white supremacist movements were widespread.

1           71. Throughout the insurrection, both Representative Biggs and Gosar  
2 continued to tweet false allegations of fraud.

3           72. At 2:13 p.m., Vice President Pence was removed by the Secret Service; the  
4 House adjourned at 2:20 p.m.

5           73. The insurrectionists had successfully obstructed Congress from certifying  
6 the votes, temporarily blocking the peaceful transition of power from one presidential  
7 administration to the next.

8           74. At 2:44 p.m., insurrectionists attempted to force their way into the  
9 Speaker's Lobby (adjacent to the House Chamber) as lightly armed security guards tried  
10 to hold the door long enough to evacuate Members of Congress and others.

11           75. Senate staffers took the electoral college certificates with them when they  
12 were evacuated, ensuring they did not fall into the hands of the insurrectionists.

13           76. Simultaneously, Gosar was tweeting a defense of his objection to the  
14 certification of Biden's victory.

15           77. Shortly after, the House Chamber and Senate Chamber fell.  
16 Insurrectionists, some carrying zip ties and tactical equipment, overtook the defenses of  
17 the United States government and achieved, through force, effective control over the seat  
18 of the United States Congress.

19           78. After 3:00 p.m., DHS, ATF, and FBI agents, and police from Virginia and  
20 Maryland, joined Capitol Police to help regain control of the Capitol.

21

1           79.    Around 4:30 p.m., insurrectionists attacked officers guarding the Capitol,  
2 beating them with improvised weapons, spraying them with mace, and beating one so  
3 badly he required staples.

4           80.    Around 5:20 p.m., the D.C. National Guard began arriving. By 6:00 p.m.,  
5 the insurrectionists had been removed from the Capitol, though some committed sporadic  
6 acts of violence through the night.

7           81.    Vice President Pence was not able to reconvene Congress until 8:06 p.m.,  
8 nearly six hours after the process had been obstructed.

9           82.    At or about 9 p.m., Trump's counsel John Eastman argued to Pence's  
10 counsel via email that Pence should refuse to certify Biden's victory by not counting  
11 certain states.

12          83.    Pence's counsel ignored it. Congress was required under the Electoral  
13 Count Act to debate the objections filed by Senators and Members of Congress to  
14 electoral results from Arizona and Pennsylvania.

15          84.    During that debate, Gosar retweeted a video of Representative Gaetz falsely  
16 claiming that antifa was responsible for the violence. Despite six Senators and 121  
17 Representatives (including Gosar and Biggs) voting to reject Arizona's electoral results,  
18 167 Cong. Rec. H77 (daily ed. Jan 6, 2021), and seven Senators and 138 Representatives  
19 (including Gosar and Biggs) voting to reject Pennsylvania's electoral results, *Id.* at H98,  
20 Biden's victory was ultimately certified at 3:14 a.m., January 7. 167 Cong. Rec. H114-15  
21 (daily ed. Jan 6, 2021).



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**CLAIM FOR RELIEF**  
**Ineligible for Election Under A.R.S. § 16-351(B); U.S. Const. Amend.14 §3.**

90. All preceding allegations are incorporated as if repeated herein.

91. Biggs swore an oath to support the U.S. Constitution as Members of Congress. He is a candidate for the office of U.S. Representative, one of the covered offices under Section Three of the Fourteenth Amendment.

92. The January 6, 2021 attack on the U.S. Capitol, either alone or in combination with related attempts to prevent a peaceful and legitimate transfer of power, constituted an “insurrection” or “rebellion” under Section Three of the Fourteenth Amendment.

93. The insurrectionists successfully defied the authority of the United States.

94. The January 6 attack meets the definition of an insurrection because the insurrectionists’ goal was to overthrow or obstruct the U.S. government, “a lawfully constituted regime.” *Pan Am. World Airways, Inc. v. Aetna Cas. & Sur. Co.*, 505 F.2d 989, 1005 (2d Cir. 1974); *Home Ins. Co. of N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954) (insurrectionary action must be “specifically intended to overthrow the constituted government and to take possession of the inherent powers thereof”).

95. The demonstration was to intimidate Congress and Vice President Pence—in particular, to intimidate Pence into violating the Twelfth Amendment and the Electoral Count Act by ignoring the legal electoral votes for Biden. And the insurrectionists mounted their violent assault on the U.S. Capitol and the government officials within for the purpose of preventing the Vice President of the United States and the United States

1 Congress from fulfilling their constitutional roles in ensuring the peaceful transition of  
2 power. As they attacked, the insurrectionists insisted that elected officials anoint their  
3 preferred candidate the winner—or be murdered.

4 96. This was an attack on the *United States*. The importance of counting the  
5 electoral votes in our constitutional system cannot be overstated. It formalizes a deeper,  
6 bedrock norm in our democracy: the peaceful transition of power. The Electoral Count  
7 Act, as well as the Article II and the Twelfth Amendment, lay out the procedures for  
8 counting votes; together with the Twentieth Amendment, they ensure that transition is  
9 orderly and non-violent. They are essential constitutional functions of the United States  
10 government. An attempt to disrupt those procedures, particularly through violence, is an  
11 attack on our country itself.

12 97. This was no mere riot; it was an attempt to disrupt an essential  
13 constitutional function and illegally prolong Trump’s tenure in office.

14 98. An attack on public authority need not be likely to succeed in order to  
15 constitute an insurrection. *Davila*, 212 F.2d at 736 (“An insurrection aimed to accomplish  
16 the overthrow of the constituted government is no less an insurrection because the  
17 chances of success are forlorn.”); *In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill.  
18 1894) (an insurrection does not require “bloodshed” or to be so large “as to insure its  
19 probable success,” only that “the rising be in opposition to the execution of the laws of  
20 the United States, and should be so formidable as *for the time being* to defy the authority  
21 of the United States.”) (emphasis added).

1           99.    The January 6 insurrectionists' violent seizure of the House and Senate  
2 Chambers and key congressional offices did, in fact, obstruct and delay this essential  
3 constitutional procedure. They very nearly succeeded in achieving their aim of  
4 overturning the results of the 2020 presidential election. This violent attack on the  
5 political system of the United States in the heart of the nation's capital is the paradigm of  
6 insurrection.

7           100. This analysis of January 6 is consistent with the understanding of Congress,  
8 the U.S. Department of Justice, and federal courts.

9           101. On the evening of January 6, after Congress was finally able to reconvene,  
10 Senator Mitch McConnell of Kentucky, the Senate Majority Leader, described the assault  
11 as a "failed insurrection."

12           102. He has since confirmed his understanding in response to the attempted  
13 characterization—by Representatives including Greene—of the insurrection as  
14 "legitimate political discourse": "We saw it happen. It was a violent insurrection for the  
15 purpose of trying to prevent the peaceful transfer of power after a legitimately certified  
16 elections, from one administration to the next. That's what it was."

17           103. In court filings, the U.S. Department of Justice has characterized the attack  
18 on the Capitol as "an insurrection attempting to violently overthrow the United States  
19 Government."

20           104. Judge Carl Nichols of the U.S. District Court for the District of Columbia  
21 has issued a ruling in a pending case, describing the attack as an "uprising" that



1 “target[ed] a proceeding prescribed by the Constitution and established to ensure a  
2 peaceful transition of power.” *United States v. Miller*, No. 21-cr-00119 (D.D.C. Dec. 21,  
3 2021), ECF No. 67. <https://bit.ly/318NBmX>.

4 105. Members of the “Oath Keepers” that stormed the Capitol or organized the  
5 storming have been indicted on seditious conspiracy charges. Indictment, 8–32 (D.D.C.  
6 Jan 12, 2022). *United States v. Rhodes*, No. 22-cr-00015, ECF No. 1, Indictment, at 8-32  
7 (D.D.C. Jan 12, 2022), [https://s3.documentcloud.org/documents/21178549/rhodes-](https://s3.documentcloud.org/documents/21178549/rhodes-complaint.pdf)  
8 [complaint.pdf](https://s3.documentcloud.org/documents/21178549/rhodes-complaint.pdf).

9 106. The elements of seditious conspiracy track the definition of insurrection  
10 almost exactly. 18 U.S.C. § 2384.<sup>2</sup>

11 107. Bipartisan majorities of the House and Senate voted for articles of  
12 impeachment describing the attack as an “insurrection.” 167 Cong. Rec. H191 (daily ed.  
13 Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021).

14 108. In the impeachment trial, President Trump’s own defense lawyer stated that  
15 “the question before us is not whether there was a violent insurrection of [sic] the Capitol.  
16 On that point, everyone agrees.” 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021).  
17 <http://bit.ly/EveryoneAgrees>.

18 109. The Senate voted by unanimous consent to award a Congressional Gold  
19 Medal for Capitol Police officer Eugene Goodman via a bill that categorized the January  
20

21 <sup>2</sup> Defining the crime as “conspir[ing] to overthrow, put down, or to destroy by force the Government of the United States . . . or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States.”

1 6 attackers as “insurrectionists.” 167 Cong. Rec. S694–95 (daily ed. Feb. 12, 2021).  
2 Congress separately voted to award Congressional Gold Medals to other Capitol Police,  
3 using the same “insurrectionists” language. Pub. L. No. 117-32, 135 Stat. 322 (2021).

4 110. Recognizing January 6 as an insurrection or rebellion for purposes of  
5 Section Three is also consistent with the intent of the Fourteenth Amendment’s drafters,  
6 who worried that the reelection of the pre-war political class in the South would re-  
7 empower those willing to use violence or otherwise reject the results when their preferred  
8 policies were not enacted, or their preferred candidates were not elected. *See, e.g.*, 69  
9 Cong. Globe, 39th Cong., 1st Sess. 2532 (1866) (statement of Rep. Banks) (“They do not  
10 rely on ideas for success. They govern by force. Their philosophy is force. Their tradition  
11 is force.”). The idea behind Section Three was that politicians who took an oath to protect  
12 the Constitution and then disregarded the norms of peaceful and lawful political discourse  
13 could not be trusted to hold office—that was true then, and it remains true today.

14 111. Representative Biggs, who was intimately involved in the plans *inside* the  
15 Capitol to reject the electoral votes of several states, was engaged in, at minimum, the  
16 planning and promotion of events that led to the insurrection.

17 112. To “engage” in insurrection or rebellion, one must voluntarily and  
18 knowingly aid the insurrection by providing it with something useful or necessary.  
19 *United States v. Powell*, 65 N.C. 709 (C.C.D.N.C. 1871) (holding that “engage” merely  
20 required “a voluntary effort to assist the Insurrection . . . and to bring it to a successful  
21 [from insurrectionists’ perspective] termination”); *Worthy v. Barrett*, 63 N.C. 199, 203

1 (1869) (in Section Three case, interpreting “engage” to mean “[v]oluntarily aiding the  
2 rebellion, by personal service, or by contributions, other than charitable, of any thing that  
3 was useful or necessary”). Cf. *Wells Fargo Bank v. Arizona Laborers, Teamsters &*  
4 *Cement Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 23 (Ariz. 2002) (three  
5 part-test for civil accomplice liability: a legal harm, knowledge of that harm, substantial  
6 assistance or encouragement).

7 113. Representatives Biggs and Gosar did not plan and promote the events of  
8 January 6 as citizens, but as sitting members of Congress, insisting to their supporters that  
9 there was a legal route to install Trump as president for another four years. They did so  
10 against a backdrop of calls from groups, to forcibly prevent the certification of Biden and  
11 install Trump as president for another four years. When those legal plans broke down—as  
12 they must have known they would—their supporters did what he had told them for years  
13 they had to do, and what they had said they would do: fight.

14 114. The candidate’s occasional professions of denial or distancing from the  
15 violence of the foot soldiers who stormed the Capitol cannot conceal the fact that the  
16 candidates encouraged and helped aid the insurrection. The candidate poses precisely the  
17 type of ongoing threat to the Republic that the Disqualification Clause was written to  
18 guard against.

19 **REQUESTED RELIEF**

20 WHEREFORE, the plaintiffs respectfully request that the Court make the  
21 following findings of fact and conclusions of law:

1           A.     Candidate Biggs was involved in planning efforts to intimidate Congress  
2 and the Vice President into rejecting valid electoral votes and subvert the essential  
3 constitutional function of an orderly and peaceful transition of power. He was involved in  
4 either planning the attack on January 6, or alternatively the planning of the pre-attack  
5 Ellipse Demonstration, Wild Protest, and/or march on the Capitol, with the advance  
6 knowledge that it was substantially likely to lead to the attack, and otherwise voluntarily  
7 aided the insurrection.

8           B.     Candidate Andrew Biggs, as a member of the U.S. House of  
9 Representatives, and prior to the insurrection, took an oath of office to support the  
10 Constitution of the United States;

11           C.     Pursuant to Section 3 of the Fourteenth Amendment to the Constitution of  
12 the United States, Candidate Biggs shall not hold any public office;

13           D.     Congress has not by a vote of two-thirds of each House removed this  
14 disability from Candidate Biggs;

15           E.     Pursuant to Section 16-351, Arizona Revised Statutes, subsection(B),  
16 Candidate Biggs is not qualified to hold the office of U.S. Representative;

17           F.     Secretary Hobbs and the county defendants be ordered to exclude Biggs'  
18 name from the ballot for the 2022 primary.

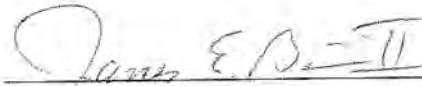
19           DATED this 7th of April 2022.

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\* Motions for pro hac vice admission forthcoming.

**VERIFICATION**

I, Carrie Goode, do state and swear under penalty of perjury and as permitted by Rule 80(c), Ariz. R. P. Civ. P., as follows:

I am a plaintiff in this action. I have read the foregoing Verified Complaint and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of April 2022.

DocuSigned by:  
**CARRIE GOODE**  
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Carrie Goode

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