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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

ARIZONA FREE ENTERPRISE CLUB, an
Arizona nonprofit corporation; RESTORING
INTEGRITY AND TRUST IN ELECTIONS,
a Virginia nonprofit corporation; and
DWIGHT KADAR, an individual,

Plaintiffs,

v.

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

Defendant.

No. _____

**VERIFIED SPECIAL ACTION
COMPLAINT**

Plaintiffs bring this special action and hereby allege as follows:

SUMMARY OF THE CASE

1. Qualified voters casting early ballots in an Arizona election must execute an affidavit on the envelope in which the early ballot is returned. Under the governing statute, if the signature on the envelope is “inconsistent with the signature of the elector on the elector’s *registration record*,” the county recorder must contact the voter and attempt to ascertain whether the voter, in fact, personally completed and signed the early ballot

1 affidavit. The early ballot cannot be tabulated unless and until the voter timely “confirm[s]
2 the inconsistent signature.” A.R.S. § 16-550(A) (emphasis added).

3 2. The signature presented on an early ballot affidavit is the fulcrum on which
4 the integrity of that ballot pivots; it is the only means by which the county recorder can
5 verify that a person casting an early ballot by mail is, in fact, a duly qualified elector. And
6 given the centrality of early ballots to elections in this state, signature verification is also
7 foundational to the overall integrity of Arizona’s elections.

8 3. Contrary to the unambiguous statutory directive of A.R.S. § 16-550(A), the
9 Secretary of State has instructed county recorders to validate early ballot affidavits if the
10 signature is deemed to match *any* signature in *any* election-related document available to
11 the county recorder. *See* Ariz. Sec’y of State, ELECTIONS PROCEDURES MANUAL (rev. Dec.
12 2019) [hereafter, “EPM”] at 68, available at
13 [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APP](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
14 [ROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf). Certain of these materials, and particularly early ballot envelopes submitted
15 in prior elections, however, are not “registration records,” and hence are not a lawful
16 comparative reference for conducting signature validation.

17 4. By issuing instructions that nullify or amend an express statutory provision
18 through a subsidiary regulation in the EPM, the Secretary has exceeded his lawful
19 jurisdiction to prescribe procedures for early voting pursuant to A.R.S. § 16-452 and other
20 applicable law.

21 5. Plaintiffs lack an equally plain, speedy and adequate remedy at law to compel
22 the Secretary to carry out his nondiscretionary legal duties in a manner consistent with
23 controlling statutory law. Special action relief thus is necessary to ensure that the signature
24 validation protocols prescribed by the EPM align with, and do not exceed, the plain terms
25 of A.R.S. § 16-550(A). *See* Ariz. R. Spec. Action P. 3(b).

1 **JURISDICTION**

2 6. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the
3 Arizona Constitution, A.R.S. §§ 12-1831, 12-2021, and Arizona Rule of Special Action
4 Procedure 4.

5 7. Venue lies in Yavapai County pursuant to Arizona Rule of Special Action
6 Procedure 4(b) because Plaintiff Dwight Kadar resides in Yavapai County.

7 **PARTIES**

8 8. Plaintiff Arizona Free Enterprise Club is an Arizona nonprofit social welfare
9 corporation that is organized and operated pursuant to section 501(c)(4) of the Internal
10 Revenue Code. Its mission is to advance a pro-growth, limited government agenda in
11 Arizona that includes enhancing and safeguarding election security.

12 9. Plaintiff Restoring Integrity and Trust in Elections is a Virginia nonprofit
13 social welfare corporation that is organized and operated pursuant to section 501(c)(4) of
14 the Internal Revenue Code. Its mission is to protect the rule of law in the qualifications for,
15 process and administration of, and tabulation of voting in the United States.

16 10. Plaintiff Dwight Kadar is a citizen of the United States of America, and a
17 resident and qualified elector of Yavapai County and the State of Arizona.

18 11. Defendant Adrian Fontes is the Secretary of State of Arizona and is named in
19 this action in his official capacity only. The Secretary of State is responsible for
20 promulgating an elections procedures manual, which, upon approval by the Governor and
21 the Attorney General, has the force of law. *See* A.R.S. § 16-452.

22 **GENERAL ALLEGATIONS**

23 12. “Arizona law generally makes it very easy to vote.” *Brnovich v. Democratic*
24 *Nat’l. Comm.*, 141 S. Ct. 2321, 2330 (2021). The overwhelming majority of qualified
25 electors who participate in Arizona elections utilize the State’s permissive early voting
26 regime, which allows eligible voters to cast a ballot either in person or by mail during the
27 27-day period preceding an election. *See* A.R.S. § 16-542(C).

1 13. Most early ballots in Arizona elections are cast by mail. A completed early
2 ballot must be submitted in a sealed envelope. The exterior of the envelope contains a pre-
3 drafted affidavit form that declares that the individual casting the early ballot has registered
4 to vote in the relevant county, has not voted and will not vote in any other jurisdiction,
5 understands that multiple voting is a felony offense, and personally voted the enclosed
6 ballot and signed the affidavit. See A.R.S. § 16-547(A). In signing his name, the individual
7 attests to the truth of these statements under penalty of perjury.

8 14. The affidavit signature presented on the exterior of the envelope
9 accompanying an early ballot submitted by mail or in a designated drop box is the sole item
10 of information available for the county recorder to use to perform her duty to corroborate
11 that the person submitting the ballot is the same qualified elector appearing on the county's
12 voter rolls. Voters are not required to provide documentary proof of identity or any
13 additional personal information—such as a date of birth or Social Security number—that
14 would enable the county recorder to verify a congruity of identity.

15 15. Upon receiving an early ballot, the county recorder (or his or her staff) is
16 required by law to “compare the signatures thereon with the signature of the elector on the
17 elector's registration record.” A.R.S. § 16-550(A). If the signatures “correspond,” the
18 ballot is forwarded for further processing and eventual tabulation. *Id.* If the signatures are
19 “inconsistent,” the county recorder's office must attempt to contact the voter, advise him or
20 her of the inconsistent signature, and “allow the voter to correct or the county to confirm
21 the inconsistent signature.” *Id.*

22 **Definition of a “Registration Record”**

23 16. Arizona law does not explicitly define the term “registration record.” But it
24 is most naturally understood to be a document upon which an individual furnishes
25 information required by federal and Arizona law to effectuate or amend her voter
26 registration. The document includes a signed certification attesting to the accuracy of the
27 information provided.
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1 17. Individuals wishing to register to vote or to amend an existing registration
2 may submit either a “federal form” formulated by the U.S. Election Assistance Commission
3 or a “state form” prescribed by Arizona law.¹

4 18. The “federal form” requires the registrant to provide her full name, residential
5 address, date of birth, government-issued ID number (such as a driver’s license number or
6 the last four digits of a Social Security number), political party affiliation information (if
7 applicable), and a signed, sworn attestation that she satisfies all enumerated eligibility
8 prerequisites, including U.S. citizenship. *See* 52 U.S.C. § 20508(b); 11 C.F.R. § 9428.4.

9 19. The “state form” requires the same information as the “federal form,” as well
10 as fields for the registrant’s telephone number, location of birth, occupation, father’s last
11 name or mother’s maiden name, and check boxes for the registrant to confirm his or her
12 U.S. citizenship, and age. The “state form” also includes statements affirming the
13 registrant’s residency, status of any other existing registration, and absence of any
14 disqualifying felony conviction. Arizona law also requires registrants using the “state form”
15 to supply documentary proof of U.S. citizenship. *See* A.R.S. §§ 16-121.01, 16-152, 16-
16 166(F).

17 20. A registrant who wishes to update or amend information presented in his or
18 her registration may do so by submitting a new “federal form” or “state form.”

19 21. Eligible individuals may register to vote or update an existing registration
20 when engaging in transactions with the Arizona Department of Transportation’s Motor
21 Vehicle Division (“MVD”), such as a driver’s license renewal. Registrants who amend
22 their existing registration through the MVD must reaffirm their legal eligibility to vote in
23 federal and/or Arizona elections. *See* 52 U.S.C. § 20504(c)(2); A.R.S. §§ 16-112, 16-
24 121.01, 16-136. Further, registrants who have changed their residence location within the
25 same county may provide the updated address information to the county recorder by
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27 ¹ Additional registration mechanisms are available to eligible individuals who reside
28 abroad or who are deployed members of the United States armed services. *See* 52 U.S.C.
§ 20301(b); A.R.S. §§ 16-103, 16-543.02(D).

1 disclosing it on an early ballot request form, a response to an Active Early Voting List
 2 notification, or a provisional ballot envelope at a polling location on Election Day. *See*
 3 A.R.S. §§ 16-135(E), 16-542(F), 16-584(C), (D). A registrant’s change of name also may
 4 be submitted on a provisional ballot envelope. *See id.* § 16-137. Each of these alternative
 5 methods contributes to a registrant’s updated registration record.

6 22. A properly executed and submitted registration form, as may be amended and
 7 updated by the registrant from time to time, “constitute[s] an official public *record of the*
 8 *registration* of the elector.” A.R.S. § 16-161 (emphasis added).

9 23. Accordingly, the “record of the registration of the elector—*i.e.*, her
 10 “registration record,” consists of the complete and facially valid federal and state forms
 11 submitted by that individual, and any amendments thereto made by the submission of new
 12 forms, an early ballot request form, a response to an Active Early Voting List notice, or a
 13 provisional ballot envelope.

14 **EPM Provisions Governing Signature Verification**

15 24. The Secretary of State is required to promulgate an elections procedures
 16 manual that prescribes, *inter alia*, “procedures for early voting and voting” and “producing,
 17 distributing, collecting, counting, tabulating and storing ballots,” as well as procedures. *See*
 18 A.R.S. § 16-452(A). The Attorney General and the Governor each must approve the manual
 19 before its provisions can take effect. *Id.* § 16-452(B).

20 25. It is well established that “an EPM regulation that contradicts statutory
 21 requirements does not have the force of law.” *Leibsohn v. Hobbs*, 254 Ariz. 1, ¶ 22 (2022).

22 26. The most recent EPM approved by all three of the Secretary of State, the
 23 Governor and the Attorney General was published in December 2019.

24 27. The 2019 EPM instructs that, “[i]n addition to the voter registration form, the
 25 county recorder should also consult additional known signatures from other official election
 26 documents in the voter’s registration record, such as signature rosters or early
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1 ballot/[Permanent Early Voting List]^[2] request forms, in determining whether the signature
 2 on the early ballot affidavit was made by the same person who is registered to vote.” EPM
 3 at p. 68. Upon information and belief, the Secretary interprets this provision as authorizing
 4 county recorders also to use signatures on early ballot envelopes submitted by the putative
 5 voter in prior elections as comparative references when verifying an early ballot affidavit
 6 signature.

7 28. The interpretation of the term “registration record” in the EPM conflicts with
 8 controlling law because it contemplates verifying the identity of a putative early voter
 9 through the use of signatures upon documents—including signature rosters and prior early
 10 ballot affidavits—that are not part of the “registration record.” That is because the
 11 signatures encompassed within the EPM’s errant instruction cannot be used either to
 12 effectuate the registration of an individual or to lawfully amend an existing registration.

13 29. Although any provision of the EPM, like its instruction expanding the types
 14 of signatures against which early ballot affidavit signatures may be compared, that exceeds
 15 or is inconsistent with its statutory predicate is *per se* invalid, the Secretary’s
 16 misconstruction of the term “registration record” is also unreasonable. It increases, in a
 17 non-linear fashion, the risk of erroneous signature verifications.

18 30. The likelihood of a reviewer mistakenly determining that an affidavit
 19 signature corresponds to a signature in the registration record increases with each additional
 20 signature added. This is true even if all added signatures are known with certainty to have
 21 come from the registrant. This problem grows even worse, however, when there is some
 22 chance—even a small chance—that an added signature might not have come from the
 23 registrant. This is precisely the situation created when past affidavit signatures or signature
 24 rosters are added to the registration record. When reviewers have determined that an
 25 affidavit signature, for example, “corresponds” to a signature in the registration record, they
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27 ² The Legislature has since supplanted the Permanent Early Voting List with the
 28 Active Early Voting List. *See* A.R.S. § 16-544, as amended by 2021 Ariz. Laws ch. 359, §
 6 (S.B. 1485).

1 have made a probabilistic determination that the affiant and the registrant are *likely enough*
 2 the same person. But there is always a chance that the affiant and the registrant are, in fact,
 3 different people. In that instance, under the EPM’s interpretation, the registration record is
 4 degraded not just by the addition of another signature but corrupted by the addition of an
 5 invalid signature.

6 31. The unreasonably permissive criteria by which correspondence
 7 determinations are often made exacerbates these risks. Upon information and belief, an
 8 affidavit signature often will be deemed to “correspond[]” if any portion of it—any loop,
 9 jot, or tiddle—matches any portion of any signature in the record. That means that an
 10 invalid affidavit signature would nevertheless be accepted if reviewers determine, for
 11 example, that it shares a single loop in common with a previously submitted affidavit
 12 signature that itself may be unreliable. The EPM’s misconstruction of the statutory
 13 signature matching requirement thus erodes the utility of signature matching as an identity
 14 verification mechanism. This compounding of error upon error inherent in the Secretary’s
 15 scheme simply reinforces the conclusion that the EPM’s construction is inconsistent with
 16 the statute.

17 32. For example, assume that Voter X casts an early ballot by mail for the first
 18 time in the 2020 general election; the only signature for comparative reference for Voter X
 19 in the county recorder’s database is the signature presented on his voter registration card.
 20 The initial signature review by the recorder’s staff determines that the two signatures are
 21 characterized by inconsistencies in some broad characteristics (*e.g.*, the spacing or slant of
 22 letters). The signature is elevated for further review by another staff member, who decides
 23 that, in her subjective judgment, “the differences can be reasonably explained,” and
 24 validates the signature. *See* Ariz. Sec’y of State, SIGNATURE VERIFICATION GUIDE (July
 25 2020) at pp. 2–3. Another individual subsequently casts an early ballot by mail in the 2022
 26 general election purporting to be Voter X. Upon comparing the signature on the new
 27 affidavit with that on Voter X’s registration form, the recorder’s office deems the signature
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1 questionable, but ultimately validates the signature because it is loosely similar to the
2 unreliable signature on Voter X’s early ballot affidavit in the 2020 general election.

3 33. In other words, the EPM’s extra-statutory, unreasonable interpretation of a
4 “registration record” improperly and unreliably expands the corpus of signatures to which
5 an early ballot affidavit signature may be compared. This continuous dilution of the pool
6 of signature specimens increases the probability of a false positive—*i.e.*, an erroneous
7 determination that an early ballot affidavit signature is valid because it bears a minimally
8 sufficient resemblance to the signature on a historical early ballot affidavit, even though it
9 is dissimilar to the signature in the voter’s actual registration. That, in turn, degrades the
10 integrity of the signature verification protocol specified by the Legislature in A.R.S. § 16-
11 550(A).

12 **COUNT I**

13 **Invalidation of the EPM’s Unlawful Definition of “Registration Record”**
14 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-2021, 16-452, 16-550; Ariz. R. Civ. P. 65)**

15 34. The Plaintiffs incorporate by reference the foregoing allegations as if fully set
16 forth herein.

17 35. When validating a signature presented on an early ballot affidavit, the county
18 recorder must “compare the signature[] presented thereon with the signature of the elector
19 on the elector’s registration record.” A.R.S. § 16-550(A).

20 36. A “registration record” consists of documents that, if facially complete and in
21 proper form, are legally sufficient to effectuate the registration of an individual to vote or
22 to formally amend that individual’s existing voter registration pursuant to applicable federal
23 or state law. *See* 52 U.S.C. § 20508(b); 11 C.F.R. § 9428.4; A.R.S. §§ 16-121.01, 16-
24 135(E), 16-136, 16-137, 16-152, 16-542(F), 16-584(C), (D).

25 37. The EPM authorizes county recorders to verify early ballot affidavit
26 signatures by comparing signature references contained in documents—including without
27 limitation polling place signature rosters and historical early ballot affidavits—that are not
28 documents by which an individual may register to vote or amend an existing voter

1 registration associated with that individual. Such documents accordingly are not
2 components of the “registration record” as a matter of law.

3 38. An EPM provision that is inconsistent with, or that exceeds the authorizing
4 scope of, a governing statute is invalid and carries no legal force or effect. *See Leibsohn v.*
5 *Hobbs*, 254 Ariz. 1, ¶ 22 (2022); *Leach v. Hobbs*, 250 Ariz. 572, 576, ¶ 21 (2021) (“[A]n
6 EPM regulation that exceeds the scope of its statutory authorization or contravenes an
7 election statute’s purpose does not have the force of law.”); *McKenna v. Soto*, 250 Ariz.
8 469, 473, ¶¶ 20–21 (2021).

9 39. The EPM’s authorization of early ballot signature validation using documents
10 that are not within the putative voter’s “registration record” denotes an act that is in excess
11 of the Secretary’s legal authority. *See* Ariz. R. Special Action Proc. 3(b).

12 40. In addition, the Secretary has a nondiscretionary legal duty to implement and
13 effectuate the signature verification process prescribed by A.R.S. § 16-550(A) in a manner
14 consistent with the statute. *See* Ariz. R. Special Action Proc. 3(a); A.R.S. § 12-2021.

15 41. Each of the Plaintiffs has a beneficial interest in ensuring that the Secretary
16 of State carry out his nondiscretionary legal duty to implement and act in a manner
17 consistent with the terms of controlling Arizona statutes. *See* A.R.S. § 12-2021; Ariz. R.
18 Special Action P. 3; *Ariz. Public Integrity All. v. Fontes*, 250 Ariz. 58, 62, ¶¶ 10–11 (2020).

19 42. In addition, because the Secretary “has acted unlawfully and exceeded his . .
20 . statutory authority,” the Plaintiffs are entitled to injunctive relief. *Ariz. Public Integrity*
21 *All.*, 250 Ariz. at 64, ¶ 26.

22 43. The Plaintiffs accordingly are entitled to special action relief and injunctive
23 remedies providing that the provisions of the EPM that instruct county recorders to validate
24 early ballot affidavit signatures by reference to documents—including without limitation
25 polling place signature rosters and historical early ballot affidavits—that are not
26 components of the “registration record” are invalid, *ultra vires*, and unenforceable.

1 **COUNT II**
2 **Declaratory Relief**
3 **(A.R.S. §§ 12-1831, *et seq.*, 16-452, 16-550(A))**

4 44. The Plaintiffs incorporate by reference the foregoing allegations as if fully set
5 forth herein.

6 45. When validating a signature presented on an early ballot affidavit, the county
7 recorder must “compare the signature[] presented thereon with the signature of the elector
8 on the elector’s registration record.” A.R.S. § 16-550(A).

9 46. A “registration record” consists of documents that, if facially complete and in
10 proper form, are legally sufficient to effectuate the registration of an individual to vote or
11 to formally amend that individual’s existing voter registration pursuant to applicable federal
12 or state law. *See* 52 U.S.C. § 20508(b); 11 C.F.R. § 9428.4; A.R.S. §§ 16-121.01, 16-
13 135(E), 16-136, 16-137, 16-152, 16-542(F), 16-584(C), (D).

14 47. The EPM authorizes the county recorders to verify early ballot affidavit
15 signatures by comparing signature references contained in documents—including without
16 limitation polling place signature rosters and historical early ballot affidavits—that are not
17 documents by which an individual may register to vote or amend an existing voter
18 registration associated with that individual. Such documents accordingly are not within the
19 putative voter’s “registration record” as a matter of law.

20 48. An EPM provision that is inconsistent with, or that exceeds the authorizing
21 scope of, a governing statute is invalid and carries no legal force or effect. *See Leibsohn*,
22 254 Ariz. 1, ¶ 22; *Leach*, 250 Ariz. at 576, ¶ 21; *McKenna*, 250 Ariz. at 473, ¶¶ 20–21.

23 49. As residents and qualified electors of Arizona, the individual plaintiffs have
24 an “interest[]” in the proper and uniform enforcement by the county recorders of statutory
25 strictures governing the verification of early ballot affidavit signatures. A.R.S. § 12-1832;
26 *see also Ariz. Sch. Bds. Ass’n. v. State*, 252 Ariz. 219, 225, ¶ 20 (2022).

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550(A)—is inconsistent with A.R.S. § 16-550(A), and hence invalid and unenforceable.

D. An award of reasonable attorneys’ fees and costs pursuant to A.R.S. §§ 12-341, 12-2030, the private attorney general doctrine, and other applicable law.

E. Such other relief as the Court deems necessary, equitable, proper, and just.

DATED this 6th day of March, 2023.

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Verification

I, Scot Mussi, a representative of the Arizona Free Enterprise Club, certify that I have read the foregoing Verified Special Action Complaint and know the contents thereof by personal knowledge. 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.

Executed under penalty of perjury this 3rd day of March 2023.



Scot Mussi

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