



649 North Fourth Avenue, First Floor  
Phoenix, Arizona 85003  
(602) 382-4078

Kory Langhofer, Ariz. Bar No. 024722

[kory@statecraftlaw.com](mailto:kory@statecraftlaw.com)

Thomas Basile, Ariz. Bar. No. 031150

[tom@statecraftlaw.com](mailto:tom@statecraftlaw.com)

*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF YAVAPAI**

ARIZONA FREE ENTERPRISE CLUB, *et al.*,

Plaintiffs,

v.

ADRIAN FONTES, *et al.*,

Defendants.

No. S-1300-CV-202300202

**PLAINTIFFS' CONSOLIDATED  
RESPONSE TO THE MOTIONS TO  
DISMISS**

(Assigned to the Hon. John Napper)

Plaintiffs Arizona Free Enterprise Club, Restoring Integrity and Trust in Elections (“RITE”), Republican Party of Arizona, LLC (“RPAZ”), and Dwight Kadar respectfully submit this consolidated response to the motions to dismiss of Defendant Secretary of State, Intervenor-Defendant the Arizona Alliance for Retired Americans (“AARA”), and Intervenor-Defendant Mi Familia Vota (“MFV”).

**INTRODUCTION**

The First Amended Complaint pleads valid and cognizable claims that the Secretary of State failed to discharge a non-discretionary duty and exceeded his statutory authority to the extent the 2019 Elections Procedures Manual (“EPM”) purports to authorize the

1 validation of signatures on early ballot affidavits by reference to documents that are not a  
2 “registration record,” within the meaning of A.R.S. § 16-550(A).

3 Plaintiffs have standing and this case is timely. AARA and MFV collectively lob a  
4 scattershot of justiciability and timeliness defenses; all miss their mark. When, as here, an  
5 elections official fails to conform to mandatory legal strictures, any individual voter or other  
6 interested person has standing to seek special action and injunctive remedies. *See Ariz. Pub.*  
7 *Integrity All. [“AZPIA”] v. Fontes*, 250 Ariz. 58 (2020). Additionally, because the lawful  
8 verification of early ballot affidavits is integral to the RPAZ’s explicitly and singularly  
9 electoral organizational objectives, it is undoubtedly “affected” by the *ultra vires*  
10 implementation of A.R.S. § 16-550(A) in the EPM. It thus has standing to seek declaratory  
11 relief. A.R.S. § 12-1832. Further, because the 2019 EPM is still in effect and Plaintiffs  
12 have sought only prospective relief well in advance of the next statewide election, this action  
13 is timely.

14 Additionally, Plaintiffs have adequately pled a plausible claim upon which relief can  
15 be granted. The Secretary’s arguments for dismissal on the merits compound a  
16 misconstruction of the Plaintiffs’ claims with a foundational error of law. He first labors to  
17 distinguish a “record” from a “form,” but this merely combats a strawman. The Plaintiffs  
18 agree that the Secretary may, through the EPM, countenance signature verifications by  
19 reference to documents other than the voter’s initial registration “form.” *See Am. Compl.*  
20 ¶¶ 22–24, 37, 47. The dispute here arises not because the Secretary has authorized the use  
21 of records other than the initial registration form to verify signatures. Rather, it is about the  
22 Secretary’s authority to authorize the verification of signatures using records other than  
23 those that can, as a matter of law, effectuate or amend a voter’s registration. Plaintiffs  
24 contend that the use of such records is unlawful because whatever type of records they may  
25 be, they are not “*registration* record[s],” A.R.S. § 16-550(A). Defendants, on the other  
26 hand, contend that this Court should defer to the broader interpretation of “registration  
27 records” the Secretary has embedded in the EPM. This argument, however, collides with  
28 both the text of the law in question and the Arizona Supreme Court’s admonition that

1 conclusions and interpretations of law in the EPM receive no judicial deference. *Leibsohn*  
2 *v. Hobbs*, 254 Ariz. 1, 517 P.3d 45, 51, ¶ 22 (2022).

3 **ARGUMENT**

4 **I. The Plaintiffs’ Claims Are Justiciable**

5 **A. Plaintiffs Have Standing to Seek Special Action and Injunctive Relief**

6 Any person has standing to seek judicial redress when an election official exceeds  
7 his statutory authority or fails to effectuate a non-discretionary legal duty. This controlling  
8 maxim finds its most apt and authoritative encapsulation in *Arizona Public Integrity*  
9 *Alliance* [“AZPIA”] *v. Fontes*, 250 Ariz. 58 (2020). There, the then-Maricopa County  
10 Recorder enclosed with early ballots an illegal instruction for correcting certain ballot errors  
11 that was inconsistent with controlling law, to wit, valid provisions of the EPM. An  
12 individual voter and a non-profit organization filed suit, seeking mandamus and injunctive  
13 relief. Reversing the trial court’s conclusion that those plaintiffs lacked standing, the  
14 Supreme Court countered that “a more relaxed standard for standing” controls in such cases.  
15 *Id.* at 62, ¶ 11. It reasoned that the plaintiffs, “as Arizona citizens and voters, seek to compel  
16 the Recorder to perform his non-discretionary duty to provide ballot instructions that  
17 comply with Arizona law,” and thus had “shown a sufficient beneficial interest to establish  
18 standing” within the meaning of A.R.S. § 12-2021. *Id.* ¶ 12. The Court added that, with  
19 respect to the plaintiffs’ alternative claim for injunctive relief, it sufficed that they had  
20 “shown that the Recorder has acted unlawfully and exceeded his constitutional and statutory  
21 authority.” *Id.* at 64, ¶ 26. In such instances, the Court held that plaintiffs “need not satisfy  
22 the standard for injunctive relief,” including the “irreparable injury” facet of the canonical  
23 four-factor test. *Id.*

24 *AZPIA* controls in this case. Just as the plaintiffs in *AZPIA*, Plaintiffs here—  
25 including an Arizona voter, an Arizona nonprofit organization, and a political party  
26 committee—have a beneficial interest in ensuring that directives governing the  
27 administration of Arizona’s elections align with superseding law. In the same way the voter  
28 and non-profit organization were beneficiaries of valid provisions of the EPM in *AZPIA*, so

1 too (and all the more so) the Plaintiffs here are beneficiaries here of valid statutory  
 2 provisions. And just as they were entitled to sue to conform regulatory interpretations to  
 3 valid provisions of the EPM, so too are the Plaintiffs here entitled to sue to conform the  
 4 EPM’s signature verification regime for early ballot envelopes to the controlling statute.  
 5 The Recorder has no discretion to issue instructions that exceed the limits of the EPM, and  
 6 the Secretary has no discretion to augment the EPM beyond its statutory limits. The  
 7 beneficial interest Plaintiffs have in ensuring that Arizona’s elections are conducted in  
 8 accordance with the law is more than adequate to sustain their standing to seek mandamus  
 9 (and injunctive) relief against the Secretary. *AZPIA*, 250 Ariz. at 62, ¶ 12; *see also Armer*  
 10 *v. Superior Court of Arizona, In & For Pima Cnty.*, 112 Ariz. 478, 480 (1975) (holding that  
 11 “respondents, as members of the public for whose benefit the financial disclosure law was  
 12 enacted, have standing to bring an action in the nature of mandamus to require disclosure.”).

13 The AARA’s efforts to distinguish *AZPIA* are all lacking. It erroneously contends  
 14 that this action does not feature an actual mandamus claim because “the relief that Plaintiffs  
 15 request is not the *performance* of an act but the *prohibition* of one” and because “the  
 16 Secretary has discretion within his statutory authority” under A.R.S. § 16-452. AARA Mot.  
 17 at 6. For at least three reasons, however, these arguments fail under scrutiny.

18 First, AARA’s position is simply irreconcilable with *AZPIA*. The contours of the  
 19 *AZPIA* plaintiffs’ claim align conceptually and doctrinally with the Plaintiffs’ cause of  
 20 action here. In both cases, the question presented was whether an elections official (here,  
 21 the Secretary; in *AZPIA*, the Recorder) failed to discharge a non-discretionary duty in  
 22 conformance with a controlling law (here, A.R.S. § 16-550(A); in *AZPIA*, the EPM itself).  
 23 *See* 250 Ariz. at 62, ¶ 12. Further, the relief sought in *AZPIA* was, in fact, at least partly  
 24 proscriptive in nature; the plaintiffs had requested mandamus and injunctive remedies  
 25 prohibiting the Recorder from enclosing the disputed instruction in early ballot packets. *Id.*  
 26 at 61, ¶ 5.

27 Second, the AARA’s argument that the Secretary has “discretion” to promulgate the  
 28 disputed provision of the EPM embraces a circular conflation of standing with the merits.

1 The gravamen of the Plaintiffs’ challenge is that the Secretary does *not* have discretion to  
2 administratively redefine in the EPM the term “registration record.”

3 AARA’s argument that discretionary duties cannot be compelled through mandamus  
4 is true but irrelevant. The AARA relies extensively on *Yes on Prop 200 v. Napolitano*, 215  
5 Ariz. 458 (App. 2007), where the plaintiffs sought a mandamus order requiring the Attorney  
6 General to withdraw or change an advisory opinion. Concluding that mandamus remedies  
7 were inapt, the Court of Appeals emphasized that the statutory “function of Attorneys  
8 General . . . is not to decide what the law is but merely opine about the law,” and the  
9 Attorney General had, in fact, done exactly that by furnishing his opinion with respect to  
10 the relevant law. *Id.* at 465, ¶¶ 14, 18. Here, the Secretary of State is not only statutorily  
11 obligated to issue the EPM, but to do so within the limits of applicable statutes. That is  
12 because its provisions carry the binding force of law. *See* A.R.S. § 16-452. While the  
13 Legislature has conferred on the Secretary certain policymaking discretion within specific  
14 and delimited parameters in other areas,<sup>1</sup> the Supreme Court has repeatedly admonished that  
15 Section 16-452 does not itself vest the Secretary with discretion to independently (re)-define  
16 statutory words or concepts. *See Leibsohn v. Hobbs*, 254 Ariz. 1, 517 P.3d 45, 51, ¶ 22  
17 (2022) (“[I]t is this Court’s role, not the Secretary’s, to interpret [a statute’s] intended  
18 meaning.”); *Leach v. Hobbs*, 250 Ariz. 572, 576, ¶ 21 (2021). And AARA points to nothing  
19 beyond A.R.S. § 16-452 to support the Secretary’s ostensible discretion to define the term  
20 “registration record.”

21 Third, AARA’s arguments rely on a formalistic and anachronistic conception of  
22 mandamus that Arizona courts have long since discarded. The common law recognized  
23 distinct writs for compelling the performance of ministerial duties (*i.e.*, mandamus) and for  
24 prohibiting or remedying actions in excess of a public officer or body’s lawful authority

25 \_\_\_\_\_  
26 <sup>1</sup> *See, e.g.*, A.R.S. §§ 16-168(I) (allowing the Secretary to devise in the EPM protocols  
27 for “protect[ing] access to voter registration information in an auditable format and  
28 method”); 16-315(D) (instructing the Secretary to “establish in [the EPM] a procedure for  
registering circulators [of nomination petitions] and receiving service of process”); 16-  
579(E) (authorizing the Secretary to develop in the EPM a procedure for voters to affix their  
signatures in electronic pollbooks).

1 (i.e., prohibition and certiorari). But these writs have since been “merg[ed],” Ariz. R. Proc.  
 2 For Spec. Actions 1, State Bar Committee Note, into the unitary rubric of a special action.  
 3 See *id.* Rule 3, State Bar Committee Note (“The practical consequence of the creation of a  
 4 single special action will be to eliminate any problem of label if the conduct sought to be  
 5 controlled is within the proper scope of either mandamus or prohibition.”). The Plaintiffs  
 6 accordingly have pleaded claims for all appropriate special action remedies. Am. Compl.  
 7 ¶¶ 5, 44, Demand for Relief.

8 At the same time, the Supreme Court’s conception of general statutory mandamus  
 9 claims, see A.R.S. § 12-2021, has likewise evolved in a more functionalist direction. Recent  
 10 cases have recognized mandamus as an appropriate mechanism for cases like this one that  
 11 seek to denote and effectuate the proper scope of elected officials’ statutory authority. See  
 12 *AZPIA*, 250 Ariz. at 63, ¶ 17; *Arizonans for Second Chances, Rehabilitation & Public Safety*  
 13 *v. Hobbs*, 249 Ariz. 396, 404, ¶ 19 (2020) (argument that Secretary was required to adapt  
 14 electronic signature platform to accommodate initiative petitions was correctly brought as  
 15 a mandamus claim, explaining that “one purpose of a mandamus action is to determine the  
 16 extent of a state official’s legal duties”); see also *Ariz. Dept. of Water Res. v. McClennen*,  
 17 238 Ariz. 371, 377, ¶ 32 (2015) (“The mandamus statute reflects the Legislature’s desire to  
 18 broadly afford standing on members of the public to bring lawsuits to compel officials to  
 19 perform their ‘public duties.’” (citation omitted)); *City of Surprise v. Ariz. Corp. Comm’n*,  
 20 246 Ariz. 206, 209, ¶ 6 (2019) (“Special action jurisdiction is . . . particularly appropriate  
 21 when a defendant ‘has proceeded or is threatening to proceed without or in excess of  
 22 jurisdiction or legal authority.’” (citation omitted)).

23 In short, Plaintiffs—which include “Arizona citizens and voters,” *AZPIA*, 250 Ariz.  
 24 at 62, ¶ 12—have standing to seek mandamus and injunctive remedies “to compel the  
 25  
 26  
 27  
 28

1 [Secretary of State] to perform his non-discretionary duty to provide [signature verification]  
2 instructions that comply with Arizona law,” *id.*

3 **B. The RPAZ Is “Affected” By the Laws Governing Early Ballot Signature**  
4 **Verification, and Thus Has Standing to Seek a Declaration of Its Invalidity**

5 Under Arizona law, “[a]ny person . . . whose rights, status or other legal relations are  
6 affected by a statute . . . may have determined any question of construction or validity  
7 arising under the . . . statute.” A.R.S. § 12-1832. This jurisdictional grant “is to be liberally  
8 construed and administered,” *id.* § 12-1842, and is satisfied when a complaint pleads  
9 “sufficient facts to establish that there is a justiciable controversy, i.e., one that ‘arises where  
10 adverse claims are asserted upon present existing facts, which have ripened for judicial  
11 determination.’” *Café Valley, Inc. v. Navidi*, 235 Ariz. 252, 255, ¶ 10 (App. 2014) (citation  
12 omitted).

13 Here, the RPAZ, as a political party committee, is organizationally oriented  
14 exclusively to the election of Republican candidates for public office. It accordingly  
15 possesses a singular and palpable interest in the lawful administration of Arizona election  
16 processes, including the verification of early ballots. *See generally* A.R.S. §§ 16-551, 16-  
17 531 (affording political parties the right to nominate individuals for appointment to early  
18 ballot boards). This distinct and differentiated stake in the correct construction of A.R.S. §  
19 16-550(A) crystallizes a concrete controversy that a judicial declaration can resolve.  
20 Importantly, a plaintiff need not be directly constrained or compelled by a disputed law or  
21 regulation to seek a declaration of its (in)validity; it need only affect his legal rights or  
22 interests. *See Ariz. Sch. Bds. Ass’n, Inc. v. State*, 252 Ariz. 219, 225, ¶ 20 (2022) (holding  
23 that a “trade association with members living and working in Pima County . . . were affected  
24 by the [challenged] bill’s alleged impediments to the county’s ‘ability to exercise local  
25 control to protect its residents’” from COVID-related risks, and hence had standing under  
26 the Declaratory Judgment Act); *Pena v. Fullinwider*, 124 Ariz. 42, 44 (1979) (“Appellants  
27 as consumers are ‘affected’ by the amendment [which related to labeling standards] because  
28 cost-per-unit pricing information is designed to allow them to compare the costs of different

1 commodities. They have an actual or real interest in the matter for determination.”). RPAZ  
2 easily meets that standard.

3 **C. Each Plaintiff Need Not Independently Establish Standing**

4 MFV fixates on RITE’s putative lack of standing as an out-of-state organization. *See*  
5 MFV Mot. at 6–7. This is a red herring. When (as here) multiple plaintiffs seek the same,  
6 uniform non-damages remedies, the establishment of one plaintiff’s standing obviates the  
7 issue as to the remaining plaintiffs. *See City of Tucson v. Pima Cnty.*, 199 Ariz. 509, 514,  
8 ¶ 14 (App. 2001) (“[E]ven if Pima County and Tortolita lack standing, there  
9 remain parties with unequivocal standing who offer the same arguments.”); *Valle del Sol*  
10 *Inc. v. Whiting*, 732 F.3d 1006, 1014 (9th Cir. 2013) (“We need only conclude that one of  
11 the plaintiffs has standing in order to consider the merits of the plaintiffs’ claims.”); *Poder*  
12 *in Action v. City of Phoenix*, 506 F. Supp. 3d 725, 728 (D. Ariz. 2020) (“[I]t is unnecessary  
13 to address the standing of each plaintiff in a multi-plaintiff case, at least where all plaintiffs  
14 seek the same form of relief, so long as one of the plaintiffs has standing.”).<sup>2</sup> Mr. Kadar is  
15 an Arizona resident and qualified elector, see Am. Compl. ¶ 11, and RPAZ and the Arizona  
16 Free Enterprise Club are domiciled in Arizona, *id.* ¶¶ 8, 10. As such, each unquestionably  
17 has standing to seek mandamus, injunctive and/or declaratory relief. *See AZPIA*, 250 Ariz.  
18 at 62, ¶ 12; *Ariz. Sch. Bds. Ass’n.*, 252 Ariz. at 225, ¶ 20. The contours of the case, the  
19 scope of the Plaintiffs’ claims, and the nature of the requested relief will be entirely  
20 unaffected by RITE’s standing or lack thereof. Therefore, the Court need not address it.

21 In any event, RITE has standing. There is no residency prerequisite to seeking  
22 mandamus, injunctive or declaratory remedies in this State. While the *AZPIA* plaintiffs’  
23 status as Arizona residents accentuated the magnitude of their beneficial interest, the  
24 predicate statutes and court rules do not confine standing only to individuals or entities  
25 domiciled in Arizona. *See* A.R.S. §§ 12-2021, 12-1832; Ariz. R. Proc. for Spec. Actions

26 \_\_\_\_\_  
27 <sup>2</sup> *See Bennett v. Napolitano*, 206 Ariz. 520, 525, ¶ 22 (2003) (“Although we are not  
28 bound by federal jurisprudence on the matter of standing, we have previously found federal  
case law instructive.”).



1 2(a)(1).

2 **D. In the Alternative, the Court Should Waive Any Applicable Standing**  
3 **Requirement**

4 Standing is a prudential consideration, not a jurisdictional prerequisite in Arizona  
5 courts. *Biggs v. Cooper ex rel. County of Maricopa*, 236 Ariz. 415, 418, ¶ 8 (2014); *State*  
6 *v. B Bar Enterprises, Inc.*, 133 Ariz. 99, 101 n.2 (1982). Even if the Court concludes that  
7 none of the Plaintiffs has sufficiently established standing, it should reach the merits in its  
8 discretion, for at least two independent reasons.

9 First, the Amended Complaint presents questions of substantial and enduring  
10 importance. The integrity of elections is acutely dependent on lawful signature verification  
11 rubrics that conform to controlling statutes. *See generally Goodyear Farms v. City of*  
12 *Avondale*, 148 Ariz. 216, 217 & n.1 (1986) (declining to decide standing in constitutional  
13 challenge to procedures for municipal annexations); *State ex rel. Montgomery v. Mathis*,  
14 231 Ariz. 103, 111 n.7 (App. 2012) (assuming standing to address questions regarding the  
15 application of open meeting laws and legislative immunity to redistricting committee  
16 proceedings)).

17 Second, and more fundamentally, hearing this case is necessary to prevent a  
18 structural asymmetry in Arizona's voting rights jurisprudence. Courts routinely  
19 accommodate plaintiffs who allege that a given electoral rule or practice is unduly  
20 restrictive, even if that voter himself is unable to demonstrate loss of the franchise. *See,*  
21 *e.g., Ariz. Democratic Party v. Hobbs*, 485 F. Supp. 3d 1073, 1086 (D. Ariz. 2020) (finding  
22 that Arizona Democratic Party had standing to challenge deadline for curing missing early  
23 ballot signatures, even though it could not identify any specific voter who would be  
24 prospectively harmed by the statute), *vacated on other grounds*, 18 F.4th 1179 (Mem) (9th  
25 Cir. 2021). Permitting standing to challenge regulatory restrictions, but not unlawful  
26  
27  
28

1 regulatory expansions, would, in many instances, place public officials’ misuse of their  
2 authority beyond the reach of judicial correction.

3 Erroneous implementation of constitutional or statutory provisions governing  
4 election administration inevitably distorts and derogates the electoral process, undermining  
5 citizens’ faith, trust, and confidence in their government. Recognition of this truism  
6 animated *AZPIA* and informed the Supreme Court’s conception of mandamus and injunctive  
7 standing in this context. Even if this Court were to credit Defendants’ arguments that *AZPIA*  
8 is inapplicable, it should nevertheless vindicate the principles underlying that decision by  
9 waiving any standing requirement in this case.

10 **II. The Plaintiffs’ Claims Are Timely**

11 MFV’s curious contention that this action is both tardy (*i.e.*, barred by laches) **and**  
12 premature (*i.e.*, not ripe) collapses under the weight of its own discordant logic. Laches  
13 requires a showing of both undue delay and resulting prejudice. In the election litigation  
14 realm, the operative temporal reference point is the election for which the plaintiffs seek  
15 relief. In this vein, courts have deployed laches only when plaintiffs have sought either to  
16 (1) obtain retroactive relief in connection with an election that had already concluded or (2)  
17 induce a last-minute change to the administration of an imminent election. *See, e.g., Harris*  
18 *v. Purcell*, 193 Ariz. 409, 412–13, ¶¶ 16–17 (1998) (holding that “even a finding of  
19 unreasonable delay is not enough; it must also be established that the delay resulted in actual  
20 prejudice to the adverse parties,” which occurs when a party “places the court in a position  
21 of having to steamroll through the delicate legal issues in order to meet the deadline for  
22 measures to be placed on the ballot.” (citation omitted)); *Sotomayor v. Burns*, 199 Ariz. 81,  
23 83, ¶ 8 (2000) (applying laches where requested relief would require extensive revisions to  
24 ballot language at a “late date,” shortly before the printing deadline). This case involves  
25 neither.

26 Plaintiffs initiated this proceeding a full year before the next statewide election (*i.e.*,  
27 the 2024 presidential preference election) and have expressly confined their requested relief  
28 to solely prospective remedies. Am. Compl. ¶¶ 44, 51, Demand for Relief; *see McLaughlin*

1 v. *Bennett*, 225 Ariz. 351, 353, ¶ 6 (2010) (rejecting laches argument where plaintiff “filed  
2 this action almost sixteen weeks before the ballot printing deadline for the Secretary of  
3 State’s publicity pamphlet and, therefore, did not ‘deprive judges of the ability to fairly and  
4 reasonably process and consider the issues’” (citation omitted)).<sup>3</sup>

5 MFV’s ripeness argument fares no better than its laches theory. It is ironically  
6 constructed on the speculative supposition that the 2019 EPM will be superseded  
7 imminently in some relevant respect. As this Court is aware, the Secretary, Attorney  
8 General and Governor were jointly responsible for revising the 2019 EPM prior to the 2022  
9 elections but never did so, thereby “leaving the 2019 EPM in effect.” *Leibsohn*, 517 P.3d  
10 at 51, ¶ 25 n.3. Perhaps a new iteration of the EPM will be implemented before next year;  
11 perhaps not. But the 2019 EPM undisputedly remains operative and governs the county  
12 recorders’ signature verification practices. *Cf. Rocky Mountain Farmers Union v. Corey*,  
13 913 F.3d 940, 949–50 (9th Cir. 2019) (courts consider the version of the law then in effect  
14 when evaluating justiciability). To be sure, if the hypothetical 2023/2024 EPM were to  
15 align with the Plaintiffs’ construction of A.R.S. § 16-550(A)—a contingency that no  
16 Defendant suggests is plausible—such a development, if and when it occurs, may moot the  
17 Plaintiffs’ claims. But the conjecture that a new EPM might be forthcoming at some  
18 unspecified future time is not a viable basis for dismissing this action as unripe.<sup>4</sup>

19 **III. The Amended Complaint Pleads a Valid Claim That the EPM Is Inconsistent**  
20 **with A.R.S. § 16-452**

21 Because it authorizes the verification of early ballot affidavit signatures by reference  
22 to documents that cannot effectuate or amend a voter registration—in particular, polling

23 \_\_\_\_\_  
24 <sup>3</sup> MFV alludes to intervening local elections. Preliminarily, Plaintiffs have not  
25 requested relief in connection with any specific local election in 2023. More broadly, local  
26 elections of various kinds can occur up to four times each calendar year. *See* A.R.S. § 16-  
27 204(B). If mere temporal proximity to one of these contests were a sufficient predicate for  
28 a laches defense, no claim relating to election administration claim could ever be timely.

<sup>4</sup> Relatedly, the AARA’s passing remark that the Attorney General and Governor  
might be necessary parties if “the Plaintiff seek to change the EPM,” *see* AARA Mot. at 6  
n.3, is something of a *non sequitur* because the Plaintiffs have never requested a court-

1 place signature rosters and early ballot affidavits from prior elections—the EPM is, in  
 2 relevant part, invalid and inoperative. Documents that cannot effectuate or amend a voter  
 3 registration are not “registration record[s],” within the meaning of A.R.S. § 16-550(A).

4 The primary flaw in the Secretary’s argument for dismissal on the grounds of failure  
 5 to state a claim is that it assails an argument that the Plaintiffs have never made.  
 6 Specifically, the Secretary ascribes to the Plaintiffs the position that the term “registration  
 7 ‘record’ . . . should be limited to the voter’s voter registration form.” Sec’y of State Mot.  
 8 at 3. That is not Plaintiffs’ argument. Rather, their position is that the term “registration  
 9 record” encompasses “the complete and facially valid federal forms submitted by that  
 10 individual, and any amendments thereto made by the submission of new forms, an early  
 11 ballot request form, a response to an Active Early Voting List notice, or a provisional ballot  
 12 envelope.” Am. Compl. ¶ 24; *see also id.* ¶¶ 22, 23, 37, 47. The Plaintiffs challenge the  
 13 EPM’s authorization of polling place signature rosters and historical early ballot affidavits  
 14 as signature exemplars not because those documents are not “voter registration *forms*”—  
 15 which they are not—but rather because they have nothing to do with voter registration at all  
 16 and therefore are not “*registration* records,” as A.R.S. § 16-550(A) requires.

17 **A. Courts Cannot Defer to the Secretary’s Interpretation of Statutory Terms**

18 Before parsing the scope of the term “registration record,” it bears emphasis that the  
 19 Secretary’s position is premised in part on the outmoded proposition that “the Secretary’s  
 20 interpretation of ‘record’, and corresponding EPM regulation, are entitled to great weight  
 21 and deference.” Sec’y of State Mot. at 8. While that notion found some favor historically,  
 22 it is not the regnant law. Today, courts “do not defer to [an] agency’s interpretation of a  
 23 rule or statute.” *Saguaro Healing LLC v. State*, 249 Ariz. 362, 364, ¶ 10 (2020); *Univ. Med.*  
 24 *Ctr. of S. Nev. v. Health Choice Ariz.*, 253 Ariz. 524, ¶ 14 (App. 2022) (“[T]he cases

25 \_\_\_\_\_  
 26 ordered issuance of a new or amended EPM. Rather, they have named the Secretary in his  
 27 capacity as the State’s “chief election officer,” *see* A.R.S. § 16-142(A)(1), to enjoin or  
 28 otherwise prohibit prospective enforcement of a discrete EPM provision. The Supreme  
 Court has never held or even intimated that the Governor or Attorney General’s presence is  
 a condition precedent to adjudicating the validity of an EPM provision. *See Leibsohn v.*  
*Hobbs*, 254 Ariz. 1 (2022); *McKenna v. Soto*, 250 Ariz. 469, 473, ¶ 20 (2021).

1 Appellants rely on for judicial deference, or *Chevron* deference, are generally no longer  
 2 applicable in this area of the law.”). This doctrinal shift was precipitated by a 2018  
 3 legislative directive that courts “shall decide all questions of law, including the  
 4 interpretation of a constitutional or statutory provision or rule adopted by an agency, without  
 5 deference to any previous determination that may have been made on the question by the  
 6 agency.” A.R.S. § 12-910(F), as amended by 2018 Ariz. Laws ch. 180, § 1. With the  
 7 enactment of that statute, “*Chevron* deference . . . died under Arizona law.” *Indus. Comm’n*  
 8 *of Ariz. Labor Dept v. Indus. Comm’n of Ariz.*, 253 Ariz. 425, 514 P.3d 925, 927, ¶ 10 (App.  
 9 2022).<sup>5</sup>

10 Conclusions of law embedded in the EPM receive no judicial deference. Although  
 11 the Legislature has not indexed “registration record” as a specifically defined term, the  
 12 proper scope of this phrase is a pure question of law that resides squarely in the judicial  
 13 domain. *Leibsohn* is instructive. A.R.S. § 19-118 requires all paid and out-of-state  
 14 circulators of statewide ballot measure petitions to register with the Secretary of State, and  
 15 a complete registration must include a signed and notarized affidavit. The statute also  
 16 instructs the Secretary to establish in the EPM “a procedure for registering circulators,  
 17 including circulator registration applications.” A.R.S. § 19-118(A). Pursuant to this  
 18 delegation, the Secretary took the position that subsequent or updated registrations by the  
 19 same circulator need not be accompanied by a new affidavit. The Supreme Court did not  
 20 temper its disagreement with deference to the Secretary’s judgment. Commenting that it  
 21 was “not persuaded to reach a different interpretation . . . simply because the Secretary may  
 22  
 23  
 24  
 25  
 26

---

27  
 28 <sup>5</sup> Not coincidentally, all the cases cited by the Secretary in support of his preferred  
 standard of review pre-date the statutory change.

1 construe the requirement differently,” 517 P.3d at 51, ¶ 22, the court emphasized that “it is  
2 this Court’s role, not the Secretary’s, to interpret § 19-118(B)(5)’s meaning,” *id.*

3 In short, this Court must determine, independently, the meaning and ambit of the  
4 term “registration record,” within the meaning of A.R.S. § 16-550(A). To the extent the  
5 EPM’s signature verification provision is inconsistent with that construction, it is invalid.

6 **B. A “Registration Record” Is Limited to Documents That Can Effectuate or**  
7 **Update a Voter’s Registration**

8 The EPM is contrary to A.R.S. § 16-550(A) because it permits the verification of  
9 early ballot affidavit signatures using documents—namely, polling place rosters and early  
10 ballot envelopes from prior elections—that have nothing to do with registration and are thus  
11 not “registration records.” When, as here, the Legislature has not explicitly imbued a  
12 statutory term with a bespoke definition, “courts apply common meanings.” *State v. Pena*,  
13 235 Ariz. 277, 279, ¶ 6 (2014). In this interpretive project, the relevant statutory provision  
14 “should be read in context” and the Court “may also consider statutes that are *in pari*  
15 *materia*—of the same subject or general purpose—for guidance and to give effect to all of  
16 the provisions involved.” *State v. Ariz. Bd. of Regents*, 253 Ariz. 6, ¶ 24 (2022) (citation  
17 omitted).

18 The term “registration record” certainly includes a voter’s registration form—*i.e.*,  
19 the document designated by federal or state law to establish his or her eligibility to  
20 participate in Arizona elections. *See* 52 U.S.C. § 20508(b); A.R.S. §§ 16-121.01, 16-152,  
21 16-166(F). For a period of time, this “registration form” was the sole statutorily authorized  
22 reference point for validating early ballot affidavit signatures. In 2019, though, the  
23 Legislature amended A.R.S. § 16-550(A) to authorize the use of any signature in the voter’s  
24 “registration record” as an exemplar for early ballot verification. *See* 2019 Ariz. Laws ch.  
25 39 § 2. The Plaintiffs agree that this legislation augmented the pool of potential signature  
26  
27  
28

1 specimens to encompass all documents that Arizona law recognizes as mechanisms for  
2 updating a voter’s registration—namely:

3 (1) an amendment submitted through the Motor Vehicles Division, *see* 52 U.S.C. §  
4 20504(c)(2); A.R.S. §§ 16-112, 16-121.01, 16-136;

5 (2) a formal early ballot request or response to an Active Early Voting List  
6 Notification, A.R.S. §§ 16-135(E), 16-542(F); or

7 (3) a provisional ballot submission envelope, *see id.* §§ 16-137, 16-584(C), (D).

8 The EPM, however, traverses this statutory perimeter by designating effectively *all*  
9 election related documents in the county recorder’s possession as “registration records”—  
10 even if they do not as a matter of law actualize or amend a voter’s registration, or indeed  
11 have anything to do with registration at all. “In construing a statute, [courts] must, if  
12 possible, give effect to every word, not merely select words.” *State v. Burbey*, 243 Ariz.  
13 145, 148, ¶ 10 (2017). The Secretary’s exertions to reinforce the (undisputed) proposition  
14 that these materials are “records” (even if they are not “forms”) obscure the dispositive  
15 textual modifier; signatures must be verified by reference not just to any election-related  
16 “record,” but to a particular type of election-related record: a *registration* record.

17 The Secretary’s argument that polling place rosters and (more significantly) previous  
18 early ballot affidavits are “registration records” is semantically and structurally incongruent  
19 with A.R.S. § 16-550(A). An early ballot affidavit signature is the item to which an actual  
20 “registration record” is compared, which necessarily implies that it is wholly extrinsic to—  
21 and therefore not a component of—the voter’s “registration record.” The notion that an  
22 early ballot envelope automatically transmutes into a “registration record” after the election  
23 in which it is cast is textually untenable. It also is logically dubious. A document that has  
24 nothing to do with a voter’s registration before an election does not, *sua sponte*, develop a  
25 relationship to registration after the election. Moreover, the erroneous validation of any  
26 given early ballot affidavit converts what would be an isolated mistake into a systematic

1 distortion; the incorrectly verified affidavit signature is now elevated to a signature  
2 exemplar in all future elections.

3 In sum, a “registration record,” within the meaning of A.R.S. § 16-550(A), is a  
4 document that effectuates or amends an individual’s registration as a qualified elector in  
5 Arizona elections. To the extent the EPM purports to authorize early ballot affidavit  
6 signature verification using documents that do not conform to these elements—namely,  
7 polling place signature rosters and historical early ballot affidavits—it is *ultra vires* and  
8 invalid.

9 **CONCLUSION**

10 For the foregoing reasons, the Court should deny the Defendant’s and Defendant-  
11 Intervenors’ respective motions to dismiss in their entirety.

12  
13 RESPECTFULLY SUBMITTED this 16th day of June, 2023.

14 STATECRAFT PLLC

15  
16 By: /s/Thomas Basile  
17 Kory Langhofer  
18 Thomas Basile  
19 649 North Fourth Avenue, First Floor  
20 Phoenix, Arizona 85003

21  
22  
23  
24  
25  
26  
27  
28  
*Attorneys for Plaintiffs*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2023, I electronically transmitted the attached document to the Clerk's Office using the TurboCourt System for filing and transmittal of a Notice of Electronic Filing to the following TurboCourt registrants:

Craig A. Morgan  
Shayna Stuart  
Jake T. Rapp  
**SHERMAN & HOWARD L.L.C**  
2555 East Camelback Road, Suite 1050  
Phoenix, Arizona 85016  
[CMorgan@ShermanHoward.com](mailto:CMorgan@ShermanHoward.com)  
[SStuart@ShermanHoward.com](mailto:SStuart@ShermanHoward.com)  
[JRapp@ShermanHoward.com](mailto:JRapp@ShermanHoward.com)  
*Attorneys for Arizona Secretary of State*  
*Adrian Fontes*

D. Andrew Gaona  
Austin C. Yost  
**COPPERSMITH BROCKELMAN PLC**  
2800 North Central Avenue, Suite 1900  
Phoenix, Arizona 85004  
T: (602) 381-5486  
[agaona@cblawyers.com](mailto:agaona@cblawyers.com)  
[ayost@cblawyers.com](mailto:ayost@cblawyers.com)



1 Aria C. Branch  
2 John Geise  
3 Lali Madduri  
4 Dan Cohen  
5 Ian Baize  
6 **ELIAS LAW GROUP LLP**  
7 250 Massachusetts Ave NW, Suite 400  
8 Washington, D.C. 20001  
9 T: (202) 968-4330  
10 [abranh@elias.law](mailto:abranh@elias.law)  
11 [jgeise@elias.law](mailto:jgeise@elias.law)  
12 [lmadduri@elias.law](mailto:lmadduri@elias.law)  
13 [dcohen@elias.law](mailto:dcohen@elias.law)  
14 [ibaize@elias.law](mailto:ibaize@elias.law)  
15 *Attorneys for Proposed Intervenor-Defendant Arizona Alliance for Retired Americans*

16 Roy Herrera  
17 Daniel A. Arellano  
18 Jillian L. Andrews  
19 Austin T. Marshall  
20 **HERRERA ARELLANO LLP**  
21 1001 North Central Avenue, Suite 404  
22 Phoenix, AZ 85004  
23 [roy@ha-firm.com](mailto:roy@ha-firm.com)  
24 [daniel@ha-firm.com](mailto:daniel@ha-firm.com)  
25 [jillian@ha-firm.com](mailto:jillian@ha-firm.com)  
26 [austin@ha-firm.com](mailto:austin@ha-firm.com)  
27 Telephone: (602) 567-4820  
28 *Attorneys for Proposed Intervenor-Defendant Mi Familia Vota*

*/s/ Daxon Ernyei*  
\_\_\_\_\_  
Daxon Ernyei