

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-022859

10/22/2025

HONORABLE MICHAEL J. HERROD

CLERK OF THE COURT
E. Valadez
Deputy

REPUBLICAN PARTY OF ARIZONA L L C, et al. KORY A LANGHOFER

v.

STATE OF ARIZONA, et al.

SYREETA AMESHA TYRELL

KAREN HARTMAN-TELLEZ
JUDGE HERROD

UNDER ADVISEMENT RULING

The Court has before it, following oral argument on October 20, 2025, *Defendants' July 28, 2025 Motion to Dismiss; Plaintiffs' August 25, 2025 Response; and Defendants' September 8, 2025 Reply.*

Plaintiffs' Complaint seeks a declaration that A.R.S. § 16-103(E) is unconstitutional under Ariz. Const. art. VII, § 2(A), and also seeks injunctive relief.

A.R.S. § 16-103(E) was passed by the State Legislature in 2005 and provides:

E. Any United States citizen who has never resided in the United States and whose parent is a United States citizen who is registered to vote in this state is eligible to register to vote and may vote in this state using a federal write-in early ballot as prescribed by section 16-543.02.

In short, 16-103(E) allows individuals who have never resided in the United States, or physically resided in Arizona, to register to vote in Arizona using the Federal Write-in Absentee Ballot

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(FWAB) if the parent of that individual is a United States citizen who is registered to vote in this state.

Ariz. Const. art. VII, § 2(A) provides “[n]o person shall be entitled to vote . . . unless such person be a citizen of the United States of the age of eighteen years or over, and shall have resided in the state for the period of time preceding such election *as prescribed by law*.” (Emphasis added).

Plaintiffs allege that the defendant Secretary of State has not only allowed individuals registered to vote under A.R.S. § 16-103(E) to vote the FWAB, but alleges, upon information and belief, that the Secretary of State has also allowed individuals registered to vote under A.R.S. § 16-103(E) to register under the Federal Post Card Application (FPCA)

Defendants seek dismissal for lack of standing, and also seek dismissal for failure to state a claim upon which relief may be granted.

I. Standing

Plaintiffs are three separate Defendants with separate interests. The Republican Party of Arizona is a stateside political party organized under Title 16, Chapter 5 of the Arizona Revised Statutes. The Republican Party of Arizona is intimately involved in all aspects of elections including voter registration, support of Republican candidates, administration of elections and the environment affecting Republican candidates in Arizona.

The Republican National Committee is a national political party based in Washington, D.C. The RNC promotes the election of Republican candidates in Arizona and throughout the United States. The RNC has interests in the administration of elections and the competitive environment affecting Republican candidates in Arizona.

Gina Swoboda is a registered voter who intends to vote in the 2026 Primary Election and the 2026 General Election. She is the Chair of the Arizona Republican Party.

Since the briefing by the parties, the Arizona Supreme Court has decided *Montenegro v. Fontes*, CV24-0166-PR, 2025 WL 2750918 (September 29, 2025).

In *Montenegro v. Fontes*, the Supreme Court specifically addressed whether the Speaker of the House of Representatives had standing to seek declaratory relief regarding the constitutionality of a voter-approved statute. Justice Bolick, writing for the majority, clarified Arizona law concerning standing.

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¶17 Our Constitution differs from the United States Constitution in significant ways. Two distinguishing provisions, which are express in one but not the other, are especially pertinent here. First, the Arizona Constitution lacks a “case or controversy” requirement, which is the foundation of the standing doctrine. *Bennett v. Napolitano*, 206 Ariz. 520, 525 ¶ 19, 81 P.3d 311, 316 (2003). (The second provision is not pertinent to the current case.)

Montenegro v. Fontes, No. CV-24-0166-PR, 2025 WL 2750918, at ¶17 (Ariz. Sept. 29, 2025).

¶18 The consequence of not having a case or controversy requirement in our Constitution is that in Arizona, standing is a prudential consideration rather than a mandatory prerequisite to suit. *Fay v. Fox*, 251 Ariz. 537, 541 ¶ 22, 494 P.3d 1105, 1109 (2021).

Montenegro v. Fontes, No. CV-24-0166-PR, 2025 WL 2750918, at ¶18 (Ariz. Sept. 29, 2025).

Defendants argue that the holding in *Montenegro* is not applicable here because it addressed the standing of the Speaker to challenge the constitutionality of a voter-approved statute. However, the first distinguishing provision regarding the case or controversy requirement is applicable here. Other than clarifying that there is no case or controversy requirement for standing under the Arizona Constitution, the discussion of standing in the *Montenegro* case is inapplicable here because that discussion is based on a separation of powers analysis that is not present here.

Defendants argue that Plaintiffs do not have standing for three reasons. First, Defendants argue that Plaintiffs can show no competitive injury. Second, Defendants argue that Plaintiff Swoboda’s claim of vote dilution does not support standing. Third, Defendants argue that there is no actual injury or controversy that allows Plaintiffs to seek declaratory judgment.

A. Competitive Injury

Plaintiffs’ Complaint alleges competitive injury due to the alleged disproportionate distribution of 16-103(E) voters as compared to the normal distribution of voters in Arizona. The 16-103(E) voters are disproportionately Democrat as compared to the normal distribution of voters.

Defendants argue that the alleged injury is not sufficient to confer standing because the law is neutral on its face and does not contain language that is intentionally beneficial to either party, rather the distribution is the “luck of the draw”.

The other alleged injury is that the language of the statute exceeds the authorization in the Arizona Constitution. The Constitution allows the legislature to determine the length of

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residence required to be eligible to vote. The statute allegedly redefines residency by conferring Arizona residence on US citizens who have never lived here.

When asked who would have standing to challenge the statute, Defendants asserted that a County Recorder would have standing if the Secretary of State mandated that a County Recorder act under the statute to register 8-106(E) voters when the County Recorder believes that statute exceeds constitutional authority. Of course, the Secretary of State can avoid that controversy by promoting registration of 8-106(E) voters directly without mandating that County Recorders do so. Under that analysis, no one would have actual standing.

The allegation that conferring Arizona residence on US citizens who have never lived in Arizona exceeds constitutional authority is a particular injury for which there is standing.

B. Vote Dilution

The vote dilution cases generally have to do with districts, not the dilution of one single voter's vote by a generalized law. The statute in this case does not directly seek to dilute Gina Swoboda's vote because the law is not directed at limiting her right to vote. Rather, the law seeks to enfranchise an entire class of voters.

Plaintiff Swoboda does not have standing to challenge 8-106(E) on a vote dilution theory.

C. Actual Injury or Controversy Under Declaratory Judgment Act

The Uniform Declaratory Judgments Act provides that "Any person ... whose rights, status, or other legal relations are affected by statute... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder." A.R.S. § 12-1832.

Defendants are "persons" under the Act. The issue is whether each defendant's rights, status, or other legal relations are affected by the provisions of 16-103(E). The Republican Party of Arizona and the RNC have a right to a determination of who are legal voters under the Arizona Constitution. Likewise, Gina Swoboda, as a registered voter has a right to a determination whether the provisions of 16-103(E) violate the Arizona Constitution such that voters who should not have the right to vote are allowed to vote in Federal elections in Arizona.

The case or controversy here is whether 16-103(E) violates the Arizona Constitution. That case or controversy is a prime purpose of the Arizona Declaratory Judgments Act.

II. Failure to State a Claim

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Defendants argue that Ariz. Const. art. VII, § 2(A) permits the Legislature to enact A.R.S. § 16-103(E) because § 2(A) allows the legislature to define residency. Plaintiff argues that the plain language of § 2(A) allows the legislature to define the required length of residency, but not to declare a non-resident a resident.

For 16-103(E) voters, the legislature has arguably defined the length of residency as zero if a parent is registered to vote in Arizona, or alternatively, the legislature has redefined the meaning of residency.

The language of § 2(A) specifically refers to the time period that the person “shall have resided in the state for the period of time preceding the election *as prescribed by law*. (Emphasis added). On its face § 2(A) can be argued to refer to time periods, not the definition of residence. Therefore, Plaintiffs state a claim that the legislature cannot either redefine residency or set the time period to zero.

Conclusion

THE COURT FINDS that all three plaintiffs have standing.

THE COURT FURTHER FINDS that Plaintiff Swoboda does not have standing under the vote dilution theory.

THE COURT FURTHER FINDS that Plaintiffs state a claim upon which relief may be granted.

IT IS ORDERED denying Defendants’ motion to dismiss.