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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

ARIZONA FREE ENTERPRISE CLUB, *et al.*,

Plaintiffs,

v.

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

Defendant,

and

ARIZONA ALLIANCE OF RETIRED
AMERICANS; and MI FAMILIA VOTA,

Intervenor-Defendants.

No. S-1300-CV-202300202

**SEPARATE STATEMENT OF FACTS
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Hon. John Napper)

Pursuant to Arizona Rule of Civil Procedure 56(c)(3)(A), Plaintiffs Arizona Free Enterprise Club, Restoring Integrity and Trust in Elections, Republican Party of Arizona, LLC, and Dwight Kadar set forth the following facts in support of their Motion for Summary Judgment:

1. Plaintiff Arizona Free Enterprise Club is an Arizona nonprofit social welfare

1 corporation that is organized and operated pursuant to section 501(c)(4) of the Internal
 2 Revenue Code. Its stated mission is to advance a pro-growth, limited government agenda
 3 in Arizona that includes enhancing and safeguarding election security. First Am. Verified
 4 Compl. ¶ 8; Sec’y of State Ans. ¶ 8 (partially admitted).¹

5 2. Plaintiff Restoring Integrity and Trust in Elections is a Virginia nonprofit
 6 social welfare corporation that is organized and operated pursuant to section 501(c)(4) of
 7 the Internal Revenue Code. Its stated mission is to protect the rule of law in the
 8 qualifications for, process and administration of, and tabulation of voting in the United
 9 States. First Am. Verified Compl. ¶ 9; Sec’y of State Ans. ¶ 9 (partially admitted).

10 3. Plaintiff Republican Party of Arizona, LLC is a statewide political party
 11 committee; an affiliate of the Republican National Committee; and the organizing body of
 12 Arizona electors who are registered members of the Republican Party, the largest political
 13 party in Arizona. Its stated purposes include protecting the procedural integrity of Arizona
 14 elections. First Am. Verified Compl. ¶ 10; Sec’y of State Ans. ¶ 10 (partially admitted).

15 4. Plaintiff Dwight Kadar is a citizen of the United States of America, and a
 16 resident and qualified elector of Yavapai County and the State of Arizona. First Am.
 17 Verified Compl. ¶ 11.

18 5. Defendant Adrian Fontes is the Secretary of State of Arizona. The Secretary
 19 of State is responsible for promulgating an elections procedures manual, which, upon
 20 approval by the Governor and the Attorney General, has the force of law. First Am. Verified
 21 Compl. ¶ 12; Sec’y of State Ans. ¶ 12.

22 6. An individual who casts an early ballot must return the ballot in an envelope.
 23 The exterior of the envelope contains a pre-printed affidavit that must be signed by the voter
 24 (or, if the voter is physically unable to sign, by an authorized assistant, who also must sign
 25 a separate affidavit on the ballot envelope). *See* A.R.S. § 16-547(A).

26 _____
 27 ¹ *Cf. Kiser v. A. J. Bayless Markets, Inc.*, 9 Ariz. App. 103 (App. 1969) (“Under some
 28 circumstances the allegations contained in a verified complaint may be adequate, in
 substance and in form, to satisfactorily controvert the affidavits of the moving party and
 meet the requirements of [Rule 56].”).

1 7. Upon receiving a submitted early ballot, the county recorder must “compare
2 the signatures thereon with the signature of the elector on the elector’s registration record.”
3 A.R.S. § 16-550(A).

4 8. If the county recorder is “satisfied that the signatures correspond,” the early
5 ballot is sent for further processing. *See* A.R.S. § 16-550(A).

6 9. If the county recorder determines that the signature on the early ballot
7 affidavit “is inconsistent with the elector’s signature on the elector’s registration record, the
8 county recorder or other officer in charge of elections shall make reasonable efforts to
9 contact the voter, advise the voter of the inconsistent signature and allow the voter to correct
10 or the county to confirm the inconsistent signature.” A.R.S. § 16-550(A).

11 10. In attempting to “correct” or “confirm” a mismatching signature, the county
12 recorder must “make a reasonable and meaningful attempt to contact the voter by mail,
13 phone, text message, and/or email.” *See* Ariz. Sec’y of State, 2019 ELECTIONS
14 PROCEDURES MANUAL (rev. Dec. 2019) [“EPM”] at 68–69.

15 11. When conducting signature comparisons, the EPM instructs that “[i]n
16 addition to the voter registration form, the County Recorder should also consult additional
17 known signatures from other official election documents in the voter’s registration record,
18 such as signature rosters or early ballot/[Permanent Early Voting List] request forms, in
19 determining whether the signature on the early ballot affidavit was made by the same person
20 who is registered to vote.” EPM at 68.

21 12. This provision of the EPM was intended, and is interpreted, to authorize the
22 county recorders to use signatures contained on early ballot affidavits cast in prior elections
23 when conducting signature verifications. *See* First Am. Verified Compl. ¶ 28; Sec’y of
24 State Ans. ¶ 28.

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RESPECTFULLY SUBMITTED this 17th day of November, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2023, I electronically transmitted the attached document to the Clerk's Office using the TurboCourt System for filing and transmittal of a Notice of Electronic Filing to the following TurboCourt registrants:

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