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16 REPUBLICAN NATIONAL
17 COMMITTEE; REPUBLICAN PARTY
18 OF ARIZONA, LLC, and YAVAPAI
19 COUNTY REPUBLICAN PARTY,

20 Plaintiffs,

21 v.

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

24 Defendant.

No.

**VERIFIED SPECIAL ACTION
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

25 Plaintiffs bring this verified special action complaint and allege:

26 **SUMMARY OF THE CASE**

27 1. Every other year, the chief election officer for the State of Arizona, the
28 Secretary of State, is tasked with the statutory responsibility of “prescrib[ing] rules” for
administering federal and state elections in the state. The Secretary’s charge: (1) to adopt

1 rules “to achieve and maintain the maximum degree of correctness, impartiality, uniformity
2 and efficiency on the procedures for early voting and voting, and of producing, distributing,
3 collecting, counting, tabulating and storing ballots” and (2) to outline those rules in “an
4 official instructions and procedures manual” (Elections Procedures Manual or EPM).

5 2. Over the years, the EPM has grown. Today, it spans 268 pages of substance
6 on a range of election topics, including voter registration, early voting, ballot-by-mail
7 elections, voting equipment, accommodating voters with disabilities, regulation of petition
8 circulators, presidential preference elections, pre-election procedures, conduct of elections
9 and election day operations, central counting place procedures, hand count audits, post-
10 election day procedures, certifying election results, and campaign finance.

11 3. Indeed, Defendant Secretary of State Adrian Fontes described the EPM as
12 “one of the most important documents to ensure consistent and efficient election
13 administration across our state.” In his words, it directs “county, city, and town election
14 officials throughout Arizona” in administering elections and exercising one of the “most
15 important jobs in our democracy.”

16 4. Considering the import of this fundamental document, one would expect
17 maximum notice and public participation in its drafting and adoption, and for the Secretary
18 to hew closely to the authority the Arizona Legislature delegated to his office. He did neither
19 in finalizing the 2023 version of the EPM. (*See generally* 2023 Arizona Elections
20 Procedures Manual (Dec. 30, 2023) (2023 EPM), attached as **Exhibit 1**.) He ignored the
21 process required under Arizona’s Administrative Procedure Act, A.R.S. §§ 41-1001 to -
22 1092.12, for promulgating legislative “rules” that carry the force of law—here, criminal
23 sanctions—and shirked calls from interested stakeholders like Plaintiffs for more time to
24 meaningfully review, comment, and engage with the important topics covered in the 2023
25 EPM. In fact, critical portions of the 2023 EPM were not disclosed to the voting public until
26 the final version was released on December 30, 2023. Still other provisions, as explained
27 below, stand in direct conflict with governing statutes.

28

GENERAL ALLEGATIONS

1
2 13. The Arizona Legislature is constitutionally vested with the authority to enact
3 “laws to secure the purity of elections and guard against abuses of the elective franchise.”
4 Ariz. Const. art. 7, § 12.

5 14. The legislature has delegated limited rulemaking authority for the conduct of
6 elections to the Secretary of State. Specifically, the legislature has empowered the Secretary
7 to “prescribe rules to achieve and maintain the maximum degree of correctness,
8 impartiality, uniformity and efficiency on the procedures for early voting and voting, and
9 of producing, distributing, collecting, counting, tabulating and storing ballots” and to “adopt
10 rules regarding fax transmittal of unvoted ballots, ballot requests, voted ballots and other
11 election materials to and from absent uniformed and overseas citizens and shall adopt rules
12 regarding internet receipt of request for federal postcard applications” A.R.S. § 16-
13 452(A).¹

14 15. These statutory delegations are specific and exhaustive, meaning that if a
15 provision of the EPM is not authorized by one of these delegations, then it cannot carry the
16 force of law. *Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021).

17 16. These rules are required to “be prescribed in an official instructions and
18 procedures manual” known as the EPM, and must “be issued not later than December 31 of
19 each odd-numbered year immediately preceding the general election.” A.R.S. § 16-452(B).

20 17. The Secretary must submit a draft EPM to the governor and attorney general,
21 and the governor and attorney general must approve it before it takes effect. *Id.*

22 18. “Once adopted, the EPM has the force of law; any violation of an EPM rule
23 is punishable as a class two misdemeanor.” *Ariz. Pub. Integrity Alliance v. Fontes*, 250 Ariz.
24 58, 63 ¶ 16 (2020) (citing A.R.S. § 16-452(C)).

25
26
27 ¹ The Secretary’s limited rulemaking authority includes other topics to be addressed
28 in the EPM. *See also* A.R.S. §§ 16-168(I), 16-246(G), 16-315(D), 16-341(H), 16-
411(B)(5)(b), 16-449(A)–(B), 16-543(A)–(C), 16-544(B), 16-579(A)(2), (E), 16-602(B),
16-926(A), 16-938(B), 19-118(A), 19-121(A)(5), 19-205.01(A).

1 19. Since 1952, the Legislature has required that where agencies or agency heads
2 act to prescribe rules of general applicability, they do so in accordance with Arizona’s
3 Administrative Procedure Act (APA). A.R.S. § 41-1001.

4 20. The Department of the Secretary of State is an “agency” under the APA.
5 A.R.S. § 41-1001(1).

6 21. Among other requirements, the APA mandates that any agency proposing
7 “rules” provide at least 30 days for public comment on the proposed rules after their
8 publication in draft form.

9 22. Under the APA, a rule is invalid unless “it is consistent with the statute,
10 [granting rulemaking authority] reasonably necessary to carry out the purpose of the
11 statute[,] and is made and approved in substantial compliance with [sections] 41-1021
12 through 41-1029.” A.R.S. § 41-1030(A).

13 23. On or around July 31, 2023, the Secretary published a 259-page draft EPM
14 for public comment.

15 24. The Secretary permitted only 15 days of public comment, from August 1
16 through August 15, 2023.

17 25. On August 15, 2023, Plaintiffs submitted a public comment objecting to the
18 artificially short period for public comment and various specific provisions of the draft EPM
19 on grounds that those provisions conflicted with Arizona statutes or otherwise exceeded the
20 Secretary’s authority.²

21 26. On September 30, 2023, without allowing additional public comment, the
22 Secretary published a 253-page updated draft EPM and transmitted the same to the governor
23 and attorney general for their review and approval under A.R.S. § 16-452.

24 27. Three months later, on Saturday, December 30, 2023, the Secretary published
25 the “final” EPM, now 268 pages, which includes multiple provisions that were not present
26 in the July or September drafts, with the approval of the governor and attorney general. The
27

28 ² https://prod-static.protectthevote.com/media/document/rulemaking/RNC_RPAZ_EPM_Comment_8.15.23_q49m6n3f.pdf

1 Secretary did not permit public comment on these new additions to the final EPM. On
2 January 11, 2024, the Secretary published an updated “final” EPM, correcting and adding
3 dates in Chapter 15 in the 2023 EPM.

4 28. Several provisions of the 2023 EPM lack statutory authorization or are in
5 direct conflict with statute, including several provisions that were never published for public
6 comment and were added last minute. Two such last-minute additions are specifically
7 challenged in Counts IV and VII of this lawsuit.

8 **COUNT I**
9 **Failure to Comply with Notice-and-Comment Rulemaking**
10 **Under Arizona’s Administrative Procedures Act**
11 **(Declaratory Relief; Injunctive Relief)**
12 **(A.R.S. §§ 41-1034, 41-1030(A); Ariz. R. Civ. P. 65)**

13 29. Plaintiffs incorporate by reference the foregoing allegations as if fully set
14 forth herein.

15 30. On July 31, 2023, the Secretary released the draft EPM. The July 31 draft
16 EPM spanned 259-pages, covering a broad range of topics central to administering state
17 and federal elections in the State of Arizona, including voter registration, early voting,
18 ballot-by-mail elections, voting equipment, accommodating voters with disabilities,
19 regulation of petition circulators, presidential preference elections, pre-election procedures,
20 conduct of elections and election day operations, central counting place procedures, hand
21 count audits, post-election day procedures, certifying election results, and campaign
22 finance. (*See generally* Ex. 1.)

23 31. Throughout the July 31 draft EPM, the Secretary purported to exercise
24 delegated authority under various state statutes. Most prominently is the specific delegation
25 in A.R.S. § 16-452(A): “the secretary of state ***shall prescribe rules*** to achieve and maintain
26 the maximum degree of correctness, impartiality, uniformity and efficiency on the
27 procedures for early voting and voting, and of producing, distributing, collecting, counting,
28 tabulating and storing ballots.” (Emphasis added.) To be sure, the Secretary cites other
statutory delegations in the July 31 draft EPM, including A.R.S. §§ 16-138(I), 16-246(G),

1 16-315(D), 16-341(H), 16-411(B)(1)(b), 16-449(A), 16-513.01, 16-453(A), 16-544(B), 16-
2 579(A)(2), 16-602(B), 16-926(A), and 16-926(A).

3 32. Despite the breadth of the rulemaking, the Secretary allowed for only 15 days
4 for the public to review the July 31 draft EPM and provide comments. Multiple interested
5 individuals and stakeholders raised with the Secretary the brevity of time allowed to review
6 the 259-page EPM and provide meaningful comment. Among those who objected to the
7 public comment period were the RNC and the RPAZ, describing the period as
8 “unnecessarily restrictive” and imploring the Secretary to extend the deadline to allow
9 “critically important” feedback on the draft EPM.

10 33. The Secretary turned away calls for extending the comment period on the July
11 31 draft EPM. Indeed, in his September 30, 2023 transmittal letter to the governor and
12 attorney general, the Secretary described any public engagement as gratuitous and “[i]n
13 keeping with the good practice of the prior Administration.”³

14 34. On September 30, 2023, the Secretary submitted the revised proposed EPM
15 to the governor and attorney general for review. The September 30 proposed EPM was 253
16 pages.

17 35. Three months later, on December 30, 2023, without any additional public
18 participation, the Secretary announced the final 2023 EPM. The Secretary stated the EPM
19 “has been one of my Administration’s highest priorities” and opined that the EPM would
20 guide “county, city, and town election officials throughout Arizona” and would “provide
21 the maximum degree of correctness, impartiality, uniformity, and efficiency in election
22 procedures across Arizona.”

23 36. The 2023 EPM includes 268 pages of rules and procedures governing the
24 administration of elections in the state. This means the 2023 EPM includes 15 pages of new
25 rules and content that the Secretary added in consultation with Governor Hobbs and
26 Attorney General Mayes, which the public never reviewed and never had the opportunity
27 to comment on.

28 _____
³ https://apps.azsos.gov/election/files/epm/cover_letter_epm_submission_20230930a.pdf

1 37. The state’s APA was first adopted in 1952. Ariz. Sess. Laws 1952, ch. 97.
2 Thus, like many states following the federal APA, Arizona has a long history of requiring
3 “agencies” to follow certain procedures when adopting positive law through the exercise of
4 delegated authority from the legislature.

5 38. In that regard, the APA applies to “agencies,” which are defined as “any
6 board, commission, *department*, officer or other administrative unit of this state, *including*
7 *the agency head* and one or more members of the agency head or agency employees or
8 other persons directly or indirectly purporting to act on behalf or under the authority of the
9 agency head, whether created under the Constitution of Arizona or by enactment of the
10 legislature.” A.R.S. § 41-1001(1) (emphasis added).

11 39. The APA also defines a “rule” and a “rulemaking.” A “rule” is “an agency
12 statement of general applicability that implements, interprets or prescribes law or policy, or
13 describes the procedure or practice requirements of an agency.” § 41-1001(21). A
14 “rulemaking” is “the process to make a new rule or amend, repeal[,] or renumber a rule.”
15 § 41-1001(22).

16 40. For rulemakings, the APA sets forth detailed and necessary procedures
17 agencies must follow before their pronouncements become law. The agency must prepare
18 and make available to the public a regulatory agenda, § 41-1021.02(A); it must provide
19 notice of the proposed rulemaking, following a statutorily prescribed format for consistency
20 and clarity, and publish the notice in the register, § 41-1022(A); it must provide 30 days at
21 least after publication for the public to comment on the proposed rulemaking, § 41-1023(B);
22 it must hold an oral proceeding on the proposed rule if one is requested during the comment
23 period, § 41-1023(C); in most circumstances, it must submit the proposed rule to the
24 governor’s regulatory review council or the attorney general for review, § 41-1024(B)(1);
25 and it must maintain an official rulemaking record, § 41-1029(A).

26 41. Courts interpreting the federal APA around the time Arizona adopted its
27 version of the APA have pointed out that “[t]he [APA] was framed against a background of
28 rapid expansion of the administrative process as a check upon administrators whose zeal

1 might otherwise have carried them to excesses not contemplated in legislation creating their
2 offices.” *United States v. Morton Salt Co.*, 338 U.S. 632, 644 (1950). The APA therefore
3 guards against administrative excess by requiring agencies, before they adopt rules with the
4 force of law, to notify the public of the proposed rule, invite the public to comment on the
5 proposed rule’s shortcomings, consider and respond to the public’s comments and
6 arguments, and explain its final decision in a statement of the rule’s basis and purpose.

7 42. The Department of the Secretary of State of Arizona is an agency under
8 A.R.S. § 41-1001(1).

9 43. The 2023 EPM is a rule as defined in A.R.S. § 41-1001(21). Not only does
10 the substance of the 2023 EPM fit the definition of a rule under the APA, but the legislative
11 delegation makes explicit that “the secretary of state shall prescribe **rules**” covering the
12 administration of elections, and “[t]he **rules** shall be prescribed in an official instructions
13 and procedures manual.” § 16-452(A), (B).

14 44. A violation of these rules is punishable as a class 2 misdemeanor, § 16-
15 452(C), which further illustrates that the rules are intended to have the force of law.

16 45. The Secretary was therefore required to follow the APA’s rulemaking process
17 outlined in Ariz. §§ 41-1021 to -1029, in adopting the 2023 EPM. Additionally, section 16-
18 452(B) required an additional step before the 2023 EPM could be finalized: “approv[al] by
19 the governor and the attorney general.”

20 46. The Secretary skipped almost every step in the notice-and-comment
21 rulemaking process under the APA. *See* Ariz. §§ 41-1021 to -1029. He did not provide
22 notice of the proposed rulemaking in the statutorily prescribed format or publish it in the
23 register, § 41-1022(A); he did not provide the public 30 days comment on the proposed
24 rulemaking after publication, § 41-1023(B); he did not hold an oral proceeding on the
25 proposed rule, nor did he give the public an opportunity to request one, § 41-1023(C); and
26 he did not maintain an official rulemaking record, § 41-1029(A).

27 47. The APA makes clear that “[a] rule is invalid unless it is consistent with the
28 statute, reasonably necessary to carry out the purpose of the statute[,] and is made and

1 approved in substantial compliance with [sections] 41-1021 through 41-1029.” § 41-
2 1030(A). Further, the APA applies to all agencies and proceedings unless expressly
3 exempted. A.R.S. § 41-1002(a). The 2023 EPM is neither consistent with statute nor was
4 it adopted in substantial compliance with sections 41-1021 through -1029.

5 48. The Secretary’s violation of the APA’s notice-and-comment rulemaking
6 process is remediable through a declaratory judgment in this Court. § 41-1034(A).
7 Accordingly, Plaintiffs request that this Court declare that the 2023 EPM is a rule subject
8 to the APA’s notice-and-comment rulemaking process, that the Secretary failed to follow
9 the prescribed rulemaking process, and, therefore, the 2023 EPM is invalid. Plaintiffs also
10 request that this Court award injunctive relief, enjoining enforcement of the 2023 EPM
11 (including by criminal prosecution) until and unless the Secretary complies with the
12 rulemaking process outlined in sections 41-1021 through -1029.

13 49. Plaintiffs separately request their reasonable attorneys’ fees and costs under
14 sections 12-348(3) and 41-1034.

15 **COUNT II**
16 **(In the Alternative)**

17 **Rule Permitting use of Previously Submitted Documentary Proof of Citizenship to**
18 **Avoid Application of Juror Non-Residency Law Conflicts with Statute**
19 **(Special Action; Declaratory Relief; Injunctive Relief)**
20 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-165(A)(10); Ariz. R. Civ. P. 65)**

21 50. Plaintiffs incorporate by reference the foregoing allegations as if fully set
22 forth herein.

23 51. Chapter 1, Section 9, Subsection C(2)(b) of the 2023 EPM states that upon
24 reviewing the summary report of juror questionnaires and identifying a true match between
25 a juror who declared themselves a noncitizen and a registered voter, “the County Recorder
26 shall determine whether the voter has previously provided DPOC [Documentary Proof of
27 Citizenship]. If the person has previously provided DPOC [or was registered at vote at the
28 time the DPOC requirement went into effect in 2004], the County Recorder *shall not cancel*
the registration.” (Ex. 1 at 43 (56 of the pdf)) (emphasis added).)

52. A.R.S. § 16-165(A)(10) provides:

1 When the county recorder obtains information pursuant to this section and
2 confirms that the person registered is not a United States citizen, including
3 when the county recorder receives a summary report from the jury
4 commissioner or jury manager pursuant to § 21-314 indicating that a person
5 who is registered to vote has stated that the person is not a United States
6 citizen. Before the county recorder cancels a registration pursuant to this
7 paragraph, ***the county recorder shall send the person notice by forwardable
8 mail that the person’s registration will be canceled in thirty-five days unless
9 the person provides satisfactory evidence of United States citizenship
10 pursuant to § 16-166.*** The notice shall include a list of documents the person
11 may provide and a postage prepaid preaddressed return envelope. ***If the
12 person registered does not provide satisfactory evidence within thirty-five
13 days, the county recorder shall cancel the registration and notify the county
14 attorney and attorney general for possible investigation.***

15 (Emphasis added.)

16 53. Hence, this provision of the 2023 EPM conflicts with A.R.S. § 16-165(A)(10)
17 because the EPM requires the county recorder to forego cancellation of the registration of
18 the voter who answered a juror questionnaire saying he or she is a non-citizen where that
19 voter has provided DPOC in the past (or been registered to vote since 2004). The statute
20 requires the county recorder to send such a voter notice that their registration will be
21 cancelled if they do not submit evidence of citizenship in response to that notice.

22 54. If an “EPM provision ... directly conflicts with the express and mandatory
23 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore
24 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);
25 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that
26 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action
27 Proc. 3(b).

28 55. Plaintiffs therefore request that, in the event the Court does not grant the relief
requested under Count I, the Court declare the Rule Permitting use of Previously Submitted
Documentary Proof of Citizenship to Avoid Application of Juror Non-Residency Law void
and award special action and injunctive relief to enjoin its implementation.

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COUNT III
(In the Alternative)
Rule Permitting Federal Only Voters Without DPOC to Vote in Presidential
Elections
(Special Action; Declaratory Relief; Injunctive Relief)
(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-127; Ariz. R. Civ. P. 65)

56. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

57. Chapter 1, Section 2, Subsection A of the 2023 EPM states that an “otherwise eligible registrant who does not submit DPOC and whose U.S. citizenship cannot be verified ... is registered as a ‘federal-only’ voter.” It goes on to provide that a “federal-only voter is eligible to vote solely in races for federal office in Arizona (including the Presidential Preference Election (PPE)).” (Ex. 1 at 3 (16 of the pdf).)

58. Chapter 10, Section 2, Subsection F(1)(f)(i), which addresses the processing of provisional ballots submitted by “federal-only” voters confirms that “federal-only” voters are entitled to have their votes counted in all federal races, including the race for President of the United States (Presidential Electors) under the EPM. (Ex. 1 at 215 (228 of the pdf).)

59. The PPE is held on the Tuesday immediately following March 15 of each year in which the President of the United States is elected (or on such later date as provided for in a gubernatorial proclamation). A.R.S. § 16-241. “Every act that is an offense pursuant to the election laws of this state is an offense for purposes of a presidential preference election” *Id.* “All provisions of other laws governing elections not in conflict and including registrations and qualifications of voters are made applicable to and shall govern primary elections.” A.R.S. § 16-401(A).

60. A.R.S. § 16-127 provides: “A person who has registered to vote and who has not provided satisfactory evidence of citizenship as prescribed by § 16-166 is not eligible to vote in presidential elections.”

61. By permitting “federal-only” voters to vote in presidential elections this provision of the 2023 EPM conflicts with A.R.S. § 16-127.

1 62. If an “EPM provision ... directly conflicts with the express and mandatory
2 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore
3 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);
4 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that
5 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action
6 Proc. 3(b).

7 63. Plaintiffs therefore request that, in the event the Court does not grant the relief
8 requested under Count I, the Court declare the Rule Permitting Federal Only Voters Without
9 DPOC to Vote in Presidential Elections void and award special action and injunctive relief
10 to enjoin its implementation.

11 **COUNT IV**
12 **(In the Alternative)**

13 **Rule Permitting Federal Only Voters Without DPOC to Vote By Mail**
14 **(Special Action; Declaratory Relief; Injunctive Relief)**
15 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-127, 16-166; Ariz. R. Civ. P. 65)**

16 64. Plaintiffs incorporate by reference the foregoing allegations as if fully set
17 forth herein.

18 65. Chapter 2, Section 1, Subsection B(1) of the 2023 EPM states that “A first-
19 time voter with “federal-only” designation who registered by mail (i.e., has a “FED”
20 designation) and requests to be placed on the AEVL must first prove their identity in
21 compliance with HAVA [the federal Help America Vote Act] prior to receiving a ballot-
22 by-mail.” (Ex. 1 at 3 (16 of the pdf).)

23 66. Further, Chapter 2, Section 5, Subsection B of the 2023 EPM states “the
24 following are invalid grounds for challenging an early ballot: ... 2. The voter registered to
25 vote using a Federal or State Form and did not provide DPOC.”

26 67. A.R.S. § 16-127(2) provides: “A person who has not provided satisfactory
27 evidence of citizenship pursuant to section 16-166 and who is eligible to vote only for
28 federal offices is not eligible to receive an early ballot by mail.”

1 68. By permitting “federal-only” voters who have not submitted DPOC in
2 accordance with A.R.S. § 16-166 to receive a mail ballot, this provision of the 2023 EPM
3 conflicts with A.R.S. § 16-127.

4 69. If an “EPM provision ... directly conflicts with the express and mandatory
5 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore
6 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);
7 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that
8 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action
9 Proc. 3(b).

10 70. Plaintiffs therefore request that, in the event the Court does not grant the relief
11 requested under Count I, the Court declare the Rule Permitting Federal Only Voters Without
12 DPOC to Vote By Mail void and award special action and injunctive relief to enjoin its
13 implementation.

14 **COUNT V**
15 **(In the Alternative)**
16 **Rule Excusing County Recorders from Duty to Check Alternative**
17 **Databases to Identify Non-Citizen Registrants**
18 **(Special Action; Declaratory Relief; Injunctive Relief)**
19 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-121.01(D), 16-165;**
20 **Ariz. R. Civ. P. 65)**

21 71. Plaintiffs incorporate by reference the foregoing allegations as if fully set
22 forth herein.

23 72. Chapter 1, Section 2, Subsection A(8)(a) of the 2023 EPM addressing the duty
24 of county recorders to verify the citizenship of registrants states:

25 Although the statute lists other sources of information for County Recorders
26 to check, the Secretary of State is not aware that County Recorders currently
27 have access to those databases for citizenship review purposes. This includes
28 the Social Security Administration database, the USCIS SAVE program, and
the National Association for Public Health Statistics and Information
Systems (NAPHSIS) electronic verification of vital events system. *See*
A.R.S. § 16-165(H), (I), (J). Because the obligation to check these sources
applies only to the extent) practicable (or, in the case of NAPHSIS, only if
accessible), **County Recorders currently have no obligation to check these
databases.**

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2 (Ex. 1 at 13 (26 of the pdf) (footnote omitted) (emphasis added).)

3 73. Chapter 1, Section 2, Subsection C(2)(a) of the 2023 EPM addressing the duty
4 of county recorders to cancel voter registrations on evidence of non-citizenship similarly
5 states:

6 Although the statute lists other databases for County Recorders to check, the
7 Secretary of State is unaware of County Recorders currently having access
8 to those databases for citizenship verification purposes. This includes the
9 Social Security Administration database, the National Association for Public
10 Health Statistics Information and Systems (NAPHSIS) electronic
11 verification of vital events system, and the Electronic Registration
12 Information Center (ERIC) database. *See* A.R.S. § 16-121.01(D)(2), (D)(4),
13 (D)(5). Because the obligation to check databases applies only when County
14 Recorders have access to citizenship data through the database, ***County
15 Recorders currently have no obligation to check these databases.***

16 (Ex. 1 at 43 (56 of the pdf) (emphasis added).)

17 74. A.R.S. § 16-165 provides:

18 ***H. To the extent practicable, each month the county recorder shall compare***
19 ***the county's voter registration database to the social security administration***
20 ***database.***

21 ***I. To the extent practicable, each month the county recorder shall compare***
22 ***persons who are registered to vote in that county and who the county recorder***
23 ***has reason to believe are not United States citizens and persons who are***
24 ***registered to vote without satisfactory evidence of citizenship as prescribed***
25 ***by section 16-166 with the systematic alien verification for entitlements***
26 ***program maintained by the United States citizenship and immigration***
27 ***services to verify the citizenship status of the persons registered.***

28 ***J. For persons who are registered to vote without satisfactory evidence of***
citizenship as prescribed in section 16-166, the county recorder shall
compare the electronic verification of vital events system maintained by a
national association for public health statistics and information systems, if
accessible, with the information on the person's voter registration file.

K. To the extent practicable, the county recorder shall review relevant city,
town, county, state and federal databases to which the county recorder has
access to confirm information obtained that requires cancellation of
registrations pursuant to this section.

(Emphasis added.)

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75. A.R.S. § 161-121.01(D) provides:

Within ten days after receiving an application for registration on a form produced by the United States election assistance commission that is not accompanied by satisfactory evidence of citizenship, ***the county recorder or other officer in charge of elections shall use all available resources to verify the citizenship status of the applicant and at a minimum shall compare the information available on the application for registration with the following, provided the county has access:***

1. The department of transportation databases of Arizona driver licenses or nonoperating identification licenses.
2. The social security administration databases.
3. The United States citizenship and immigration services systematic alien verification for entitlements program, if practicable.
4. A national association for public health statistics and information systems electronic verification of vital events system.
5. Any other state, city, town, county or federal database and any other database relating to voter registration to which the county recorder or officer in charge of elections has access, including an electronic registration information center database.

(Emphasis added.)

76. Hence, these provisions of the 2023 EPM conflict with A.R.S. §§ 16-165 and 16-121.01(D) because they affirmatively remove any obligation of the county recorder to check the databases provided in statute while the statute affirmatively requires that they be checked if practicable and accessible.

1 77. If an “EPM provision ... directly conflicts with the express and mandatory
2 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore
3 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);
4 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that
5 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action
6 Proc. 3(b).

7 78. Plaintiffs therefore request that, in the event the Court does not grant the relief
8 requested under Count I, the Court declare the Rule Excusing County Recorders from The
9 Duty to Check Alternative Databases to Identify Non-Citizen Registrants void and award
10 special action and injunctive relief to enjoin its implementation.

11 **COUNT VI**
12 **(In the Alternative)**
13 **Rule Limiting Public Access to Registrant Signatures**
14 **(Special Action; Declaratory Relief; Injunctive Relief)**
15 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-168(F); Ariz. R. Civ. P. 65)**

16 79. Plaintiffs incorporate by reference the foregoing allegations as if fully set
17 forth herein.

18 80. Chapter 1, Section 11, Subsection C(1) of the 2023 EPM states:

19 *A registrant’s signature* may be viewed or accessed by a member of the
20 public only for purposes of verifying signatures on a candidate, initiative,
21 referendum, recall, new party, or other petition or for purposes of verifying
22 candidate filings. A.R.S. § 16-168(F). A County Recorder may establish the
23 conditions under which the signature may be viewed or accessed, including
24 prohibition of photography.

25 (Ex. 1 at 43 (56 of the pdf) (emphasis added).)

26 81. A.R.S. § 16-168(F) provides, in relevant part:

27 Nothing in this section shall preclude public inspection of voter registration
28 records at the office of the county recorder for the purposes prescribed by
this section, except that the month and day of birth date, the social security
number or any portion thereof, the driver license number or nonoperating
identification license number, the Indian census number, the father's name or
mother's maiden name, the state or country of birth *and the records
containing a voter's signature* and a voter's e-mail address shall not be
accessible or reproduced by any person other than the voter, by an authorized

1 government official in the scope of the official's duties, for any purpose by
2 an entity designated by the secretary of state as a voter registration agency
3 pursuant to the national voter registration act of 1993 (P.L. 103-31; 107 Stat.
4 77), **for signature verification on petitions and candidate filings, for**
5 **election purposes and for news gathering purposes by a person engaged in**
6 **newspaper, radio, television or reportorial work, or connected with or**
7 **employed by a newspaper, radio or television station or pursuant to a court**
8 **order.** Notwithstanding any other law, a voter's e-mail address may not be
9 released for any purpose. A person who violates this subsection or
10 subsection E of this section is guilty of a class 6 felony.

(Emphasis added.)

11 82. This provision of the 2023 EPM conflicts with A.R.S. § 16-168(F) in at least
12 two ways. First, it limits public access to a “registrant’s signature” for only the purposes of
13 “verifying signatures on a candidate, initiative, referendum, recall, new party, or other
14 petition or for purposes of verifying candidate filings.” But the statute expressly provides
15 that the public shall have access to “records containing a voter’s signature” for these
16 purposes and for “election purposes” which necessarily includes signature verification on
17 mail ballots. Second, the 2023 EPM provision is phrased in the singular: “the registrant’s
18 signature” when multiple signatures are currently being consulted for the purpose of ballot
19 and petition verification by the Secretary. Indeed, litigation is currently pending challenging
20 the Secretary’s practice of consulting signatures outside the voter registration record. *See*
21 *Arizona Free Enterprise Club v. Fontes*, (Yavapai County Super. Ct. docket no.
22 S1300CV2023-00202). Until and unless a singular signature is to be referenced by elections
23 officials for petition and ballot verification, access to all signatures which may be used by
24 the County Recorder to verify a registrant’s vote (or petition signature) is critical.

25 83. If an “EPM provision ... directly conflicts with the express and mandatory
26 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore
27 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);
28 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that
contradicts statutory requirements does not have the force of law.”); *Ariz. R. Special Action*
Proc. 3(b).

1 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action
2 Proc. 3(b).

3 90. Plaintiffs therefore request that, in the event the Court does not grant the relief
4 requested under Count I, the Court declare Rule Permitting Active Early Voting List Ballot
5 Mailing Out of State void and award special action and injunctive relief to enjoin its
6 implementation.

7 **COUNT VIII**
8 **(In the Alternative)**

9 **Rule Barring Early-Ballot Challenges Received Before the Early**
10 **Ballot is Returned and After the Affidavit Envelope is Opened, but**
11 **Before the Ballot is Placed in the Ballot Box**
12 **(Special Action; Declaratory Relief; Injunctive Relief)**
13 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-552(D); Ariz. R. Civ. P. 65)**

14 91. Plaintiffs incorporate by reference the foregoing allegations as if fully set
15 forth herein.

16 92. Chapter 2, Section 5, Subsection A of the 2023 EPM states:

17 Challenges to early ballots must be submitted in writing after an early ballot
18 is returned to the County Recorder and prior to the opening of the early ballot
19 affidavit envelope. ***Challenges received before the early ballot is returned***
20 ***or after the affidavit envelope containing the ballot has been opened must***
21 ***be summarily denied as untimely.***

22 (Ex. 1 at 79 (92 of the pdf) (emphasis added).)

23 93. A.R.S. § 16-552(D) provides:

24 An early ballot may be challenged on any grounds set forth in section 16-
25 591. All challenges shall be made in writing with a brief statement of the
26 grounds ***before the early ballot is placed in the ballot box.*** A record of all
27 challenges and resulting proceedings shall be kept in substantially the same
28 manner as provided in section 16-594. If an early ballot is challenged, it shall
be set aside and retained in the possession of the early election board or other
officer in charge of early ballot processing until a time that the early election
board sets for determination of the challenge, subject to the procedure in
subsection E of this section, at which time the early election board shall hear
the grounds for the challenge and shall decide what disposition shall be made
of the early ballot by majority vote. If the early ballot is not allowed, it shall
be handled pursuant to subsection G of this section.

(Emphasis added.)

1 94. This provision of the 2023 EPM conflicts with A.R.S. § 16-552(D) because
2 while the statute allows challenges to early ballots to be submitted at any time “before the
3 early ballot is placed in the ballot box,” the EPM bars challenges “received before the early
4 ballot is returned or after the affidavit envelope containing the ballot has been opened” The
5 EPM thus bars challenges that are timely under the statute.

6 95. If an “EPM provision ... directly conflicts with the express and mandatory
7 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore
8 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);
9 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that
10 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action
11 Proc. 3(b).

12 96. Plaintiffs therefore request that, in the event the Court does not grant the relief
13 requested under Count I, the Court declare the Rule Barring Early-Ballot Challenges
14 Received Before the Early Ballot is Returned and After the Affidavit Envelope is Opened,
15 but Before the Ballot is Placed in the Ballot Box void and award special action and
16 injunctive relief to enjoin its implementation.

17 **COUNT IX**
18 **(In the Alternative)**
19 **Rule Authorizing Out-of-Precinct Voting in Precinct-Based Counties**
20 **(Special Action; Declaratory Relief; Injunctive Relief)**
21 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-122, 16-135, 16-584; Ariz. R. Civ.**
22 **P. 65)**

23 97. Plaintiffs incorporate by reference the foregoing allegations as if fully set
24 forth herein.

25 98. Chapter 8, Section 8, Subsection B of the 2023 EPM, addressing the signature
26 statement for a provisional ballot affidavit requires that the voter signing the affidavit attest
27 to the following statement:

28 “I swear or affirm under penalty of perjury that the above information is
correct, that I have resided in the precinct and/or district listed at least 29
days before the election, that I am eligible to vote in this election, and that I
have not previously voted in this election.

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2 I know that my provisional ballot will only be *fully counted* if I have voted
3 the correct ballot style for my assigned precinct, which is based on where I
4 currently live. **I understand that voting the wrong ballot style in the**
5 **wrong precinct means that my ballot will not be counted. I also**
6 **understand that voting in the wrong county means my ballot will not be**
7 **counted.”**

8 (Ex. 1 at 165 (178 of the pdf) (italicized emphasis added).)

9 99. Chapter 9, Section 6, Subsection B(1)(f) of the 2023 EPM addresses out-of-
10 precinct voters in counties that conduct assigned polling place elections and states, in
11 pertinent part:

12 If the voter’s name does not appear on that precinct’s signature roster because
13 the voter resides in another precinct (in counties that conduct assigned
14 polling place elections), an election official shall:

- 15 • *Permit the voter to vote a provisional ballot* (in the correct ballot
16 style for the voter’s assigned precinct) using an accessible voting
17 device that is programmed to contain all ballot styles, *and inform the*
18 *voter that their provisional ballot will be counted* after it is processed
19 and if it is confirmed the voter is otherwise eligible to vote and did not
20 vote early or at another voting location and had that other ballot
21 counted.

22 (Ex. 1 at 190 (203 of the pdf) (italicized emphasis added).)

23 100. A.R.S. § 16-122 provides: “*No person shall be permitted to vote unless such*
24 *person’s name appears as a qualified elector in both the general county register and in*
25 *the precinct register* or list of the precinct and election districts or proposed election
26 districts in which such person resides, except as provided in sections 16-125, 16-135 and
27 16-584.” (Emphasis added.)

28 101. While HAVA requires provisional ballots to be offered to out-of-precinct
voters, nothing in A.R.S. § 16-125, 16-135, or 16-584 permits a voter in a precinct-based
county to have their provisional ballot counted if cast in another precinct.

102. These provisions of the 2023 EPM conflict with A.R.S. § 16-122 because they
purport to permit voting by out-of-precinct voters in direct contravention of the statute.

1 103. If an “EPM provision ... directly conflicts with the express and mandatory
2 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore
3 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);
4 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that
5 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action
6 Proc. 3(b).

7 104. Plaintiffs therefore request that, in the event the Court does not grant the relief
8 requested under Count I, the Court declare the Rule Authorizing Out-of-Precinct Voting in
9 Precinct-Based Counties is Returned void and award special action and injunctive relief to
10 enjoin its implementation.

11 **DEMAND FOR RELIEF**

12 WHEREFORE,

13 A. Plaintiffs demand relief in the following form:

14 1. A declaration under A.R.S. §§ 12-1831, 12-1832, and 41-1034(A), or
15 other applicable law, that the 2023 EPM is a “rule” subject to the APA’s notice-and-
16 comment rulemaking process, that the Secretary failed to follow the prescribed
17 rulemaking process, and, therefore, the 2023 EPM is invalid.

18 2. A preliminary and permanent injunction under Ariz. R. Civ. P. 65 or
19 other applicable law prohibiting the Secretary from enforcing or implementing the
20 2023 EPM until and unless he complies with the rulemaking process outlined in
21 A.R.S. §§ 41-1021 through -1029.

22 3. An award of reasonable attorneys’ fees and costs under A.R.S. §§ 12-
23 348(3) and 41-1034, and other applicable law.

24 B. Alternatively, Plaintiffs demand relief in the following form:

25 1. A declaration under A.R.S. §§ 12-1831 and 12-1832, and special
26 action relief under Arizona Rule of Special Action Procedure 3(b) or other applicable
27 law providing that the 2023 EPM’s Non-Residency of Juror Questionnaire Rule,
28 Investigations of Citizenship Status Rule, AEVL Effective Date Rule, Validity of

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Circulator Registrations Rule, and Duty to Canvass Rules (*see* Ex. 1 at Chapter 1, Section 9, Subsections C(1) and C(2)(a), Chapter 2, Section 1, Subsection B(7), Chapter 6, Section 2, Subsection C, Chapter 13, Section 2, Subsections A(2) and B(2)): (i) exceed the Secretary’s specific statutory authorization and lawful authority because these provisions conflict with specific statutes; (ii) do not carry the force of law; and (iii) are void.

2. A preliminary and permanent injunction under Ariz. R. Civ. P. 65 or other applicable law prohibiting the Secretary from enforcing or implementing the 2023 EPM’s Non-Residency of Juror Questionnaire Rule, Investigations of Citizenship Status Rule, AEVL Effective Date Rule, Validity of Circulator Registrations Rule, and Duty to Canvass Rules (*see* Ex. 1 at Chapter 1, Section 9, Subsections C(1) and C(2)(a), Chapter 2, Section 1, Subsection B(7), Chapter 6, Section 2, Subsection C, Chapter 13, Section 2, Subsections A(2) and B(2)).

3. An award of reasonable attorneys’ fees and costs under A.R.S. §§ 12-341, 12-348.01, 12-2030, the private attorney general doctrine, and other applicable law.

C. Such other relief as the Court deems necessary, equitable, proper, and just.

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DATED this 9th day of February, 2024.

BROWNSTEIN HYATT FARBER SCHRECK
LLP

By: /s/ Christopher O. Murray
Christopher O. Murray
Julian R. Ellis, Jr.
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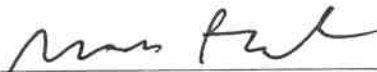
Attorneys for Plaintiffs

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VERIFICATION

I, Mike Reed, certify that I have read the foregoing Verified Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 9th day of February 2024.



[Name] Mike Reed
RNE chief of Staff

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VERIFICATION

I, Gina Swoboda, certify that I have read the foregoing Verified Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 9th day of February 2024.

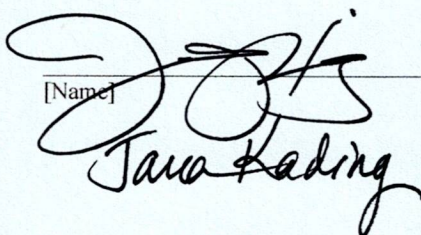
Gina Swoboda
[Name]

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VERIFICATION

I, Jawa Kading, certify that I have read the foregoing Verified Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 8th day of February 2024.

[Name] 
Jawa Kading