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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PUENTE ARIZONA, *et al.*,

Plaintiffs,

v.

ARIZONA STATE LEGISLATURE,

Defendant.

No. CV2019-014945

DEFENDANT'S MOTION TO DISMISS

(Oral Argument Requested)

(Before the Hon. Connie Contes)

Because the Plaintiffs have not presented any viable and justiciable claim for relief, the Fifty-Fourth Arizona State Legislature (the "Legislature")—through Karen Fann, President of the Arizona State Senate, and Russell Bowers, Speaker of the Arizona House of Representatives—respectfully moves that the Court dismiss the Complaint in its entirety, with prejudice, pursuant to Arizona Rule of Civil Procedure 12(b)(5) and 12(b)(6).

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In addition to defective service of process, at least four reasons compel the termination of these proceedings. ***First***, the Arizona Constitution vests in each house of the Legislature plenary and exclusive authority to formulate its own rules of procedure, including those governing the convocation and conduct of committee meetings. *See* Ariz. Const. art. IV, pt. 2, §§ 8, 9. Because the Arizona Open Meeting Law, A.R.S. § 38-431, *et seq*. ("OML"), necessarily is subordinate to this constitutional prerogative, allegations concerning the Legislature's compliance with the OML are nonjusticiable political questions.

Second, even if the Legislature's proceedings were subject to judicial oversight under the OML, any ostensible "meeting" conjured by the Complaint would constitute a "political caucus of the legislature" that is wholly exempt from the OML. *See* A.R.S. § 38-431.08(A)(1). That is because the 26 members mentioned in the body of the complaint are all members of the same political party.

Third, even if the Plaintiffs' claims were justiciable and even if the political caucus exception were inapplicable, the Complaint does not actually allege any discernible violation of the OML. The Plaintiffs never proffer any facts that could constitute a "legal action" by the allegedly participating legislators, nor do they identify any statute or other legislative enactment that allegedly germinated in the ALEC summit. In the same vein, the OML does not permit—and this Court is not constitutionally empowered to fashion—the absurdly expansive and invasive injunction the Plaintiffs demand.

Fourth, enlisting the courts as roving monitors of legislators' adherence to the OML would substantially impede elected representatives' discharge of their official responsibilities. It also would entangle the judiciary in a serious and potentially intractable conflict between the OML's directives and the Legislature's constitutionally ordained privileges and immunities.

FACTUAL BACKGROUND

On December 4, 2019, the Plaintiffs filed the Complaint, seeking (among other dubious requests) that this Court order the Legislature to implement the provisions of the OML in connection with an upcoming private conference hosted by a third party nonprofit organization, the American Legislative Exchange Council ("ALEC"), which the Plaintiffs alleged would be attended by various Arizona legislators, as well as by "legislators from around the country and private corporations." Compl. ¶¶ 34, 37, 49.

On January 28, 2020—more than seven weeks after filing the Complaint and long after the ALEC summit had concluded—the Plaintiffs attempted to effectuate service on the "Arizona State Legislature" by leaving a copy of the summons and complaint with the House Rules Attorney and the Senate General Counsel. After being informed by both attorneys that they could not accept service on behalf of the "Arizona State Legislature," the Plaintiffs sought and obtained from this Court an order authorizing alternative service. President Fann and Speaker Bowers received the Complaint and summons via certified mail on February 21, 2020.

ARGUMENT

I. Standard of Review

The Court must dismiss any complaint that fails to state a claim upon which relief may be granted. *See* Ariz. R. Civ. P. 12(b)(6). In evaluating a motion to dismiss, the Court will assume the complaint's factual allegations to be true, but will enter a judgment of dismissal if "the plaintiff should be denied relief as a matter of law given the facts alleged." *Hogan v. Washington Mut. Bank, N.A.*, 230 Ariz. 584, 586, ¶ 7 (2012).

II. The Plaintiffs Did Not Name or Serve Proper Parties

As a preliminary matter, the Court should dismiss this action pursuant to Ariz. R. Civ. P. 12(b)(5) because the Plaintiffs failed to name and serve the proper defendants. As devised by the Arizona Constitution, the "Legislature" actually consists of two separate and independent houses, the Senate and the House of Representatives. *See* Ariz. Const. art. IV, pt. 2, § 1. The distinction transcends semantic technicalities. Each house maintains its own

self-contained membership, committee and subcommittee structures, and rules of proceedings. *See id.* §§ 8, 9. To this end, the Plaintiffs nowhere allege that "the Legislature" engaged in any wrongdoing; rather, their claims are leveled at the alleged actions or omissions of certain individual legislators who allegedly were acting as specific "committees" of a particular legislative house. Those members, of course, cannot be served with civil process during the legislative session. Ariz. Const. art. IV, pt. 2, § 6.

In any event, the Complaint cannot be salvaged by naming different defendants and effectuating proper service; as explained below, the Plaintiffs' claims are irremediably defective on the merits.

III. Claims Concerning the Legislature's Compliance with the OML Are Non-Justiciable Political Questions Because Legislative Rules of Procedure are Constitutionally Committed to That Branch Exclusively

The existence, terms, and enforcement of the "rules of procedure" governing each house of the Legislature are entrusted solely to that house—and to no other branch or organ of the state government. *See* Ariz. Const. art. IV, pt. 2, § 8. The OML does not, and could not, abrogate this constitutional command. As courts nationwide have concluded in evaluating claims substantively identical to the Plaintiffs' here, a legislative body's constitutional entitlement to control its own rules of procedures renders the judiciary institutionally incapable of enforcing a contrary statute against the legislative body.

A. Overview of the Political Question Doctrine

There are certain disputes that, while nominally presenting questions of law, are so innately entwined with political dimensions as to render them unamenable to judicial resolution. Recognizing that such cases "involve decisions that the constitution commits to one of the political branches of government and raise issues not susceptible to judicial resolution according to discoverable and manageable standards," *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485, ¶ 7 (2006), "courts refrain from addressing political questions." *Kromko v. Ariz. Bd. of Regents*, 216 Ariz. 190, 192, ¶ 12 (2007); *see also Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) ("The political question

doctrine first found expression in Chief Justice Marshall's observation that '[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to [another branch], can never be made in this court,'" and concluding that "if a case presents a political question, we lack subject matter jurisdiction to decide that question") (internal citation omitted).

In short, the political question doctrine is a self-imposed limitation on judicial power. It is founded in a recognition that when adjudication of a claim will entail incursions into the internal domain of the legislature or executive, respect for those coequal branches necessitates dismissal. An assertion that one branch of government has violated or neglected an ostensible statutory obligation in the conduct of its internal functions "does not give license to one of the coordinate branches to correct [it]. Correction comes from within that branch itself or from the people to whom all public officers are responsible for their acts." *Renck v. Superior Court of Maricopa Cnty.*, 66 Ariz. 320, 326 (1947).

B. The Conduct of Legislative Committee "Meetings" is Controlled Exclusively by the Legislative House

As the text of the OML itself concedes, no statute can supersede each legislative house's constitutional right and responsibility to govern its own proceedings. Article IV, Part 2, Section 8 of the Arizona Constitution entitles each house of the Legislature to "determine its own rules of procedure." In the same vein, Section 9 provides that the "majority of the members of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members, ***in such manner and under such penalties as each house may prescribe***" [emphasis added]. In other words, all strictures governing legislative proceedings—to include denoting what constitutes a committee "meeting" and even defining the term "committee" itself—are the exclusive province of the legislative house. In a concession to this constitutive attribute of the legislative power, the OML acknowledges that "[e]ither house of the legislature may adopt a rule or procedure pursuant to article IV, part 2 section

8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article." A.R.S. § 38-431.08(D).

To this end, Arizona House of Representatives Rule 32(H) directs that "the meeting notice and agenda requirements for the House, Committee of the Whole and all standing, select and joint committees and subcommittees shall be governed exclusively by these rules," thereby supplanting the OML entirely.[1] The Arizona Senate similarly has exercised its constitutional privilege to independently prescribe the rules that govern committee proceedings. *See* Ariz. Senate Rules, Fifty-Fourth Legislature, Rule 7.[2] And both houses have explicitly subordinated statutes to the constitution *and* to the house's own internal rules in itemizing the hierarchy of authorities that govern parliamentary practice and procedure. *See* House Rule 29; Senate Rule 24.

The Arizona Supreme Court—considering a cognate grant of authority in the context of Senate impeachment trials, *see* Ariz. Const. art. VIII, pt. 2, § 1—observed, in words that resonate here,

> The Constitution wisely leaves impeachment trial procedures and rules to the Senate. Absent a clear constitutional mandate, we refuse to usurp the Senate's prerogatives in this area. Article 3 of the state Constitution prohibits judicial interference in the legitimate functions of the other branches of our government. We will not tell the legislature when to meet, what its agenda should be, what it should submit to the people, what bills it may draft or what language it may use. The separation of powers required by our Constitution prohibits us from intervening in the legislative process.

Mecham v. Gordon, 156 Ariz. 297, 302 (1988).

It is no answer to say that the Legislature is included in the catalogue of "public bodies" to which the OML applies, *see* A.R.S. § 38-431(6). "A statute or rule, of course, 'cannot circumvent or supplant ... constitutional requirements.'" *Fragoso v. Fell*, 210 Ariz. 427, 431, ¶ 13 (App. 2005) (internal citation omitted). The provisions of the

[1] The Rules of the House of Representatives of the State of Arizona, Fifty-Fourth Legislature, are available at: https://www.azleg.gov/alispdfs/54leg/House/54rd_leg_rules_1st_session.pdf.

[2] *Available at* https://www.azleg.gov/alispdfs/53leg/senate/RULES_2017_2018.pdf.

OML necessarily are subordinate to, and subsumed into, each legislative house's constitutional prerogative to order its own proceedings.

For precisely this reason, courts in at least eight other states have held that the legislature's compliance with the jurisdiction's open meeting law (or equivalent enactments) are nonjusticiable. Considering allegations that non-public gatherings of certain legislators violated that state's open meeting law, the New Hampshire Supreme Court explained, in reasoning that engrafts perfectly onto this case,

> The legislature, alone, 'has complete control and discretion whether it shall observe, enforce, waive, suspend, or disregard its own rules of procedure.' The same is true of statutes that codify legislative procedural rules . . . We emphasize that the question before us is not whether the Right-to-Know Law applies to the legislature. By the statute's express terms, it does. The question before us is whether the legislature's alleged violation of the Right-to-Know Law is justiciable. We have concluded that this question is not justiciable . . . ."

Hughes v. Speaker of the N.H. House of Reps., 876 A.2d 736, 744, 746 (N.H. 2005) (internal citations omitted); *see also Ex parte Marsh*, 145 So. 3d 744, 751 (Ala. 2013) ("Because the Alabama Constitution gives the legislature the authority to establish its own procedural rules and because the Open Meetings Act must yield to the Alabama Constitution, the legislature's alleged violation of the Open Meetings Act or Rule 21 in this case is not justiciable. It is not the function of the judiciary to require the legislature to follow its own rules."); *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 339-40 (Alaska 1987) ("[B]ecause the constitution commits to the legislature the authority to provide for its own rules of procedure, and because the question of whether a legislative committee meeting or caucus meeting shall be open or closed falls within this grant of authority, we regard the question whether the Legislators have violated the Open Meetings Act or [a legislative rule] to be nonjusticiable."); *Moffitt v. Willis*, 459 So.2d 1018, 1021 (Fla. 1984) (deeming nonjusticiable claims arising out of alleged "secret meetings" of legislators, observing that "a judicial determination of this matter hinges on the meaning of legislative committee

meeting and what activity constitutes such a meeting. At this point, the judiciary comes into head-to-head conflict with the legislative rulemaking prerogative"); *Coggin v. Davey*, 211 S.E.2d 708, 710–11 (Ga. 1975) ("We do not believe that it can reasonably be argued that the House or Senate cannot pass an internal operating rule for its own procedures that is in conflict with a statute formerly enacted. We therefore hold that the 'Sunshine Law' is not applicable to the Legislative branch of the government and its committees."); *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 496, 503 (Iowa 1996) ("The senate's decision to keep the records in question confidential falls within the constitutionally-granted power of the senate to determine its rules of proceedings."); *Mayhew v. Wilder*, 46 S.W.3d 760, 770 (Tenn. Ct. App. 2001) (even assuming that legislature was within the scope of the open meetings law, "[b]inding the Legislature with procedural rules passed by another General Assembly would violate [the state constitution's] grant of the right to the Legislature to determine its own rules."); *State ex rel. Ozanne v. Fitzgerald*, 798 N.W.2d 436, 440 (Wis. 2011) ("As the court has explained when legislation was challenged based on allegations that the legislature did not follow the relevant procedural statutes, 'this court will not determine whether internal operating rules or procedural statutes have been complied with by the legislature in the course of its enactments.'" (internal citation omitted)); *see also Consejo de Desarrollo Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1172 (9th Cir. 2007) ("Here, Article I of the Constitution provides that '[e]ach House may determine the Rules of its Proceedings.' In short, the Constitution textually commits the question of legislative procedural rules to Congress.").

Animating this principle is a concern not only with preserving an interbranch equilibrium, but also vindicating constitutional privileges intrinsic to the legislature itself. Even assuming that the Thirty-Fifth Legislature wished to bind itself to the OML when defining the term "public body" to include the Legislature, *see* 1982 Ariz. Session Laws ch. 278, § 1, the intent of one iteration of the Legislature did not—and could not—abridge the institution's sovereign power to control the conduct of its own proceedings. *See generally Higgins' Estate v. Hubbs*, 31 Ariz. 252, 264 (1926) (rejecting "an attempt by one

Legislature to limit or bind the acts of a future one. That this cannot be done is, of course, undoubted. The authority of the Legislature is limited only by the Constitution itself."); *see also Mayhew*, 46 S.W.3d at 770 ("[E]ven if the Legislature intended to bind itself when it passed the Sunshine Law, the act would not bind a subsequent General Assembly.").

In sum, all matters attendant to proceedings of the Legislature—to include the existence of a "quorum," the definition of a "meeting," and what (if any) public notice and access limitations apply—are exclusively committed by the Arizona Constitution to the two legislative houses. *See* Ariz. Const. art. IV, pt. 2, §§ 8, 9. The Plaintiffs' claims accordingly present nonjusticiable political questions, and must be dismissed.

IV. The Complaint Alleges Only the Meeting of a "Political Caucus of the Legislature," Which is Not Subject to the OML

Even if a statute could displace the Legislature's constitutional authority, the "meeting" alleged by the Complaint would not trigger the OML's public notice and access mandates in any event. The OML categorically exempts from its terms "any political caucus of the legislature." A.R.S. § 38-431.08(A)(1). Although the term "political caucus" is undefined and it appears no Arizona court has had occasion to consider its contours, its "ordinary meaning . . . encompasses, within its terms, a meeting of members of a legislative body who belong to the same political party or faction to determine policy with regard to proposed legislative action." Ariz. Op. Atty Gen. No. I83-128 (R83-031), Nov. 17, 1983.

Here, all of the 26 legislators that the Complaint alleges attended the ALEC policy summit in December 2019 are members of the Republican caucus. *See* Compl. ¶¶ 37, 49. The OML's "political caucus" exemption is intended to forestall attempts (such as the Plaintiffs' here) to weaponize the OML to encroach on political associations and trespass into their internal discussions. Private political organizations are constitutionally entitled to associational privacy, even if their membership includes elected officials and even if (indeed, *especially* if) their activities concern matters of public policy. Thus, because the ostensible "meeting" alleged by the Complaint would constitute a "political caucus of the

legislature," it was never subject to the provisions of the OML, and the Plaintiffs' claims fail as a matter of law.

V. The Complaint Fails to Allege an Actionable Violation of the OML or Plead Any Cognizable Form of Relief

Matters of justiciability and the applicability of the "political caucus" exemption aside, the Complaint suffers from an even more fundamental defect: it never alleges any identifiable "meeting" entailing "legal action" taken in violation of the OML, and its prayer for relief includes no judicially conferrable remedy.

A. The Complaint's Allegations Cannot Support an Inference of a "Legal Action"

An indispensable element of any OML claim for injunctive relief is a non-public "legal action," which is defined as "a collective decision, commitment or promise made by a public body." A.R.S. § 38-431(3). While OML plaintiffs need not portray with lapidary precision the supposed "legal action" at issue, they must at the very least furnish "facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation." *Fisher v. Maricopa Cnty. Stadium Dist.*, 185 Ariz. 116, 122 (App. 1995). Reduced to its essence, the Complaint is little more than a partisan jeremiad directed at an organization that the Plaintiffs perceive as hostile to their own ideological agenda. The Complaint proffers merely a litany of bills—some enacted more than a decade ago—that the Plaintiffs insinuate trace their lineage to various ALEC proposals. *See* Compl. ¶¶ 40-48. Conspicuously absent, however, are any allegations concerning any articulable "legal actions" that occurred—or that the Plaintiffs reasonably anticipated would occur—at the December 2019 ALEC summit. Rather, the Complaint vaguely avers that "[u]pon information and belief," attending legislators will "discuss, propose, and deliberate on" various unspecified "model bills" that might be subsequently introduced as legislation. Such "mere conclusory statements are insufficient to state a claim upon which relief can be granted." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, 420 ¶ 7, 14 (2008) (adding

that "Rule 8 does not permit a trial or appellate court to speculate about hypothetical facts that might entitle the plaintiff to relief.").

Furthermore, discussions, proposals and deliberations do not constitute "legal action," *see* A.R.S. § 38-431(3) (requiring a concrete "decision, commitment or promise"). The Complaint only alleges that 26 Arizona legislators may attend the ALEC summit, which it states also would be frequented by "[s]tate legislators from around the country and private corporations." *See* Compl. ¶¶ 34, 51. Indeed, according to the Complaint, ALEC's member and affiliates include "nearly a quarter of the nation's state legislatures . . . in addition to 20 percent of Congress, eight sitting governors, and more than 300 local elected officials." *Id.* ¶ 32. In other words, some Arizona legislators allegedly were interspersed among potentially hundreds of other individuals and organizational representatives at a national conference. The Complaint neither alleges, nor supplies any facts that could sustain an inference, that Arizona legislators comprising a committee caucus even interacted with one other at the ALEC summit, let alone reached a "collective decision, commitment or promise," A.R.S. § 38-431(3), with respect to some identifiable legislative action in Arizona.

B. This Court Cannot Grant the Extraordinarily Sweeping and Invasive Remedies the Plaintiffs Seek

A corollary of the absence of any cognizable OML violation is that the Plaintiffs' claims are not susceptible to any judicial relief. The crux of the OML's remediable provisions is that any "legal action" taken in contravention of the statute is null and void, except that a public body may ratify such action in a subsequent, OML-compliant meeting. *See* A.R.S. § 38-431.05. In this vein, the Plaintiffs' claims implode under the weight of the Complaint's own allegations. Specifically, the gravamen of the Plaintiffs' theory is that the Legislature has enacted (and presumably will continue to enact) ALEC-promulgated proposals "verbatim." Compl. ¶ 40. Importantly, the Complaint does **not** allege that the procedural channels these bills traversed in the Legislature itself—*i.e.*, committee hearings, floor debates and votes, etc.—violated the OML. Thus, even indulging the Plaintiffs'

assumption that some nebulous "legal action" occurred at one or more ALEC conferences, the Legislature's subsequent "verbatim" adoption of such proposals during its regular proceedings, which undisputedly were noticed and accessible to the public, cured any supposed OML violation. *See Cooper v. Ariz. W. Coll. Dist. Governing Bd.*, 125 Ariz. 463, 468 (App. 1980) ("We find no provision in the Arizona statutes relating to public meetings which precludes a public body from adopting at a subsequent public meeting action which was legally ineffective from a previous meeting of the public body.").

To this end, the Plaintiffs' request for a declaration that "all 'model bills' drafted and submitted to the Arizona Legislature for deliberations and vote be subject to the requirements of" the OML, Compl. Prayer, ¶ B, is entirely nugatory. The Complaint does not—and could not—present even a single example of any bill introduced in the current legislative session that was debated and/or voted on in proceedings that did not comply with the OML.

Perhaps recognizing this deficiency in their claims, the Plaintiffs also ask the Court to fashion a prospective injunction of massive breadth to prevent "a quora of the Legislative Committees from attending any future Summit of ALEC or similarly situated organizations without complying with" the OML. Compl. Prayer, ¶ D. Preliminarily, it bears emphasis that the "Arizona State Legislature"—the sole named defendant in this case—is an entity; it cannot "attend" any events, and it cannot control or monitor the elected representatives comprising it. To the extent the Plaintiffs wish to restrict the activities of individual legislators or "committees" of legislators, they are not parties to these proceedings.[3]

More fundamentally, even putting aside the substantial ripeness questions that afflict this request and its noxious implications for First Amendment rights, such a sweeping injunction would be an unprecedented judicial incursion into the sovereign affairs of a

[3] The Plaintiffs' request that the Court enter an order declaring that ALEC's internal documents and materials are "public records" is likewise an inoperative demand to enjoin a non-party. *See generally Bobolas v. Does 1-100*, CV-10-2056-PHX-DGC, 2010 WL 3923880, at *2 (D. Ariz. Oct. 1, 2010) ("Plaintiff has provided no legal or factual basis that would allow the Court to enjoin . . . a non-party.").

coequal branch. Article III of the state constitution secures the separation of powers that is the cornerstone of the constitutional edifice. Since the early days of statehood, the judiciary has recognized that "courts cannot interfere with the action of the legislative department." *State v. Osborn*, 16 Ariz. 247, 249 (1914); *see also City of Phoenix v. Superior Court of Maricopa County*, 65 Ariz. 139, 144 (1946) ("Courts have no power to enjoin legislative functions."); *Rubi v. 49'er Country Club Estates, Inc.*, 7 Ariz. App. 408, 418 (1968) ("The doctrine of separation of power renders conclusive upon us the legislative determination within its sphere of government."); *Winkle v. City of Tucson*, 190 Ariz. 413, 415 (1997) ("We have long held that Article III requires the judiciary to refrain from meddling in the workings of the legislative process."). Indeed, the nonjusticiability of the Plaintiffs' claims (*see supra* Section I) derives from the underlying constitutional principle that "[u]ntil the people, through their fundamental law, shall require the courts to supervise and direct the actions of the other departments in the process of making laws, we shall adhere to the theory of government that those departments are responsible to the people . . . and not to the courts." *Allen v. State*, 14 Ariz. 458, 479 (1913).

In sum, the Complaint fails for the independent reason that it does not present any facts from which the Court could infer that any discernable "legal action" was adopted at the ALEC summit—or even that any "quorum" of Arizona legislators actually communicated with one another there at all. Further, even assuming that ALEC "model bills" have been adopted into law, the Complaint never alleges that these ratifying actions were not conducted in OML-compliant proceedings. It follows that the Complaint pleads no cognizable claim for relief, and that neither the OML nor the Arizona Constitution licenses the extraordinary judicial measures it seeks.

VI. The Plaintiffs' Conception of the OML Would Unduly Constrict the Legislative Power and Present Serious Constitutional Concerns

Finally, the Plaintiffs' theory would perpetually entangle the courts in matters that exceed their constitutional authority and institutional competence. Holding that *any* gathering—whether on the Capitol lawn or at a conference, a fundraiser, a social event, or

even at a coffee shop—of *any* permutation of legislators who may constitute a quorum of *any* committee would paralyze the effective functioning of the institution. The formulation of policy ideas and the negotiation of legislative solutions depend on flexible, spontaneous and *ad hoc* communications among legislators. If all such gatherings were "meetings" governed by the OML, the practical ability of elected representatives to develop relationships with their colleagues and build legislative coalitions would be severely corroded, at the expense of efficient and effective governance.

Further, a ruling in the Plaintiffs' favor promises an inevitable deluge of OML litigation that would enlist the courts in a chronic micromanagement of the Legislature's internal affairs and individual legislators' daily activities. Not only would such an arrangement be impracticable, it would precipitate at least two serious constitutional quandaries. First, as discussed above, courts are constitutionally precluded from interposing themselves into any facet of the legislative process. *See generally League of Arizona Cities & Towns v. Brewer*, 213 Ariz. 557, 559, ¶ 10 (2006) ("Before a bill passes, the courts generally may not interfere with the legislative process."). Thus, even if a court were persuaded that an upcoming private gathering of a group of legislators might constitute a "meeting," any attempt to enjoin the gathering or dictate the manner in which it is conducted would transgress the outer perimeter of the judicial power.

Second, both legislative institutions and their individual members possess a "legislative privilege" that "is rooted in both federal common law and the Arizona Constitution." *Arizona Indep. Redistricting Comm'n v. Fields*, 206 Ariz. 130, 137, ¶ 16 (App. 2003). Importantly, the legislative privilege insulates confidential communications among legislators (and even between legislators and third parties) "about legislation or legislative strategy." *Puente Arizona v. Arpaio*, 314 F.R.D. 664, 670 (D. Ariz. 2016) (holding that Puente was not entitled to obtain legislator's official emails and other documents). A ruling for the Plaintiffs would effectively nullify such confidentiality protections for many intra-house gatherings and communications, and thereby place the OML (and, by extension, the judiciary) on a collision course with a constitutionally secured

privilege. The Court should decline the Plaintiffs' invitation to embark on that misadventure.

CONCLUSION

For the foregoing reasons, the Court should find that the Plaintiffs have failed to (1) name and serve the proper defendants and/or (2) state any valid claim upon which relief could be granted, and accordingly dismiss the Complaint in its entirety, with prejudice, pursuant to Ariz. R. Civ. P. 12(b)(5) and/or 12(b)(6).

RESPECTFULLY SUBMITTED this 19th day of March, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2020, I electronically transmitted the attached document to the Clerk's Office using the TurboCourt System for filing and transmittal of a Notice of Electronic Filing to the following TurboCourt registrants:

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