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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,

21 Defendant.

22 ARIZONA ALLIANCE FOR RETIRED
23 AMERICANS; and MI FAMILIA VOTA,

24 Intervenor-Defendants.

No. S-1300-CV-202300202

**INTERVENOR-DEFENDANT MI
FAMILIA VOTA'S RESPONSE
TO PLAINTIFFS' SECOND
NOTICE OF SUPPLEMENTAL
AUTHORITY**

(Assigned to the Honorable John D.
Napper)

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1 This case is unripe because we do not know whether the challenged provision will
2 govern signature matching in 2024. The new Elections Procedures Manual may include the
3 challenged provision, or it might not. And while the Court must assume that state officials
4 will adopt a new EPM by the December 31 deadline, A.R.S. § 16-452(B), the deadline could
5 lapse, leaving the old EPM in effect. *See Leibsohn v. Hobbs*, 254 Ariz. 1, 46 n.3 (2022). In
6 any event, we will not know until then whether the challenged provision will be in effect
7 for 2024. A ruling on the challenged provision’s validity now would be unripe. *See Winkle*
8 *v. City of Tucson*, 190 Ariz. 413, 415 (1997) (“The ripeness doctrine prevents a court from
9 rendering a premature judgment or opinion on a situation that may never occur.”).

10 Whether any given *draft* of the new EPM contains the challenged provision is beside
11 the point. Writing and revising the EPM is an inherently iterative process. Before approval,
12 the Secretary may add or take out provisions in response to feedback from a diverse set of
13 stakeholders. The Secretary’s initial draft omitted the challenged provision.¹ The draft
14 released for public comment two weeks ago now has it. Future drafts may omit it again. But
15 as Plaintiffs correctly noted in declining MFV’s offer to file the initial draft without the
16 provision at the July 7 hearing, a draft is not worth the paper it’s printed on.

17 MFV has never said that “a new [EPM] will imminently be adopted without the
18 relevant provision.” Pls. 2d Not. Supp. Auth. at 2. The initial draft indeed omitted the
19 challenged provision, but the point is that “[t]he case is unripe until a new EPM is *adopted*
20 that includes the challenged policy or until it is *confirmed* that the current EPM will govern
21 the 2024 statewide elections.” MFV Reply at 2 (emphasis added). That remains true
22 irrespective of what any inoperative draft says before approval.

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27 ¹ A copy of the relevant page from the initial draft’s early voting chapter, which the
28 Secretary provided in response to a public records request on July 6, 2023, is attached here
as Exhibit A. *See Mathieu v. Mahoney*, 174 Ariz. 456, 457 n.1 (1993) (courts may “take
judicial notice of the records of the Secretary of State”).

1 Dated: August 15, 2023

Respectfully submitted,

2 */s/ Austin T. Marshall*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 15th day of August, 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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26
27 /s/ Austin T. Marshall

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Exhibit A

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V. PROCESSING AND TABULATING EARLY BALLOTS

A. County Recorder Responsibilities

1. Signature Verification & Early Ballot Tracking

Upon 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.

- If the signature is inconsistent with the elector's signature on the elector's registration record, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature. The county recorder or other officer in charge of elections shall allow signatures to be corrected not later than 5:00 p.m. on the fifth business day after a primary, general or special election that includes a federal office or the third business day after any other election.
- If the signature is missing, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the elector, advise the elector of the missing signature and allow the elector to add the elector's signature not later than 7:00 p.m. on election day. If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold the envelope containing the early ballot and the completed affidavit unopened.

[A.R.S. § 16-550\(A\);](#)

For a county that uses early ballots, the county recorder or other officer in charge of elections shall provide an early ballot tracking system that indicates whether the voter's early ballot has been received and whether the early ballot has been verified and sent to be tabulated or rejected. The county recorder or other officer in charge of elections shall provide voters with access to the early ballot tracking system on the county's website.

[A.R.S. § 16-550\(D\).](#)

B. Early Ballot Board Responsibilities

The Board of Supervisors or officer in charge of elections shall appoint one or more early ballot boards consisting of an inspector and two judges (the two judges must be from different political party preferences). If the early ballot boards retire and reconvene, all materials shall be secured under the control of the Board of Supervisors or officer in charge of elections until the time for the boards to reconvene.

The early election board shall check the voter's affidavit signature on the envelope containing the early ballot. If the affidavit signature is missing or not found to be sufficient, the vote shall be