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Secretary of State Adrian Fontes

11 **SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF YAVAPAI**
13

14 ARIZONA FREE ENTERPRISE CLUB,
an Arizona nonprofit corporation; et al.,
15 RESTORING INTEGRITY AND TRUST
IN ELECTIONS, a Virginia nonprofit
16 corporation; REPUBLICAN PARTY OF
ARIZONA, LLC, a statewide political
17 party committee; and DWIGHT KADAR,
an individual

18 Plaintiffs,

19 v.

20 ADRIAN FONTES, in his official
21 capacity as the Secretary of State of
Arizona, *et al.*

22 Defendants.
23

24 ARIZONA ALLIANCE OF RETIRED
25 AMERICANS; and MI FAMILIA VOTA,

26 Intervenor-Defendants.

No: S-1300-CV-202300202

**ARIZONA SECRETARY OF
STATE'S RESPONSE TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
CROSS-MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Hon. John Napper)

**Oral Argument Scheduled
January 18, 2024 at 1:30 p.m.**

1 Arizona Secretary of State Adrian Fontes respectfully requests that this Court deny
2 Plaintiffs' Motion for Summary Judgment ("MSJ"), and grant the Secretary's Cross-
3 Motion for Summary Judgment pursuant to Ariz. R. Civ. P. 56. The term "registration
4 record" in A.R.S. § 16-550 is a term of art that must be reviewed *in pari materia* with
5 other law governing voter records, respecting the plain language of the statutes in Title 16
6 and the processes followed by the Secretary and other elections officials to effectuate it.

7 INTRODUCTION

8 Plaintiffs argue that the only thing necessary to understand the statutes that create
9 the interlocking systems that ensure accurate and secure elections is a dictionary. Indeed,
10 Plaintiffs' argument hinges on just *two words* in a comprehensive statutory framework
11 spanning everything from registering to vote to the nuts and bolts of election
12 administration to criminal penalties and campaign finance. Plaintiffs' definition,
13 however, is a gross oversimplification that leads to an unworkable definition of
14 "registration record" that ignores key provisions and mechanisms of election law.

15 Contrary to Plaintiffs' claim, the meaning of "registration record" cannot be
16 gleaned by simply amalgamating the definitions of "registration" and "record" from the
17 dictionary. Instead, "registration record" is a term of art that can only be understood by
18 looking at the full statutory framework that governs the interrelationship between
19 registration and voting. By including provisions in the Elections Procedures Manual that
20 recognize the way voter information is maintained in the statewide voter registration
21 database, the Secretary did not overstep.

22 In short, a voter's registration record is not limited to the twenty-four discrete
23 pieces of information called for on a registration form or the even fewer pieces of
24 information that may be used to update a voter's registration record. Viewed in light of
25 the entire statutory framework, A.R.S. § 16-550 is clear, and the amendment changing the
26 statute's language from "registration form" to "registration record" was significant. For
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1 this reason, as explained more fully below, the Court should deny Plaintiffs’ MSJ and
2 grant summary judgment in Defendant’s favor.¹

3 **BACKGROUND**

4 Arizona has enabled at least some of its residents to vote by mail since World War
5 I, just after statehood. 1918 Ariz. Sess. Laws, ch. 11(3rd Leg., 1st Spec. Sess., (allowing
6 armed forces members serving out of state to vote by mail). By 1925, the Legislature had
7 extended absentee voting to any voter who would be outside their county of residence on
8 election day or if the voter had a physical disability that would prevent them from going
9 to their assigned polling place. 1921 Ariz. Sess. Laws, ch. 117 (5th Legis., 1st Reg.
10 Sess.); 1925 Ariz. Sess. Laws, ch. 75 (7th Leg., 1st Reg. Sess). With the expansion of
11 absentee voting in 1925, the law directed county election boards to compare “the
12 signature of the voter on the application [for absentee ballot] with the signature on the
13 voter’s affidavit of registration in the precinct register” to determine whether the
14 signatures “correspond.” 1925 Ariz. Sess. Laws, ch. 75, § 11. In 1991, the Legislature
15 further expanded the right to vote by mail to any eligible voter, as “no excuse” early
16 voting. 1991 Ariz. Sess. Laws, ch. 51, § 1 (40th Leg., 1st Reg. Sess.).

17 Federal statutes also play a role in the administration of elections, most relevant to
18 this case being the National Voter Registration Act (“NVRA”) passed in 1991, and the
19 Help America Vote Act (“HAVA”), passed in 2002. NVRA focused on the expansion of
20 voter registration convenience, and voter list maintenance. 52 U.S.C. § 20501, *et seq.*
21 HAVA concerned the nuts and bolts of election administration, and included
22 requirements for a single voter registration database to be administered by each state,
23 with federal funding to make this possible. 52 U.S.C. § 21081, *et seq.*

24
25 ¹ At the September 19, 2023 status conference, the Court directed Plaintiffs alone to file
26 a motion for summary judgment. As this Response demonstrates, there is no genuine
27 issue of material fact and it would be appropriate for the Court to enter judgment for
28 Defendant as a matter of law. To the extent that there must be a motion seeking that
relief pending, the Secretary respectfully requests that the Court treat this filing as a
Consolidated Response and Cross-Motion for Summary Judgment.

1 The Secretary is Arizona’s chief elections officer, and in that role he is responsible
2 for drafting the Elections Procedures Manual (“EPM”) to “achieve and maintain the
3 maximum degree of correctness, impartiality, uniformity and efficiency on the
4 procedures for early voting and voting, and of producing, distributing, collecting,
5 counting, tabulating and storing ballots.” A.R.S. § 16-452(A). The EPM is drafted in
6 consultation with other subject matter experts, specifically county election officials, and
7 is submitted to the Attorney General and Governor for review and approval. *Id.*

8 Under state and federal law, one of the Secretary’s primary areas of authority as
9 the chief elections officer is the administration and maintenance of the state’s voter
10 registration database. 52 U.S.C. § 21083; A.R.S. § 16-168(J). “[E]ach state, acting
11 through the chief State election official, shall implement, in a uniform and
12 nondiscriminatory manner, a single, uniform, official, centralized, interactive
13 computerized statewide voter registration list defined, maintained, and administered at
14 the State level that contains the name and registration information of every legally
15 registered voter in the State.” 52 U.S.C. § 21083(a)(1)(A). “The computerized list
16 contains the name and registration information of every legally registered voter in the
17 State.” *Id.* at (a)(1)(A)(ii). “The secretary of state shall develop and administer a
18 statewide database of voter registration information that contains the name and
19 registration information of every registered voter in this state.” A.R.S. § 16-168(J). The
20 Secretary has the express authority to regulate the database via the EPM. *Id.* at (I)-(J).

21 In 2019, the legislature amended A.R.S. § 16-550 in two significant ways. 2019
22 Ariz. Sess. Laws. Ch. 39 (54th Leg. 1st Reg. Sess.). First, it adopted a curing process for
23 early ballot affidavit envelopes with inconsistent signatures. *Id.* § 2. While some
24 counties had been conducting curing as their resources allowed up to 7:00pm on Election
25 Day, with the amendment it is now mandatory for all counties to attempt to cure
26 inconsistent signatures for up to five days past Election Day. *Id.* The amendment also
27 changed what records county recorders could use to verify signatures from the
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1 “registration form” to the “registration record.” *Id.* This change caused the language in
2 the EPM to be modified from “registration form” to “the voter’s signature in the voter’s
3 registration record,” which includes “signature rosters or early ballot/PEVL request
4 forms” to use as comparators when conducting signature verification of early ballot
5 affidavits.

6 Based on the narrow legal arguments before it earlier in this litigation, the Court
7 denied the Secretary’s and Intervenors’ motions to dismiss. At the September status
8 conference, however, the Court acknowledged that it is not bound by its order on the
9 motions to dismiss when ruling on this Motion.

10 LEGAL ARGUMENT

11 A motion for summary judgment may only be granted when the non-moving party
12 has failed to demonstrate a “genuine dispute as to any material fact *and* the moving party
13 is entitled to judgment as a matter of law.” *Orme School v. Reeves*, 166 Ariz. 301, 305
14 (1990). Plaintiffs are not entitled to summary judgment because: 1) the 2019
15 amendment to A.R.S. § 16-550(A) is significantly broader than Plaintiffs’ restrictive
16 reading; 2) the statutory definitions of “record” and what the legislature has mandated be
17 included in the statewide database control; 3) Plaintiffs’ definitions would make the 2019
18 amendment a legal and practical nullity; and 4) the Secretary was well within his role
19 when including which signatures should be used to count early ballots in the EPM.

20 **I. The Intent of the Legislature in Amending A.R.S. § 16-550 Is More** 21 **Expansive than Plaintiffs’ Definition Allows.**

22 Statutes are interpreted to “give effect to the legislature’s intent.” *Parrot v.*
23 *DaimlerChrysler Corp.*, 212 Ariz. 255, 257, ¶ 7 (2006). “A statute’s plain language best
24 indicates legislative intent, and when the language is clear, we apply it unless an absurd
25 or unconstitutional result would follow.” *Premier Physicians Group, PLLC v. Navarro*,
26 240 Ariz. 193, 196, ¶ 9 (2016).

27 Plaintiffs argue that the legislature’s change to the language in A.R.S. § 16-550(A)
28 from “registration form” to “registration record” indicates that the legislature wanted to

1 include a few additional signatures as potential exemplars, not all the verified signatures
2 in the registrant’s record. Specifically, Plaintiffs argue that the signatures used to add or
3 update the information from a voter registration form qualifies under this definition—but
4 no other signatures may be used.

5 Assuming that Plaintiffs’ forms always, or even usually, update a voter’s
6 registration (they do not), Plaintiffs’ definition completely ignores the significance of the
7 legislature’s choice to change the words used in the statute. “[W]e must assume that the
8 legislature intended different consequences to flow from the use of different language.”
9 *P.F.W., Inc. v. Superior Court*, 139 Ariz. 31, 34 (App. 1984). If the legislature meant to
10 be as restrictive as Plaintiffs allege, and prohibit the use of documents not “used to enroll
11 an individual to vote in Arizona elections,” (Mot. at 4), then the obvious amendment
12 would have been to change “form” singular to “forms” plural. The statute now does not
13 refer to a voter registration “form” at all, but instead uses an entirely different word,
14 namely “record.”

15 This is particularly important where, as here, the old, non-defined word is
16 supplanted by an entirely new word that *is* defined by Arizona law. State law defines the
17 word “record” broadly, including all information maintained by government officials in
18 the conduct of their official duties. A.R.S. § 41-151(2). Verifying that a ballot was cast
19 by a qualified elector constitutes one of the most solemn duties of an election official, and
20 thus the signatures used in the verification process are “records” under Arizona law, as
21 they are “received by any governmental agency . . . in connection with the transaction of
22 public business” and “evidence of the . . . functions . . . decisions, procedures, operations
23 or other activities of the government.” *Id.*; *see also, e.g. Griffis v. Pinal Cnty.*, 215 Ariz.
24 1, 4, ¶ 11 (2007). All officers and public bodies are required by law to “maintain all
25 records, including records as defined in § 41-151, reasonably necessary to maintain an
26 accurate knowledge of their official activities.” A.R.S. § 39-121.01. Indeed, failure to
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1 maintain the information required is a class 2 misdemeanor. (Statement of Facts (“SOF”)
2 at ¶ 33).

3 Finally, the intent and purpose of the change was to *expand* the number of early
4 ballots that were counted. In addition to expanding which signatures could be used in the
5 verification process, it codified and expanded the time period for counties to verify the
6 signatures on voters’ ballots. (SOF ¶¶ 19-21). Plaintiffs’ reading of “record” to mean the
7 much more restrictive “forms” is at odds with the obvious purpose of the legislation to
8 maximize the number of valid votes counted. (*Id.* at ¶¶ 22-23). Plaintiffs implicitly
9 recognize that reducing the exemplars will likely result in more early ballot affidavits
10 with inconsistent signatures, but allege that the curing period will allow those votes to be
11 counted. (Mot. at 13). But even with the curing period, more eligible voters may be
12 disenfranchised. By broadening the signatures available for comparison and adding a
13 post-election day cure period, the legislature clearly intended that more valid votes be
14 counted, not fewer.

15 **II. Registration Record Is a Term of Art With a Specific Meaning Based on**
16 **Statutory Definitions in Titles 41 and 16.**

17 Plaintiffs admit that interpreting A.R.S. § 16-550 requires an examination of the
18 entire statutory framework, including statutes that are “of the same subject or general
19 purpose” when determining the definition of words in the statute. (Mot. at 3 (*citing State*
20 *v. Sorensen*, 25 Ariz. 316, ¶ 8 (App. 2023)). “Statutes shall be liberally construed to
21 effect their objects and to promote justice.” A.R.S. § 1-211(B). However, Plaintiffs
22 declare—without citation—that the legislature “strictly cabined ‘record’ with the
23 qualifier ‘registration’” (Mot. at 4), and on that basis conclude that only a “document
24 used to qualify an individual to vote in Arizona elections” is part of the “registration
25 record.” But this argument misapprehends the specialized context of election
26 administration. (SOF ¶¶ 1-17).

27 Every Arizona voter has one record of their official transactions as a voter. (*Id.* at
28 ¶ 28). That is the Arizona Voter Information Database (“AVID”). (*Id.* at ¶ 6); 52 U.S.C.

1 § 21083; A.R.S. § 16-168(J). The “voter registration information” in AVID is the
2 “registration record.” The definition of “registration record” includes signatures from
3 returned early ballots because: 1) the statutory definition of “record” is broad, and must
4 include signatures compared by counties to determine whether a ballot was lawfully cast;
5 2) the legislature provided an extensive list of what information must be maintained as
6 part of the “voter’s registration information” and it includes “*all data* relating to early
7 voters;” and 3) the Secretary was specifically empowered by the legislature to develop
8 this system, and it does not segregate or differentiate records as Plaintiffs desire.

9 **A. All the Information in AVID Is the Official “Record” of the**
10 **Registrant Held by the County Recorder or Other Officer in**
11 **Charge of Elections as Required by Law.**

12 When a definition is provided in statute, that language controls. (Order at 3). In
13 this case, the records that must be maintained by election officials are any documents
14 made or received by an agency in connection with its duties in carrying out an election,
15 including voter registration, Active Early Voter List (“AEVL”) requests, early ballot
16 returns and other documents. (SOF ¶ 30-33); *see* A.R.S. § 41-151(2). This definition of
17 “record” includes all these documents without resorting to creating an artificial limitation
18 that is nowhere in statute. It is the better reading of the term “registration record”
19 because it includes the signatures from the forms that Plaintiffs identify in their Amended
20 Complaint and Motion but also includes the complete group of signatures that must be
21 maintained by election officials as the registrant’s official record. A.R.S. § 16-168(C).

22 All the data in AVID, the “records management” system for registration
23 information, constitutes the “registration record.” Arizona law defines “records
24 management” as the “creati[on] and implementati[on] of systematic controls for records
25 and information activities from the point where they are created or received through final
26 disposition or archival retention, including distribution, use, storage, retrieval, protection
27 and preservation.” A.R.S. § 41-151.14(D). All “voter registration information” is
28 maintained in AVID. A.R.S. § 16-168(J). Thus, it is appropriate for county elections

1 officials to review and rely upon any of the verified signatures in AVID—the registrant’s
2 record—when determining whether a ballot has been cast by the voter.

3 **B. The Term “Registration Record” is Defined by What Is**
4 **Contained in A.R.S. § 16-168(C), and Has Become a Term of Art**
5 **Understood by Elections Officials as the Information Available**
6 **in AVID.**

7 In addition to the expansive definition of “record” from Titles 39 and 41, A.R.S. §
8 16-168(C) provides a more specific list of what AVID contains. The list of “voter
9 registration information” that must be maintained in the “voter registration database”
10 includes eleven categories of information. *Id.* The first nine categories can indeed be
11 found on the voter registration form itself, but voter registration information also includes
12 “voting history for all elections in the prior four years and any other information
13 regarding registered voters that the county recorder . . . maintains electronically and that
14 is public information” and “[a]ll data relating to early voters, including ballot requests
15 and *ballot returns*.” A.R.S. § 16-168(C)(10)-(11) (emphasis added). In other words, the
16 documents maintained by the Secretary and the counties in AVID pursuant to A.R.S. §
17 16-168(C) are the official “registration record.” Notably, AVID is identified in statute as
18 the “voter registration database” even though the information within it is *not* limited to
19 information used to effectuate or update a voter’s registration, but includes information
20 such as voting history and ballot status. (SOF at ¶¶ 8-16, and Ex. 4).

21 Defining “registration record” to encompass documents maintained in AVID
22 comports with state and federal law. The “chief elections officer” is required to maintain
23 a single, comprehensive list of voter registration information. 52 U.S.C. §
24 21083(a)(1)(A). This is the official voter registration list. *Id.* at (a)(1)(A)(viii); A.R.S. §
25 16-168(J). AVID is the “records management system” for all voter information in the
26 state, required by both state and federal law to include all the information election
27 officials use in the electoral process, from initial registration, through verifying signatures
28 for candidate nomination petitions, to voting history. *Id.* It contains voter history, party

1 affiliation, AEVL status, and it must link with the Social Security Administration and the
2 Motor Vehicle Division, among others, to allow list maintenance. A.R.S. § 16-168(J).
3 AVID is not just the database that maintains information necessary to be a qualified
4 registrant.

5 Words with specialized contexts may become “terms of art.” Indeed, language
6 governing the administration of elections includes such terms of art. *See In re Pima*
7 *County Mental Health No. 20200860221*, 255 Ariz. 519, ¶ 11 (2023) (declining to import
8 the concept of ‘strict compliance’ . . . a term of art used in election law cases” to the
9 mental health statutes). “Registration record” is, like “strict compliance,” a term of art.

10 Terms of art cannot be defined solely by reference to dictionary definitions. For
11 example, looking at “gold standard,” the word “gold”² is defined as “a yellow metallic
12 element that occurs naturally in pure form and is used especially in coins, jewelry, and
13 electronics, or a variable color averaging deep yellow” while “standard”³ is defined as a
14 “conspicuous object formerly carried at the top of a pole and used to mark a rallying
15 point or something established by authority, custom, or general consent as a model or
16 example or for the measure of quantity, weight, extent, value, or quality.” However, the
17 “gold standard” is *either* an example of the former monetary standard of the United States
18 which set the dollar to a specific weight of gold, *or* the best of something in a given class.
19 The definition of these words in isolation, or even using the preceding word to serve as a
20 modifier of the second word, still does not guarantee the correct result without additional
21 context.

22 Not only does A.R.S. § 16-168(C) provide the express definition of “voter
23 registration record” by mandating what information must be maintained in the voter’s
24 record, but items that once had no relevance to voter registration in the strictest sense are
25 now of special import. Now that Arizona has an “Active Early Voter List” rather than a

26 ² Merriam Webster Dictionary, gold def. 1 available at [https://www.merriam-
webster.com/dictionary/gold](https://www.merriam-
27 webster.com/dictionary/gold) (last visited on Dec. 22, 2023).

28 ³ Merriam Webster Dictionary, standard def. 4 available at [https://www.merriam-
webster.com/dictionary/standard](https://www.merriam-
webster.com/dictionary/standard) (last visited on Dec. 22, 2023).

1 permanent one, that voter’s history—specifically whether they have voted in any of the
2 elections in the last two cycles—determines whether that voter is removed from AEVL,
3 placed on inactive status, and ultimately removed from the list of registered voters all
4 together. A.R.S. § 16-544. In other words, the registrant’s voting history, which has
5 nothing to do with the act of registering to vote, now has real consequences to that voter’s
6 registration. It is therefore a part of the “registration record.” This demonstrates why
7 Plaintiffs’ simplistic view of “registration record” is incorrect.

8 **III. Plaintiffs’ Definition of “Registration Record” Is Self-Contradictory**
9 **and Not a Plain Reading of the Statutory Language Given the Full**
10 **Legal and Factual Context.**

11 Plaintiffs’ narrow definition of “registration record” collapses under its own
12 weight. Plaintiffs acknowledge that the change from “form” to “record” must mean
13 something, but their attempt to narrowly cabin it is neither natural nor reasonable.
14 Plaintiffs’ proposed definition does not meet their own criterion. Moreover, their
15 preferred definition includes forms that do not actually fit that definition, and would not
16 be understood by anyone other than election officials to function as updating the voter’s
17 registration record.

18 **A. Plaintiffs’ Proposed Definition Does Not Fit Their Own Definition of What**
19 **Constitute the “Registration Record.”**

20 Plaintiffs have used a generally consistent definition of what they believe a
21 “registration record” should be. The First Amended Complaint (“FAC”) defined it as “a
22 document upon which an individual furnishes information required by federal and
23 Arizona law to effectuate or amend her voter registration.” (FAC at 5, ¶ 17). Similarly,
24 in their response to the motions to dismiss, they explained the A.R.S. § 16-550
25 amendment as “augment[ing] the pool of potential signature specimens to encompass all
26 documents that Arizona law recognizes as mechanisms for updating a voter’s
27 registration.” (Resp. at 14-15). Plaintiffs specifically took issue with the fact that
28 documents cannot “develop a relationship to registration after the election.” (Resp. at

1 15); *see also* (Mot. at 5 (defining registration record to exclude any documents which rely
2 “in full, upon registration as a pre-condition.”). Despite their continued insistence that
3 the definition of “registration record” was “strictly cabined” by the Legislature, that is not
4 reflected in the forms Plaintiffs assert are covered by the 2019 amendment.

5 For example, Plaintiffs have had to admit that signatures from forms that have
6 *nothing to do with registering to vote* can be used to verify signatures, or their preferred
7 definition would render the 2019 amendment to A.R.S. § 16-550(A) a nullity. To
8 manufacture restrictions where none exist, Plaintiffs identify at least three circumstances
9 where a signature updates the “registration record” even though the voter *must* already be
10 registered to vote before it can be appended to the registrant’s record: 1) formal early
11 ballot requests; 2) response to an early voting notification (“90-day notice”); and 3) a
12 provisional ballot envelope. (Mot. at 4). This alone defeats Plaintiffs’ claim that only
13 signatures “used to enroll an individual to vote in Arizona elections” qualify as part of the
14 “registration record.” (Mot. at 4). By definition, formal early ballot requests and
15 responses to 90-day notices are not “used to enroll an individual to vote in Arizona
16 elections” and can only (if at all) be “aspects [of the electoral process] that rely, in full,
17 upon registration as a precondition,” which is the very reason Plaintiffs argue the
18 Secretary’s interpretation of “registration record” is incorrect. (Mot. at 4-5); (SOF at ¶¶
19 34, 36-37, 43).

20 The minor, secondary allegation is that these three types of documents—which are
21 indisputably not “documents the putative voter used to register” (Mot. at 3)—may
22 nonetheless be considered voter registration records because they *might* be used to update
23 voter registration records. But there is no sound, statutory basis to distinguish between
24 official elections correspondence that may cancel or cause a ballot to be mailed to an
25 otherwise already registered voter, and the early ballot affidavit. Indeed, the vast
26 majority of the forms that Plaintiffs cite only “update” a voter’s registration record if that
27 record is viewed in light of the expansive list of “voter registration information”
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1 maintained pursuant to A.R.S. § 16-168(C), rather than Plaintiffs’ definition. For
2 example, the vast majority of 90-day notices are returned only for unaffiliated voters to
3 request a party ballot to vote in the primary; indeed, voters are specifically instructed not
4 to return them otherwise. (SOF at ¶¶ 38-40). Plaintiffs’ definition thus fails as a matter
5 of law.

6 **B. Most of Plaintiffs’ Forms Cannot Be or Are Not Used to Update a Voter’s**
7 **Registration Record Under Plaintiffs’ Definition.**

8 The forms Plaintiffs argue breathe life into the 2019 amendment to A.R.S. § 16-
9 550(A), or create a “carefully calibrated balance,” do not actually do what Plaintiffs
10 purport, which would render the amendment a nullity. (Mot. at 8).

11 To the extent Plaintiffs’ restrictive definition of “record,” is limited to signatures
12 from forms that are voter registration forms themselves, undercuts the need for a statutory
13 change, particularly one that changes not just the singular to the plural, but the entire
14 word. Plaintiffs identify “a discrete set of documents that satisfy [Plaintiffs’] criterion,”
15 which are: a state or federal voter registration form, “an amendment” through the MVD,
16 an early ballot request or response to an early ballot mailing, and a provisional ballot
17 envelope. (*Id.* at 4) Changes to a voter’s registration information captured through the
18 MVD are transmitted to AVID as an electronic version of a voter registration form.⁴
19 (SOF at ¶¶ 25-26, 42). It would naturally be included as a “registration form” that could
20 be consulted under the prior version of the statute. (Ex. 9). Therefore only two
21 remaining sets of documents satisfy Plaintiffs’ criterion are not actual voter registration
22 forms, but *neither* is used to register a person to vote. (Exs. 11-2, 16-17). This defeats
23 Plaintiffs’ claims that only records that do not “rely, in full, on registration as a
24 precondition” satisfy the definition of “registration record.” (Mot. at 5).

25 While it is true, for example, that a provisional ballot envelope may update a
26 voter’s registration record if they have a new address, in the most recent election most

27 ⁴ Such forms, however, do not include a new signature. They rely on the signature that
28 MVD has on file from a voter’s driver’s license or non-operator’s identification.

1 provisional ballots cast in 2022 were for people who were not registered at all or had not
2 registered in time to vote for that election. (Ex. 13). Provisional ballot envelopes *can* be
3 used to update a registrant’s record, but that is not their primary function. A voter who is
4 not registered at all will not be registered by filling out a provisional ballot envelope.
5 The envelope does not contain enough information to register a voter, *e.g.* documentary
6 proof of citizenship and residence, so that signature never becomes part of a “registration
7 record.” (SOF at ¶ 43). Moreover, people who registered too late—*i.e.*, fewer than
8 twenty-nine days before an election—will almost never need to update their information
9 just a few weeks after initially providing it. Provisional ballot envelopes’ core function is
10 to allow election officials to determine if the voter was eligible to cast a ballot at that
11 election—not to perform a registration function.

12 Similarly, the response to a 90-day notice may be to update a registrant’s record,
13 but more often it is used to inform county election officials which primary election a non-
14 affiliated voter chooses to participate in. Approximately one-third of Arizona registered
15 voters are “independent” or “no party declared.” The only way for voters on the AEVL
16 to vote by mail in primary elections when unaffiliated with a recognized party is to return
17 the 90-day notice. (Ex. 11). Importantly, this does not update or change the voter’s party
18 registration *in any way*, but it *does* update the registrant’s record by providing
19 correspondence that is included in AVID pursuant to A.R.S. § 16-168(C)(10)-(11), and
20 supplementing that registrant’s voting history in the registration record if that person goes
21 on to successfully cast that primary ballot. (SOF at ¶ 40).

22 Moreover, because the change in word choice “must” indicate that the legislature
23 desired a different meaning to flow from that, it is unlikely that the legislature changed
24 “form” to “record” just to include these generally rare events. *P.F.W., Inc.*, 139 Ariz. at
25 34. Importantly, the vast majority of Plaintiffs’ self-identified forms do not actually
26 change a registrant’s record before the election, as Plaintiffs’ own definition requires.
27 (Mot. at 5). Asserting, as Plaintiffs do, that “registration record” means a number of very
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1 different “forms” which only rarely update voters’ records does not clarify the
2 legislature’s intent, nor does it protect the integrity of elections.

3 **C. The Forms Plaintiffs Identify Would Not be Understood by the Average**
4 **Voter as Updating a Voters’ Registration Record.**

5 Finally, to the extent the Plaintiffs maintain “common sense” indicates that only
6 forms that can “be used to effectuate or amend a voter’s registration” would be
7 understood by the ordinary person to update their “registration record,” that argument
8 does not hold up to scrutiny. The forms that Plaintiffs have identified—provisional ballot
9 envelopes and AEVL request forms—are not at all obviously an update to the voter
10 registration record for the average votere. For example, in Maricopa County the
11 provisional ballot envelope looks exactly like the early ballot envelope, only in a different
12 color. (Ex. 12). The AEVL request form requires some of the information required to
13 register, but is missing key pieces, such as the documentary proof of citizenship required
14 by A.R.S. § 16-166(F). (Exs. 15-17). Moreover, the average voter would understand the
15 purpose of AEVL to “authorize the county recorder to add my name to the active early
16 voting list and by doing so the county recorder will automatically mail an early ballot to
17 me for each election. Complete the form . . . for a vote by mail ballot.” (Ex. 15). While
18 AEVL forms vary in their complexities across counties, they cannot be used to register an
19 unregistered voter, and their obvious purpose is to enroll a voter in the AEVL, not update
20 their voter registration record.

21 In short, Plaintiffs cannot have it both ways. If the “plain meaning” is determined
22 by what an average person believes the function of these various forms are, then it is not
23 at all “obvious” or “natural” that Plaintiffs’ selection of forms modify the registrant’s
24 record. In which case, Plaintiffs’ argument that “record” means voter registration forms
25 plus other documents that are used by election officials to update a registrant’s record
26 evaporates, rendering the legislature’s choice to amend A.R.S. § 16-550(A) a nullity.
27 Instead, the 2019 amendment recognizes these terms have specialized meanings, long
28 understood by elections professionals, that the Legislature chose to recognize by

1 substantially expanding the signatures that can be used to verify a ballot. With this
2 context, it is clear that Plaintiffs’ interpretation, while “common sense” at first blush, is
3 actually an extreme over-simplification based on a misunderstanding of an important,
4 highly-regulated system. This Court should reject Plaintiffs’ invitation to contrive a
5 definition that would cause “registration record” to collide with the statutory mandates of
6 A.R.S. §§ 16-168, 41-151, and the realities of elections administration.

7 **IV. The Secretary Did Not Overstep by Using the EPM to Ensure**
8 **“Uniformity and Efficiency” in Early Ballot Processing.**

9 There is no single, one-size fits all word (or two) that can adequately capture the
10 intricacies of this reality. Person A may vote in-person on Election Day, only for
11 President, possibly after canceling their AEVL membership or being removed from
12 AEVL due to inactivity. Person B may vote in-person early, and bring their meticulously
13 researched sample ballot to help them ensure that they complete fifty or sixty races
14 exactly as they choose, which may include strategic undervotes in certain elections. And
15 while Person A and Person B might both live in the same Sedona neighborhood, one
16 might live in Yavapai County and the other in Coconino, and therefore have completely
17 different ballots.

18 By requiring the EPM, the Legislature empowers subject matter experts with the
19 legal authority to ensure that the people who must process several million ballots can do
20 so accurately, reliably, and efficiently across Arizona. A.R.S. § 16-452. Adopting
21 Plaintiffs’ restrictive meaning of “registration record” is not only unsupported by Arizona
22 law, it would curtail, what the Legislature empowered the executive branch to do through
23 the EPM. If *any* but the narrowest reading of the statutory text is impermissible, then the
24 EPM is unnecessary at best and harmful at worst. If any word pairing or phrase could be
25 divorced from the specialized context of election administration and slapped in a search
26 bar to provide a “plain language definition,” then the only authority that the EPM has to
27 ensure “the maximum degree of correctness and impartiality” is whatever any given
28 interest group cannot find a suitable dictionary definition to challenge.

1 It is not just the statutory command of A.R.S. § 16-452 that provides the Secretary
2 the authority to “prescribe rules . . . on the procedures for early voting and voting, and . . .
3 counting . . . ballots” which impels this result, but also the statute governing what is
4 included in the voter registration database. Specifically, A.R.S. § 16-168(I) requires that
5 “voter registration information” shall be protected by the Secretary and the county
6 recorders “in an auditable format and method specified in the secretary of state’s
7 electronic voting system instructions and procedures manual that is adopted pursuant to
8 section 16-452.” The Secretary has acted well within his role in creating and adopting
9 these rules in the EPM. Put simply, the plain meaning of words govern, but deriving the
10 true meaning requires consideration of the context. Indeed, this is implicit in the entries
11 of even the most basic words in a dictionary, which may be divided by forms of speech
12 (noun, adjective) and provide multiple definitions for the same word. Contrary to
13 Plaintiffs’ assertions, the Secretary acted well within the Legislature’s prescription when
14 providing examples of what signatures could be used to verify early ballots, as has been
15 the long-standing practice of prior Secretaries.

16 **CONCLUSION**

17 For these reasons, Plaintiffs’ Motion for Summary Judgment should be denied,
18 and summary judgment entered in favor of the Secretary.

19 Respectfully submitted this 22nd day of December, 2023.

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