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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE DISTRICT OF ARIZONA

12
 13 Arizona Alliance for Retired Americans; et
 al.,

14 Plaintiffs,

15 v.

16 Katie Hobbs, in her official capacity as
 17 Secretary of State for the State of Arizona,
 et al.,

18 Defendants.
 19
 20

No. 2:22-CV-01374-GMS

**OBJECTION TO SECRETARY OF
 STATE KATIE HOBBS’S NOTICE
 RE INTERPRETATION OF SB 1260**

21 In response to Plaintiffs’ Motion for Preliminary Injunction, Secretary of State Katie
 22 Hobbs filed a “Notice” regarding her interpretation of Senate Bill (“SB”) 1260. [Doc. 73.]
 23 Proposed-Intervenor Yuma County Republican Party (“YCRC”) takes no issue with the
 24 Secretary’s factual statements regarding her office’s current practices and procedures
 25 related to cancellation of voter registrations and removal of voters from the Arizona Early
 26 Voter List (“AEVL”). However, YCRC strongly objects to the Secretary’s politically
 27 charged and argumentative interpretation of those same provisions. Importantly, at the
 28 Court’s September 14, 2022, return hearing, the Secretary of State asked to be declared a

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1 nominal party. The Secretary’s interpretation of SB 1260 goes well beyond explaining
 2 current procedures. Because the Secretary is a nominal party, the Court should disregard
 3 this “interpretation.” But, even if the Court considers the Secretary’s interpretation, it should
 4 be rejected for the following reasons.

5 **I. The Plain Meaning of SB 1260 Does Not Support the Secretary’s Interpretation**
 6 **of the Cancellation and Removal Provisions.**

7 The Secretary suggests that the only reasonable reading of the Cancellation and
 8 Removal Provisions’ “credible information” phrase is to read into the law a source
 9 requirement not present in the actual text of SB 1260. Specifically, the Secretary urges that
 10 this Court adopt a construction of SB 1260 that requires “credible information” to come
 11 only from another county recorder or some other government election official. [Doc. 73 at
 12 6-7.] This argument belies the plain meaning of the statutes at issue.

13 A federal court’s “role when interpreting a state statute as a matter of first impression
 14 is to ‘determine what meaning the state’s highest court would give to the law.’” *Brunozzi v.*
 15 *Cable Comm’ns, Inc.*, 851 F.3d 990, 998 (9th Cir. 2017) (quoting *Bass v. County of Butte*,
 16 458 F.3d 978, 981 (9th Cir. 2006)). In Arizona, the Supreme Court will “read words in
 17 context and effectuate the plain meaning of [the statute] unless doing so would be absurd.”
 18 *S. Point Energy Ctr. LLC v. Ariz. Dep’t of Rev.*, 253 Ariz. 30, ¶ 14 (2022). However, a court
 19 “will not read into a statute something that is not within the manifest intent of the Legislature
 20 as gathered from the statute itself.” *Collins v. Stockwell*, 137 Ariz. 416, 420 (1983).

21 Here, A.R.S. § 16-165(B) and § 16-544(R) use parallel language: “If the county
 22 recorder receives credible information that a person has registered to vote in a different
 23 county, the county recorder shall confirm the person’s voter registration with that other
 24 county.” And “[w]hen the county recorder receives confirmation *from another county*
 25 *recorder* that the person registered has registered to vote in that other county,” then the first
 26 county recorder is directed to either cancel the voter’s old registration or remove the voter
 27 from their outdated AEVL. A.R.S. §§ 16-165(A)(10) (emphasis added), 16-544(Q)
 28 (requiring receipt of “confirmation *from another county*” (emphasis added)).

1 Stated another way, when the county recorder receives credible information about a
2 voter's new registration, *then* the recorder must seek confirmation from the appropriate
3 county recorder or county. It is significant that the Legislature included a source
4 requirement for the confirmation portion of the statute but not the credible information
5 portion of the statute. Reading in the phrase "from the county recorder" (or other election
6 official) in relation to the receipt of credible information would render the words "from the
7 county recorder" in the confirmation portion to be meaningless. *Brenda D. v. Dep't of Child*
8 *Safety*, 243 Ariz. 437, 443 ¶ 20 (2018) ("We will not interpret statutes or rules in a manner
9 that renders portions of their text superfluous."). It would also create an absurd, circular
10 requirement: Why would the legislature require a county recorder to confirm the "credible
11 information" with the very county from whom he received the information? This
12 construction should be rejected. *State ex rel Montgomery v. Harris*, 237 Ariz. 98, 102 ¶ 13
13 (2014) ("Statutes should be construed sensibly to avoid reaching an absurd conclusion.").

14 Put simply, if the "legislature had intended to include" a source requirement for
15 credible information in SB 1260's Cancellation and Removal Provisions, "it would have
16 expressly done so." *Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 327 ¶ 15
17 (2011).

18 The phrase "credible information" is more appropriately interpreted by simply
19 looking at the plain meaning of the words used. "Credible" means something that "offer[s]
20 reasonable grounds for being believed." *Credible*, Merriam-Webster.¹ With this lens, the
21 statute requires the county recorder who receives information regarding a voter's purported
22 registration in a different county to review that information and determine whether the
23 source provides reasonable grounds for being believed. If the county recorder reasonably
24 determines that the information is in fact credible, only then is the county recorder required
25 to confirm the information with the appropriate recorder in the voter's new county of
26 residence.

27
28 ¹ <https://www.merriam-webster.com/dictionary/credible>

1 Under this standard, bare allegations would not be sufficient to trigger an
 2 investigation, because they would not provide reasonable grounds for being believed. For
 3 instance, if a “third-party organization” were to deliver a list of names to a county recorder
 4 under the suspicion that those individuals had re-registered, without any information about
 5 the grounds for believing the individuals on such list had re-registered, that would not be
 6 enough information to constitute “credible information.” Not only would this pose logistical
 7 problems for the county recorder (*e.g.*, a list with only names could prove impossible to
 8 distinguish between voters with the same name), there must be adequate information
 9 presented to constitute a reasonable basis for believing a person has re-registered to vote in
 10 a different county.

11 For all these reasons, this Court should reject the Secretary’s interpretation.

12 **II. The Court Should Not Endorse the Secretary’s Suggestion to Willfully Ignore**
 13 **Arizonans.**

14 The Secretary’s interpretation of “credible information” all but dictates that the
 15 county recorders should blindly ignore information reported to their offices by their own
 16 constituents. [Doc. 73 at 7.] This interpretation invites willful disregard of citizen
 17 grievances in violation of the county recorders’ statutory duties.

18 County recorders are charged with certifying the “completeness and correctness” of
 19 their precinct registers before transmitting them to the election boards. *See* A.R.S. § 16-
 20 169(A). As a local political party, YCRC relies on these registers. If the county recorders
 21 were to ignore credible information regarding a voter’s re-registration in another county
 22 from any source other than another county recorder (or other election official), they would
 23 be knowingly and willfully disregarding this duty to certify that the voter lists are accurate.

24 Moreover, the responsibility of a public office to review citizen requests like those
 25 that may stem from the “credible information” provision is not as radical as the Secretary
 26 suggests.² Like other reasonable laws designed to provide citizens with an opportunity to

27 _____
 28 ² The Secretary’s footnote regarding action taken by “non-governmental third party organizations” in Georgia is entirely inappropriate given her nominal status. She suggests

1 hear or be heard, SB 1260 simply requires the county recorders to shift resources to review
 2 the information provided to them and determine whether any further action needs to be
 3 taken, within a reasonable and non-statutorily mandated time. *See, e.g.*, A.R.S. § 39-
 4 121.01(D) (“*Any person* may request to examine or be furnished copies” of public records
 5 (emphasis added)); 5 U.S.C. § 552 (similar).

6 Given that the Secretary admits that she does not have any supervisory capacity over
 7 the county recorders offices or their administration of their official duties, these arguments
 8 should be left to the counties. [*See* Doc. 73 at 9-10.]

9 **II. Statutory Interpretation Is Not Within the Secretary’s Purview.**

10 The Secretary offers her interpretation SB 1260 on behalf of the State as a
 11 purportedly neutral party. But she is not. Moreover, statutory interpretation falls under the
 12 purview of the courts—not an elected member of the executive branch. *Leibsohn v. Hobbs*,
 13 No. CV-22-0204-AP/EL, 2022 WL 4352090, at ¶ 22 (Ariz. Sept. 20, 2022) (rejecting the
 14 Secretary’s interpretation of a statute in the election procedures manual that “contradict[ed]
 15 statutory requirements” and emphasizing that it is the “Court’s role, not the Secretary’s, to
 16 interpret [the] meaning” of election laws). If the Secretary is concerned with the
 17 interpretation of SB 1260 and its impact on the Court’s adjudication of the issues in this
 18 case, this case would be an appropriate candidate for a certified question to the Arizona
 19 Supreme Court for an interpretation of SB 1260. *See* A.R.S. § 12-1861 (“The supreme court
 20 may answer questions of law certified to it by . . . a United States district court” when “it
 21 appears to the certifying court there is no controlling precedent in the decisions of the
 22 supreme court and the intermediate appellate courts of this state.”); Ariz. R. Sup. Ct. 27.

23 Certification is “[d]esigned to avoid federal-court error in deciding state-law
 24 questions antecedent to federal constitutional issues.” *Arizonans for Off. English v. Arizona*,
 25 520 U.S. 43, 75 (1997). Certification of dispositive underlying issues of state law directly

26 _____
 27 that the request coming from an apparently Republican source is (a) not credible
 28 information and (b) might someday happen in Arizona. [Doc. 73 at 7 n.5.] However, no
 county in this litigation has suggested that these sorts of actions are occurring in their
 counties or speculate regarding whether they might ever occur in the future.

1 to the State Supreme Court also “reduc[es] the delay, cut[s] the cost, and increas[es] the
 2 assurance of gaining an authoritative response.” *Id.* Here, assuming that Plaintiffs can
 3 somehow get past the justiciability problems with many of their claims, there are four issues
 4 of statutory interpretation that are antecedent issues to Plaintiffs’ constitutional and other
 5 federal question challenges:

- 6 1. What is the plain meaning of “credible information” as used in A.R.S. § 16-
 7 165(B) and A.R.S. § 16-544(R)?
- 8 2. Does “credible information,” as referenced in A.R.S. § 16-165(B) and A.R.S.
 9 § 16-544(R), need to come from a certain source (*i.e.*, a county recorder or
 10 other election official), or may it come from any source?
- 11 3. Does “knowingly,” as used in A.R.S. § 16-1016(12), modify one or both
 12 requirements that follow it?
- 13 4. What is the plain meaning of “mechanisms for voting,” as used in A.R.S.
 14 § 16-1016(12)?

15 The Court’s interpretation of Sections 16-164 and 16-544 will impact its evaluation
 16 of Plaintiffs’ claimed (and speculative) injury of disenfranchisement, which is in turn
 17 relevant to Plaintiffs’ due process claims as well as YCRC’s justiciability defense.
 18 Similarly, the Court’s interpretation of Section 16-1016(12) is integral to Plaintiffs’ due
 19 process, vagueness, and overbreadth claims.

20 As such, certification is appropriate here because there now there are several issues
 21 of state statutory construction that are dispositive to the Court’s adjudication of the
 22 constitutional and federal issues before it, and because as a brand-new statute it is naturally
 23 one of first impression. Accordingly, it would be appropriate and prudent for this Court to
 24 certify these four questions to the Arizona Supreme Court.

1 DATED this 20th day of September, 2022.

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CERTIFICATE OF SERVICE

I certify that, on September 20, 2022, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing, which automatically sends a Notice of Electronic Filing to all counsel of record.

s/ Tracy Hobbs

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