

ARIZONA SUPREME COURT

GINA SWOBODA, et al.,

No. CV-24-0198-SA

Petitioners,

v.

KATIE HOBBS, in her official capacity
as Governor of the State of Arizona,

Respondent.

**AMICUS BRIEF OF ONE ARIZONA IN OPPOSITION TO SPECIAL
ACTION PETITION**
(with written consent of the parties)

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Pursuant to Rule 16 of the Arizona Rules of Civil Appellate Procedure, Proposed Amicus Curiae One Arizona submits this brief in support of Respondent Governor Hobbs. This brief is submitted with written consent by the parties. ARCAP 16(b)(1)(A).

INTERESTS OF AMICUS CURIAE

One Arizona is a nonpartisan, nonprofit corporation organized under section 501(c)(3) of the Internal Revenue Code. One Arizona was founded in 2010 in direct response to growing disenfranchisement of Latino voters in the state and in the wake of SB 1070, the “Show Me Your Papers Law.” It is an advocacy group comprised of 29 organizations who together focus on building a culture of civic engagement and democratic participation, especially among voters in historically underrepresented communities, including Latino voters, other communities of color, and young people.¹ The centerpiece of One Arizona’s mission is its commitment to increasing civic engagement and democratic participation across Arizona.

In furtherance of its mission, One Arizona heavily invests in voter registration efforts, get-out the-vote projects, voter protection programs, and other election-related efforts. One Arizona provides training, written materials, and other resources to its member groups, who work collaboratively to advance One Arizona’s mission of ensuring that all Arizonans are able to participate in the state’s elections. One Arizona also provides direct grants to its member groups so that those groups can

¹ The organizations that comprise One Arizona are: All Voting Is Local; Arizona Advocacy Network; Arizona Center for Empowerment; Arizona Coalition for Change; Arizona Democracy Resource Center; Arizona Dream Act Coalition; Arizona Students’ Association; Asian Pacific Community in Action; Black Phoenix Organizing Collective; CAIR Arizona; CASE; Chispa Arizona; Corazon AZ; Fuerte; Instituto; Inter Tribal Council of Arizona, Inc.; Mi Familia Vota; Mountain Park Health Center; New American Leaders; OCA Greater Phoenix; Phoenix Indian Center; Planned Parenthood Arizona; Poder in Action; Poder Latinx; Progress Arizona Institute; Promise Arizona; Protecting Arizona’s Family; Puente Movement; and Rural Arizona Engagement.

implement One Arizona’s programs, including its voter registration and grassroots get-out-the-vote programs, youth-advocacy programs, and immigration support services. One Arizona also invests substantial resources to coordinate field work aimed at engaging with potential voters, as well as voter education and community outreach—especially through social media campaigns and other digital programs geared toward young voters and underrepresented groups in Arizona.

In the last six years alone, One Arizona’s members have registered more than 600,000 voters in the state—including 185,000 in 2020. 70% of the 600,000 voters that One Arizona’s members registered voted in the 2020 election. During this critical election year, One Arizona is coordinating statewide voter registration and get-out-the-vote activities, election protection work, and democracy defense efforts across the state. To date, the organization has hired 15 paid employees to help One Arizona carry out these mission-critical programs.

Because One Arizona is committed to promoting effective administration of elections and ensuring access to voting for all eligible voters, it has a direct interest in this petition challenging the legality of Governor Hobbs’s Executive Order 2023-23 (“EO-23”) and Executive Order 2023-25 (“EO-25”). EO-23 and EO-25 are intended to operationalize recommendations made by a bipartisan task force to facilitate voter registration and authorize the use of state facilities as voting and ballot drop-off locations to help strengthen Arizona’s democracy and protect and promote the right to vote. The Governor’s EOs comport with One Arizona’s mission of increasing civic engagement and ensuring *all* Arizonans have access to the resources they need to participate in Arizona’s elections. In view of the EOs, One Arizona’s organizations will have more resources to promote to their members and constituents about where they can register to vote, drop off their ballots, and vote. The EOs will also give the communities that One Arizona serves better chances of encountering voter registration forms at state agencies with which they frequently interact. Making voter registration forms more accessible through state agencies is

essential to those who do not know how to register to vote and would not have otherwise been able to register absent such interaction with the agencies. Finally, having more options to drop off their ballot or go vote at other secure locations will also help facilitate voting for One Arizona's constituents. Many are wary of appearing in person to use voting locations or ballot drop box sites, particularly in light of voters experiencing threats and harassment in recent Arizona elections. These constituents' prior voting locations may also no longer be available. As explained below, many existing polling locations—including hundreds of local Arizona schools—have ceased offering their facilities as voting locations as a result of threats against elections workers and the increased hostility at these vote centers.

Priorities USA sponsored this brief. Priorities USA, a nonprofit corporation organized under Section 501(c)(4) of the Internal Revenue Code, supports programming to educate, register, and turn out voters across the country, including in Arizona. Priorities USA has a direct interest in ensuring that the challenged executive orders remain in place for the November election because it promotes more opportunities for voters to register to vote and cast a ballot in Arizona.

INTRODUCTION

Last year, Governor Hobbs exercised her lawful, executive authority by issuing modest and commonsense EOs that serve to strengthen Arizona's democracy and safeguard the integrity of its elections by ensuring that counties have the funding they need to support free, fair, and safe elections, and making voter registration and voting more accessible and safer for qualified Arizonans who may otherwise have difficulties successfully registering or casting their ballots. Among other things, the EOs gave state employees the ability to receive civic duty leave to serve as election workers; made state buildings available to serve as voting locations (if desired by county officials); and directed state agencies to provide voter registration information and assistance to the public they serve. These reasonable orders were the result of recommendations of a bipartisan task force and help expand registration

opportunities for qualified Arizona voters as well as address a lack of voting locations in the state.

Petitioners brought this action because they dislike the policy choices reflected by the EOs. This tactic is not new: Arizona courts are now swamped with frivolous cases seeking to weaponize the courts to compel the petitioners' policy preferences and disrupt and undermine voter confidence in the upcoming election. This Court should not tolerate such gamesmanship, particularly where those demanding court intervention fail to allege *any* injury, as is this case. Petitioners point to absolutely no harm stemming from these executive orders, nor could they. The EOs are lawful exercises of the Governor's power and help *all* Arizonans exercise their most fundamental right to vote. The petition, and the extraordinary relief it seeks, should be denied.

BACKGROUND

In January 2023, Governor Hobbs established the Governor's Bipartisan Elections Task Force through Executive Order 2023-03.² The Task Force's goal was to identify bipartisan proposals for improving the state's elections.³ As Governor Hobbs explained, "Arizona's voters deserve an election system that is free, fair, and secure. I look forward to the task force's recommendations and will continue working toward meaningful election reform that will improve the democratic process for voters and election administrators in Arizona."⁴ Executive Order 2023-03 mandated that the Task Force "include a diverse representation of political party

² Executive Order 2023-03, Establishing the Governor's Bipartisan Elections Task Force (Jan. 6, 2023), available at perma.cc/W5VV-A7VP.

³ State of Arizona, Governor's Bipartisan Elections Task Force, Final Report (Nov. 1, 2023), available at perma.cc/5FXX-42SD.

⁴ News Release, Governor Katie Hobbs Announces Members of Bipartisan Elections Task Force (Mar. 8, 2023), available at perma.cc/ALJ2-GVQV.

affiliations and geographic presence to ensure that the Task Force considers recommendations reflective of communities across Arizona.”⁵

On November 1, 2023, the Task Force issued its Final Report outlining 16 policy recommendations to “address some of the challenges that Arizonans face when participating in our democracy.”⁶ That same day, “to immediately address some of the problems identified by the Bipartisan Elections Task Force to ensure Arizona voters can make their voices heard,” the Governor signed three elections-related EOs, two of which are at issue here.⁷

EO-23 authorizes the use of state facilities as voting locations.⁸ The Order explains that “counties may face challenges in procuring enough adequate voting locations, particularly in light of increased threats and intimidation against election officials, poll workers, and voters in recent elections.”⁹ The Order accordingly directs the Arizona Department of Administration to coordinate with state agencies and counties to make state facilities available for use as voting locations or ballot drop-off locations.¹⁰ The Order does not require any state agency to become a voting location; it simply states that certain state-owned facilities “*may* satisfy the criteria for voting locations or serve as convenient and secure ballot drop-box locations across the State.”¹¹ It likewise does not require counties to accept state agencies as voting locations, merely instructing that state agencies should “work with counties

⁵ *Supra* n.2.

⁶ *Supra* n.3 at 1.

⁷ News Release, Governor Katie Hobbs Announces Executive Orders and Funding to Improve Arizona’s Elections as Task Force Releases Final Report (Nov. 2, 2023), available at perma.cc/AX3F-QXTT.

⁸ EO-23, available at perma.cc/P9LN-A6H6.

⁹ *Id.* at 1.

¹⁰ *Id.*

¹¹ *Id.*

to make State-owned facilities available for use” if convenient.¹² Simply put, EO-23 offers additional voting location options for counties to choose from, should they wish to do so.¹³

EO-25 directs an array of state agencies, including the Arizona Department of Transportation, Arizona Department of Health Services, Arizona Department of Veterans’ Services, Arizona Department of Housing, and Arizona Office of Economic Opportunity, to include on their websites a voter registration link directing users to the Secretary of State’s voter registration webpage or Arizona’s online voter registration portal.¹⁴ It also directs the same agencies to make voter registration forms available (as practicable and permitted by law), in conspicuous public locations and encourages these agencies to provide opportunities for online voter registration at their public locations, such as via an electronic kiosk or QR code.¹⁵

EO-25 further specifies that “State Agencies need not be formally designated as Voter Registration Assistance Agencies to provide voter registration forms and information to the citizens and communities they serve.”¹⁶ That is unremarkable, as Arizona law explicitly contemplates that state voter registration forms may be distributed by agencies that are not formally designated as Voter Registration

¹² *Id.*

¹³ Executive Order 2023-24—not at issue here—directs the Arizona Department of Administration (ADOA) to conduct rulemaking to provide state employees to be eligible for civic duty leave for the purpose of serving at a voting location during a statewide election. The Order explicitly identifies that “counties have struggled in recent elections cycles to recruit sufficient numbers or poll workers” and “misinformation, disinformation, and threats to election works have [] undermined poll worker recruitment efforts.” See Executive Order 2023-24, available at perma.cc/3G6T-MH5H.

¹⁴ EO-25, available at perma.cc/68AQ-LWCB.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 1.

Assistance Agencies. *See, e.g.*, A.R.S. § 16-134(D) (establishing procedures for voter registrations submitted from groups or agencies “not authorized to accept voter registrations pursuant to [county recorder designations]”); *see also id.* § 16-151 (voter registration forms are supplied by the state and counties and made available to “governmental and private entities” for distribution).¹⁷

Regardless, several of the identified state agencies in EO-25 are already designated (or have divisions within the agency designated) as voter registration assistance agencies under the 2023 Elections Procedures Manual (EPM),¹⁸ including: (1) the Arizona Department of Health Services (Division of Health Prevention), (2) the Arizona Department of Economic Security (Family Assistance Administration within the Division of Benefits and Medical Eligibility, Developmental Disabilities Division, and Employment and Rehabilitation Services Division), and (3) the Arizona Health Care Cost Containment System.

Since the Governor issued these EOs, Arizona has conducted several statewide elections subject to the orders without any problems, including both the Presidential Preference Election in March and the Primary Election in July of this year. The Petition does not identify any disruption or harm caused by either EO-23 or EO-25 during these elections.

¹⁷ The Secretary’s website also states: “Need lots of forms for a large voter registration drive? Your County Recorder can help provide forms to government agencies, political parties, and private organizations. (A.R.S. § 16-151(A)) Contact your County Recorder’s Office to get copies of state voter registration forms[.]” *See* Voter Registration Procedures, Ariz. Sec’y of State, available at <https://azsos.gov/elections/about-elections/elections-procedures/vr-procedures> (under How to Register to Vote, Paper Forms) (last visited Aug. 30, 2024).

¹⁸ The Order refers to the 2019 EPM, which was the operative EPM at the time the Order was issued. Since then, the 2023 EPM has taken effect—it was issued by the Secretary of State and approved by the Attorney General and Governor, as required by law. *See* Arizona Sec’y of State, 2023 Elections Procedures Manual, available at https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Ca1_1_11_2024.pdf.

ARGUMENT

I. EO-23 and EO-25 promote sensible pro-voter policies and directly address some of the recommendations of the bipartisan task force.

Governor Hobbs's EOs are commonsense measures: they make voter registration opportunities more readily available to the public and offer counties additional facilities for holding elections. Both EO-23 and EO-25 protect the interests of the people and the state by promoting and fostering crucial engagement between state agencies and their employees, and the public whom they serve and represent, and by ensuring that there are adequate voting locations available to effectively run elections. There is no question that voting locations are necessary to voting and that more voting locations make it easier for Arizonans to vote. Nor is there any question that greater awareness of and access to voter registration applications leads to higher numbers of registered voters, and in turn more voters who participate in the state's elections. And these EOs are part of a holistic effort following the Bipartisan Election Task Force's recommendations to ensure that there are adequate resources and staff to help the state's elections run smoothly. Petitioners fail to explain how these kinds of policy initiatives are anything but beneficial to Arizona voters writ large.

The need for these initiatives is great. As Governor Hobbs explained in the EOs, Arizona (and indeed, the nation) is facing increased threats and intimidation against elections officials, poll workers, and volunteers, making it increasingly difficult to effectively staff and run elections. According to a nationwide poll of election officials by the Brennan Center for Justice, a nonprofit organization dedicated to preserving American democracy, 1 in 6 election officials across the country have experienced threats because of their job, and 77% of election

officials feel that these threats have increased in recent years.¹⁹ Over half of those who responded to the poll reported being concerned about the safety of their colleagues, and more than 1 in 4 are concerned about being assaulted on the job.²⁰ The report notes this threat is acute in Arizona: “Arizona election workers have run active-shooter drills and obtained materials to barricade doors.”²¹ These drastic measures have been in direct response to the unavoidable reality, as election workers and public officials in Arizona specifically “have been plagued by incessant threats and harassment.”²² The U.S. Attorney for Arizona reports that—of all threats made to poll workers for federal elections across the country—a remarkable *one-third* come from Arizona alone.²³ And the turnover in county recorder and election official positions is high. According to a report from a nonpartisan group called Issue One, about 98% of Arizona voters in the general election this year can expect to see new personnel managing their elections.²⁴ Since 2020, 12 of the state’s 15 counties have seen turnover in either their county recorder or elections director positions.²⁵ The

¹⁹ Exhibit A at APP-004, Ruby Edlin, *Poll of Local Election Officials Finds Safety Fears for Colleagues – and Themselves*, Brennan Center for Justice (Mar. 10, 2022), perma.cc/GNL4-THVL.

²⁰ *Id.*

²¹ Exhibit B at APP-010, Ruby Edlin, *Poll of Election Officials Finds Concerns About Safety, Political Interference*, Brennan Center for Justice (May 1, 2024), perma.cc/YW3Q-JW8G.

²² Exhibit C at APP-014, Ella Lee, *Arizona becomes ground zero for 2024 election misinformation fears*, The Hill (Mar. 27, 2024), <https://thehill.com/regulation/court-battles/4558118-arizona-becomes-ground-zero-for-2024-election-misinformation-fears/>.

²³ *Id.* at APP-015.

²⁴ Exhibit D at APP-019, Sasha Hupka, *A ‘Dire’ situation: Report finds Arizona hit hard by turnover of election officials*, AZ Central (Sept. 26, 2023), <https://www.azcentral.com/story/news/politics/elections/2023/09/26/report-finds-arizona-hit-hard-by-departures-of-election-officials/70936427007/>.

²⁵ *Id.*

sad reality of threats against election workers—like the Republican Yuma County recorder who left her job in July 2022 after nearly 14 years²⁶—has resulted in a gap of qualified and willing elections officials to run the state’s elections. As a result, Governor Hobbs has had to work tirelessly to close that gap through initiatives (including EO-23 and EO-25) that promote voting and access to voting, and that provide funding to pay for election administration needs, such as security measures at the county level and resources to support these new election workers.²⁷

In addition to election workers, election locations have also been difficult to secure. For example, while schools have long served as polling sites in Arizona, superintendents in many districts have expressed concerns with opening their campus doors to voters as voting locations in “this environment, where you have people with body cameras and weapons that are being brandished.”²⁸ Some have reported “confrontations” at their schools, including attacks on school staff mistaken for election officials.²⁹ As a result of these incidents, “hundreds” of schools across the state “are no longer willing to assume the risks associated with holding elections.”³⁰ In just eight years, the percentage of polling sites in Arizona that are

²⁶ Exhibit E at APP-024, Mary Jo Pitzl, *‘It’s a very sad day’: Across Arizona, elections officials leave office following harassment over 2020*, AZ Central (Jul. 10, 2022),

<https://www.azcentral.com/story/news/politics/elections/2022/07/10/arizona-elections-leaders-leaving-their-posts-early-following-threats/7816106001/>.

²⁷ Exhibit F at APP-029, Caitlin Sievers, *Hobbs gives \$2M to election efforts, orders departments to ramp up voter registration*, Arizona Mirror (Nov. 2, 2023), [perma.cc/ZR3W-Q5NE](https://www.azcentral.com/story/news/politics/elections/2023/11/02/hobbs-gives-2-million-to-election-efforts-orders-departments-to-ramp-up-voter-registration/7816106001/). See also *supra* n.7.

²⁸ Exhibit G at APP-034, Yvonne Wingett Sanchez, *With voting under attack, Arizona schools don’t want to be polling locations*, Washington Post (Aug. 5, 2024), <https://www.washingtonpost.com/politics/2024/08/05/arizona-maricopa-county-schools-elections/>.

²⁹ *Id.* at APP-033.

³⁰ *Id.*

schools has fallen from 37% to just 14% so far this year.³¹ This year, Mesa Public Schools—the largest school district in the state—decided not to open its schools as vote centers.³² The district cited “heightened safety protocols” and “staff and student experiences [in] past elections” as reasons to decline hosting as a polling location.³³ Many county officials have resorted to using “rented-out storefronts,” “aquatic centers,” and even “funeral home[s]” as polling sites due to a shortage of willing schools.³⁴

EO-23 proposes practical solutions to help fill the gap caused by these critical issues threatening Arizona’s elections. It ensures that more locations remain viable options for voting centers even as local offices grow weary of the increasingly threatening election environment. There is nothing out of the ordinary about government buildings being used as election voting centers. State facilities offer an added measure of security to voters and poll workers alike. EO-23 provides more options for counties who need to find and staff secure voting locations for their voters to be able to exercise their fundamental right to vote.

EO-25 is likewise a practical and sensible measure, expanding opportunities for ordinary Arizonans to register to vote when they interact with state offices, including by requiring voter registration links on state websites and at state offices. Consider, for example, an Arizona veteran who needs to apply for benefits. That veteran may visit the Arizona Department of Veterans’ Services to gather information and seek help in applying for benefits. While at the office, she sees in the waiting area a clearly identifiable and visible QR code and sign stating, “Register

³¹ *Id.*

³² Exhibit H at APP-040, Emma Lockhart, *Phoenix-area school districts opting out as vote centers over safety*, AZ Family (Aug. 7, 2024), perma.cc/QF6L-4DDF.

³³ *Id.*

³⁴ Exhibit G at APP-033.

to Vote.” Without having to seek out information on her own, that veteran can now easily access information on how to register to vote online—pure common sense. The veteran still must provide the necessary registration information, submit the registration form, and have it approved by her County Recorder—EO-25 changes none of that. Indeed, EO-25 states at the top that “Arizonans must register as prescribed by law to be eligible to vote.” But EO-25 eliminates some of the barriers to that process. And it does so across agencies that many Arizonans interact with as part of their ordinary business, such as the Arizona Department of Health Services, Arizona Department of Housing, and Arizona Department of Transportation.³⁵

For these same reasons, EO-23 and EO-25 help groups like One Arizona achieve their missions by making voter registration and voting easier and more accessible. All voters in Arizona—regardless of their party or where they live—are better off from these orders.

II. Petitioners lack standing because they have not identified any particularized injury resulting from the challenged EOs.

While One Arizona and its members will find it much more difficult to engage and motivate voters if EO 23 and EO 25 are hamstrung or enjoined, Petitioners have unsurprisingly failed to identify *any* purported harm stemming from them. It is hard to fathom how they could—who is injured by promoting voter registration to the public and ensuring that county officials have safe and secure locations for holding elections? No one. Petitioners’ deficiency is particularly remarkable given that both EOs have been in place for several statewide elections—yet Petitioners point to no

³⁵ The above agencies also all have “Register to Vote” links on the top of their websites—easily available to Arizonans that frequent these agency sites for varying services. *See, e.g.*, Arizona Department of Veterans’ Services website, available at <https://dvs.az.gov/>; Arizona Department of Housing website, available at <https://housing.az.gov/>; Arizona Department of Transportation website, available at <https://azdot.gov/home>; Arizona Department of Health Services website, available at <https://www.azdhs.gov/>.

harm caused by the EOs in those contests. For that reason, their overreaching request for relief should be dismissed for lack of standing.

“This court has, as a matter of sound judicial policy, required persons seeking redress in the courts first to establish standing, especially in actions in which constitutional relief is sought against the government.” *Bennett v. Napolitano*, 206 Ariz. 520, 524 ¶ 16 (2003). To establish individual standing, a person must make a “sufficient showing of particularized injury,” as opposed to a “wholly abstract and widely dispersed” injury. *Id.* at 526–27 ¶ 28 (citation omitted); *see also, e.g., Sears v. Hull*, 192 Ariz. 65, 69–70 ¶¶ 16–17 (1998) (denying standing to citizens seeking special action relief against Governor where they “alleged only generalized harm rather than any distinct and palpable injury”).

Petitioners here fail to identify *any* injury, much less a particularized one. They claim that “Governor Hobbs has exceeded . . . her authority as Governor” in issuing the challenged EOs. Pet. ¶ 6. That is wrong as a matter of law, *see infra* Part III, but even so they nowhere even attempt to explain how the challenged EOs injure Petitioners—or *anyone* for that matter. They instead make conclusory allegations that the “executive orders severely harm and diminish the public and voter’s confidence in election integrity.” *Id.* ¶ 13; *see also id.* ¶¶ 14–15. Such generalized, abstract, speculative harm is insufficient to establish standing; the same reasoning could be used to challenge virtually *any* election procedure or government policy. *See Bennett*, 206 Ariz. at 524 ¶ 16 (“A contrary approach would inevitably open the door to multiple actions asserting all manner of claims against the government.”). And these allegations ignore that what actually undermines confidence in election integrity—threatening and harassing poll workers and voters, and the loss of secure and convenient places to vote—is what made the EOs necessary in the first place.

None of Petitioners’ allegations provide any plausible basis for a particularized injury. They wholly fail, for example, to explain how various state agencies have implemented EO-23 and EO-25, or what practical effect such

implementation has had such that it could plausibly cause any harm. And, as is clear from their text, neither EO compels any specific outcome. EO-23, for example, merely says that state facilities “may” satisfy the criteria for voting locations, and thus should be “ma[d]e available” to county officials who wish to use them. Likewise, EO-25 makes voter registration information and materials more readily available to Arizonans; but those voters still must properly complete the registration form and have it approved by their County Recorder. Such measures in no way modify or affect the qualifications to register or to lawfully vote.

Moreover, Petitioners may not evade their lack of standing simply by seeking declaratory relief—the same standing principles apply to claims under the Declaratory Judgment Act. “[I]t is well settled that a declaratory judgment must be based on an actual controversy which must be real and not theoretical,” and courts lack “jurisdiction to render a judgment” unless the complaint “set[s] forth sufficient facts to establish that there is a justiciable controversy.” *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 310 (1972); *see also Klein v. Ronstadt*, 149 Ariz. 123, 124 (App. 1986) (similar); *Dail v. City of Phoenix*, 128 Ariz. 199, 201 (App. 1980) (refusing to interpret Declaratory Judgment Act “to create standing where standing did not otherwise exist”).

Petitioners also claim to have a “beneficial interest” in seeing the Governor follow the law, Pet. ¶ 16, but the more relaxed “beneficial interest” standard is not available to them because they do not seek mandamus relief. *See* A.R.S. § 12-2021 (describing beneficial interest standard for writ of mandamus); State Bar Comm. Note, Ariz. R. Proc. Spec. Act. 3(a) (“This section sets forth the traditional functions of the writ of mandamus.”); Pet. ¶ 7 (citing Ariz. R. Proc. Spec. Act. 3(b), not 3(a)). That “relaxed standard” applies only “in mandamus actions.” *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 ¶ 11 (2020).

Far from a “relaxed standard,” Petitioners in fact have a *higher* standing burden here. They seek a writ of quo warranto; but, when sought by someone other

than the Attorney General or county attorney, that writ is available solely to a “person *claiming such office or franchise*[.]” A.R.S. § 12-2043 (emphasis added). Petitioners do not claim the Governor’s office, so they may not bring a private quo warranto claim against her. *See, e.g., State ex rel. Sawyer v. LaSota*, 119 Ariz. 253, 255 (1978) (“By the express provisions of [Section 12-2043] a private party can only bring quo warranto when he, himself, claims the office or franchise in question.” (quoting *Skinner v. City of Phoenix*, 54 Ariz. 316, 323 (1939))). Their request for such a writ thus fails from the start.

Because Petitioners lack standing, this Court should deny their requested relief.

III. The challenged EOs do not violate Arizona law.

Even if this Court were to consider the merits, Petitioners’ claims fail because the challenged EOs do not violate Arizona law.

First, EO-23 directs the Arizona Department of Administration to “coordinate with State agencies and counties to identify and make available State-owned facilities, *as appropriate*, for use as voting locations or ballot drop-off locations in any statewide election in this State.” EO-23 at 1 (emphasis added). The Governor has the statutory power to “supervise the official conduct of all executive and ministerial officers,” A.R.S. § 41-101(A)(1), as well as the constitutional duty to “transact all executive business with the officers of the government” and to “take care that the laws be faithfully executed.” Ariz. Const. art. V, § 4; *see also Arizona State Land Dep’t v. McFate*, 87 Ariz. 139, 148 (1960) (Governor is “responsible for the supervision of the executive department and is obligated and empowered to protect the interests of the people and the State by taking care that the laws are faithfully executed.”), *abrogated on other grounds in State ex rel. Brnovich v. Arizona Bd. of Regents*, 250 Ariz. 127, 134 (2020). This plainly encompasses the authority to direct the coordination of state agencies for statewide elections “as appropriate.”

Petitioners claim that “EO 23 directs ADCRR and ADJC and other state agencies to designate their facilities as ballot drop-off locations for the upcoming 2024 Election and beyond,” Pet. ¶ 20, but EO-23 does nothing of the sort: it only requires the Arizona Department of Administration to “coordinate with State agencies *and counties to identify and make available* State-owned facilities, *as appropriate*, for use as voting locations or ballot drop-off locations[.]” EO-23 at 1 (emphasis added). It also expressly recognizes that Arizona law “require[s] counties to designate voting locations prior to elections” and that “the State owns facilities that *may satisfy* the criteria for voting locations or serve as convenient and secure ballot drop-off locations[.]” *Id.* (citing A.R.S. §§ 16-248, -411) (emphasis added). Thus, nothing about EO-23 infringes upon the county board’s authority to designate voting locations and ballot drop-off locations; in fact, it plainly recognizes that authority and helps county boards effectuate that authority by *giving them more options* of potential facilities to choose from. This is particularly important now, when many traditional voting locations, such as schools, are no longer available because of the risks imposed by widespread election disinformation and harassment. *See supra Part I.* EO-23 is a quintessential exercise of the Governor’s statutory power and constitutional duty to supervise the executive department and ensure that the law is followed. One Arizona and its members need, at a minimum, an order like EO-23 that requires agencies to give as much help to voters as the law allows.

Second, EO-25 directs a dozen state agencies “[t]o the greatest extent practicable and permitted by law” to include voter registration links on their public websites, make voter registration forms available in conspicuous public locations, and ensure availability of the forms, and encourages them to provide opportunities for online voter registration at their public locations, such as via a QR code. EO-25 at 1–2. It also requires the agencies to return any accepted paper voter registration forms “within five days of receipt” and to “take reasonable steps” to ensure any registration received within five days of a registration deadline is timely delivered

or postmarked. *Id.* at 2. It further instructs agencies to “provide a report to the Governor and the Secretary and State” that will “[i]dentify and evaluate potential opportunities, *consistent with Arizona and federal law*, to increase access to voter registration.” *Id.* (emphasis added). It reiterates that under A.R.S. § 16-192, no state agency “shall, in any manner that is not impartial or neutral, use State resources to influence an election by supporting or opposing a candidate” or promote a political party. *Id.* at 4. Again, EO-25 simply provides Arizonans with the maximum help allowed under the law to exercise their right to vote. Amicus and its members, who work tirelessly on the ground to engage with residents and encourage them to register to vote and vote, can affirm what should be obvious: this help is needed to ensure that all eligible Arizona voters have an equal opportunity to participate in our democracy.

Such qualified and general directions—to the extent permitted by law, and in a manner consistent with Arizona and federal law—do not exceed the Governor’s authority. She enjoys broad statutory and constitutional authority to direct the coordination of state agencies. *See* A.R.S. § 41-101(A)(1); Ariz. Const. art. V, § 4. Moreover, Petitioners identify no state agency that has violated Arizona law in any way as a result of EO-25. Petitioners claim that this Order is *ultra vires* because it “attempt[s] to designate . . . state agencies[] as de facto public assistance agencies” by granting them the authority to provide and collect voter registration forms, despite none of them being so authorized. Pet. ¶ 58. But that argument is belied by the text of the Order; nowhere does it designate any agencies as public assistance agencies—in fact, it explicitly states that “No State Agency shall be deemed a . . . Voter Registration Assistance Agency . . . solely on the basis that it makes voter registration forms available to the public or accepts and transmits completed forms to the Secretary of State or County Recorder.” EO-25 at 2. Arizona law contemplates such a scenario; nothing in Arizona law gives county recorders the exclusive authority to designate where voter registration forms are available. *See, e.g.*, A.R.S.

§ 16-134(D) (establishing procedures for voter registrations submitted from groups or agencies “not authorized to accept voter registrations pursuant to [county recorder designations]”); *see also id.* § 16-151 (voter registration forms are supplied by the state and counties and made available to governmental and private entities for distribution).

Ultimately, both EO-23 and EO-25 are manifestly reasonable and appropriate exercises of the Governor’s authority to supervise and direct state agencies: they direct state agencies to make it easier for eligible voters to vote. They in no way change or infringe upon the county board or recorder’s role in designating voting locations or approving voter registration forms; in fact, they expressly recognize that authority. *See* EO-23 at 1 (citing A.R.S. §§ 16-248, -411); EO 25 at 2 (citing A.R.S. § 16-134). As Amicus can attest to, these EOs are particularly important for the upcoming general election in light of widespread misinformation and threats making it more difficult for election workers to do their jobs. *See supra* Part I.³⁶ One Arizona and its members everyday face difficulties attempting to engage and motivate Arizonans to trust and participate in the state’s elections. Petitioners’ belated attempt to restrict the Governor’s ability to coordinate state agencies to improve access to vote centers and voter registration forms is meritless and must be rejected.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioners’ requested relief.

³⁶ *See also* Exhibit B at APP-009; Exhibit I at APP-042–44, Betsy Reed, *Secure cages and Swat teams: Arizona county’s drastic steps to protect the vote*, *The Guardian* (May 24, 2024), <https://www.theguardian.com/us-news/article/2024/may/22/arizona-election-security-measures-maricopa-county>.

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