

SUPREME COURT OF ARIZONA

WARREN PETERSEN, et al., ) Arizona Supreme Court  
 ) No. CV-26-0023-PR  
Plaintiffs/Appellees/ )  
Cross-Appellants, ) Court of Appeals  
 ) Division One  
v. ) No. 1 CA-CV 25-0219 A  
 )  
ADRIAN FONTES, ) Maricopa County  
 ) Superior Court  
Defendant/Appellant/ ) No. CV2024-001942  
Cross-Appellee. )  
 ) **FILED 01/28/2026**  
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**O R D E R**

On January 21, 2026, Appellees/Cross-Appellants and Legislative Leaders (“Legislators”) filed a “Petition for Review in Accelerated Appeal” and a “Motion to Expedite Briefing Schedule in Accelerated Appeal” (“Motion”). This Court ordered expedited briefing to address the Motion and has considered the “Response in Opposition to Motion to Expedite Briefing Schedule” filed by Appellant/Cross-Appellee Secretary of State Adrian Fontes (“Secretary”) and the Legislators’ Reply. Legislators raise two challenges they believe could affect the 2025 Election Procedures Manual (“EPM”) for the 2026 elections and request expedited consideration to meet specific deadlines. The Secretary advises he will not be filing a Cross-Petition for Review.

**AEVL**

The Legislators’ first challenge is to the Secretary’s interpretation of statutory amendments enacted in 2021 that initiated a process by which voters are to be removed from the Active Early

Voting List ("AEVL").<sup>1</sup> Legislators concede that "it is already too late for this Court to render a decision on the AEVL Implementation Provision prior to the March or May 2026 elections," but believe "there is still time to review and render a decision on the AEVL Implementation Provision prior to the 2026 Primary and General Election," reasoning that "if this Court resolves the AEVL Implementation Provision issue in favor of the Legislative Leaders, **county recorders can send the AEVL notice required by A.R.S. § 16-544(L) with (or before) the notices required by § 16-544(D) [to] go out on April 9, 2026.**" See Motion at 6-7 (Emphasis added).

The removal notification section reads:

**L. On or before January 15 of each odd-numbered year,** the county recorder or other officer in charge of elections shall send a notice to each voter who is on the active early voting list and who did not vote an early ballot in all elections for two consecutive election cycles as prescribed by subsection K of this section. . . . The notice shall inform the voter that if the voter wishes to remain on the active early voting list, the voter shall do both of the following with the notice received:

1. Confirm in writing the voter's desire to remain on the active early voting list.

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<sup>1</sup> Legislators point out that the pertinent statutory change went into effect on September 29, 2021, A.R.S. §16-544(L)-(M), as amended by 2021 Ariz. Laws Ch. 359, § 6 (S.B. 1485), although Chapter 2, Section 1, Subsection (B)(7) n. 34 of the EPM refers to "S.B. 1485 (2022)." In their Opening Brief on Cross Appeal, Legislators note that to vote in the 2022 election cycle, a voter needed to cast an early ballot from January 1, 2021 through December 31, 2022. Although the lower courts determined that applying the statute to elections in March, May and August 2021 would have impermissibly made the statutory changes retroactive, we need not resolve that question to rule on the pending motion.

2. Return the completed notice to the county recorder or other officer in charge of elections within ninety days after the notice is sent to the voter. . . .

A.R.S. § 16-544(L) (Emphasis added).

Early voters receive a notice under § 16-544(D) in advance of an election. This notice is sent not less than ninety days before an election in March or August with information about the upcoming election and provides "a means for the voter" to update the voter's information. A.R.S. § 16-544(D). The removal notice provision in subsection (L), however, is required to be sent no later than January 15 in an odd-numbered year and requires affirmative action by the voter to remain on the AEVL. There is no statutory process to begin the removal notification during an election year. Any voter receiving the removal notice would no doubt be confused to receive it in 2026. The Court agrees with the lower courts that the statement in the EPM, "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," does not conflict with Arizona law.

### **County Canvass**

Legislators also challenge the language in the EPM pertaining to the county canvass and point out the value of having "'clear guidance' and time to implement any changes to the elections procedures prior to the 2026 Primary and General elections, which is of the utmost statewide importance." (Motion at 8) The Secretary

advises that the first day for county canvass would be August 10, 2026. In light of the posture of events, it's not necessary to expedite briefing, as requested.

The Court, en banc, having considered this matter,

**IT IS ORDERED** granting the motion to treat this as an expedited election appeal under ARCAP 29(f). The Court will give this matter priority accordingly.

**IT IS FURTHER ORDERED** denying the request for expedited briefing. The Response to the Petition for Review is due February 20, 2026.

**IT IS FURTHER ORDERED** any amicus briefs are due not later than March 2, 2026, and either party may file one response to address the arguments raised in opposing amicus briefs no later than March 16, 2026.

DATED this 28<sup>th</sup> day of January, 2026.

/s/  
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JOHN R. LOPEZ IV  
Duty Justice

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  
Lalitha D Madduri  
Jonathan Hawley  
Daniel Cohen  
Roy Herrera  
Daniel A Arellano  
Jillian Andrews  
Austin T Marshall  
Alexis E Danneman  
Margo R. Casselman  
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Benjamin Berwick  
Janine M Lopez  
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Jonathan Diaz  
Rachel Appel  
Matthew J Martin

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