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15 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

16 IN AND FOR THE COUNTY OF YAVAPAI

17 ARIZONA FREE ENTERPRISE CLUB, et al.,

18 Plaintiffs,

19 v.

20 ADRIAN FONTES, et al.,

21 Defendant.

No. S-1300-CV-202300202

**INTERVENOR-DEFENDANT MI
FAMILIA VOTA'S REPLY IN
SUPPORT OF ITS
MOTION TO DISMISS**

(Assigned to the Honorable John D.
Napper)

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1 **INTRODUCTION**

2 Plaintiffs brought this action to advance a tortured reading of A.R.S. § 16-550 and
3 argue that the soon-to-be-replaced 2019 Elections Procedures Manual allows practices that
4 exceed what the statute permits. The Secretary of State, the Arizona Alliance for Retired
5 Americans, and Mi Familia Vota all ask this Court to dismiss Plaintiffs’ case on various
6 independent grounds. As MFV has argued, and as Plaintiffs fail to rebut, Plaintiffs’ claims
7 are unripe until a new EPM is approved later this year or until the deadline passes and it is
8 confirmed whether the current EPM will remain in effect through the next general election.
9 Plaintiffs’ claims are also barred by laches, both because the requested relief would disrupt
10 ongoing local elections *and* because Plaintiffs waited too long to bring suit; laches is a
11 product of both prejudice and delay.

12 At minimum, the Court should dismiss Plaintiff Restoring Integrity and Trust in
13 Elections (RITE) because the “beneficial interest” in the administration of Arizona election
14 law is one held exclusively by Arizona citizens and voters.

15 **ARGUMENT**

16 **I. Plaintiffs’ request for prospective relief emphasizes their procedural bars.**

17 Plaintiffs maintain that their action is timely because they seek relief only as to
18 statewide elections in 2024 and not any imminent local elections. Cons. Resp. at 2, 11 n.3.
19 But that only confirms that their challenge is better suited to be raised then, soon after a new
20 EPM is due to be adopted in December 2023. *See* A.R.S. § 16-452(B). And it elides the fact
21 that Plaintiffs’ requested relief, even if prospective, would still disrupt ongoing local
22 elections now and, critically, that Plaintiffs waited *over three years* to challenge the existing
23 EPM. Even narrowed to 2024 statewide elections, the case remains unripe and barred by
24 laches.

25 As to ripeness, Plaintiffs say it is “speculative” to suppose that a new EPM will be
26 adopted this year. Cons. Resp. at 11. But it is more than mere speculation or “conjecture,”
27 *id.*; it is what the law requires. *See* A.R.S. § 16-452(B) (“The rules shall be prescribed in an
28 official instructions and procedures manual to be issued not later than December 31 of each

1 odd-numbered year immediately preceding the general election.”). And the Court should
2 expect that officials will follow the law and fulfill their duty to implement a new EPM on
3 time. *See Donaldson v. Sisk*, 57 Ariz. 318, 324 (1941) (“It is presumed that every public
4 officer does his duty, and we are satisfied that the auditor, when a proper legal salary claim
5 is presented to her, will follow the rules laid down by this court as to the law and do her
6 duty in regard thereto.”); *Wright v. Leyda*, 67 Ariz. 241, 244 (1948) (“Public officers are
7 presumed to do their duty . . .”).

8 What is indisputably certain is that a new EPM is due for adoption by the end of this
9 year. A.R.S. § 16-452(B). Even if the Secretary of State, Attorney General, and Governor
10 do not agree on a new EPM in time, the fate of the *current* EPM will not be known until
11 the deadline to adopt a new one passes. Until then, a challenge to the *current* EPM,
12 especially one seeking relief only as to elections due to be governed by the *next* EPM, is
13 unripe. Plaintiffs in effect ask for an order saying, *in the event* the EPM is not replaced or
14 *in the event* the new one includes the same challenged policy, *then* the challenged policy
15 may not be applied, *but only then* after a several local elections occur first. The myriad
16 contingencies and conditions on which Plaintiffs’ claims depend epitomize an unripe
17 lawsuit.

18 Not only is the 2019 EPM due to be replaced soon, but public reporting indicates
19 that the new EPM will not even include the policy being challenged. *See Jen Fifield, Arizona*
20 *Elections Would Have Fewer Rules Under Secretary of State Adrian Fontes’ New Manual,*
21 *Votebeat* (June 27, 2023), [https://www.votebeat.org/2023/6/27/23775527/arizona-](https://www.votebeat.org/2023/6/27/23775527/arizona-elections-would-have-fewer-rules-under-secretary-of-state-adrian-fontes-new-manual)
22 [elections-would-have-fewer-rules-under-secretary-of-state-adrian-fontes-new-manual](https://www.votebeat.org/2023/6/27/23775527/arizona-elections-would-have-fewer-rules-under-secretary-of-state-adrian-fontes-new-manual)
23 (noting that the draft of the 2023 EPM omits the instruction to recorders that they may
24 consult signatures on early ballot request forms and signature rosters). The case is unripe
25 until a new EPM is adopted that includes the challenged policy or until it is confirmed that
26 the current EPM will govern the 2024 statewide elections.

27 As to laches, even if these Plaintiffs care only about the 2024 statewide election,
28 their requested relief would still disrupt local elections now, including elections this August

1 and November in Prescott, Glendale, and Tucson. See City of Prescott, *Election*
2 *Information*, [https://www.prescott-az.gov/city-management/elections/election-](https://www.prescott-az.gov/city-management/elections/election-information/)
3 [information/](https://www.prescott-az.gov/city-management/elections/election-information/) (information about the primary election on August 1, 2023, and general
4 election on November 7, 2023); City of Glendale, *Elections*,
5 https://www.glendaleaz.com/your_government/connect/departments/city_clerk/elections
6 (“The City Council has called a special election to be held on November 7, 2023. The
7 Special Election is being conducted as a ballot by mail election.”); City of Tucson, *Election*,
8 <https://www.tucsonaz.gov/Departments/Clerks/Elections> (“Primary Election: August 1,
9 2023 General Election: November 7, 2023”). Plaintiffs having “initiated this proceeding a
10 full year before the next statewide election (*i.e.*, the 2024 presidential preference election)
11 and hav[ing] expressly confined their requested relief to solely prospective remedies,”
12 Cons. Resp. at 10, does not obviate the prejudice to ongoing local elections, the
13 administrators of which can be expected to follow the Court’s ruling whether the EPM’s
14 signature verification procedures are lawful.

15 Plaintiffs assert that, because local elections in Arizona occur up to four times every
16 year, “[i]f mere temporal proximity to one of these [local election] contests were a sufficient
17 predicate for a laches defense, no claim relating to election administration claim could ever
18 be timely.” Cons. Resp. at 11 n.3. But the prejudice to the administration of an upcoming
19 election is not the only factor at play. The laches doctrine requires a showing of both
20 prejudice **and** unreasonable delay. See, e.g., *Prutch v. Town of Quartzsite*, 231 Ariz. 431,
21 435 ¶ 13 (App. 2013) (“A defendant must not only prove that a plaintiff’s delay prejudiced
22 the defendant, the court, or the public, but also that the plaintiff acted unreasonably.”). And
23 Plaintiffs’ delay here certainly is unreasonable, both because they waited **over three years**
24 since the 2019 EPM’s adoption to challenge it, and because they did so on the eve of a new
25 EPM coming due. Indeed, Plaintiffs neither make any effort now to explain what took them
26 so long nor justify why they need relief now.

27 In the years since the EPM was adopted in December 2019, millions of Arizonans
28 have voted in elections governed by its rules, and still more will do so in local elections this

1 year. Plaintiffs should not be rewarded for sitting on their hands for three years with an
2 order that would abruptly disrupt the status quo on which election administrators currently
3 rely.

4 **II. Even if other Plaintiffs have standing, RITE should be dismissed from the case.**

5 Responding to MFV’s argument that the Court should dismiss RITE, Plaintiffs assert
6 “[w]hen (as here) multiple plaintiffs seek the same, uniform non-damages remedies, the
7 establishment of one plaintiff’s standing obviates the issue as to the remaining plaintiffs.”
8 Cons. Resp. at 8.

9 Though courts can resolve a case on the merits if one of several plaintiffs lacks
10 standing, courts are not required to allow plaintiffs without standing to remain in the case.
11 *See M.M.V. v. Garland*, 1 F.4th 1100, 1110 (D.C. Cir. 2021) (one-plaintiff rule
12 “does not *prohibit* the court from paring down a case by eliminating plaintiffs who lack
13 standing”). Further, the traditional rule remains: “[o]ne party’s standing does not
14 automatically confer standing on others.” *Mindock v. DuMars*, No. 20-1236, 2022 WL
15 1410017 at *2 n.1 (10th Cir. May 4, 2022); *see also Am. Humanist Ass’n, Inc. v. Douglas*
16 *Cnty. Sch. Dist. RE-1*, 859 F.3d 1243, 1250 (10th Cir. 2017) (“Each plaintiff must have
17 standing to seek each form of relief in each claim.” (citation omitted)).

18 Each plaintiff still must establish standing, despite standing not acting as a
19 jurisdictional requirement in Arizona. *Dobson v. State ex rel., Comm’n on App. Ct.*
20 *Appointments*, 233 Ariz. 119, 122 ¶ 9 (2013) (“Our decision to recognize standing turns on
21 ‘questions of prudential or judicial restraint.’” (citation omitted)). Despite Plaintiffs’
22 argument that the plaintiffs in *Arizona Public Integrity Alliance v. Fontes* merely
23 “accentuated the magnitude of their beneficial interest” for mandamus standing by being
24 Arizona citizens, the Supreme Court nevertheless found standing on that rationale alone.
25 250 Ariz. 58, 62 ¶ 12 (2020) (“Here, Plaintiffs, *as Arizona citizens and voters*, seek to
26 compel the Recorder to perform his non-discretionary duty to provide ballot instructions
27 that comply with Arizona law. *Thus*, we conclude that they have shown a sufficient
28 beneficial interest to establish standing.” (emphasis added)).

1 Here, in support of RITE’s standing, Plaintiffs merely point out that “the predicate
2 statutes and court rules do not confine standing only to individuals or entities domiciled in
3 Arizona.” Cons. Resp. at 8. But the mandamus statute expressly limits standing to those
4 parties “beneficially interested” in the action. A.R.S. § 12-2021. And Plaintiffs have
5 advanced no reason why an out-of-state corporation holds a beneficial interest in the
6 administration of Arizona elections. The Court should thus look to *Fontes* and confine
7 mandamus standing only to those Plaintiffs who are “members of the public for whose
8 benefit” Arizona enacted its election administration laws—“Arizona citizens and voters.”
9 *Id.* (quoting *Armer v. Superior Court*, 112 Ariz. 478, 480 (1975)). Thus, even if the other
10 Plaintiffs have standing and the Court can reach the merits, it should dismiss RITE first
11 because it has no stake in the outcome of this case.

12 CONCLUSION

13 For the reasons here and in MFV’s motion to dismiss, the Court should dismiss the
14 Amended Complaint. If the Court does not dismiss the Amended Complaint in its entirety,
15 it should still dismiss RITE for lack of standing.

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17 Dated: June 30, 2023

Respectfully submitted,

18 /s/ Austin T. Marshall

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 30th day of June, 2023, I electronically transmitted a
3 PDF version of this document to the Office of the Clerk of the Superior Court, Yavapai
4 County, for filing using the AZTurboCourt System. I further certify that a copy of the
5 foregoing was sent via email this same date to:

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