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**IN THE SUPREME COURT  
STATE OF ARIZONA**

WARREN PETERSEN, in his official  
capacity as President of the Arizona State  
Senate; and STEVE MONTENEGRO, in  
his official capacity as Speaker of the  
Arizona House of Representatives,

Plaintiffs/Appellees/  
Cross-Appellants,

v.

ADRIAN FONTES, in his official capacity  
as Arizona Secretary of State,

Defendant/Appellant/  
Cross-Appellee.

No. \_\_\_\_\_

Court of Appeals  
No. 1 CA-CV 25-0219

Maricopa County Superior Court  
No. CV2024-001942

**MOTION TO EXPEDITE  
BRIEFING SCHEDULE IN  
ACCELERATED APPEAL**

**(Motion for Procedural Order)**

Pursuant to ARCAP 3(a) and 29(f), Arizona State Senate President Warren Petersen and Speaker of the Arizona House of Representatives Steve Montenegro (the “Legislative Leaders”) respectfully request that the Court expedite the briefing schedule in this Petition for Review in an Accelerated Appeal.

An expedited schedule is both appropriate and necessary to provide clarity needed for the orderly administration of the 2026 election cycle and to preserve the Legislative Leaders’ opportunity to be heard on their Petition before one of the two issues it presents becomes moot, which will occur if this issue is not addressed before the 2026 Primary and General elections.

Pursuant to ARCAP 6(b)(1)(B), the Legislative Leaders have discussed this procedural motion with counsel for Defendant Secretary of State Adrian Fontes. Defendant does not object to accelerated review by the Court, but objects to the accelerated briefing schedule requested by this Motion.

### **ARGUMENT**

Expedited review is warranted to resolve purely legal issues of substantial statewide importance—challenges to various provisions of the 2023 Elections Procedure Manual (the “EPM”)—before critical deadlines governing the 2026 Primary and General elections. *See Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 518 ¶ 1 (2000) (stating cases of statewide importance affecting an impending election warrant expedited review). The Legislature has delegated

authority to the Secretary of State to create an EPM. A.R.S. § 16-452. But the Secretary has adopted EPM provisions that exceed the scope of, nullify, or amend express statutory provisions. In doing so, he has exceeded his lawful jurisdiction to prescribe election procedures. Ariz. Const. art. III., art. IV & art. V. This case concerns four of those challenged provisions:

- The Jury Questionnaire Provision – This provision directs county recorders to move voters to the inactive list when they receive notice from a jury commissioner or manager that the voter certifies under the penalty of perjury that the voter is not a resident of the county (and the voter fails to respond to a subsequent notice)—even though A.R.S. § 16-165(A)(9)(b) requires a county recorder to cancel the voter’s registration under these circumstances.
- The AEVL Implementation Provision – This provision delays until 2027 the implementation of a new Active Early Voting List (the “AEVL”) removal process that requires a county recorder to remove a voter from the AEVL if the voter fails to vote via early ballot for two consecutive election cycles and fails to respond to a notice issued by the county recorder. A.R.S. § 16-544.
- The Circulator Registration Provision – This provision excuses mistakes or errors in the statutorily required registrations of paid or out-of-state ballot measure petition circulators, even though Arizona law requires strict compliance. A.R.S. §§ 19-101.01, 19-102.01(A).

- The County and Statewide Canvass Provisions – These provisions compel county boards of supervisors to reflexively vote to adopt only the returns provided by the election official when conducting a canvass and permit the Secretary of State to certify a statewide canvass that consists of returns of fewer than fifteen counties.<sup>1</sup>

The superior court concluded that the Jury Questionnaire, Circulator Registration, Statewide Canvass, and County Canvass Provisions were “invalid and unenforceable because [they] directly conflict[] with Arizona law and further, because the Secretary acted beyond the scope of his authority under the delegation.” Ex. 1 at 7–9, 10–13 (Superior Court Order). As a result, the superior court enjoined these provisions. *Id.* at 14. However, the superior court declined to enjoin the AEVL Implementation Provision because it concluded the Secretary had “statutory authority” to determine the implementation date of the statute and the Secretary’s interpretation was “reasonable.” *Id.* at 9–10.

The Secretary appealed the order as to the Jury Questionnaire, Circulator Registration, Statewide Canvass, and County Canvass Provision and the Legislative

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<sup>1</sup> While the case was pending at the Court of Appeals, the Secretary issued the 2025 EPM, which removed the Statewide Canvass Provision and the Circulator Registration Provision, but retains in identical or substantially similar form the provisions at issue in the Petition for Review. Ariz. Sec’y of State, 2025 Elections Procedures Manual (Dec. 2025) at 46, 67 n.4 & 278, <https://apps.azsos.gov/election/files/epm/2025/Election-Procedures-Manual-2025--FINAL-12-22-25.pdf>

Leaders cross-appealed the order’s determination of the AEVL Implementation Provision.

On April 14, 2025, the Court of Appeals designated the case as an accelerated appeal under ARCAP 29. Ex. 2 (Order re Motion to Accelerate).

The Court of Appeals held oral argument on these issues on November 19, 2025, and issued its original memorandum decision on November 24, 2025. Ex. 3 (November 24, memorandum decision). This decision affirmed the superior court’s decision on the Jury Questionnaire, AEVL Implementation and Circulator Registration Provisions and deemed the Statewide Canvass Provision moot. *Id.*

On December 9, 2025, the Secretary filed a motion for partial reconsideration to request that the court of appeals also address the County Canvass Provision. The Court of Appeals granted that Motion and issued an amended decision on January 6, 2026, reversing the superior court’s decision on the County Canvass Provision. Ex. 4 (Order Granting Motion for Reconsideration). The decision was amended via interlineation on January 8, 2026. Ex. 5 (Jan. 8. 2026 decision).

The Legislative Leaders have petitioned the Court of Appeals’ decision on the AEVL Implementation and County Canvass Provisions. Because this case was designated an accelerated appeal, ARCAP 29(f) states that this Court “will give priority to the petition.” In light of that priority status, an expedited briefing schedule and resolution is necessary.

Specifically, if the Legislative Leaders succeed on their Petition related to the AEVL Implementation Provision, then on or before January 15, 2025, county recorders should have sent AEVL voters who did not vote an early ballot in the 2022 and 2024 election cycles notices directing them to confirm in writing within ninety days of receiving the notice whether they wished to stay on the AEVL. A.R.S. § 16-544(L).

As the 2026 statewide elections draw closer, this requirement will become difficult if not impossible to implement unless the Court expedites the consideration of this issue. Indeed, it is already too late for this Court to render a decision on the AEVL Implementation Provision prior to the March or May 2026 elections. However, if the parties and the court act quickly, there is still time to review and render a decision on the AEVL Implementation Provision prior to the 2026 Primary and General elections.

As the Secretary explained in his opposition to the Motion to Expedite before the Court of Appeals, early voting for the Statewide primary begins on July 8, 2026, and “[e]lection officials must mail AEVL voters a notice containing specific information about their mail ballot by April 9, 2026 for the August 2026 Primary Election.” Ex. 6 (Secretary Opp. to COA Motion to Expedite). Like the AEVL Implementation Provision at issue in this lawsuit, the referenced AEVL notice is required to be sent out no less than 90 days prior to any polling place election

scheduled in March or August. *Id.* (citing A.R.S. § 16-544(D)). Thus, if this Court resolves the AEVL Implementation Provision issue in favor of the Legislative Leaders, county recorders can send the AEVL notice required by A.R.S. § 16-544(L) with (or before) the notices required by § 16-544(D) go out on April 9, 2026.

Importantly, these are the last set of elections that the AEVL Implementation Provision should have been applied to before the 2023 EPM’s extra-textual and ultra vires implementation date of January 15, 2027. To preserve this opportunity for proper implementation and to give county recorders sufficient time to prepare the notice, the Court must resolve this case by mid to late March. Failure to address these arguments prior to this timeline will deprive the Legislative Leaders of the benefit of their appeal.

In addition to the AEVL Implementation Provision, the Legislative Leaders have petitioned this Court to review the portion of the decision regarding the County Canvass Provision, and the Secretary may cross-petition for review of the remaining issues. Election related challenges almost always pose special timing considerations, especially here, where the Court is reviewing issues in an election year. Paramount of these considerations is the need to avoid last minute shifts in governing law before an election. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006); *see Mi Familia Vota v. Fontes*, 111 F.4th 976, 984 (9th Cir. 2024) (reasoning a “late-stage alteration to the status quo of Arizona’s election rules” would cause “confusion and chaos”).

Early resolution of this matter will ensure local election officials have “clear guidance” and time to implement any changes to the elections procedures prior to the 2026 Primary and General elections, which is of the utmost statewide importance. *Purcell*, 549 U.S. at 5; *cf. Dobson ex rel. Comm’n on App. Ct. Appointments*, 233 Ariz. 119, 121 ¶¶ 7–8 (2013) (citing need for immediate resolution as grounds to grant special action jurisdiction); *Brewer v. Burns*, 222 Ariz. 234, 237 ¶ 9 (2009) (citing special timing concerns as grounds to grant special action jurisdiction).

### **CONCLUSION**

For all these reasons, the Legislative Leaders respectfully request that the Court expedite consideration of this case and enter an order that:

1. Prioritizes the review of this accelerated appeal under ARCAP 29(f), including the issuance of a decision order within 5 days after any oral argument on the matter;
2. Suspends the deadlines set forth in ARCAP 23(b) and (f) and adopt the following briefing schedule:
  - a. Defendant to file his Response to the Petition combined with any cross-Petition on or before February 5, 2026.
  - b. If a cross-Petition is filed, the Legislative Leaders to file their Response on or before February 20, 2026.

3. Suspends ARCAP 16(d) and 15(a)(7) and orders that:
  - a. Amicus Curiae to submit briefs on or before February 6, 2026.
  - b. All Responses to Amicus Curiae Briefs to be (i) combined and (ii) to be filed on or before February 20, 2026.
4. If the Court grants review, to decide the issues without supplemental briefing.
5. If the Court grants oral argument, that oral argument be held as soon as practicable following the conclusion of briefing. *See* ARCAP 29(f). The Legislative Leaders would not object to a waiver of oral argument.
6. The Legislative Leaders also request that the Court decide the appeal no later than March 20, 2026. *See* ARCAP 29(f).

Because an expedited briefing schedule will provide needed clarity to a matter of statewide importance that will impact the 2026 election cycle, the Legislative Leaders respectfully request that this Court grant this motion and enter a briefing schedule with the above deadlines.

RESPECTFULLY SUBMITTED this 21st day of January, 2026.

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