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CLERK OF THE SUPERIOR COURT
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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

LIVING UNITED FOR CHANGE IN ARIZONA, an Arizona nonprofit corporation; Victory PAC, an Arizona political action committee; ALEJANDRA GOMEZ, a qualified elector; and OSCAR DE LOS SANTOS, a qualified elector,

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as Secretary of State; and the STATE OF ARIZONA.

Defendants.

Case No.:

CV2024-014129

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND
PRELIMINARY INJUNCTION**

Election Case/Referendum Challenge per
A.R.S. § 19-161(B)

This is a challenge, pursuant to Section 19-161(B), Arizona Revised Statutes, to the form of House Concurrent Resolution 2060, enacted by the Fifty-sixth Legislature during the Second Regular Session in 2024 (HCR 2060), as unconstitutionally encompassing more than a single subject in violation of the Article IV, part 2, section 13, Arizona Constitution.

1 PARTIES

2 1. Living United for Change in Arizona (“LUCHA”) is a nonpartisan,
3 nonprofit membership organization based in Arizona. It is led by community members
4 fighting for social, racial, and economic justice.

5 2. HCR 2060 will negatively affect LUCHA’s more than 93,000 members,
6 many of whom are people of color and/or have low income.

7 3. LUCHA’s membership also consists of naturalized U.S. citizens who will
8 be targeted for specific classifications and disfavored treatment under the requirements
9 and processes established in HCR 2060.

10 4. In light of HCR 2060’s effort to conflate the unlawful sale of drugs with
11 immigration issues, LUCHA’s members, many of whom are people of color, are
12 significantly more likely than the population at large to be the target of unfair suspicion
13 and targeting under HCR 2060.

14 5. Because LUCHA’s membership consists of naturalized U.S. citizens and
15 DACA recipients, its members would be significantly more likely than the population at
16 large to be the target of the anti-immigration provisions of HCR 2060, including, e.g.,
17 requiring a person to return to the foreign nation from which the person entered the United
18 States. Its members are also more likely to be unfairly targeted and treated with suspicion
19 under the referendum’s characterization of Arizona as being under an “actual invasion.”

20 6. LUCHA conducts a rights restoration client that focusses on assisting those
21 convicted of a felony obtaining the right to vote again. LUCHA has served citizens in this

1 capacity in the last year and plans to continue that program.

2 7. HCR 2060's purported expansion of activity to be treated as a felony will
3 increase the need for LUCHA's rights restoration clinic and increase the cost of operating
4 that program.

5 8. LUCHA will spend more time training volunteers to educate members and
6 its served community concerning HCR 2060's requirements and potential misapplication
7 of the law.

8 9. These diversions of funds to address HCR 2060 will continue for as long as
9 these requirements are in effect and are exacerbated by HCR 2060's deficiency in form—
10 namely its embracing numerous subjects—requiring a particularly significant diversion of
11 resources for the education effort.

12 10. HCR 2060's disparate treatment of otherwise eligible recipients of public
13 aid means that LUCHA's organizers must take additional time and training to inform
14 members of the impacted community of the many new changes in the law and the threats
15 of criminal investigation and prosecution.

16 11. LUCHA expects that many of its members and the community members
17 will be intimidated and discouraged from seeking a federal public benefit or state or local
18 public benefit, even though they are eligible, because of HCR 2060's enhanced criminal
19 charges and its potential for disparate impact on naturalized citizens.

20 12. Even if applicants happen to have required documentation under HCR 2060,
21 LUCHA must now incur costs and additional burdens to educate community members

1 that they will not be targeted by HCR 2060, and/or prepare them for how to respond to
2 unfair misapplication of the law.

3 13. Plaintiff Victory PAC is an Arizona political action committee, Filer ID No.
4 202000014, that will raise and spend funds to oppose HCR 2060's passage should the
5 referendum remain on the 2024 General Election ballot.

6 14. Plaintiff Alejandra Gomez is a qualified elector who intends to vote in the
7 2024 General Election and will be forced to decide whether to vote for HCR 2060,
8 including all of the subjects addressed by the referral, without the opportunity to
9 distinguish among the topics. She is also the Executive Director of Plaintiff LUCHA and
10 the Chair of Plaintiff Victory PAC.

11 15. Plaintiff Oscar De Los Santos is an elected representative serving in the
12 Arizona House of Representatives who was denied the opportunity to vote for the subjects
13 covered by HCR 2060 individually.

14 16. Defendant Adrian Fontes is the Arizona Secretary of State, a public officer,
15 and is named as a defendant in this action in his official capacity.

16 17. Defendant State of Arizona is a body politic.

17 **GENERAL ALLEGATIONS**

18 18. Prior to the Legislature's passing HCR 2060, it unsuccessfully attempted to
19 enact the various provisions of the HCR 2060 in other pieces of legislation.

20 19. Governor Katie Hobbs vetoed Senate Bill 1231, "Arizona Border Invasion
21 Act," because it "does not secure the border, will be harmful for communities and

1 businesses in our state, and burdensome for law enforcement personnel and the state
2 judicial system.” Governor Hobbs, *SB 1231 Veto Letter* (Mar. 4, 2024).

3 20. HCR 2060 addresses the subject of Senate Bill 1231.

4 21. House Bill 2820 would have created a new “Drug Trafficking Homicide”
5 criminal offense and provides the following legislative finding:

6 The legislature finds that the department of health services has reported that
7 thousands of Arizonans have lost their lives to opioid overdoses and that
8 fentanyl is a powerful synthetic opioid that is up to fifty times stronger than
9 heroin and one hundred times stronger than morphine. The legislature intends
10 to hold fentanyl dealers fully accountable for these deaths and target the drug
11 traffickers who are responsible for causing these deaths. The legislature does
12 not intend to punish individuals for homicide who possess fentanyl without
13 the intent to sell to others. The legislature further intends that in any
14 prosecution for this offense causation must be proven beyond a reasonable
15 doubt as required by section 13-203, Arizona Revised Statutes.

16 HCR 2060 addresses the subject of House Bill 2820, which is distinct from the subject of
17 Senate Bill 1231.

18 22. Provisions of HCR 2060 are included in other bills including House Bill
19 2821, “short title: state crime; illegal border crossings,” which includes an immunity
20 provision also found in HCR 2060 as follows:

21 A. An elected or appointed state official or a state employee or contractor is
immune from liability for damages arising from a cause of action under the
laws of this state resulting from an action taken by the state official, employee
or contractor to enforce title 13, chapter 38, article 35 or an order issued under
section 13-4295.05 during the course and scope of the state official’s,
employee’s or contractor’s office, employment or contractual performance
for or service on behalf of this state.

22 23. House Bill 2748, “short title: illegal border crossings; state; crime,” adds a
23 section to Title 13 purportedly permitting a magistrate to issue an order “and require the

1 person to return to the foreign nation from which the person entered or attempted to enter”
2 if certain conditions apply.

3 24. HCR 2060 addresses the subjects of House Bill 2821 and 2748, which are
4 distinct from the subjects of House Bill 2820 and Senate Bill 1231.

5 25. During the June 4, 2024, floor debate on HCR 2060, Representative
6 Montenegro acknowledged that HCR 2060 embraced the subjects of numerous bills,
7 stating that Republicans had sent numerous bills to the Governor and that she “has failed,
8 she has vetoed every single one,” and that for that reason HCR 2060 is being submitted to
9 the voters.

10 26. Similarly, in the May 9, 2024, Senate Floor debate Senator Peterson said
11 that HCR 2060 was necessary because of 10 individual bills that had been vetoed by
12 Governor Hobbs.

13 27. Perhaps unwittingly, Representative Heap revealed the Republican
14 Legislators’ breathtaking view of what subjects could be contained in a bill allegedly
15 addressing immigration, or as it has been recast by the Republican legislators a “border
16 invasion,” by saying during the February 22, 2024, House floor debate, “Every issue that
17 we deal with here in this state is made worse by our open border and mass immigration.”

18 28. Members of the House warned the body that it was adopting a measure that
19 unconstitutionally embraced more than a single subject.

20 29. Representative Lucking alerted members that “now all these bills are
21 crammed together into this,” during the June 4, 2024, floor debate.

1 30. When Plaintiff Representative De Los Santos noted that HCR 2060 is a
2 hodge podge of disparate subjects—employment verification, drug sentencing,
3 cities/towns administration, etc.—Speaker Toma responded, by essentially conceding the
4 point, noting that the bill does three things: enhances sentencing for fentanyl dealing,
5 strengthens E-Verify, prevents submitting false documents for public benefits, and makes
6 it a state crime to enter from a foreign nation anywhere that is not a port of entry.

7 31. Strengthening E-Verify, a employment related verification system, and
8 preventing the submitting of false documents for public benefits are distinct subjects;
9 thus, Speaker Toma’s concession of HCR 2060’s many subjects actually encompasses
10 four separate subjects, not three.

11 32. Speaker Toma’s comments the day before at a Yuma press conference
12 similarly reflect the multitude of topics that those who supported referring HCR 2060 want
13 to address, saying, “We have major issues with human trafficking and fentanyl and HCR
14 2060 is attempting to do something about all of those pieces.”

15 33. Both the intention of the supporters of HCR 2060 and the text of HCR 2060
16 demonstrate that the referendum embraces numerous and varied subjects.

17 **FIRST CLAIM FOR RELIEF – DECLARATORY JUDGMENT**

18 34. Plaintiffs incorporate the allegations set forth above as though fully set forth
19 herein.

20 35. Article 4, pt. 2 § 13 of the Arizona Constitution provides that, “Every Act
21 shall embrace but one subject and matters properly connected therewith.”

1 36. This section of the Constitution applies with equal force to legislative
2 referenda as to any other act of the Legislature.

3 37. This section serves to ensure that acts of the Legislature do not result in
4 surprise by including unrelated propositions in the same act in order to attract majority
5 support for some provisions, also known as logrolling.

6 38. Section 2 of HCR 2060 identifies numerous unrelated subjects included in
7 the measure such as “immigration enforcement,” a matter regulated under federal
8 administrative controls, “illicit fentanyl,” a matter regulated by under federal and state
9 criminal enforcement, a so-called “actual invasion” of the State of Arizona, a matter
10 regulated by Article I, Section 10 of the United States Constitution, “receipt of public
11 benefits” both state and federal, regulated by various state and federal agencies, and
12 “unauthorized employment” and related “unfair labor competition.”

13 39. Section 3 of HCR 2060 amends Title 1, chapter 5, article 1 of Arizona
14 Revised Statutes to, *inter alia*, create a class 6 felony for “knowingly apply[ing] for a
15 federal public benefit or a state or local benefit by submitting a false document to any
16 entity that administers the federal public benefit or the state or local benefit.”

17 40. Section 4 of HCR 2060 amends Title 13, chapter 34 of Arizona Revised
18 Statutes to create a felony for the sale of “lethal fentanyl.”

19 41. Section 5 of HCR 2060 amends Title 13, chapter 38 of Arizona Revised
20 Statutes to make “illegal entry into this state,” a state crime.

1 42. Section 5 of HCR 2060 also creates a standard for probable cause and a
2 prerequisite for enforcement of the article based on the State of Texas’ keeping a Texas
3 law “in effect for a period of sixty consecutive days.”

4 43. Section 5 of HCR 2060 also immunizes certain government officials and
5 agencies against actions related to enforcement of the Act’s numerous and varied
6 provisions.

7 44. Section 6 of HCR 2060 amends Title 23, chapter 2, article 2 of Arizona
8 Revised Statutes to regulate employment and the use of the E-Verify program.

9 45. Section 7 of HCR 2060 changes state law regarding intervention “in any
10 action concerning this act” to specifically include the minority leader of the Senate and
11 the minority leader of the House of Representatives.

12 46. HCR 2060 does not amend a specific, single act enacted by the Arizona
13 voters or the Arizona legislature, but rather, sections of the Arizona Revised Statutes
14 scattered throughout several titles enacted by numerous, separate legislative acts.

15 47. HCR 2060 does not fall under any exemption or exception from the Single
16 Subject Rule.

17 48. Because HCR 2060 combines numerous, unrelated subjects from
18 immigration to employment law to criminal drug enforcement, it embraces more than one
19 subject in violation of Article 4, pt. 2 § 13 of the Arizona Constitution, and is therefore
20 unconstitutional.

21 49. When an act combines unrelated subjects in violation of the Single Subject

1 Rule courts will not attempt to ascertain which of the subjects is primary but will strike
2 the measure in its entirety.

3 50. Plaintiffs are entitled to a Declaration that HCR 2060 violates the Arizona
4 Constitution.

5 **SECOND CLAIM FOR RELIEF – PRELIMINARY INJUNCTION**

6 51. Plaintiffs incorporate the allegations set forth above as though fully set forth
7 herein.

8 52. Plaintiffs have filed this timely challenge to HCR 2060 as authorized by
9 Section 19-161(B), Arizona Revised Statutes.

10 53. As provided above, HCR 2060 is not legally sufficient in its form as it
11 embraces more than a single subject.

12 54. Because HCR 2060 is not legally sufficient, Plaintiffs are entitled to an order
13 enjoining the Secretary of State from certifying HCR 2060 for the 2024 General Election.

14 WHEREFORE, Plaintiffs request the following:

15 A. A Declaration that HCR 2060 violates Article 4, pt. 2 § 13 of the Arizona
16 Constitution;


17 B. An Order enjoining the Arizona Secretary of State from certifying HCR
18 2060 for placement on the 2024 General Election Ballot;

19 C. An award of costs and reasonable attorneys' fees pursuant to the private
20 attorney general doctrine;

21 D. Further relief as the Court deems necessary and appropriate.

1 RESPECTFULLY SUBMITTED this 5th of June 2024.

2 **BARTON MENDEZ SOTO PLLC**

3 By: 
4 James E. Barton II
5 Jacqueline Mendez Soto
6 Daniella Fernandez Lertzman
7 *Attorneys for Plaintiffs*

8 **VERIFICATION**

9 I, Alejandra Gomez, declare, as permitted by Ariz. R. Civ. P. Rule 80(c), as follows:

10 1. I am one of the named plaintiffs in this case, in my personal capacity as a
11 qualified elector;

12 2. I am the Executive Director of LUCHA and am authorized to sign this
13 verification on behalf of LUCHA;


14 3. I am the Chair of Victory PAC and am authorized to sign this verification on
15 behalf of Victory PAC;

16 4. I have read the Verified Complaint and know its contents;

17 5. To the best of my knowledge, information and belief, the statements made in it
18 are true and correct.

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

20 Executed on June 5, 2024

21 
Alejandra Gomez