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

**IN AND FOR THE COUNTY OF MARICOPA**

KARI LAKE,

Plaintiff,

v.

KATIE HOBBS, *ET AL*.

Defendants.

No. CV2022-095403

**SECRETARY OF STATE ADRIAN FONTES' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

BEFORE THE HON. PETER A. THOMPSON



Adrian Fontes, in his official capacity as Arizona Secretary of State (the "Secretary"), asks this Court to dismiss Kari Lake's remaining claim on remand, Count III, because Ms. Lake fails to state a claim upon which relief can be granted. Ariz. R. Civ. P. 12(b)(6).

Arizonans have been through enough. Enough baseless conspiracy theories recklessly strewn about to sow distrust in our most sacred of institutions. Enough divisive rhetoric. Enough perpetuation of the unsubstantiated narrative that dedicated public servants – our fellow Arizonans; friends and neighbors alike – purposefully and nefariously sabotaged our democracy. Katie Hobbs is our governor. Fair and square. We all know it. So does Ms. Lake. That she may not want to *believe* that reality is no substitute for *actual proof* that "votes were affected in sufficient numbers to alter the outcome of the election based on a competent mathematical basis to conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty." Supreme Court Order ("Order") at 4-5 (cleaned up).

The issue on remand is narrow and singular. This Court is to review Count III as alleged and:

> … determine whether the claim that Maricopa County failed to comply with A.R.S. § 16-550(A) fails to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6) for reasons other than laches, or, whether Petitioner can prove her claim as alleged pursuant to A.R.S. § 16-672 and establish that "votes [were] affected 'in sufficient numbers to alter the outcome of the election'" based on a "competent mathematical basis to conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty." (Opinion at ¶ 11.)

Order at 4-5.

Now is not the time to recast the Complaint as stating something anew, to conduct new discovery, or to present new evidence beyond that identified in the Complaint. We must consider the Complaint as pled, and as pled, it fails to state a claim.

Moreover, to the extent Ms. Lake takes issue with what the term "registration record" means (and the Complaint is not clear at all in this regard), she fails to state a claim to the extent she means to argue that the registration record is limited to the signature contained on a voter's original voter registration form.

Finally, the evidence Ms. Lake references in her Complaint (at ¶ 152 – a declaration from someone unqualified to give "expert" testimony), and indeed, the evidence she presented at trial, fails to clearly and convincingly prove that votes were affected in sufficient numbers to alter the outcome of the election based on a competent mathematical basis to conclude that the outcome would plausibly have been different, as opposed to simply an untethered assertion of uncertainty.

Accordingly, this Court should dismiss Count III.

## I. THE FACTS

This Court is well versed in the facts, so rather than recite them here, the Secretary will point the Court to those facts that matter (or the lack thereof) throughout this memorandum. Even so, it is worth noting that Count III is pled in the Complaint at ¶¶ 149 – 155.

## II. LEGAL ARGUMENT

### A. THE LEGAL STANDARD OF REVIEW

The standard of review in an election contest is worth repeating given the Complaint's failure to meet that standard in pleading Count III. "All reasonable presumptions must favor the validity of an election." *Moore v. City of Page*, 148 Ariz. 151, 159 (App. 1986). The "returns of the election officers are prima facie correct" and courts presume election officers acted in good faith and honestly, absent "clear and satisfactory proof" to the contrary. *Hunt v. Campbell*, 19 Ariz., 254, 268 (1917). When considering a motion to dismiss, the Court assumes as true only "well-pled facts, not legal conclusions." *Grand v. Nacchio*, 225 Ariz. 171, 175 n.1 (2010) (cleaned up). "[A] complaint that states only legal conclusions, without any supporting factual allegations, does not satisfy Arizona's notice pleading standard under Rule 8." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008). Moreover, the Court will "not accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005); *see also Hancock v. Bisnar*, 212 Ariz. 344, 348 ¶ 17 (2006) (assessing election contest under Rule 8); *Griffin v. Buzard*, 86 Ariz. 166, 168 (1959 (election contest subject to dismissal for failure to sate a claim).



### B. THERE IS NEITHER THE RIGHT TO, NOR A NEED FOR, A NEW TRIAL NEARLY 7 MONTHS AFTER THE 2022 GENERAL ELECTION

If the Supreme Court wanted to require a new trial or additional expanded discovery on remand, then the Supreme Court would have done so by *specifically directing* this Court to permit additional expanded discovery and conduct a new trial. But the Supreme Court made no such direction. This makes sense, "[b]ecause not every case in which error is discovered on appeal needs to be remanded for an entirely new trial …." *Anderson v. Contes*, 212 Ariz. 122, 125, ¶ 10 (App. 2006); A.R.S. § 12–2103(A) (2003) ("The supreme court ... may remand the action to the court below with directions to render such judgment or order, or may direct that a

new trial or other proceedings be had, as justice may require...."); *Bogard v. Cannon & Wendt Elec. Co.*, 221 Ariz. 325, 334 (App. 2009) ("On remand, a trial court must 'strictly follow' the mandate of an appellate decision. (citations omitted)). "In non-jury cases, our appellate courts have frequently exercised this authority by reversing or vacating a judgment and remanding for further proceedings that do not require complete retrial of an issue but are more limited in focus, such as the presentation of additional evidence, amendment of findings based on the record, and application of the correct legal standard based on the evidence already received." *Anderson*, 212 Ariz. at 125, ¶ 10.

The Supreme Courts asked this Court to:

> … determine whether the claim that Maricopa County failed to comply with A.R.S. § 16-550(A) fails to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6) for reasons other than laches, or, whether Petitioner can prove her claim as alleged pursuant to A.R.S. § 16-672 and establish that "votes [were] affected 'in sufficient numbers to alter the outcome of the election'" based on a "competent mathematical basis to conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty." (Opinion ¶ 11.)

Order at 4-5. The Supreme Court did not remand this narrow issue, nearly 7 months after the 2022 General Election, for the purpose of conducting a new expanded trial, with new expanded discovery and the presentation of evidence apart from that cited in the Complaint as supposedly supporting Count II of Ms. Lake's contest. Thus, this Court is not necessarily required to conduct a trial on remand or weigh new or additional evidence.

Nor should this Court do so, for several reasons. First, Ms. Lake fails to state a claim for relief for all the reasons stated herein and in the Defendants' various briefs.

Second, the claim on remand is based on conclusory "information and belief" which cannot clearly and convincingly prove that votes were affected in sufficient numbers to alter the outcome of the election based on a competent mathematical basis to conclude that the outcome would plausibly have been different. Specifically, the claim on remand is that Maricopa County failed to comply with A.R.S. § 16-550(A):

> *Upon information and belief*, a material number of early ballots cast in the November 8, 2022 general election were transmitted in envelopes containing an affidavit signature that the Maricopa County Recorder or his designee determined did not match the signature in the putative voter's "registration record." The

> Maricopa County Recorder nevertheless accepted a material number of these early ballots for processing and tabulation.

Compl. at ¶ 151 (emphasis added). However, there are no concrete allegations for this Court to assume as true which would be sufficient to allow this claim to survive dismissal. Indeed, an election contest must be verified as true by the contester. *See* A.R.S. § 16-673(B). And such a requirement means that the party seeking relief must provide more than allegations based on mere conclusory information and belief. In this regard, *Wahl v. Crosby*, 18 Ariz. 251 (1916), is instructive.

In *Wahl*, a party sought a writ of mandamus to compel a court to set a case for trial. *Id*. Like A.R.S. § 16-673(B), the mandamus statute then in effect required that the writ filed "shall be verified by the oath of the plaintiff, his agent or attorney." *Id*. at 252. The Supreme Court rejected the writ for several reasons, one of which being that the instrument was verified upon information and belief – which "is not a sufficient verification under the statute." *Id*.

Here, too, Ms. Lake's allegations are verified "upon information and belief." Complaint at ¶ 152. And just as in *Wahl*, such a verification "is not a sufficient verification under [a] statute" requiring a verified statement. *Wahl*, 18 Ariz. at 252; Compl., at 70 (Ms. Lake asserting "I know the allegations of the Verified Special Action Complaint to be true, *except the matters therein on information and belief, which I believe to be true*." (emphasis added)). As such, Ms. Lake's claim is "simply an untethered assertion of uncertainty" that cannot survive dismissal. Order at 4-5 (cleaned up).

Third, Ms. Lake's statement that "the invalid signature envelopes established in the Busch and Parikh declarations demonstrate that Maricopa County's elections suffered from [an] outcome-derivative number of illegal votes from mail-in ballots in 2020 and 2022" also cannot save this claim from dismissal. Compl. at ¶ 152. Her statement fails to articulate a *precise* number of "votes were affected in sufficient numbers to alter the outcome of the election based on a competent mathematical basis to conclude that the outcome would plausibly have been different . . . ." Order at 4-5 (cleaned up). And in any event, Ms. Lake's conclusory assertion about an "outcome-derivative number" is not assumed as true. *Jeter*, 211

Ariz. at 389, ¶ 4. So this Court need go no further to resolve this issue in light of the Supreme Court's clear mandate that Count III cannot be an untethered assertion of uncertainty.

Even so, the Busch and Parikh declarations simply fall short of stating a claim. The Busch declaration tries to extrapolate from the *2020* General Election that "20,176 alleged voters who voted in the *2022* election, were the same alleged voters from 2020 whose ballots failed signature verification standards." Busch Declaration at ¶ 21 (emphasis added). Whatever happened in 2020 has no relevance to the 2022 General Election, and Ms. Busch fails to articulate a competent mathematical (or empirical) basis to conclude the 2022 General Election would have been affected so as to plausibly alter the outcome of the general election. Moreover, Ms. Busch fails to identify her qualifications for opining on signature comparison or verification matters, or how exactly she was qualified to do such comparisons with regard to the "records" she supposedly reviewed. So Ms. Busch cannot testify as a fact witness or as an "expert" on this issue. *See* Ariz. R. Evid 701 (lay witness can only testify on matters rationally based on perception, helpful to determining a fact issue, and "not based on scientific, technical, or other specialized knowledge within the scope of Rule 702"); 702 (expert must be "qualified as an expert by knowledge, skill, experience, training, or education").



The Parikh declaration fares no better. His entire conclusion is based on his review of unspecified affidavits, statements, documents, and news articles (much of which are hearsay that cannot be used if he is a lay witness). Parikh Declaration at ¶ 6. A proper expert witness is required to disclose the matters upon which they have relied to form an opinion. But Mr. Parikh does nothing more than baldly assure us he relied on something while failing to state how he is qualified to engage in a signature comparison analysis or explain how what he relied on is something experts on whatever he claims to have expertise commonly rely on. This cannot suffice to allow Mr. Parikh to testify about the lone issue on remand, let alone sustain a claim, especially in an election contest seeking to thwart the People's will.

But regardless, the substance of Mr. Parikh's declaration still falls short. All he opines on are alleged *voting system certification deficiencies* this Court already rejected, and which

have no meaningful relevance to the narrow claim on remand: whether Maricopa County officials accepted and processed early ballots deemed not to have proper signatures. Mr. Parikh offers nothing related to the signature comparison and validation issue, let alone articulate a *precise* number of "votes [were] affected in sufficient numbers to alter the outcome of the election based on a competent mathematical basis to conclude that the outcome would plausibly have been different . . . ." Order at 4-5 (cleaned up).[1]

There is no reason to entertain the claim on remand a moment more. Ms. Lake has failed to state a claim "that votes [were] affected in sufficient numbers to alter the outcome of the election based on a competent mathematical basis to conclude that the outcome would plausibly have been different …." Order at 4-5 (cleaned up). Instead, her claim as pled is "simply an untethered assertion of uncertainty." *Id*. Dismissal is warranted.

### C. If Ms. Lake Is Claiming That Election Officers Violated A.R.S. § 16-550(A) By Considering Items In The "Registration Record" Other Than A Voter's Registration *Form*, Then Count III Fails As A Matter Of Law



Ms. Lake appears to take issue with what the term "registration record" means for purposes of A.R.S. § 16-550(A). If Ms. Lake thinks that comparison of a ballot envelope signature is limited to the voter's signature on their voter registration form, then Ms. Lake is wrong. We will explain why.

"Statutes shall be liberally construed to effect their objects and to promote justice." A.R.S. § 1-211. "When the language of a statute is clear and unambiguous, a court should not look beyond the language, but rather simply apply it without using other means of construction, assuming that the legislature has said what it means." *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 178, ¶ 6 (App. 2008) (cleaned up). "Where a statute is silent on an issue, [the Court] will not read into it . . . nor will [the Court] inflate, stretch or extend the statute to matters not falling within its expressed provisions." *Ponderosa Fire Dist.*

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[1] The lack of a *precise* number of votes being adequately pled is emphasized by Ms. Lake on remand trying to pursue new discovery. She does not have any evidence compliant with the mandate to move forward, hence her hope to expand these proceedings.

*v. Coconino Cnty.*, 235 Ariz. 597, 604, ¶ 30 (App. 2014) (cleaned up). Moreover, "we must assume that the legislature intended different consequences to flow from the use of different language." *P.F.W., Inc. v. Superior Court*, 139 Ariz. 31, 34 (App. 1984).

The statute at issue in Count III is A.R.S. § 16-550(A). *Before* August 26, 2019, A.R.S. § 16-550(A) *used to state*:

> Upon receipt of the envelope containing the early ballot and the completed affidavit, the county recorder or other election officer in charge of elections shall compare the signatures thereon with the signature of the *elector on his registration form*. ….

Laws 2019, Ch. 39, § 2 (emphasis added).[2] At some point, the legislature decided it was time to make a change. So as of August 26, 2019, A.R.S. § 16-550(A) states:

> [O]n receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on the *elector's registration record*. ….

(Emphasis added).



The legislature's decision to revise the law from the narrow term "form" to the more expansive term "record" is as telling as it is dispositive of Ms. Lake's claim. First, "it is presumed when a legislature alters the language of a statute that it intended to create a change in the existing law." *State v. Kozlowski*, 143 Ariz. 137, 138 (App. 1984). Clearly the legislature understood the words "form" and "record" mean different things, because the legislature decided to replace the former with the latter in 2019. So, we cannot interpret the legislature's use of the term "record" to only encompass the former term "form" because doing so would render the legislature's express change a futile act, and "[t]here is a strong presumption that legislatures do not create statutes containing provisions which are redundant, void, inert and trivial." *Kozlowski*, 143 Ariz. at 138.

Second, although the words "form" and "record" are not defined in A.R.S. § 16-550(A),

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[2] For the Court's convenience, a copy of this statute, reflecting its prior language, is attached as **Exhibit A**.

we know that "[w]ords and phrases" used in a statute, but not otherwise defined, "shall be construed according to the common and approved use of the language." A.R.S. § 1-213. And "[b]y declining to define a statutory term, the legislature generally intends to give the ordinary meaning to the word." *Circle K Stores, Inc. v. Apache Cnty.*, 199 Ariz. 402, 408, ¶ 18 (App. 2001).

Even as *formerly used* in the context of A.R.S. § 16-550(A), a "form" is clearly and ordinarily understood to be encompassed as part of a "record". Compare *Form*, https://www.merriam-webster.com/dictionary/form (defining the noun as "a printed or typed document with blank spaces for insertion of required or requested information") (last visited May 8, 2023) with *Record*, https://www.merriam-webster.com/dictionary/record (defining the noun as "something that records" or "a collection of related items of information (as in a database) treated as a unit") (last visited May 8, 2023). Indeed, whenever the legislature has wanted to distinguish between the narrower term "form" and the broader term "record", the legislature has done so. For example, in A.R.S. § 16-544(C), the legislature stated:

> On receipt of a request to be included on the active early voting list, the county recorder or other officer in charge of elections *shall compare the signature on the request form with the voter's signature on the* ***voter's registration form*** and, if the request is from the voter, shall mark the voter's registration ***file*** as an active early ballot request.

(Emphasis added). Conversely, in A.R.S. § 16-550(A), which is implicated after a voter is already on the early voting list, the legislature references the broader "record", which includes the entire record for the duration of the voter's registration history. *See* A.R.S. § 16-550(A); Election Procedures Manual ("EPM"), Ch. 2, § VI(A)(1) at 68.

Third, the more expansive interpretation of "record" comports with the legislature's desire to make it generally *very easy* to vote. *See Brnovich v. Democratic Nat'l. Comm.*, 141 S.Ct. 2321, 2330 (2021). Narrowly construing the term "record" to only include the prior used *but now discarded* term "form", and limiting that record *only* to a voter registration form, runs contrary to very easy voting. For example, it is no stretch to surmise that by giving the county recorders a single means to check the accuracy of a signature (a registration form), those whose

signature have changed slightly over time (as they do) are left to hope they are in a position to receive the county recorder's communication and respond. This necessarily adds another layer or hurdle to easy voting.

Courts, however, are constrained to interpret statutes in a manner that preserves the meaning of other parts of that statute (here, making voting very easy). *See One Hundred Eighteen Members of Blue Sky Mobile Home Owners Ass'n v. Murdock*, 140 Ariz. 417, 419 (App. 1984) (holding "statutory provisions must be considered in the context of the entire statute and consideration must be given to all of the statute's provisions so as to arrive at the legislative intent manifested by the entire act."); *Spirlong v. Browne*, 236 Ariz. 146, 149, ¶ 9 (App. 2014) (holding that "if the statutory language is not clear, we may consider other factors, including the language used, the subject matter, its historical background, its effects and consequences, and its spirit and purpose." (internal quotations and citation omitted)). Interpreting "record" to be more expansive merely perpetuates the apparent legislative desire to make voting generally very easy. After all, "[s]tatutes shall be *liberally construed* to effect their objects and to promote justice." A.R.S. § 1-211 (emphasis added). And the Secretary's interpretation of A.R.S. § 16-550(A) does just that.



Fourth, the Secretary's construction just makes sense. The term "record" is broader than a specific "form." A form can be a record of something. But so can other documents that may not be a "form" (*e.g.*, signature affidavits on early ballots from prior elections). Thus, while a federal form or state form is "*an* official public record of the registration of the elector[,]" A.R.S. § 16-161 (emphasis added), those forms are *not the only* official record of the registration of the elector. More importantly, neither A.R.S. § 16-550(A) nor A.R.S. § 16-161 mandate such a narrow reading (or else why revise § 16-550(A) in 2019). Thus, Ms. Lake's restrained interpretation of the term "record" in this context cannot carry the day.

Fifth, if one accepts that the term "record" is ambiguous in the context of A.R.S. § 16-550(A), then that ambiguity necessarily equips the Secretary – Arizona's chief election officer – with the discretion to determine what constitutes a registration record. And his

administrative "interpretation of applicable statutes and regulations is entitled to great weight." *Ariz. Cannabis Nurses Ass'n v. Ariz. Dep't of Health Services*, 242 Ariz. 62, 65–66, ¶ 8 (App. 2017) (internal quotations and citation omitted); *see also Scottsdale Healthcare Inc. v. AHCCCS*, 206 Ariz. 1, 8 ¶ 27 (2003) (same); *Ariz. Water Co. v. Ariz. Dep't Water Resources*, 208 Ariz. 147, 154 ¶ 30 (2004) (when the legislature "has not spoken" on an issue, "considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer.' In such cases, 'a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." (cleaned up)). Moreover, a "party attacking the validity of an administrative regulation has a heavy burden." *Watahomigie v. Ariz. Bd. of Water Quality Appeals*, 181 Ariz. 20, 24 (App. 1994). An agency's rulemaking powers "are measured and limited by the statute creating them," *Caldwell v. Ariz. State Bd. of Dental Examiners*, 137 Ariz. 396, 398 (App. 1983), and courts will not invalidate a regulation "unless its provisions cannot, by any reasonable construction, be interpreted in harmony with the legislative mandate." *Watahomigie*, 181 Ariz. at 25.



The Secretary is empowered to promulgate the EPM, and at least in the current EPM, the Secretary determined that the term "record" encompasses more than just the "form" an elector uses to register to vote. This interpretation is reasonable and entirely consistent with the law. For example, in 2019, A.R.S. § 16-550(A) was expressly revised to replace "form" with "record". And Arizona law permits voters to update their registration information at an emergency voting location, and to that end, permits the Secretary to proscribe rules in the EPM for doing so. *See* A.R.S. § 16-246(G) ("…the county recorder or other officer in charge of elections may allow a qualified elector to update the elector's *voter registration information as provided for in the secretary of state's instructions and procedures manual* adopted pursuant to § 16-452." (emphasis added)). Indeed, other statutes clearly recognize that a voter can update registration information in the manner the Secretary prescribes in the EPM. *See* A.R.S. §§ 16-542(A) ("Notwithstanding § 16-579, subsection A, paragraph 2, at any on-site early voting

location or other early voting location the county recorder or other officer in charge of elections may provide for a qualified elector to update the elector's *voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to § 16-452*." (emphasis added)); 16-542(E) ("… at any on-site early voting location the county recorder or other officer in charge of elections may provide for a qualified elector to update the elector's *voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to § 16-452*." (emphasis added)); 16-542(I) ("… the county recorder or other officer in charge of elections may allow a qualified elector to update the elector's *voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to § 16-452*." (emphasis added)). So the Secretary's interpretation of the term "record" as more expansive than just a form used to register to vote can be harmonized with the legislative mandate empowering the Secretary to create the EPM. *See Watahomigie*, 181 Ariz. at 25; A.R.S. § 16-542(A) (permitting creation of EPM to "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting ….").



Finally, if Ms. Lake is challenging Maricopa County's review of one or more portions of a voter's registration record other than that voter's registration form, then very clearly her challenge is barred, because "challenges concerning alleged procedural violations of the election process must be brought prior to the actual election." *Sherman v. City of Tempe*, 202 Ariz. 339, 342, ¶ 9 (2002). To be clear, this is *not* a laches argument. The word "laches" is nowhere mentioned in *Sherman*. Nor is the word "laches" found in *Tilson v. Moffard*, 153 Ariz. 468, 470 (1987) or *Kerby v. Griffin*, 48 Ariz. 434, 444-46 (1936) – the two cases *Sherman* relies on related to this issue. *Sherman*, 202 Ariz. at 342,¶¶ 9-11 ("Ordinarily, we would find Respondents' claim precluded because they did not challenge the timing of the City's distribution of publicity pamphlets before the election."). This is a jurisdictional argument. *See Tilson*, 153 Ariz. at 470 ("Indeed, we have held that the procedures leading up to an election cannot be questioned after the people have voted, but instead the procedures

must be challenged before the election is held."), holding modified by *Arizona Together v. Brewer*, 214 Ariz. 118, 149 P.3d 742 (2007). If Count III is based on an argument that something in a voter's record besides a registration form was used in connection with adhering to A.R.S. § 16-550, then Ms. Lake's claim is barred.

All of this to say, to the extent that Ms. Lake takes issue with what the term "registration record" means for purposes of A.R.S. § 16-550(A), the Court must similarly find that her claim lacks merit and should dismiss Count III because (1) she fails to even clearly articulate her argument, (2) it would render the legislature's change to A.R.S. § 16-550(A) from "form" to "registration record" trivial and void, (3) it would similarly render the Secretary's instructions and procedures for updating voter information via the EPM null and void, and (4) it is an argument over which the Court lacks jurisdiction. Such an upheaval of our election statutes and processes should not be entertained, especially not by a begrudged candidate 7 months after the election. It is time for finality.



### D. THE SECRETARY JOINS THE OTHER DEFENDANTS' BRIEFING

Dismissal is also appropriate for the additional reasons the other Defendants outline in their respective motions and supporting memoranda. Rather than restate those arguments here, for purposes of judicial economy, the Secretary instead incorporates those arguments herein by reference.

## III. CONCLUSION

This Court should dismiss Count III with prejudice.

RESPECTFULLY SUBMITTED: May 9, 2023.

**SHERMAN & HOWARD L.L.C.**

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**ORIGINAL** of the foregoing filed via AZ TurboCourt this 9th day of May, 2023.

With a **COPY** of the foregoing served by email this 9th day of May, 2023to:

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