EXHIBIT 1

Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-001942 12/16/2024

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

WARREN PETERSEN, et al.

JOSEPH KANEFIELD

v.

ADRIAN FONTES

KAREN HARTMAN-TELLEZ

DAVID ANDREW GAONA
DANIEL D MAYNARD
JAMES E BARTON II
JARED G KEENAN
ROY HERRERA
TRACY A OLSON
KORY A LANGHOFER
AUSTIN C YOST
KYLE ROBERT CUMMINGS
KARA MARIE KARLSON
THOMAS J. BASILE
DANIEL A ARELLANO
JILLIAN L ANDREWS
AUSTIN TYLER MARSHALL
ALEXIS E DANNEMAN
MARGO R CASSELMAN
DOUGLAS C ERICKSON
LALITHA D MADDURI
MARILYN GABRIELA ROBB
JUDGE BLANEY

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-001942 12/16/2024

UNDER ADVISEMENT RULING

The Court has reviewed and considered the following:

1. Plaintiffs' *Verified Special Action Complaint for Declaratory and Injunctive Relief*;
2. Plaintiffs' *Motion for Preliminary Injunction*;
3. Secretary of State's *Response in Opposition to Motion for Preliminary Injunction*;
4. Plaintiffs' *Reply in Support of Plaintiffs' Motion for Preliminary Injunction*;
5. Secretary of State's *Motion to Dismiss*;
6. Plaintiffs' *Response to Motion to Dismiss*;
7. Secretary of State's *Reply in Support of Motion to Dismiss*;
8. *Amicus Brief of American Civil Liberties Union of Arizona*;
9. *Brief of Amicus Curiae Arizona Election Officials*;
10. *Brief of Amici Curiae Democratic National Committee and Arizona Democratic Party*;
11. *Brief of Amici Curiae Living United For Change in Arizona, League of United Latin American Citizens, Arizona Students' Association, San Carlos Apache Tribe and Inter Tribal Council of Arizona, Inc., in Support of Defendants*;
12. Plaintiffs' *Consolidated Response to the Briefs of Amici Curiae*;
13. Plaintiffs' *Supplemental Brief*;
14. Secretary of State's *Supplemental Brief*;
15. *Joint Notice of Supplemental Authorities*; and
16. The arguments received at each of the hearings in this matter.

This case involves a challenge to the current Elections Procedures Manual ("EPM") by the President of the Arizona Senate and the Speaker of the Arizona House of Representatives on behalf of their respective chambers ("Plaintiffs"). Plaintiffs argue that the Secretary exceeded his authority through the promulgation of several rules in the current EPM. Plaintiffs seek declaratory and injunctive relief.

The Elections Procedures Manual

The Legislature delegated to the Secretary the authority and responsibility to create rules and procedures for voting. A.R.S. § 16-452. Subsection A provides:

> After consultation with each county board of supervisors or other officer in charge of elections, the secretary of state shall prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots. The secretary of state shall also adopt rules

> regarding fax transmission of unvoted ballots, ballot requests, voted ballots and other election materials to and from absent uniformed and overseas citizens[.]

The statute further provides "[a] person who violates any rule adopted pursuant to this section is guilty of a class 2 misdemeanor." A.R.S. § 16-452(C). "Once adopted, the EPM has the force of law[.]" *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63 ¶ 16 (2020).

In 2023, the Secretary of State led a review and modification of the prior election EPM. After receiving approval from both Governor Hobbs and Attorney General Mayes, the Secretary issued the Arizona 2023 EPM in December 2023.

The EPM is written to "ensure election practices are consistent and efficient throughout Arizona." *McKenna v. Soto*, 250 Ariz. 469, 473 ¶ 20 (2021). As stated above, the Secretary has the authority to prescribe rules to achieve this result. *Id*.; *see* A.R.S. § 16-452(A).

Plaintiff brought the present case seeking to invalidate six provisions in the EPM, which focus upon: (1) the steps a county recorder should take after receiving a report from the jury commissioner regarding non-residency of registered voters; (2) when county recorders must investigate the citizenship status of voters who are already registered; (3) the date on or after which county recorders must begin to send notices to voters regarding removal from the Active Early Voting List ("AEVL") for not casting early ballots; (4) the effect of mistaken or incorrect information on a registered petition circulator's registration; (5) county boards of supervisors' duty to canvass election results; and (6) the Secretary's ability to timely conduct the statewide canvass, even without results from one or more counties.

The Secretary moved to dismiss Plaintiffs' action pursuant to Rules 12(b)(1) and (6), Ariz.R.Civ.P. The Secretary argued in his *Motion* that Plaintiffs lacked standing to bring the present litigation because Plaintiffs failed to demonstrate an institutional injury to the Legislature and further, because Plaintiffs failed to establish that the Legislature authorized Plaintiffs to bring this litigation on its behalf. The Secretary's *Motion* also challenged the merits of Plaintiffs' challenges to specific EPM provisions.

The parties subsequently stipulated to stay the determination of Plaintiff's Count II (Investigations of Citizenship Status Rule) and to dismiss without prejudice Count VI (Secretary's Authority to Interpret and Codify Court Rulings). *See* March 5, 2024 Hearing Minute Entry at pg. 3 (filed 03/06/2024); *see also* April 4, 2024 Order Dismissing Count VI (filed 04/08/2024). Counts I, III, IV, and V remain.

The Court received briefing on the *Motion to Dismiss* and on the merits of the case, as well as briefing of amici curiae. The Court held an oral argument combined with trial on the merits on

May 23, 2024. The Court subsequently held an oral argument on the parties' supplemental briefing on October 2, 2024.

Standing

The Secretary argues that Plaintiffs lack standing in this case. "A plaintiff has standing to bring an action if it alleges a distinct and palpable injury; a generalized harm shared by all or by a large class of people is generally insufficient." *Mills v. Arizona Board of Technical Registration*, 253 Ariz. 415, 423 ¶ 24 (2022) (internal quotations omitted). "To have standing, a party generally must allege a particularized injury that would be remediable by judicial decision." *Brewer v. Burns*, 222 Ariz. 234, 237 ¶ 12 (2009). The Court will analyze standing based upon whether Plaintiffs have "plausibly alleged particularized injury *before* analyzing the merits of the parties' disputes." *Id. at* ¶ 14 (emphasis added). The Secretary "cannot defeat standing merely by assuming [he] will ultimately win." *Id*.

Plaintiffs seek declaratory relief in this action. A.R.S. § 12-1831 grants this Court the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." The Uniform Declaratory Judgments Act is remedial and is therefore to be liberally construed and administered. A.R.S. § 12-1842. Thus, Plaintiffs are merely required to plead "sufficient facts to establish that there is a justiciable controversy, i.e., one that arises where adverse claims are asserted upon present existing facts, which have ripened for judicial determination." *Café' Valley, Inc. v. Navidi*, 235 Ariz. 252, 255 ¶ 10 (App. 2010) (internal quotations omitted).

The Secretary first argues that Plaintiffs do not have standing because Plaintiffs have failed to establish that the Legislature authorized them to bring the present action on its behalf. But as Plaintiffs point out, the majorities of both legislative chambers adopted rules at the start of the legislative session that authorized Speaker Toma and President Petersen, respectively, to "bring or assert in any forum on behalf of [their chambers] any claim or right arising out of any injury to [their chambers'] powers or duties under the Constitution or Laws of this state." *Plaintiffs' Response to Motion to Dismiss* at 15 (citing each chamber's Rules for the 56th Legislature 2023-2024).

Based upon separation of powers principles, this Court is not in a position to scrutinize the Legislature's internal rules. Our constitution empowers legislative houses to determine and implement their own rules and procedures. *See* Ariz.Const. art IV, pt. 2 §§ 8, 9. "That authority is absolute and continuous, meaning each successive embodiment of a house is empowered to establish its own procedures." *Puente v. Arizona State Legislature*, 254 Ariz. 265, 270 ¶ 14 (2022).

The Secretary argues, *inter alia*, that authorization for litigation must be specific and made on a case-by-case basis. But Division One of the Arizona Court of Appeals recently rejected a nearly identical argument in *Toma v. Fontes*, 553 P.3d 881 (App. 2024), stating:

> Finally, Defendants think it would be easy for the Legislature to authorize litigation on a case-by-case basis. But the practical ease of Defendants' proffered requirement is beside the point. The Constitution vest the Legislature with the power to create rules authorizing litigation. The Legislature authorized Speaker Toma and President Petersen to bring litigation, and the claims here fall within that authorization – that is the end of the matter so far as the judiciary is concerned.

Id. at 890 ⁋ 32. Here, Plaintiffs have alleged an injury to their respective chamber's powers under the Arizona Constitution. The Court "will not superintend the specificity with which the Legislature authorizes litigation." *Id*. at 889 ¶ 29. The claims in this case fall sufficiently within the scope of the authorizations.

THE COURT FINDS that Plaintiffs have established that they had authority to bring this case on behalf of the Legislature.

The Secretary further argues that Plaintiffs have failed to establish standing because they have not sufficiently alleged an institutional injury. "Legislative standing based on institutional injury turns on the facts and circumstances in each case." *Toma*, 553 P.3d at 890 ⁋ 38. Generally, those facts and circumstances must show that the Legislature suffered a "particularized injury to the legislative body as a whole." *Id*. However, Plaintiffs, having brought an action for declaratory relief, are not required to suffer an *actual* injury before their claims become justiciable. They simply need to allege that an actual controversy exists between the parties. *Mills*, 253 Ariz. at 424 ¶ 29.

Here, Plaintiffs argue that the Legislature has an institutional interest in defending the proper scope of any authority it has delegated to other branches of government, including the Secretary. Plaintiffs further argue that the Secretary has violated the limits of its delegated authority by issuing EPM rules that exceed the scope of the delegation and/or nullify or amend currently existing statutory provisions.

The Secretary counters that the disputed EPM rules do not regulate the Legislature as an entity or nullify legislative power because the Legislature retains its full authority to enact laws to override the rules set forth in the EPM, or even to change the law authorizing the EPM.[1]

[1] The Court finds the Secretary's suggested remedy – that the Legislature can simply enact laws that override the disputed rules in the EPM – to be unworkable and unreasonable. Requiring the Legislature to

THE COURT FINDS that Plaintiffs have sufficiently alleged that an actual controversy exists between the parties that supports legislative standing in this case. Here, each of the *Verified Complaint's* counts that are still in dispute identifies an EPM rule that, at a minimum, conflicts with the language of an existing statute. For example:[2]

- Count I alleged that the EPM rule conflicted with the statute governing the cancellation of non-residents' voter registrations by disregarding the words "shall cancel the person's registration" and instead directing that the registration be placed in an inactive status for four years. *See* A.R.S. § 16-165(A)(9)(b). As alleged, the disputed EPM rule contradicts the controlling statute.

- Count III alleged that the EPM rule conflicted with the governing statute by applying an incorrect implementation date for compliance with the statute's mandates.

- Count IV alleged that the EPM rule regarding circulator registrations conflicted with A.R.S. § 19-102.01(A)'s mandate of strict compliance with statutory requirements governing the initiative process by excusing mistakes or inconsistencies in the circulator's recording of required information.

- Count V alleged that the EPM rule addressing the Board of Supervisors' duty to canvass was *ultra vires* because the scope of a legislative or executive official's duty to canvass an election is not a topic that the Secretary is authorized by A.R.S. § 16-452 to include in the EPM. Count V further alleged that the EPM rule conflicted with the plain language of A.R.S. §§ 16-642, 16-643, and 16-646.

When the executive branch promulgates rules that conflict with and, as alleged here, improperly override validly enacted statutes, an actual controversy exists between the parties and the Legislature suffers an institutional injury. *Biggs v. Cooper*, 236 Ariz. 415, 418 ¶ 9 (2014) ("[T]he legislature as a body suffers a direct institutional injury, and so has standing to sue, when an invalid gubernatorial veto improperly overrides a validly enacted law."). Plaintiffs are correct

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create new laws each time an administrative actor promulgates a rule that contradicts existing statutes or strays beyond the scope of a delegation would be to ignore the separation of powers doctrine and force the Legislature into an ongoing game of "whack-a-mole."

[2] This is not a case in which the institutional injury can be traced to the statute that delegated authority to the Secretary, as was the case in *Toma*. *Toma*, 553 P.3d at 893 ¶ 52. Here, the alleged institutional injury is directly traceable to the EPM rules that allegedly conflict with and functionally override existing Arizona statutes.

that the Arizona Constitution places the power and authority to make laws with the Legislature. Ariz. Const. art IV. That principle is further clarified in Article III of the Arizona Constitution:

> The powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, except as provided in this constitution, such departments shall be separate and distinct, *and no one of such departments shall exercise the powers properly belonging to either of the others*.

(emphasis added). The Legislature is free to delegate authority to the Secretary, but the Secretary must stay within the scope of the delegation. "Any excursion by an administrative body beyond the legislative guidelines is a usurpation of constitutional powers vested only in the major branch of government." *Toma*, 553 P.3d at 893 ¶ 53 (quoting *Cochise County v. Kirschner*, 171 Ariz. 258, 261-62 (App. 1992)). [3] That is precisely what Plaintiffs have alleged in the present case and, accordingly, an actual controversy exists between the parties. *Mills*, 253 Ariz. at 424 ¶ 29.

THE COURT THEREFORE FINDS that Plaintiffs have standing to pursue declaratory relief based upon the claims asserted in this case. Thus, the Court may reach the merits of Plaintiffs' claims.

Count I

In Count I, Plaintiffs challenge Chapter 1, Section 9, Subsection C(1)(b) of the EPM. That provision addresses County Recorders' duties upon receiving a summary report from the Jury Commissioner or Jury Manager that indicates a voter is not a resident of the county or state. Plaintiffs argue that the EPM provision conflicts with the governing statute, A.R.S. § 16-165(A)(9), which states:

> The county recorder shall cancel a registration … [w]hen the county recorder receives written information from the person registered that the person has a change of address outside the county, including when the county recorder … [r]eceives a summary report from the jury commissioner or jury manager … indicating that the person has stated that the person is not a resident of the county.

§ 16-165(A)(9) specifically details what steps the County Recorder must take before canceling the registration:

[3] The Court recognizes that the court in *Toma* appeared to distinguish the quoted language from *Kirschner* by pointing out that the court did not make the proclamation while considering the issue of legislative standing. *Id*. But the Court finds the quoted language to be directly on point to a determination of whether the offending rules' alleged conflict with the statutes supports a finding of institutional injury.

> Before the county recorder cancels a registration pursuant to this paragraph, the county recorder shall send the person notice by forwardable mail and a postage prepaid preaddressed return form requesting the person confirm by signing under penalty of perjury that the person is a resident of the county and is not knowingly registered to vote in another county or another state. The notice shall inform the person that failure to return the form within thirty-five days *will result in the person's registration being canceled*. *If the person fails to return the notice within thirty-five days the county recorder shall cancel the person's registration*. (Emphasis added).

The plain, unambiguous language of the statute requires County Recorders to cancel a person's registration if the person does not return the required notice within thirty-five days. But the EPM provision at issue replaces the operative wording of § 16-165(A)(9) with the following: "If the person fails to respond to the notice after thirty-five days, the voter's registration status will be changed to *inactive*." (Emphasis added). The operative section further states that, after placement in an inactive status, the person's registration *may* (replacing the statute's use of "shall") be canceled if the person does not subsequently verify his or her registration address or vote in two election cycles after being placed in inactive status. Thus, the EPM – which has the effect of law – directs County Recorders to not cancel a registration as required by the statute, but instead to place the registration into an inactive status and maybe cancel the registration after another four years of inaction (two election cycles).

When a statute is "subject to only one reasonable interpretation, we apply it without further analysis." *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017) (internal quotations omitted). The Court can find no ambiguity in § 16-165(A)(9). The EPM provision directly conflicts with the statute's plain, nondiscretionary language and timelines. The two simply cannot coexist.

The Secretary argues that he is simply "harmonizing" the state statute with federal law because, according to the Secretary, the state statute conflicts with the National Voter Registration Act of 1993, 52 U.S.C. § 20501, *et seq*. Based upon his legal assessment, the Secretary has disregarded portions of the state statute that he believes do not conform to the NVRA. But "it is the Court's role, not the Secretary's, to interpret [election statutes]." *Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022); *see also Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). The Secretary does not have the authority to overrule and rewrite state law, even in part, on his mere belief that a conflict exists between state and federal law.

Moreover, as Plaintiffs correctly argue, no conflict actually exists between the NVRA and Arizona statutes. More specifically, § 20507(d)(1)(A) permits the State to remove the name of a

person from the official list of eligible voters if the person confirms in writing that he or she has changed residence to a place outside the county. And pursuant to Arizona law, persons that seek disqualification from jury duty based upon an attestation that he or she does not reside within the county do so on a court questionnaire. Thus, the individual has confirmed his or her nonresidence in writing. Additionally, the questionnaire the person uses to seek disqualification from jury duty specifically notifies the person that disqualification from jury duty based upon residence outside the county will result in cancellation of the person's voter registration. A.R.S. § 21-314(B); *see also* Trial Exhibit 4 at AG136657.

The Court can find no conflict between the NVRA and applicable state statutes, nor can the Court find any basis to conclude that persons are unaware that their request for exemption from jury service based upon out-of-county residence will result in cancellation of their voter registration.

THE COURT THEREFORE FINDS that Chapter 1, Section 9, Subsection C of the EPM is invalid and unenforceable because it directly conflicts with Arizona law and further, because the Secretary acted beyond the scope of his authority under the delegation.

IT IS THEREFORE ORDERED declaring the 2023 EPM's Non-Residency of Juror Questionnaire Rule in Chapter 1, Section 9, Subsection C(1)(b) exceeds the Secretary's specific statutory authorization and lawful authority, does not carry the force of law, and is void.

Count III

In Count III, Plaintiffs challenge Chapter 2, Section 1, Subsection B(7) of the EPM. Count III addresses the Active Early Voter List ("AEVL") which is "a list of voters who receive an early ballot by mail for any election for which the county voter registration roll is used to prepare the election register." A.R.S. § 16-544(A). The list is maintained by County Recorders. At issue is § 16-544(H)(4), which states that a voter on the AEVL will continue to receive an early ballot by mail until, *inter alia*, the voter fails to vote an early ballot in all elections for two consecutive election cycles. On January 15 of every odd-numbered year, the County Recorder must send a notice to every voter on the AEVL that has not voted in two consecutive election cycles. The notice asks the voter whether he or she would like to remain on the AEVL. If the voter does not respond within 90 days, the voter is removed from the AEVL, but may re-enroll at any time.

The parties dispute which specific election cycle occurring after § 16-544(H)(4) became effective should be the first election cycle included in the statute's "two consecutive election cycles." The disputed EPM section addresses the date for implementation, and mandates that:

> "[b]ecause the 2022 election cycle began before S.B. 1485 (2022) took effect and S.B. 1485 does not apply retroactively, the first two full election cycles after S.B. 1485's effective date are the 2024 and 2026 election cycles. Therefore, the first AEVL removal notices must be sent out by January 15, 2027 to AEVL voters who vote by early ballot in zero eligible elections in the 2024 and 2026 election cycles."

Plaintiffs argue that because § 16-544(H)(4) became effective during the 2022 election cycle, the registrant's subsequent voting or failure to vote in the 2022 and 2024 election cycles must be given full effect. Thus, according to Plaintiffs, AEVL removal notices must be sent out in 2025, not 2027. Both parties agree that the statutory provision became effective during the 2022 election cycle. The statute itself is silent on this issue.

THE COURT FINDS that Plaintiffs have failed to establish good cause for the relief they seek in Count III of the *Verified Complaint*. Plaintiffs have not identified any statute or constitutional provision with which the EPM provision directly conflicts. Moreover, given the fact that the § 16-544(H)(4) became effective ***during*** the 2022 election cycle, the Secretary's determination that implementation should begin on the next full election cycle is reasonable, and within the Secretary's statutory authority to "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting[.]" A.R.S. § 16-452(A).

IT IS THEREFORE ORDERED denying the relief sought by Plaintiffs in Count III.

Count IV

In Count IV, Plaintiffs challenge footnote 58 in Chapter 6, Section 2, Subsection C of the EPM, which purports to excuse situations in which a circulator does not properly list his or her information when applying for registration as a circulator in the Circulator Portal. Footnote 58 states:

> The requirement to list certain information on the circulator portal does not mean that a circulator's signatures shall be disqualified if the circulator makes a mistake or inconsistency in listing that information (e.g., a phone number or email address that is entered incorrectly; a residential address that doesn't match the residential address listed on that circulator's petition sheets; etc.).

Again, "[o]nce adopted, the EPM has the force of law[.]" *Ariz. Pub. Integrity All.*, 250 Ariz. at 63 ¶ 16. There are multiple problems with the language of footnote 58. First, the Secretary's edict directly conflicts with Arizona statutes. For example, the information that the Secretary believes need not be accurate or complete in the circulator application is expressly required by Arizona

statute, specifically A.R.S. § 19-118(B), which states: "[t]he circulator registration application required by subsection A of this section ***shall*** require the following…." (emphasis added). Second, pursuant to Arizona statute, the Secretary must remove the signature sheets for any circulator that was required to be registered but who did not properly register. A.R.S. § 19-121.01. A registration based upon an inaccurate or incomplete application is not a "proper" registration of the circulator.

Third, the footnote disregards the need for strict compliance with statutory requirements in the initiative and referendum processes. *See* A.R.S. § 19-101.01 (requiring "that the … statutory requirements for the referendum be strictly construed and that persons using the referendum process strictly comply with those … statutory requirements."); § 19-102.01 ("[S]tatutory requirements for statewide initiative measures must be strictly construed and persons using the initiative process must strictly comply with those … statutory requirements.").[4] The Court finds the Secretary's citation to *Leibsohn v. Hobbs*, 254 Ariz. 1 (2022) to be unhelpful. The court in *Leibsohn* did not excuse the circulator's failure to include his apartment unit number in the circulator application; the court instead found that the applicable law does not require an apartment number when listing the address. By contrast, however, footnote 58 improperly seeks to excuse the omission of information that is actually required by statute, which is a violation of A.R.S. §§ 19-101.01 and 19-102.01.

Finally, the footnote is impermissibly vague. For example, the act of knowingly omitting or misrepresenting information on the application is a criminal offense – a class 1 misdemeanor. A.R.S. § 19-118(H). Footnote 58 purports to excuse situations where a circulator applicant submits an application with factual inconsistencies which, if considered to have been intentional, would be a criminal act under § 19-118(H). The footnote also purports to excuse factual inaccuracies if they are the product of mistake but identifies no standards for determining what would be an excusable mistake or inconsistency versus a criminal act. Counsel for the Secretary informed the Court at the May 23, 2024, hearing that footnote 58 directs the actions of the Secretary and his office, not the superior court. Thus, the Secretary intends to make the determination whether inaccuracies or inconsistencies in a circulator application are the product of mistake – and therefore excusable – or whether the applicant "knowingly" submitted an inaccurate or incomplete application. The language of the footnote is vague and "is drafted in such a way that allows for arbitrary and discriminatory enforcement." *In re Dayvid S.*, 199 Ariz. 169, 172 ¶ 11 (App. 2000) (discussing impermissible vagueness in the criminal context).

[4] The Court notes that both statutes also mandate that ***constitutional*** requirements be strictly construed. But our Supreme Court called into question whether "under separation-of-powers principles … the legislature can direct how courts apply our constitution." *Voice of Surprise v. Hall*, 255 Ariz. 510, 517 n. 1 (2023). The Court will therefore only focus on the need for an applicant to strictly comply with ***statutory*** requirements and the need for the Court to strictly construe ***statutory*** requirements.

THE COURT THEREFORE FINDS that footnote 58 in Chapter 6, Section 2, Subsection C of the EPM is invalid and unenforceable because it directly conflicts with Arizona law, is impermissibly vague – allowing for arbitrary and discriminatory enforcement, and is beyond the scope of the Secretary's authority under the delegation.

IT IS THEREFORE ORDERED declaring that footnote 58 in Chapter 6, Section 2, Subsection C of the EPM exceeds the Secretary's specific statutory authorization and lawful authority, does not carry the force of law, and is void.

Count V

In Count V, Plaintiffs challenge two portions of Chapter 13, Section 2 of the EPM, both of which address duty to canvass.

Subsection A(2) purports to place limits on the scope of what a county Board of Supervisors is permitted to do when canvassing. The disputed section states:

> The Board of Supervisors has a non-discretionary duty to canvass the returns as provided by the County Recorder or other officer in charge of elections and has no authority to change vote totals, reject the election results, or delay certifying the results without express statutory authority or court order.

Both parties cite to A.R.S. § 16-643, which states that a canvass of election returns "shall be made in public by opening the returns … and determining the vote of the county[.]" The statute does not define what it means to "determine" the vote, nor does the statute expressly preclude the Board of Supervisors from "chang[ing] vote totals, reject[ing] the election results, or delay[ing] certifying the results." Indeed, the statute does not suggest in any way the proper scope of "determining the vote."

The Secretary has relied on the statute's silence and interpreted it to preclude the Board of Supervisors from doing anything other than opening the returns and counting what they find. But again, "it is the Court's role, not the Secretary's, to interpret [election statutes]." *Leibsohn*, 254 Ariz. at 7 ¶ 22. Here, the Secretary, without proper authority, has attempted to create a legally-enforceable presumption in the EPM that the Board of Supervisors is limited to simply opening and counting during a canvass, unless the Board seeks an exception from the judiciary on a case-by-case basis. However, the Secretary's presumption does not exist in the statute, and the Secretary does not have the authority to read such a presumption into the statute. It would be more appropriate for either party to bring this issue before a court of competent jurisdiction once the issue actually arises in an election and is ripe for determination on specific, existing facts.

Plaintiffs also challenge Subsection B(2), which states that the Secretary must proceed with the state canvass without including the votes of any county that has not forwarded its official canvass by the deadline. In support, the Secretary points to the strict deadlines with which he must comply. The Secretary is correct about the short deadlines and their non-discretionary nature. But nothing in the statutes permits the Secretary to exclude a particular county's canvass and/or, by extension, disenfranchise the entirety of the county's voters. The Secretary does not have the authority to read such a drastic course of action into the governing statutes. Instead, this issue is more appropriately resolved by a court of competent jurisdiction in the context of: (1) an actual dispute that is ripe for determination; (2) involving a missing county canvass and approaching deadlines; (3) based upon existing facts; and (4) a request for mandamus or similar relief.

THE COURT THEREFORE FINDS that Chapter 13, Section 2, Subsections A(2) and B(2) of the EPM are invalid and unenforceable because the Secretary acted beyond the scope of his authority under the delegation.

IT IS THEREFORE ORDERED declaring that Subsections A(2) and B(2) of Chapter 13, Section 2 of the EPM exceed the Secretary's specific statutory authorization and lawful authority, do not carry the force of law, and are void.

Injunctive Relief

Plaintiffs seek injunctive relief in addition to declaratory relief. As detailed above, Plaintiffs have established that the Secretary exceeded his specific statutory authorization and lawful authority in Counts I, IV, and V. "Because Plaintiffs have shown that [the Secretary] has acted unlawfully and exceeded his constitutional and statutory authority, they need not satisfy the standard for injunctive relief." *Arizona Public Integrity Alliance*, 250 Ariz. at 64 ¶ 26. Plaintiffs are therefore entitled to injunctive relief on Counts I, IV, and V.[5]

[5] The Secretary argues that Plaintiffs must meet the traditional, four-factor test for injunctive relief. The Secretary states that the standard the Arizona Supreme Court enunciated in *Arizona Public Integrity Alliance* ("AZPIA") does not apply in this case based upon two arguments: (1) *AZPIA* was a mandamus action and mandamus actions are subject to different standards; and (2) the Arizona Supreme Court's subsequent decision in *Fann v. State* utilized the traditional, four-factor test, indicating that the court was not abandoning the traditional test. *Fann v. State*, 251 Ariz. 425 (2021). Neither argument is compelling. First, the paragraphs from *AZPIA* cited by the Secretary to demonstrate a different standard for mandamus actions actually address *standing* to bring a mandamus action; they do not address a different standard for determining whether a party succeeded in demonstrating an *entitlement to mandamus relief*. *Id*. at ¶¶ 11-14. Second, the *Fann* case did not involve an action to enjoin a public official that had acted unlawfully – as is the case here and in *AZPIA*. Instead, *Fann* considered the propriety and application of a voter-approved initiative.

IT IS THEREFORE ORDERED granting Plaintiffs' request for declaratory relief in part, consistent with the orders detailed in each section above.

IT IS FURTHER ORDERED granting Plaintiffs' request for injunctive relief in part consistent with the rulings above, and enjoining the Secretary on a permanent basis from implementing and/or enforcing the following:

1. The EPM's Non-Residency of Juror Questionnaire Rule in Chapter 1, Section 9, Subsection C of the EPM;

2. Footnote 58 of the EPM's Validity of Circulator Registrations Rule in Chapter 6, Section 2, Subsection C of the EPM; and

3. The EPM's Duty to Canvass Rule, specifically Chapter 13, Section 2, Subsections A(2) and B(2) of the EPM.

IT IS FURTHER ORDERED declining to address the parties' remaining arguments as either unpersuasive or moot.

IT IS FURTHER ORDERED directing Plaintiffs to prepare and lodge a form of Judgment on or before **January 10, 2025**. Plaintiffs shall file any application for attorney's fees and statements of taxable costs by this deadline as well. Defendant shall file any objection or response to the form of judgment or to the request for attorney's fees and costs within **ten (10) days** thereafter.

EXHIBIT 2

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 04/14/2025
MATTHEW J. MARTIN, CLERK
BY: AMI

WARREN PETERSEN, et al.,	)	Court of Appeals
	)	Division One
Plaintiffs/Appellees/	)	No. 1 CA-CV 25-0219
Cross-Appellants,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CV2024-001942
ADRIAN FONTES,	)	
	)	
Defendant/Appellant/	)	
Cross-Appellee.	)	
	)	

ORDER RE: MOTION TO ACCELERATE

The court considered appellees/cross-appellants' March 31, 2025 Motion to Accelerate Appeal and Expedite Briefing Schedule, appellant/cross-appellee's response, and the reply.

Appellees/cross-appellants move to accelerate the briefing schedule and decision in this appeal. Appellant/cross-appellee does not oppose accelerating the appeal but opposes expediting the briefing.

IT IS ORDERED denying the motion in part as to the request for an expedited briefing schedule without prejudice to the parties filing briefs as quickly as they wish before the due dates. The court does not anticipate granting any briefing extensions.

IT FURTHER IS ORDERED granting the motion in part and directing the Clerk of the Court to schedule this appeal for disposition under Rule 29, Arizona Rule of Civil Appellate Procedure, after it is at issue. Even so, once this appeal is assigned to a panel, the panel may remove it from accelerated disposition if the panel concludes it is not suitable for acceleration. ARCAP 29(g).

IT FURTHER IS ORDERED, notwithstanding ARCAP 18(a), any request for oral argument must be filed not later than the cross-appeal reply brief.

_____/s/_____
David B. Gass, Chief Judge

A copy of the foregoing
was sent to:

Kory A Langhofer
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Vanessa Pomeroy
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Graham Provost

EXHIBIT 3

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

WARREN PETERSEN, et al., *Plaintiffs/Appellees/ Cross-Appellants*,

v.

ADRIAN FONTES, *Defendant/Appellant/ Cross-Appellee*.

No. 1 CA-CV 25-0219 A

FILED 11-24-2025

Appeal from the Superior Court in Maricopa County
No. CV2024-001942
The Honorable Scott A. Blaney, Judge

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Presiding Judge David B. Gass delivered the decision of the court, in which Judge Michael J. Brown and Judge Andrew J. Becke joined.

G A S S, Judge:

¶1 This appeal involves a challenge to the 2023 Arizona Elections Procedures Manual. The court accelerates its review under Rule 29, Arizona Rules of Civil Appellate Procedure.

¶2 The President of the Arizona Senate and the Speaker of the Arizona House of Representatives bring the challenge on behalf of their chambers. The Legislators argue the Secretary exceeded his authority when he adopted certain provisions of the 2023 Manual. They seek declaratory and injunctive relief to enjoin those provisions. The superior court granted their requested relief.

¶3 The court affirms.

FACTUAL AND PROCEDURAL HISTORY

¶4 Since the 1980s, the legislature has charged the Secretary with adopting an election procedures manual every 2 years. A.R.S. § 16-452.B. The manual contains rules and procedures for voting in Arizona. A.R.S. § 16-452.A. The Secretary issues an updated manual at the end of each odd-numbered year. A.R.S. § 16-452.B. The Governor and the Attorney General must approve the manual before it takes effect. *Id.* The Secretary submitted the 2023 Manual to the Arizona Attorney General and Arizona Governor. With their approval, the Secretary issued the 2023 Manual in December of that year.

¶5 The Legislators brought this action to enjoin the Secretary from implementing 4 provisions in the 2023 Manual. The 4 challenged provisions relate to:

1. County Canvasses;
2. Juror questionnaires;
3. Circulator registrations; and
4. Active early voting lists.

¶6 The Secretary moved to dismiss, arguing the Legislators lacked standing. The superior court found the Legislators have standing because the legislature authorized them to bring this action and they sufficiently alleged an actual controversy.

¶7 As to the first 3 challenged provisions, the superior court ruled the Secretary exceeded his statutory authority in adopting those provisions. The superior court thus declared those provisions unenforceable and granted injunctive relief, permanently enjoining the Secretary from promulgating those 3 provisions. The Secretary appeals the superior court's rulings on standing and the 3 enjoined provisions.

¶8 The superior court agreed with the Secretary on the fourth challenged provision—the active early voting list provision—and ruled the provision did not directly conflict with any constitutional or statutory provision and was within the Secretary's statutory authority. The Legislators cross-appeal that ruling.

¶9 The court has jurisdiction over the Secretary's timely appeal and the Legislators' timely cross-appeal under Article VI, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21.A.1, and 12-2101.A.1.

DISCUSSION

I. The Legislators have standing to challenge the 2023 Manual provisions.

¶10 The Secretary argues the Legislators lack standing under recent Arizona Supreme Court precedent. *See Montenegro v. Fontes*, ___ Ariz. ___, ___ ¶ 19, 576 P.3d 692, 697 (2025). The Legislators rely on the same precedent to challenge the Secretary's argument. The Legislators are correct.

¶11 The court reviews *de novo* whether a party has standing. *Id.* at 696 ¶ 15. When deciding whether a party has standing, the court assumes without deciding the party is "correct on the merits." *Id.* at 697 ¶ 19. Arizona courts have long recognized the legislature "has standing to challenge actions that inflict institutional injury." *Id.* at 699 ¶ 28. Though Arizona's Constitution does not have an express "case or controversy" requirement, when the court has resolved "disputes between branches of government, [the court] also required some showing of a particularized injury to establish standing." *Id.* at 696–97 ¶¶ 17–19. But the "[L]egislators need not exhaust all alternative political remedies before filing suit." *Id.* at 699 ¶ 32. (quoting *Biggs v. Cooper ex rel. Cnty. of Maricopa*, 236 Ariz. 415, 419 ¶ 17

(2014) (ruling legislators had standing even if they did not try to repeal a law or refer it to the voters)); *see also Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482, 487 ¶¶ 17–18 (2006) (ruling legislators had standing even if they did not try to override the Governor's veto).

¶12 The Legislators do not challenge the Secretary's statutory authority to promulgate the 2023 Manual. A.R.S. § 16-452.A provides the Secretary "shall prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting . . . ." Acting under this authorization, the Secretary promulgated the 4 challenged provisions.

¶13 Instead, the Legislators argue they have an alleged actual injury because the Secretary went too far when including those 4 provisions in 2023 Manual. They argue the Secretary adopted rules that conflict with express statutory provisions, nullified those statutes, set policy beyond that established by the legislature, and encroached on the legislative branch's power as a result. The Legislators thus argue the Secretary violated Arizona's express constitutional separation of powers clause. *See* Ariz. Const. art. 3.

¶14 The Legislators argue they have shown an actual controversy, relying on broad language in *Montenegro*: "[T]he parties here are adversarial to each other over the issues in the lawsuit and have fully, vigorously, and capably argued the law. So we clearly have a case or controversy in the literal sense of the term." *Montenegro*, ___ Ariz. at ___ ¶ 18, 576 P.3d at 697. And as in *Montenegro*, the Legislators here "proceed[ed] under the Uniform Declaratory Judgments Act, which among other things gives the courts 'power to declare rights, status, and other legal relations.'" *Id.* (quoting A.R.S. § 12-1831). And the legislature has standing to seek relief under that uniform act when its "rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise . . . ." *See* A.R.S. § 12-1832. The 2023 Manual has the force of law. *See Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63 ¶ 16 (2020) (recognizing the election procedures manual has the force of law).

¶15 The Secretary argues the court should find no standing because this case, unlike *Montenegro*, does not involve a delegation in a voter initiative. *Montenegro* decried that distinction: "The constitutional reservation to the people of the powers of initiative and referendum 'does not in any way affect the division of powers; they remain the same.'" *Montenegro*, ___ Ariz. at ___ ¶ 24, 576 P.3d at 698 (quoting *Tillotson v. Frohmiller*, 34 Ariz. 394, 401 (1928)).

¶16 The case is analogous to *Napolitano*, 213 Ariz. at 484 ¶¶ 4–6. *Montenegro* discussed *Napolitano* and explained, the legislature "challenged the Governor's veto of a portion of a state employee compensation bill." *Montenegro*, ___ Ariz. at ___ ¶ 29, 576 P.3d at 699. And that challenge was enough to show "the legislature 'alleged a particularized injury to the legislature as a whole.'" *Id.* (quoting *Napolitano*, 213 Ariz. at 486 ¶ 14). The governor argued the legislature "lacked standing because it had not attempted to override her veto." *Id.* The Arizona Supreme Court concluded "the existence of the injury does not depend upon and is not affected by whether the Legislature attempted to override her veto." *Id.* (quoting *Napolitano*, 213 at 487 ¶ 17). The issue in *Napolitano* was whether the governor used an executive act to encroach on the legislature's power.

¶17 As a final point, this case requires a different outcome than *Bennett v. Napolitano*, 206 Ariz. 520 (2003). In *Bennett*, the Arizona Supreme Court "ruled that individual legislators did not have standing to challenge certain line-item vetoes by the Governor. The legislators themselves did not claim injury as their votes were not nullified." *Montenegro*, ___ Ariz. at ___ ¶ 28, 576 P.3d at 699 (discussing *Bennett*, 206 Ariz. at 526 ¶ 26). The distinction is pertinent here. In *Bennett*, the Arizona Supreme Court said when a "claim allegedly belongs to the legislature as a whole," four legislators could not allege institutional injury "without the benefit of legislative authorization." *Id.* (quoting *Bennett*, 206 Ariz. at 527 ¶ 29). The Legislators have legislative authorization to bring this action.

¶18 Assuming, as the court must, the Legislators are correct on the merits, they have stated a sufficient institutional injury to confer standing to bring the challenge. *See Montenegro*, ___ Ariz. at ___ ¶ 34, 576 P.3d at 700.

II. The Legislators' challenge to the 2023 Manual's canvass provision is moot.

¶19 In the Secretary's reply brief, the Secretary argues the Legislators' challenge to the canvass provision is moot because the last election under the 2023 Manual has occurred and the results have been canvassed. *See* Ariz. Sec'y of State, State of Arizona Official Canvass (2025). The court directed the Legislators to file a supplemental brief to address whether the court should consider the issue moot. The Legislators argue the issue is not moot because the Secretary still has a chance to reinsert the provision before the 2025 Manual is issued.

¶20 Generally, the court exercises judicial restraint and refrains from deciding moot questions. *See Kondaur Cap. Corp. v. Pinal Cnty.*, 235

Ariz. 189, 192–93 ¶ 8 (App. 2014). A question becomes moot when an intervening event causes the outcome to have no practical effect on the parties. *Arpaio v. Maricopa Cnty. Bd. of Supervisors*, 225 Ariz. 358, 361 ¶ 7 (App. 2010) (quoting *Sedona Priv. Prop. Owners Ass'n v. City of Sedona*, 192 Ariz. 126, 127 ¶ 5 (App. 1998)).

¶21 The court's application of the mootness doctrine is discretionary, and the court may address moot issues under certain circumstances. *See id.* at 362 ¶ 14. One such circumstance is if "a decision on the substantive issues could affect similar future legislative [or executive] acts." *Id.* (exercising discretion to hear moot issue). Another is if the issue presents a question of "great public importance" and is "capable of repetition while yet evading review." *See Kondaur Cap. Corp.*, 235 Ariz. at 193 ¶ 8 (quoting *Bank of N.Y. Mellon v. De Meo*, 227 Ariz. 192, 194 ¶ 8 (App. 2011)); *see also State ex rel. Corbin v. Ariz. Corp. Comm'n*, 174 Ariz. 216, 218 (App. 1992).

¶22 The challenged provision in the 2023 Manual and the language in the proposed 2025 manual are very different. The Legislators challenge the following canvass provision of the 2023 manual. It reads:

> If the official canvass of any county has not been received by this deadline, the Secretary of State must proceed with the state canvass without including the votes of the missing county (i.e., the Secretary of State is not permitted to use an unofficial vote count in lieu of the county's official canvass).

Ariz. Sec'y of State, 2023 Elections Procedures Manual 252 (2023).

¶23 The Secretary completely revised that provision in the proposed 2025 manual. The provision reads as follows:

> If a Board of Supervisors fails to meet its own statutory duty to canvass an election and transmit the official canvass by its own statutory deadline, the Secretary of State will use all available legal remedies to compel the Board to comply with Arizona law and protect voters' right to have their votes counted.

Ariz. Sec'y of State, 2025 Elections Procedures Manual 281 (2025).

¶24 The challenged language in the canvass provision will not appear in the 2025 Manual. And the Secretary's counsel has avowed "the Secretary has no reason to believe that this draft provision will change

substantively in the issued version." The Legislators have not argued the canvass provision in the draft 2025 manual raises the same or similar concerns. And if in the future the Secretary takes any action the Legislators believe is not an "available legal remedy," they can seek judicial review based on the Secretary's specific acts.

¶25 The court thus declines to address the canvass provision as moot.

III. The 2023 Manual's juror questionnaire and circulator registration provisions encroach on the legislature's lawmaking power, but the active early voting list provision does not.

¶26 The Legislators assert facial challenges to 3 other provisions in the 2023 Manual. The superior court ruled in the Legislators' favor on 2 (juror questionnaires and circulator registrations) and in the Secretary's favor on 1 (active early voting lists). To prevail in a facial challenge, the Legislators must show the challenged provision "cannot be constitutionally enforced under any set of circumstances." *Montenegro*, ___ Ariz. at ___ ¶ 16, 576 P.3d at 696.

¶27 The court reviews *de novo* questions of statutory interpretation. *Aroca v. Tang Inv. Co. LLC*, 259 Ariz. 302, 306 ¶ 12 (2025) (interpreting statutes). A statute's language guides the court's interpretation. *See Ariz. Advoc. Network Found. v. Stat*e, 250 Ariz. 109, 114 ¶ 19 (App. 2020). If the language is unambiguous, the court "must give effect to that language without employing other rules of statutory construction." *Parsons v. Ariz. Dep't of Health Servs.*, 242 Ariz. 320, 323 ¶ 11 (App. 2017). The court "give[s] terms their ordinary and commonly accepted meaning, unless the legislature has provided a specific definition." *JH2K I LLC v. Ariz. Dep't of Health Servs.*, 246 Ariz. 307, 310 ¶ 9 (App. 2019). "When the plain text of a statute is clear and unambiguous, it controls unless an absurdity or constitutional violation results." *McKenna v. Soto*, 250 Ariz. 469, 472 ¶ 12 (2021) (citation omitted).

A. Because the NVRA and Arizona's juror questionnaire statute do not conflict, the 2023 Manual's juror questionnaire provision must track Arizona law.

¶28 The Legislators ask the court to strike the 2023 Manual's juror questionnaire provision because it conflicts with A.R.S. § 16-165.A.9(b). The Legislators argue the Secretary misinterpreted the federal statute and federal cases interpreting it.

¶29 The Secretary argues A.R.S. § 16-165.A.9(b) conflicts with 52 U.S.C. § 20507(d)(1)(B)(i), a provision of the NVRA. The Secretary must maintain Arizona's voter registration list. A.R.S. § 16-168.J. Section 16-168.J then requires the Secretary to implement "provisions regarding removal of ineligible voters that are consistent with the [NVRA.]" For that reason, the Secretary argues the 2023 Manual harmonized federal and Arizona law governing voter registration list maintenance "to achieve and maintain the maximum degree of correctness. . . ." A.R.S. § 16-452.A. The Secretary thus argues he was "well within his statutory authority to recognize" the preemptive effect of a federal statute on an Arizona statute and to ensure the 2023 Manual did not conflict with federal law.

¶30 Arizona's statute directs a county recorder to take certain action when the county's jury commissioner or jury manager sends a notice to the county recorder "indicating that the person has stated that the person is not a resident of the county." A.R.S. § 16-165.A.9(b). The statute directs the county recorder as follows:

> Before the county recorder cancels a registration pursuant to this subdivision, the county recorder shall send the person notice by forwardable mail and a postage prepaid preaddressed return form requesting the person confirm by signing under penalty of perjury that the person is a resident of the county and is not knowingly registered to vote in another county or another state. The notice shall inform the person that failure to return the form within thirty-five days will result in the person's registration being canceled. If the person fails to return the notice within thirty-five days the county recorder shall cancel the person's registration.

Id. Once the county recorder cancels the voter's registration, the voter must re-register before the person can vote again. *See* A.R.S. § 16-121.01.A (defining requirements for registering to vote); *see also* A.R.S. § 16-152.A (identifying information voter must provide in the form to register).

¶31 Though A.R.S. § 16-165.A.9(b) directs the county recorder to cancel the voter's registration, the 2023 Manual requires the county recorder to put the voter on the inactive voter list. The 2023 Manual says jury commissioners and managers must send a summary report to the county recorder of those summoned jurors who tell the jury commissioner or manager they are not residents of the county. The county recorder then sends those jurors an "initial notice giving the person 35 days to explain the information provided on the jury questionnaire." If the person does not

respond within 35 days, the county recorder changes the person's voter registration to inactive rather than cancel it as A.R.S. § 16-165.A.9(b) directs. The county recorder does not cancel a person's registration unless the person does not confirm a residence in the county or does not vote in 2 election cycles. At any time during the next 2 election cycles, the county recorder will reinstate that person's registration if the person contacts the county recorder or appears at a polling place and asks to vote.

¶32 The Secretary argues the NVRA prohibits the State from canceling the person's registration under these circumstances. The NVRA includes a procedure for removing the name of a registrant when the registrant "confirms in writing" they have changed residences. *See* 52 U.S.C. § 20507(d)(1)(A).

> (1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--
>
> (A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or
>
> (B)(i) has failed to respond to a notice described in paragraph (2); and
>
> (ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

U.S.C. § 20507(d).

¶33 In deciding the federal and state statutes conflict, the Secretary relied on federal courts' interpretations of that federal statute. *See League of Women Voters of Ind., Inc. v. Sullivan*, 5 F.4th 714 (7th Cir. 2021); *see also Common Cause Ind. v. Lawson*, 937 F.3d 944 (7th Cir. 2019). Relying on the Seventh Circuit precedent, the Secretary takes the position A.R.S. § 16-195.A.9(b) violates the NVRA because "both as a matter of fact and as a matter of law, the summary report from the jury commissioner does not constitute written confirmation from the voter to the county recorder of change of residence sufficient to comply with the NVRA."

¶34 The Legislators argue the Seventh Circuit did not go that far. True, the Seventh Circuit concluded the NVRA preempts a similar Indiana statute. But ultimately, the Seventh Circuit ruled the NVRA does not require direct communication from the voter before cancelling a voter's registration. On that point, the Seventh Circuit addressed a misunderstanding created by its earlier *Lawson* opinion. *Sullivan* said:

> We see nothing in the NVRA that would prohibit the second method of passing along the voter's choice to Indiana. An authorization-of-cancellation form that a voter personally signs and that is then forwarded to Indiana from another state complies with section 20507(a)(3)(A) of the NVRA. When we stated in [*Lawson*] that the NVRA requires "direct" contact with a voter, we meant that a communication must be generated by the voter to qualify as a "request of the registrant"—not by a third party.

5 F.4th at 732 (emphasis in original).

¶35 *Sullivan* is correct. At bottom, the NVRA says Arizona cannot cancel a voter's registration based on a change in residence unless the voter "confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered . . . ." *See* 52 U.S.C. § 20507(d)(1)(A). The NVRA does not require the voter to provide the confirmation directly to the county recorder or any other election official. *See Sullivan*, 5 F.4th at 732.

¶36 Because the Seventh Circuit precedent does not conflict with A.R.S. § 16-165.A.9, the NVRA does not preempt that Arizona statute. Though the county recorder does not receive the information directly from the voter, the NVRA does not require it if the person "confirms in writing." Here, the county recorder sends the notice only when a person signs (under penalty of perjury) a written juror questionnaire saying the person no longer resides in the county. A.R.S. § 16-165.A.9(b). That notice satisfies the NVRA.

B. The superior court did not err when it ruled the removal notices for the active early voting lists (A.R.S. § 16-544.H.4) applied starting with the 2024 election cycle.

¶37 The 2023 Manual says the removal notice statute (A.R.S. § 16-544.H.4) applies starting with the 2024 election cycle, which began on January 1, 2023. The removal notice statute allows the State to remove a

voter when "[t]he voter fails to vote an early ballot in all elections for two consecutive election cycles." A.R.S. § 16-544.H.4.

¶38 An election cycle means:

> [T]he two-year period beginning on January 1 in the year after a statewide general election or, for cities and towns, the two-year period beginning on the first day of the calendar quarter after the calendar quarter in which the city's or town's second, runoff or general election is scheduled and ending on the last day of the calendar quarter in which the city's or town's immediately following second, runoff or general election is scheduled, however that election is designated by the city or town.

A.R.S. § 16-544.S.

It is silent, however, on whether the removal notice process applies to the already-in-progress 2022 election cycle or applies starting with the next complete election cycle. And the legislation contains no retroactivity clause.

¶39 The Legislators argue the removal notice statute applies to the 2022 election cycle, which started on January 1, 2021. For that reason, they argue the 2023 Manual unlawfully delays the effective date.

¶40 The Secretary argues the removal notice statute does not apply to the 2022 election cycle because that cycle began before the removal notice statute's September 21, 2021 effective date. For that reason, the Secretary concluded the removal statute applies to the next complete election cycles after the statute's effective date. The 2023 Manual thus has the removal notice statute process start with the 2024 election cycle. The 2024 election cycle started on January 1, 2023. The superior court agreed with the Secretary. We thus affirm.

1. Unless the legislature expressly makes a law retroactive, the court presumes it applies prospectively.

¶41 Arizona has long presumed "a statute applies only prospectively from the effective date of the statute." *Krol v. Indus. Comm'n of Ariz.*, 259 Ariz. 261, 267 ¶ 22 (2025). As the Arizona Supreme Court recently explained in *Krol*, the presumption arises out of "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Id.* at

267–68 ¶ 23 (citation omitted). Under that principle, "the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place[.]" *Krol*, 259 Ariz. at 268 ¶ 23 (citation omitted). As *Krol* explained, "[R]etroactive statutes raise particular concerns with respect to the legislature's ability to sweep away settled expectations suddenly and without individualized consideration." *Id.* at 268 ¶ 24 (internal quotations deleted). To that point, "[t]he legislature has specifically directed that 'no statute is retroactive unless expressly declared therein.'" *Id.* at 268 ¶ 25 (quoting A.R.S. § 1-244). For that reason, the court applies the presumption against retroactivity unless "the legislature expressly declares that a statute is retroactive . . . ." *Id.* at 268 ¶ 25.

¶42 On retroactivity, the court more recently said:

> A statute applies retroactively when it attaches new legal consequences to events completed before the effective date of the statute. But a statute is not necessarily retroactive because it relates to antecedent facts. A substantive statute may not be applied retroactively absent an express directive by the legislature. But a procedural statute has no such restriction if it does not affect an earlier established substantive right.

State v. Danner, 2 CA-CR 2025-0126-PR, 2025 WL 2970551, at *2 ¶ 10 (App. Oct. 22, 2025) (cleaned up).

¶43 As the Arizona Supreme Court noted in *Krol*, "The legislature knows how to provide for the retroactivity of measures that it enacts. In fact, the legislature included several express retroactivity provisions in acts passed during the 2021 legislative session." *Krol*, 259 Ariz. 261, 268 ¶ 26 (listing legislation from that session in which the legislature included a retroactivity clause). The statute in *Krol*, like the statute here, was enacted during the same 2021 legislative session. And like the statute here, the statute in *Krol* did not contain a retroactivity clause. And the Arizona Supreme Court in *Krol* concluded the statute did not apply retroactively. *Id.* at 276 ¶ 61.

2. The legislature neither expressly made A.R.S. § 16-544.D retroactive nor expressly said it would apply to the 2022 election cycle.

¶44 The active early voter list is "a list of voters to receive an early ballot by mail for any election for which the county voter registration roll is used to prepare the election register." A.R.S. § 16-544.A. County recorders maintain the active early voting lists. *Id.* Once on an active early voting list,

voters remain on it until at least 1 of 4 enumerated removal events occur. A.R.S. § 16-544.H.1–H.4. The removal event here applies when "[t]he voter fails to vote an early ballot in all elections for two consecutive election cycles." A.R.S. § 16-544.H.4. An election cycle is defined as "the two-year period beginning on January 1 in the year after a statewide general election" or as otherwise provided "for cities and towns." A.R.S. § 16-544.S.

¶45 For voters who fail "to vote an early ballot in all elections for two consecutive election cycles," the county recorder must send them notices asking them whether they would like to remain on the active early voting list. A.R.S. § 16-544.L. The county recorder must send those removal notices by January 15 of every odd-numbered year. *Id.* For all voters who do not respond to the notices within 90 days, the county recorder must remove them from the active early voting list. A.R.S. § 16-544.M. The Legislators argue the voters may re-enroll in the active early voting list. *See* A.R.S. § 16-544.A, C. But the voters would need to re-enroll early enough to have it take effect for the next election, which means before early voting begins. *See* A.R.S. § 16-544.F.

¶46 Consistent with the Secretary's position, the disputed 2023 Manual provision addresses the issue as follows:

> Because the 2022 election cycle began before S.B. 1485 (2022) took effect and S.B. 1485 does not apply retroactively, the first two full election cycles after S.B. 1485's effective date are the 2024 and 2026 election cycles. Therefore, the first [active early voting list] removal notices must be sent out by January 15, 2027 to [active early voting list] voters who vote by early ballot in zero eligible elections in the 2024 and 2026 election cycles.

Ariz. Sec'y of State, 2023 Elections Procedures Manual 261 (2023).

¶47 The Legislators argue the only way to give the law's plain language full effect is for the removal notice apply to any failure to vote in the 2022 and 2024 election cycles, even if those cycles began before the statute's effective date. The Secretary argues the plain language precludes that application because the statute became effective after the 2022 election cycle had begun and the legislation neither said it applied retroactively nor said it would apply to then-ongoing 2022 election cycle.

¶48 The Legislators concede A.R.S. § 16-544.H.4 legislation contained no retroactivity clause. And it did not say it would apply to the 2022 election cycle. Even so, they would have the statute apply to voters

who failed to vote in elections before the statute's effective date. True, the first federal election in the 2022 cycle occurred in August 2022, after the statute's effective date. But the statute defines election cycle to a "city or town candidate primary or first election . . . ." A.R.S. § 16-544.K.2(a)–(b). Some of those elections occurred in March, May, and August 2021—before the statute's effective date. Under the Legislators' interpretation, the statute would apply retroactively to any failure to vote in those "city or town candidate primary or first election." The Secretary's interpretation does not create the same retroactivity concern.

¶49 As with the statute at issue in *Krol*, the legislature applied no retroactivity clause to A.R.S. § 16-544.H.4. If the court were to adopt the Legislator's proposed interpretation, it would have the statute apply retroactively to voters' actions before the effective date of the statute. Based on *Krol* and other Arizona precedents, the court affirms the superior court's ruling because the statute does not apply to the 2022 election cycle.

C. The superior court did not err when it concluded the 2023 Manual's circulator registration provision did not track Arizona law.

¶50 The Legislators argue footnote 58 in the 2023 Manual, which relates to circulator registrations, conflicts with A.R.S. § 19-118.A and -118.B because circulators must strictly comply with those registration requirements under A.R.S. § 19-102.01.A. The Secretary argues footnote 58 tracks Arizona law because it does not change the circulator's obligations or suggest the Secretary—not the courts—will determine strict compliance.

¶51 Under A.R.S. § 19-118.B, the circulators are subject to registration and what they must include in the registration. Subsection B says the registration must include:

> 1. The circulator's full name, residence address, telephone number and email address.
>
> 2. The initiative or referendum petition on which the circulator will gather signatures.
>
> 3. A statement that the circulator consents to the jurisdiction of the courts of this state in resolving any disputes concerning the circulation of petitions by that circulator.
>
> 4. The address of the committee in this state for which the circulator is gathering signatures and at which the circulator

> will accept service of process related to disputes concerning circulation of that circulator's petitions. Service of process is effected under this section by delivering a copy of the subpoena to that person individually, by leaving a copy of the subpoena with a person of suitable age or by mailing a copy of the subpoena to the committee by certified mail to the address provided.
>
> 5. An affidavit from the registered circulator that is signed by the circulator before a notary public and that includes the following declaration:
>
> I, (print name) , under penalty of a class 1 misdemeanor, acknowledge that I am eligible to register as a circulator in the state of Arizona, that all of the information provided is correct to the best of my knowledge and that I have read and understand Arizona election laws applicable to the collection of signatures for a statewide initiative or referendum.

When registering, circulators "must strictly comply with those constitutional and statutory requirements." A.R.S. § 19-102.01.A.

¶52 As for the registration statute, at page 119, the 2023 Manual says:

> The Secretary of State's Office has no obligation to review the substance of circulator registrations to ensure that accurate or proper information has been provided. The circulator remains solely responsible for compliance with all legal provisions.

¶53 The Legislators do not challenge that language. Instead, they challenge the associated footnote 58:

> The requirement to list certain information on the circulator portal does not mean that a circulator's signatures shall be disqualified if the circulator makes a mistake or inconsistency in listing that information (e.g., a phone number or email address that is entered incorrectly; a residential address that doesn't match the residential address listed on that circulator's petition sheets; etc.).

¶54 The Secretary argues footnote 58 merely emphasizes the Secretary is undertaking no new obligations and the circulators' existing

obligations remain unchanged. The Legislators argue by adopting footnote 58, the Secretary is declaring certain mistakes or inconsistencies in circulator registrations do not conflict with the strict compliance requirement. The Legislators are correct.

¶55 Even in context, the footnote says failure to comply with the "requirement to list certain information . . . does not mean that a circulator's signatures shall be disqualified . . . ." The footnote then identifies specific items that will not result in disqualification, including "a mistake or inconsistency in listing that information (e.g., a phone number or email address that is entered incorrectly; a residential address that doesn't match the residential address listed on that circulator's petition sheets; etc.)." The Secretary's list in that footnote has the force of law, meaning those enumerated items would not result in disqualification. *See Ariz. Pub. Integrity All.*, 250 Ariz. at 63 ¶ 16. The superior court thus did not err.

ATTORNEY FEES AND COSTS

¶56 The Legislators request attorney fees and costs under A.R.S. §§ 12-341, -348, -348.01, -1840, and -2030. They also request attorney fees and costs under the private attorney general doctrine. *See Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 609 (1989). The Secretary requests attorney fees and costs under A.R.S. §§ 12-341 and -348.01. Because neither the Legislators nor the Secretary prevailed, the court exercises its discretion and denies those requests.

CONCLUSION

¶57 The court thus affirms the superior court's finding the Legislators suffered an institutional injury sufficient to confer standing. The Legislators' challenge to the 2023 Manual's county canvass provision is moot. The court affirms the superior court's order to enjoin the 2023 Manual's juror questionnaire provision and the circulator registration provision. The court also affirms the superior court's order denying the Legislators requested relief for the 2023 Manual's challenged active early voting list provision.

MATTHEW J. MARTIN • Clerk of the Court
FILED: JR

EXHIBIT 4

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 01/06/2026
MATTHEW J. MARTIN, CLERK
BY: MEW

WARREN PETERSEN, et al.,	)	Court of Appeals
	)	Division One
Plaintiffs/Appellees/	)	No. 1 CA-CV 25-0219 A
Cross-Appellants,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CV2024-001942
ADRIAN FONTES,	)	
	)	
Defendant/Appellant/	)	
Cross-Appellee.	)	
	)	

ORDER GRANTING MOTION FOR PARTIAL RECONSIDERATION, VACATING MEMORANDUM DECISION ISSUED NOVEMBER 24, 2025 AND ISSUING NEW MEMORADUM DECISION

The court reviewed Appellant's motion for partial reconsideration and Appellees' response.

IT IS ORDERED granting the motion for partial reconsideration.

IT FURTHER IS ORDERED the memorandum decision issued in this matter on November 24, 2025 is vacated and replaced by the memorandum decision issued this date.

/s/
DAVID B. GASS, PRESIDING JUDGE

A copy of the foregoing
was sent to:

Kory A Langhofer
Thomas J Basile
Joseph A Kanefield
Tracy Olson
Karen J Hartman-Tellez
Kara Karlson
Kyle R Cummings
Kristin K Mayes
D Andrew Gaona
Austin C Yost
Jonathan Hawley
Daniel Cohen
Lalitha D Madduri
Roy Herrera
Daniel A Arellano
Jillian Andrews
Austin T Marshall
Alexis E Danneman
Margo R. Casselman
Jared G Keenan
Patricia Yan
James E Barton II
Brent Ferguson
Jonathan Diaz
Rachel Appel
Daniel D Maynard
Douglas C Erickson
Benjamin Berwick
Janine M Lopez
Graham Provost
Hon Scott A Blaney

EXHIBIT 5

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 01/08/2026
MATTHEW J. MARTIN, CLERK
BY: MEW

WARREN PETERSEN, et al.,	)	Court of Appeals
	)	Division One
Plaintiffs/Appellees/	)	No. 1 CA-CV 25-0219 A
Cross-Appellants,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CV2024-001942
ADRIAN FONTES,	)	
	)	
Defendant/Appellant/	)	
Cross-Appellee.	)	
	)	

ORDER RE: INTERLINEATION

The court, Presiding Judge David B. Gass, Judge Michael J. Brown, and Judge Andrew J. Becke, on its own,

IT IS ORDERED directing the Clerk of this court to amend, by interlineation, the Memorandum Decision filed January 6, 2026, page 3, strike paragraph 8. Insert a new paragraph 8 as follows:

> ¶ 8 The superior court agreed with the Secretary on the fifth challenged provision–the active early voting list provision–and ruled the provision did not directly conflict with any constitutional or statutory provision and was within the Secretary's statutory authority. The Legislators cross-appeal that ruling.

IT IS FURTHER ORDERED that a copy of this order be sent to each party appearing herein or to the attorney for such party, and to the Honorable Scott A. Blaney.

/s/
David B. Gass, Presiding Judge

A copy of the foregoing
was sent to:

Kory A Langhofer
Thomas J Basile
Joseph A Kanefield
Tracy Olson
Karen J Hartman-Tellez
Kara Karlson
Kyle R Cummings
Kristin K Mayes
D Andrew Gaona
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Brent Ferguson
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Douglas C Erickson
Benjamin Berwick
Janine M Lopez
Graham Provost
Hon Scott A Blaney

EXHIBIT 6

ARIZONA COURT OF APPEALS

DIVISION ONE

WARREN PETERSEN, in his official capacity as the President of the Arizona State Senate; and STEVE MONTENEGRO, in his official capacity as the 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. 1 CA-CV 25-0219 Maricopa County Superior Court No. CV2024-001942

SECRETARY OF STATE'S RESPONSE IN OPPOSITION TO MOTION TO ACCELERATE APPEAL AND EXPEDITE BRIEFING SCHEDULE

OFFICE OF THE ARIZONA ATTORNEY GENERAL (Firm No. 1400)
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Attorneys for Arizona Secretary of State Adrian Fontes

This Court should deny the Motion to Accelerate Appeal and Expedite Briefing Schedule (the "Motion") filed by Plaintiffs Petersen and Montenegro on behalf of the Arizona Legislature because expedited briefing is not necessary, and hasty briefing will be less helpful to this Court in reaching a decision. As noted in the Motion, the Secretary does not object to this Court designating this appeal as "accelerated" under ARCAP 29(d) once briefing is completed and the case is at issue. (*See* Mot. at 1).[1] However, Plaintiffs have not established the good cause necessary to severely truncate the briefing schedule for this appeal and briefing should follow the standard deadlines. *See* ARCAP 3(a); 1 Ariz. App. Handbook 2.0, § 5.3.B (2020) ("Absent a statutory preference, motions to expedite under ARCAP 3 are rarely granted.").

Plaintiffs requested to sharply limit the parties' time to provide thoughtful briefing to this Court based on their purported interest in having this appeal resolved before the date on which the Secretary plans to distribute a draft of the 2025 Elections Procedures Manual (the "EPM") for

[1] Because the Motion's pages are not numbered, citations to specific pages are based on the PDF document's numbering.

public comment. (Mot. at 4). But Plaintiffs' desire for a speedy resolution does not establish good cause for several reasons. First, even if this matter is not resolved before the public comment period, that does not preclude changes to the 2025 EPM that ensure compliance with this Court's final order. Second, the legal arguments concerning the EPM provisions at issue in this appeal can be offered during public comment period. Indeed, as the Secretary did in the 2023 EPM, the pendency of this litigation can be noted in the draft of the EPM that is circulated for public comment. Third, this Court's decision in this case is unlikely to be the end of appellate proceedings in this case. Even if this Court rushes to decide the matter by Plaintiffs' desired deadline, if either party seeks further review, that decision will not go into effect for approximately two months (at the earliest) beyond Plaintiffs' proposed June 30 deadline. *See* ARCAP 24(b).

In addition, Plaintiffs' asserted need for speed did not seem to drive their conduct in the proceedings below. In the superior court, after agreeing to consolidate Plaintiffs' Motion for Preliminary Injunction with the merits, the parties argued the case to the superior court on May 23, 2024, but the court did not enter judgment until March 4, 2025. While Plaintiffs are not

wholly responsible for the trial court's schedule, they sought additional time for supplemental briefing below, and did not request that the superior court expedite the matter at any time after the original schedule was established. Finally, the Secretary's counsel's schedules and other litigation obligations make Plaintiffs' proposed schedule virtually impossible for the Secretary to meet with existing resources. As explained more fully below, Plaintiffs have not established good cause for an expedited briefing schedule that will cause this Court and the parties to "steamroll through delicate legal issues in order to meet" Plaintiffs' purported deadline. *Lubin v. Thomas*, 213 Ariz. 496, 497, ¶ 10 (2006) (cleaned up).

I. Drafting the 2025 EPM Does Not Require Accelerated Briefing.

Plaintiffs argue accelerated briefing is necessary because "it will enable an informed dialogue" during the EPM public comment period, "and help ensure that the 2025 EPM does not carry forward invalid provisions." (Mot. at 5). However, neither point establishes "good cause" to expedite briefing. ARCAP 3(a).

First, even if the public comment period in August 2025 comes and goes before resolution of this appeal, that is not the last chance the Secretary

has to revise the draft EPM. After the public comment period, the Secretary has until October 1, 2025 to incorporate such comments before sending the draft EPM to the Attorney General and Governor for their review and approval. A.R.S. § 16-452(B). After the Secretary has submitted the draft EPM to the Governor and Attorney General, those officials have an additional ninety-one days to review and, if appropriate, revise it before the December 31, 2025 statutory deadline to issue it. *Id*. If this appeal follows the previously ordered briefing schedule, then briefing would be complete by the beginning of September 2025. That would give this Court roughly four months to decide the matter before the statutory deadline to issue the EPM. There is simply no need for expedited briefing to ensure that the 2025 EPM does not contain invalid provisions.

Second, Plaintiffs do not explain how a decision in this case before the public comment period would "enable an informed dialogue" that otherwise would not occur. (Mot. at 5). At base, this matter is about whether specific EPM provisions are valid and enforceable. Those who wish to offer comments—Plaintiffs included—will be able to provide "informed dialogue" on any EPM provision. Indeed, the Secretary has scheduled a

public comment period that is twice as long (30 days) than was provided for the 2023 EPM. Commenters may agree or disagree with Plaintiffs' position on these EPM provisions. But ultimately, it is this Court's (and potentially the Supreme Court's) decision that will determine whether the challenged EPM provisions are consistent with Arizona law.

Third, Plaintiffs' desire to prevent inclusion of any purportedly "invalid" provision in the EPM supports briefing in the normal course, not accelerating briefing to get a decision sooner. If this Court decides that an EPM provision exceeds the Secretary's statutory authority or conflicts with Arizona law—even after the final EPM is issued for that cycle—that provision does not carry the force of law. *See McKenna v. Soto*, 250 Ariz. 469, 473, ¶ 21 (2021). Moreover, recognizing that ongoing litigation can affect the enforceability of EPM provisions, in 2023 the Secretary included footnotes noting that possibility so that the election officials to whom the EPM is directed were on notice of potential changes to the law.[2]

[2] *See, e.g.,* 2023 EPM, at 12 & n. 8-9 (noting that statutes governing certain voter registration procedures were subject to ongoing litigation and incorporating September 14, 2023 court order). The 2023 EPM is available on the Secretary's website at:

Fourth, Plaintiffs' argument that there must be a final decision from this Court before the beginning of the public comment period ignores the fact of possible review by the Arizona Supreme Court. In other words, even if this Court rules by June 30, 2025, that may not be the final word. As Plaintiffs note, the EPM provisions at issue involve matters of statewide importance. (*See* Mot. at 2). Accordingly, it is reasonable to assume that the party who does not prevail in this Court may seek and obtain Supreme Court review. This would extend appellate proceedings well beyond June 30, 2025. *See* ARCAP 24(b) (setting dates for issuance of the mandate); *Borrow v. El Dorado Lodge, Inc*., 75 Ariz. 218, 220 (1953) (recognizing that an appellate decision is not effective until the mandate issues).

Finally, allowing the appellate process and the drafting of the 2025 EPM to proceed on their regular, established schedules could help narrow the issues in this appeal. There are four EPM provisions at issue in this appeal. If the Secretary decides to change any of those four provisions while drafting the 2025 EPM, the parties could decide that there is no need to seek

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https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf.

this court's intervention with respect to those provisions. But if this matter is fully briefed before the first draft of the 2025 EPM is completed, that potential efficiency will be lost.

In short, the breakneck pace that Plaintiffs seek is unnecessary, unhelpful, and cuts against the interests of justice. *See Mathieu v. Mahoney*, 174 Ariz. 456, 460 ("The ultimate prejudice in election cases is to the quality of decision making in questions of great public importance."). This Court should deny Plaintiffs' request to expedite the briefing and decision making on matters of statewide importance when there is no need to do so.

II. Plaintiffs' challenge concerning the AEVL effective date will not be mooted by the established briefing schedule.

Plaintiffs further argue that "expedited review is needed to avoid last minute shifts in election law," to "provide 'clear guidance' to local elections officials," and to "prevent voter confusion as the 2026 election cycle swiftly approaches." (Mot. at 5). In particular, Plaintiffs stress that A.R.S. § 16-544(L)'s notice requirement "will become difficult if not impossible to implement" as the 2026 election draws closer. (*Id*.). Plaintiffs attempt to manufacture an emergency where there is none, as "last minute shifts" in

the status quo can be avoided under the existing briefing schedule, because clear guidance can be issued early enough to instruct election officials.

Under the existing briefing schedule in this case, the parties' briefing will be complete by August 31, 2025. The next statewide election, the 2026 Primary, occurs on August 4, 2026. A.R.S. § 16-206(A). And early voting for that election begins on July 8, 2026. A.R.S. § 16-542(C). Election officials must mail AEVL voters a notice containing specific information about their mail ballot by April 9, 2026 for the August 2026 Primary Election. A.R.S. § 16-544(D) (AEVL notices to be mailed "[n]ot less than ninety days before any polling place election scheduled in March or August").[3]

These timelines demonstrate that there is more than ample time for briefing to proceed at the standard pace and for this Court to rule without the "confusion and chaos that would be engendered by a late-stage alteration to the status quo of Arizona's election rules." Mot. at 6 (citation and quotation omitted). Completing briefing by August 31, 2025 would not preclude implementation of A.R.S. § 16-544(L) in time to remove voters from

[3] Elections held in March are jurisdictional elections, which can be held as all-mail elections that do not use AEVL. *See* A.R.S. § 16-409.

AEVL before the March or May 2026 jurisdictional elections or the August 2026 Primary.

III. Plaintiffs have not expeditiously advanced this case.

"[L]itigants and lawyers in election cases must be keenly aware of the need to bring such cases with all deliberate speed" *Sotomayor v. Burns*, 199 Ariz. 81, 83, ¶ 9 (2000) (cleaned up). But throughout this case, Plaintiffs have not acted with the urgency that they now claim requires expedited briefing.

Plaintiffs filed this action on January 31, 2024. (IR 1). The trial court held oral argument on May 23, 2024 and took Plaintiffs' Motion for Preliminary Injunction and the Secretary's Motion to Dismiss under advisement. (IR 81, at 3). While those motions were under advisement, this Court issued an opinion in *Toma v. Fontes*, 553 P.3d 881 (Ariz. App. 2024), review granted (Jan. 7, 2025). The Secretary filed a Notice of Supplemental Authority to notify the superior court of the decision, after which Plaintiffs sought an additional month to provide supplemental briefing regarding *Toma*'s bearing on the standing issues in this case. (IR 82, 84). After the superior court held a status conference on September 30, 2024, Plaintiffs again requested leave to submit additional supplemental authorities by

October 15, 2024. (IR 108, at 2-3). After the superior court issued its Ruling on December 19, 2024, Plaintiffs waited the full time provided by the Court's order—until January 10, 2025—to submit a form of judgment. (IR 122). In short, at no time after the superior court issued its initial scheduling order in this case did Plaintiffs seek to expedite its resolution until now. Having not acted with urgency in the superior court, Plaintiffs' demand that this Court and the Secretary adhere to an expedited schedule for this appeal is unwarranted.

IV. The Secretary cannot meet Plaintiffs' proposed briefing schedule.

Under the briefing schedule established pursuant to ARCAP 15 at the time the Secretary filed this appeal, the Opening Brief is due on May 19, 2025. Plaintiffs are now asking to cut nearly five weeks off the Secretary's time to complete that brief. (Mot. at 6-7 (asking that the Opening Brief deadline be moved to April 18, 2025)). But the Secretary's counsel's litigation and travel schedule makes meeting such a deadline nearly impossible.

In particular, the Secretary's lead counsel in this action will be on leave from April 9 through April 15, 2025 and will be out of the country during much of that time. (*See* Declaration of K. Hartman-Tellez, ¶ 2, attached

hereto). That would give only three days after returning to the U.S. to complete the Opening Brief. In addition, the Secretary's counsel has other litigation deadlines in matters related to the EPM that negate their ability to meet Plaintiffs' extremely expedited briefing schedule, including:

- A petition for review to the Arizona Supreme Court in *Republican Nat'l Comm. v. Fontes*, No. 2 CA-CV 24-0241, due April 7, 2025;
- A reply brief in *American Encore v. Fontes*, No. 24-6703 (9th Cir.), due April 18, 2025;
- Responses to written discovery, potential depositions, and dispositive motions in *Arizona Free Enterprise Club v. Fontes*, No. CV2024-002760 (Ariz. Super. Ct. Maricopa Cnty.). Discovery closes on April 18, 2025 and dispositive motions are due by May 19, 2025; and
- A reply in the superior court in support of the Secretary of State's Motion for Stay Pending this Appeal, which is due April 14, 2025.

(Hartman-Tellez Decl. ¶ 3). The Secretary's counsel have managed the deadlines in this case around counsel's schedules in this and other matters.

The highly expedited briefing schedule Plaintiffs request here will harm the Secretary and the quality of the advocacy provided to this Court.

CONCLUSION

Resolution of the important issues in this case, which impact election officials and voters throughout the state, deserves thorough briefing, with adequate time for the Secretary to present argument to the Court. As Arizona appellate courts have repeatedly recognized, the quality of decision-making is harmed when the parties and the Court are rushed:

> Last-minute election challenges prejudice not only defendants but the entire system. They deprive judges of the ability to fairly and reasonably process and consider the issues. They unreasonably telescope the process and rush appellate review, leaving little time for reflection and wise decision making.

Mathieu v. Mahoney, 174 Ariz. 456, 461 (1993). While such accelerated consideration is often unavoidable in election matters, this is not such a case. Because Plaintiffs have not established good cause for the extraordinary relief they seek, this Court should deny Plaintiffs' Motion to the extent it seeks expedited briefing.[4]

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[4] While the Secretary does not object to this Court accelerating its consideration of this appeal under ARCAP 29, the Secretary does not believe such accelerated consideration is necessary for the reasons stated above.

RESPECTFULLY SUBMITTED this 7th day of April, 2025.

Kristin K. Mayes
Attorney General

/s/ Karen J. Hartman-Tellez
Karen J. Hartman-Tellez
Kara Karlson
Senior Litigation Counsel
Kyle Cummings
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Attorneys for Arizona
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