Kory Langhofer (#024722)
Thomas Basile (#031150)
STATECRAFT PLLC
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
Telephone: (602) 382-4078
kory@statecraftlaw.com
tom@statecraftlaw.com

Joseph Kanefield (#015838)
Tracy A. Olson (#034616)
SNELL & WILMER L.L.P.
One East Washington Street
Suite 2700
Phoenix, Arizona 85004
Telephone: (602) 382-6000
jkanefield@swlaw.com
tolson@swlaw.com

Attorneys for Arizona State Senate President Petersen and Speaker of the Arizona House of Representatives Steve Montenegro

IN THE SUPREME COURT
STATE OF ARIZONA

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

Plaintiffs/Appellees/
Cross-Appellants,

v.

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

Defendant/Appellant/
Cross-Appellee.

No. CV-26-0023-PR

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

Maricopa County Superior Court
No. CV2024-001942

REPLY IN SUPPORT OF MOTION TO EXPEDITE BRIEFING SCHEDULE IN ACCELERATED APPEAL

(Motion for Procedural Order)

The Secretary does not object to this Court giving priority to the Petition for Review in this accelerated appeal, but objects to an expedited briefing schedule to avoid "hasty" briefing and scheduling issues.

This appeal presents pure legal issues that were already briefed and argued before the superior court and court of appeals. Moreover, because the challenge to the Statewide Canvass Provision is moot and the Secretary does not intend to petition this Court for review of the challenges to the Circulator Registration Provision or the Jury Questionnaire Provision, the issues have been substantially narrowed. Because the parties are well-equipped to efficiently explain the remaining legal issues, an expedited briefing schedule fortunately is not an obstacle to thoughtful briefing.

Despite this backdrop, and the nature of the election law questions of statewide importance that are presented to the Court, the Secretary advances four arguments to explain why the briefing schedule should not be accelerated:

1. It is already too late to implement the AEVL Implementation Provision;
2. There is no rush to hear the appeal on the County Canvass Provision;
3. The Legislative Leaders allegedly "have not expeditiously advanced this case"; and
4. The Secretary's counsel cannot meet the proposed deadlines.

None of these arguments are persuasive grounds to deny the Motion.

ARGUMENT

I. Good Cause Exists to Accelerate Briefing.

Good cause exists to expedite briefing because this Court's decision is needed to avoid mooting the Legislative Leaders' challenge to the AEVL Implementation Provision and to provide clarity prior to the 2026 elections. *See* ARCAP 3(a).

A. Review of the AEVL Implementation Provision will be Moot if the Court Does Not Expedite Timelines.

When the Secretary opposed the Legislative Leaders' Motion to Expedite before the court of appeals, he stated that AEVL notices under A.R.S. § 16-544(D) must be mailed out by April 9, 2026, and that this "timeline[] demonstrate[s] that there is more than ample time for briefing to proceed" without "confusion" and without "preclud[ing] implementation of A.R.S. § 16-544(L) in time to remove voters from the AEVL before the March or May 2026 jurisdictional elections or the August 2026 primary." Mot. to Exp. Ex. 6 at 8–9. In an about face, Secretary now argues (at 2–6) that "it is already too late for a ruling from this Court" on the AEVL Implementation Provision "to impact the 2026 Primary and General Election." The Secretary further argues that these AEVL notices will not be mailed until May 6, 2026, but even so, implementing the notices required under A.R.S. § 16-544(L) will "needlessly cause voter confusion."

None of the Secretary's new arguments hold merit.

First, all A.R.S. § 16-544(L) substantively requires is that voters are given ninety days to respond before they are removed from the AEVL list. A.R.S. § 16-544(L), (M). A voter's status on the AEVL list will impact whether the voter receives an early ballot. According to the Secretary's election calendar, early ballots are mailed on July 8, 2026. Therefore, to provide voters with the 90-day period to respond to AEVL notices required by A.R.S. § 16-544(L), notices must be sent out at least 90 days prior to the early ballot mailing date. Thus, these notices can be mailed as late as April 9, 2026—90 days prior to July 8, 2026.

Second, and without any support, the Secretary argues (at 4–6) that the county recorders cannot practically send the AEVL notices on this timeline. While it is true that the notices referenced in the AEVL Implementation Provision should have been mailed out by county recorders by January 15, 2025, that does not mean that it is impossible for county recorders to send those notices out prior to the 2026 Primary or General elections, even if expedited briefing makes that timeline more difficult than if the Secretary had followed the law in the first place. The Secretary has provided zero evidence from any county recorder that this timeline would be impossible or infeasible.

The Pinal County Recorder has provided a declaration that the implementation of a decision for this Court would be difficult, but possible. *See* Ex. A. The county recorders will need at least four weeks, likely six weeks, to implement

the notice required by A.R.S. § 16-544(L). *Id.* For these reasons, this Court must issue a decision between **February 26, 2026 and March 12, 2026**, in order to give the AEVL Implementation Provision effect for the 2026 Primary election.

Although this timeline is earlier than what the Legislative Leaders anticipated based on statutory text, the short timeline is not unprecedented, especially in an election setting. *See* Order, *Richer v. Fontes*, No. CV-24-0221-SA (Ariz. Supreme Ct., Sept. 17, 2024)[1] (ordering briefing on September 17, 2024 original special action regarding election procedures to conclude within three days); Decision Order, *Richer v. Fontes*, No. CV-24-0221-SA (Ariz. Supreme Ct., Sept. 20, 2024)[2] (issuing decision order in same case on September 20, 2024, four days after filing of special action).

Simply, logistical challenges do not excuse compliance with the law. *Cf. Smith v. Fontes*, 573 P.3d 93, 95–96 (2025) (noting that a "ballot-printing deadline, by itself" did not extinguish a party's "right to challenge the eligibility of the Initiative"—signaling need to adjudicate election laws on the merits despite planned election timeline and logistics). And historically, county recorders have been able to timely implement directives from this Court, even where concerns about their ability

[1] Available at https://www.azcourts.gov/Portals/0/201/2024_09_17_05270419-0-0000-Order.PDF
[2] Available at https://www.azcourts.gov/Portals/0/201/ASC-CV240221%20-%209-20-2024%20-%20FILED%20-%20DECISION%20ORDER.pdf

to do so have been raised. *See Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 65 ¶¶ 28–30 (2020).

Even if it were impossible to give effect to the AEVL Implementation Provision prior to the 2026 Primary election, the Secretary effectively concedes that it is possible to send the AEVL notices by July 8, 2026, and complete the removal process before the early ballots are mailed for the 2026 General election on October 7, 2026. To give proper legal effect to A.R.S. § 16-544(L) in the 2026 General election, the Court would need to decide its case prior to **May 27, 2026**.

Third, the Secretary argues that there will be an irreconcilable conflict between the 90-day notice period for AEVL voters set forth in A.R.S. § 16-544(D), and the 90-day AEVL notice period set forth in 16-544(L)(2), (M), and that this conflict will confuse voters. For one, the Secretary's pure speculation over voter confusion is not enough to excuse compliance with a duly enacted law. *Cf. Soltysik v. Padilla*, 910 F.3d 438, 448 (9th Cir. 2018) (holding in voting rights context that court "disagree[d] with the notion that a state is categorically 'not required to make an evidentiary showing of its interest'" and that a "speculative concern of voter confusion" is generally insufficient); *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 455 (2008) (noting the court had "no evidentiary record to assess th[e] assertions that voters will be confused" by potential changes to ballot).

Regardless, this putative "conflict" is overstated and can be easily addressed by the Court by either deciding this issue early enough to meet both deadlines or simply requiring that a sentence be included in the 90-day notice sent to AEVL voters per A.R.S. § 16-544(D), that informs the AEVL voter that they will not receive a primary or general election early ballot if they received the separate AEVL notice at issue here and do not respond by the deadline contained in that notice. *Cf. Wash. State Grange*, 552 U.S. at 456 (examining "whether the ballot could conceivably be printed in such a way as to eliminate the possibility of widespread voter confusion").[3]

B. The County Canvass Provision Should Be Adjudicated Prior to the Upcoming 2026 Elections.

The Legislative Leaders believe resolution of the County Canvass Provision before **August 4, 2026**, the date of the 2026 Primary election is most appropriate. However, the Legislative Leaders do not oppose the Secretary's proposed timeline of determining the County Canvass Provision issue by August 10, 2026.

[3] The Secretary has included similar notations in, or revisions to, official election publications to inform voters of intervening court decisions or other ad hoc developments. *E.g.*, Ariz. Sec'y of State, *Arizona 2022 General Election Publicity Pamphlet* at 134 (explaining that ballot initiative that had been included in print edition of the publicity pamphlet that was mailed to voters had subsequently been removed from the ballot), available at https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf.

II. The Legislative Leaders Have Advanced This Case with Expediency.

Contrary to the Secretary's view of this litigation, the Legislative Leaders have consistently advanced this case in an efficient and expeditious manner.

On December 30, 2023, the Secretary published a 385-page EPM. EIR 1 at 6. Notably, this version contained 117 new pages. *Id.* By January 31, the Legislative Leaders analyzed all 385 pages (including the 117 new pages published for the first time on December 30) and filed a targeted, six-count complaint. EIR 1. The Legislative Leaders, as a professional courtesy, stipulated to two extensions of time for the Secretary to respond to the complaint and motion for preliminary injunction. EIRs 18, 31. After the Secretary filed his Motion to Dismiss and response to the Motion for Preliminary injunction on March 4, 2024, EIRs 39–40, the court held a hearing on March 5, 2024, EIR 45. At this hearing, the parties agreed that the case involved primarily (if not exclusively) issues of law that did not require factual development and agreed to consolidate the evidentiary hearing on the motion for preliminary injunction with a trial on the merits. EIRs 45–46. The court held the evidentiary hearing/trial on May 23, 2024, and took the matter under advisement. EIR 81.

While the parties were waiting for a ruling, the court of appeals issued its (since vacated) opinion in *Toma v. Fontes*, 258 Ariz. 109 (App. 2024), and the Secretary filed a notice of supplemental authority regarding the same. EIRs 82–83.

On August 2, 2024, the parties filed supplemental briefing regarding the impact of this case on the Secretary's standing arguments. EIRs 92–93. The parties then waited again for a ruling from the superior court. Nearly sixty days later, the superior court *sua sponte* set a status conference/oral argument for October 2, 2024, to discuss the impact of *Toma* on the case. EIR 107. Because other courts had issued rulings that also potentially impacted the claims in this case, and those rulings were raised during the oral argument, the parties filed a joint notice of supplemental authorities for the court's reference on October 15, 2024. EIR 109–110.

On December 19, 2024, 65 days later, the superior court issued its under advisement ruling. EIR 111. The under advisement ruling instructed the Legislative Leaders to lodge a proposed form of judgment on or before January 10, 2025. EIR 111 at 14. During this time, the parties negotiated a stipulation to extend the deadline for filing a fee application, which was memorialized in the proposed form of judgment. EIRs 121–122. The court issued a final judgment on March 4, 2025. EIR 127.

From filing their initial complaint to the issuance of a final judgment, the Legislative Leaders successfully litigated their case in just over a year. And notably, more than seven months of that time was spent waiting for court action (i.e., the time between the hearing/trial and the notice of supplemental authority: 39 days; the time between the submission of the parties' supplemental briefing and the court's hearing

on standing: 62 days; the time between the joint notice of supplemental authorities and the issuance of the under advisement ruling: 65 days; and the time between lodging the proposed form of judgment and the issuance of a final judgment: 53 days).

On March 11, 2025, the Secretary filed a notice of appeal, EIR 128, and the Legislative Leaders filed a notice of cross-appeal on March 21, 2025. EIR 134. On March 31, 2025, the Legislative Leaders filed a Motion to Expedite and designate the appeal accelerated, in part due to timing concerns related to the AEVL Implementation Provision if further appeal was necessary. Specifically, the Legislative Leaders identified the very concern raised by this Motion:

> In addition, the looming 2026 elections risk depriving the Legislative Leaders of the benefit of their cross-appeal. Under the default schedule, briefing will not be complete until September 2025. Even if this Court's decision comes shortly after, it is possible this Court will affirm the superior court's interpretation of the AEVL Implementation Rule. In that case, the Legislative Leaders would file a petition for review. But the Supreme Court is unlikely to act on a petition for review until spring of 2026, at the earliest.

Ex. B at 7 (Reply in Support of Mot. to Expedite).

The Secretary actively opposed the expedited schedule, arguing that a regular briefing schedule would not moot the Legislative Leaders' challenge to the AEVL Implementation Provision, but did not oppose an accelerated designation. Mot. to Exp. Ex. 6 at 7–9 ("Plaintiffs' challenge concerning the AEVL effective date will not be mooted by the established briefing schedule.").

The court of appeals denied the motion to expedite briefing but granted the motion to designate the appeal accelerated. *Id.* Ex. 2 at 1–2. The Secretary took the full amount of time to file his opening brief and combined reply brief/answering brief on cross appeal, and the Legislative Leaders filed both their combined answering brief/opening brief on cross appeal, and cross reply early.[4]

Oral argument was set for November 19, 2025, and the court of appeals ordered two rounds of supplemental briefing. Although the court of appeals initially issued its decision three business days after oral argument, the Secretary filed a motion for reconsideration, which was eventually granted and a new decision was issued over six weeks after oral argument on January 6 (and amended on January 8) which contained brand new analysis on the County Canvass Provision that was omitted from the initial decision. The Legislative Leaders filed their Petition on this new analysis in 15 days and promptly alerted the Court to the timing considerations posed by the AEVL Implementation Provision.

The Secretary's only evidence that the Legislative Leaders did not move fast enough is the fact that they only filed their answering brief one day early. But this ignores the Legislative Leaders filed their cross-reply thirteen days early—effectively shaving two weeks off the briefing schedule. It also ignores that

[4] Docket, *Petersen v. Fontes*, 1 CA-CV 25-0219 A, available at https://apps.azcourts.gov/aacc/appella/1CA/CV/CV250219.PDF.

the Secretary opposed a faster pace of litigation at every turn and the significant lag between the completion of briefing (August 26, 2025) and the oral argument (November 19, 2025).

This litigation schedule does not demonstrate a lack of urgency. Rather, it demonstrates an efficient adjudication of several legal issues in a rapidly changing area of law. Moreover, any delays—either due to the issuance of new authority or the court's review (or re-review) of the issues—were beyond the Legislative Leaders' control and do not weigh against the need for expedited briefing on appeal.

III. Legislative Leaders Are Open to an Alternative Briefing Schedule.

Though the Legislative Leaders proposed their preferred briefing schedule, they are open to another reasonably expedited schedule to accommodate the conflicts identified by Secretary's counsel and practical implementation from the county recorders, while still permitting meaningful review of the AEVL Implementation Provision. Moreover, when workload and scheduling demands conflict with the timeline of a particular case, the Attorney General's office has dozens of staff attorneys that can step in to assist and alleviate the burden, especially in an expedited election matter. Finally, as noted above, the parties briefed the issues presented in the Petition exhaustively in the superior court and court of appeals; the Secretary's counsel is not researching or responding to novel or unanticipated issues for the first time.

CONCLUSION

An expedited briefing schedule in this accelerated appeal will avoid mooting the Legislative Leaders' challenge to the AEVL Implementation Provision and provide clarity on the County Canvass Provision prior to the 2026 Primary election. Accordingly, this Court should grant the Legislative Leaders' Motion to Expedite Briefing Schedule.

RESPECTFULLY SUBMITTED this 27th day of January, 2026.

STATECRAFT PLLC

By: */s/ Thomas Basile (w/ permission)*
Kory Langhofer
Thomas Basile
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003

SNELL & WILMER, L.L.P.

By: */s/ Joseph Kanefield*
Joseph Kanefield
Tracy A. Olson
One East Washington Street
Suite 2700
Phoenix, Arizona 85004

Attorneys for Arizona State Senate President Petersen and Speaker of the Arizona House of Representatives Steve Montenegro