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** Application Pro Hac Vice Forthcoming*

ARIZONA SUPERIOR COURT

YAVAPAI COUNTY

ARIZONA FREE ENTERPRISE CLUB, an Arizona nonprofit corporation, and MARY KAY RUWETTE, individually, Plaintiffs, v. ADRIAN FONTES, in his official capacity as the Secretary of State of Arizona, Defendant.	No. S1300CV202300872 **MOTION TO INTERVENE** (Assigned to the Hon. John Napper)

INTRODUCTION

Plaintiffs' challenge to the legality of drop boxes comes far too late and is entirely meritless. Voters in Arizona have long relied on the availability of drop boxes to allow them to return their ballots, confident that they will be received by election officials in time for them to be counted. Indeed, they are using them right now for local elections throughout the State. The Legislature has been well aware of the use of drop boxes in Arizona for decades, and while it has sought to restrict *who* may return ballots, it has never given any indication that the drop box *method* of returning ballots is contrary to Arizona law. Even the guidance in the Election Procedures Manual that Plaintiffs challenge is, at this point, already nearly four years old. Yet, despite Arizonans' historical and continued reliance on drop boxes to cast their ballots in countless elections, Plaintiffs offer no plausible allegations that *any* Arizona voters—let alone Plaintiffs themselves—have been harmed by the use of unstaffed drop boxes.

Plaintiffs' lawsuit, by contrast, threatens to cause severe harm to Arizona voters—including specifically those among Proposed Intervenors' membership and constituency—by making it needlessly harder for them to ensure that their ballots are returned to and received by election officials in time to be counted. Continued availability of drop boxes is critical in this State, where the vast majority of voters vote using early ballots, yet many live in communities underserved (or not served at all) by reliable mail service. The voters who stand to suffer most significantly from Plaintiffs' widespread attack are those in Arizona's most vulnerable and marginalized communities, including underserved Latinx communities and elderly voters where access to the franchise is already difficult and burdensome. These include hundreds of thousands of members and constituents of the Proposed Intervenors, Arizona Alliance for Retired Americans ("Arizona Alliance") and Voto Latino (together "Proposed Intervenors"), as well as Proposed Intervenors themselves.

Proposed Intervenors meet the requirements for both intervention as of right and permissive intervention under Arizona Rule of Civil Procedure 24. Proposed Intervenors have

moved quickly to protect their substantial and legally protectable interests in this matter—both on their own behalf and on behalf of their members and constituents. If Plaintiffs are granted the relief they seek, Proposed Intervenors' members and constituents will lose a crucial voting method, and Proposed Intervenors will have to divert resources from their other work—in the middle of an ongoing election cycle no less—to mitigate that harm by providing education and facilitating alternative means for their members and constituents to vote. Though Defendant Secretary of State shares the objective of defending Arizona's current, lawful election administration procedures, the Secretary does not, for example, involve himself in targeted get-out-the-vote ("GOTV") programming, engage in voter advocacy efforts, and ultimately does not have a stake in the civic participation of Proposed Intervenors' members and constituents.

In light of the grave threat Plaintiffs' claims pose to Proposed Intervenors' organizations and members, Proposed Intervenors should be granted intervention as of right, or in the alternative, permissive intervention.[1]

ARGUMENT

Under Arizona Rule of Civil Procedure 24 and Arizona Rule of Procedure for Special Actions 2(b), a party is entitled to intervene as a matter of right where, on timely motion, the party "claims an interest relating to the subject of the action, and . . . disposing of the action in the person's absence may as a practical matter impair or impede the person's ability to protect that interest, unless existing parties adequately represent that interest." Ariz. R. Civ. P. 24(a)(2). Separately, a court "may" in its discretion permit a party to intervene where the motion is timely and a party "has a claim or defense that shares with the main action a common question of law or fact." Ariz. R. Civ. P. 24(b)(1)(B). Rule 24 is a remedial rule that "should be construed liberally in order to assist parties seeking to obtain justice in protecting their rights." *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009). It is "substantively indistinguishable" from Federal

[1] Defendant Secretary of State Fontes does not oppose the instant motion to intervene; Plaintiffs Arizona Free Enterprise Club and Mary Kay Ruwette oppose the instant motion.

Rule of Civil Procedure 24 such that a court "may look for guidance to federal courts' interpretations of their rule." *Heritage Vill. II Homeowners Ass'n v. Norman,* 246 Ariz. 567, 572 ¶ 19 (App. 2019).

Proposed Intervenors satisfy Rule 24 standards both for intervention as of right and permissive intervention, and the motion to intervene should be granted. Consistent with Rule 24, Proposed Intervenors have attached both a proposed answer as their "pleading in intervention," Ariz. R. Civ. P. 24(c), and a response to Plaintiffs' application for order to show cause and injunctive relief.[2]

I. Proposed Intervenors are entitled to intervene as of right.

Proposed Intervenors are entitled to intervene as of right under Rule 24(a). The Court must allow intervention where a proposed intervenor satisfies four elements: "(1) the motion must be timely; (2) the applicant must assert an interest relating to the property or transaction which is the subject of the action; (3) the applicant must show that disposition of the action may impair or impede its ability to protect its interest; and (4) the applicant must show that the other parties would not adequately represent its interests." *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶ 13 (App. 2014). Proposed Intervenors meet each of these requirements.

A. The motion to intervene is timely.

Proposed Intervenors timely move to intervene just one week after the commencement of these proceedings. Timeliness under Rule 24 is a "flexible" requirement. *Winner Enterprises, Ltd. v. Superior Ct. in & for Cnty. Of Yavapai*, 159 Ariz. 106, 109 (App. 1988). In determining whether a motion to intervene is timely, courts consider "the stage at which the action has progressed before intervention is sought and whether the applicant was in a position to seek

[2] While Rule 24 requires a "pleading," Rule 12 requires that certain defenses be asserted by motion prior to a responsive pleading. Ariz. R. Civ. P. 12(b). Accordingly, if granted intervention, Intervenors intend to file a motion to dismiss prior to filing their proposed Answer.

intervention at an earlier stage of the proceedings." *Id.* The most important consideration "is whether the delay in moving for intervention will prejudice the existing parties to the case." *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446 (App. 1989) (quotation omitted). "Because an intervenor of right may be seriously harmed if not permitted to intervene, the court should be reluctant to dismiss a request for intervention as untimely." *Winner Enterprises, Ltd.*, 159 Ariz. at 109 (finding trial court erred in denying motion to intervene filed one month after commencement of special action and three weeks after court granted preliminary injunctive relief).

Proposed Intervenors file this motion to intervene just one week after the case was initiated and during the earliest stages of this proceeding. Although an emergency motion for preliminary injunction and responsive briefing have been filed in preparation for a hearing that the Court scheduled on Friday, October 27, 2023, the hearing has not yet taken place and the Court has not made any substantive determinations. In any event, out of an abundance of caution, Proposed Intervenors attach a brief response to Plaintiffs' motion here.[3] And granting intervention would not cause any delay in resolution of this action in either the short or long term.[4]

Nor will intervention cause any delay or replication of labor that would prejudice any party. *Cf. CSL Holdings, LLC v. Skapa Properties, LLC*, No. 1 CA-CV 20-0576, 2021 WL 5578036, at *3 (Ariz. Ct. App. Nov. 30, 2021) (finding prejudice where granting intervention motion would have delayed resolution and judgment); *Weaver*, 162 Ariz. at 446 (finding

[3] Notably, as of 3:00 pm PT today/this filing, the public docket still does not reflect any of the filings or orders from this week. Proposed Intervenors were only made aware of the Court's order to show cause setting a briefing schedule and hearing date upon reaching out to the parties' regarding their position on intervention.

[4] Indeed, much later interventions have been deemed timely. *See, e.g.*, *Winner Enterprises, Ltd.*, 159 Ariz. at 109 (intervention would not have caused prejudice to parties and was timely where motion was filed at least 21 days after movant had notice of proceedings and entry of a preliminary injunction); *Zenith Elecs. Corp. v. Ballinger*, 220 Ariz. 257, 263 (App. 2009) (affirming finding that post-judgment motion to intervene was timely filed).

prejudice where plaintiff already expended money and experienced "considerable personal agony" in presenting evidence, and granting intervention would have required plaintiff to re-present evidence).

For all these reasons, Proposed Intervenors' motion is timely, and they satisfy the first element of intervention as of right.

B. The disposition of this case will impair Proposed Intervenors' ability to protect their interests and those of their members and constituents.

Proposed Intervenors satisfy the intertwined second and third prongs of the standard for intervention as of right: (1) they have an interest in the subject of this action, and (2) disposition of this action may impair or impede their ability to protect their interests. "[A] prospective intervenor 'has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.'" *Wilderness Soc'y v. U.S. Forest Servs.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (quoting *California ex rel. Lockyer v. United States,* 450 F.3d 436, 441 (9th Cir. 2006)). "It is generally enough that the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." *Wilderness Soc'y*, 630 F.3d at 1179 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). In Arizona, "a would-be intervenor must show only that impairment of its substantial legal interest *is possible* if intervention is denied"—a burden courts consider "minimal." *Heritage Vill. II*, 246 Ariz. at 572 ¶ 21 (quoting *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001)). Proposed Intervenors easily clear this hurdle, because the relief Plaintiffs seek will negatively impact not only the organizations themselves, but also their members and constituents.

First, if Plaintiffs' lawsuit is successful, it will significantly increase the likelihood that the Proposed Intervenors' members and constituents will be deprived of a well-established and frequently utilized method of early voting, and they will have more difficulty voting as a result. While eliminating ballot drop boxes will impact all voters in Arizona, Proposed Intervenors,

their members, and their constituencies stand to suffer disproportionately, given the hurdles they are more likely to face in attempting to overcome the burdens this would place on their ability to ensure that their ballots are timely returned and counted. For example, Arizona Alliance has approximately 50,000 retiree members, including 2,964 members in Yavapai County, between 55 and 90 years of age, many of whom have disabilities, illness, mobility challenges, caretaking responsibilities, rely on caretakers for transportation and other support, and/or are non-native English speakers. Many of Arizona Alliance's members rely on access to drop boxes to return their ballots, often to account for mobility and geographic issues that make it difficult to access polling locations or postal services. Many of Arizona Alliance's members use drop boxes to ensure that their ballots are received in time to be counted and their right to vote not subject to delays with mail delivery. Voto Latino focuses its work to grow political engagement in the historically underrepresented groups of young and Latinx voters, including in Arizona, a crucial state for its voter participation efforts. Voto Latino's constituents—many of whom are young individuals more likely to vote early, and hourly workers reliant on access to safe and convenient methods of voting—use drop boxes to exercise their right to the franchise.

Proposed Intervenors undoubtedly have an interest in preventing their members and constituents from having to clear unnecessary obstacles to access the franchise and vote, and from disenfranchisement altogether. *See, e.g.*, *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (holding that the risk that some voters will be disenfranchised confers standing upon organizations); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) ("A plaintiff need not have the franchise wholly denied to suffer injury."); *see also Bechtel v. Rose*, 150 Ariz. 68, 72 (1986) (explaining that the interest necessary for standing is a higher bar than intervention because an intervenor under Arizona Rule 24 "does not even have to be a person who would have been a proper party at the beginning of the suit" (quotation omitted)).

Second, if Arizona bans the use of unstaffed drop boxes, leaving voters with fewer options

to ensure that their ballots are returned in time to be counted, Proposed Intervenors will be forced to divert resources from their mission-critical work to ensure that their members are not unreasonably burdened, prevented, or deterred from voting. Arizona Alliance—whose mission is to ensure social and economic justice and to protect the civil rights of retirees after a lifetime of work—will need to redirect time and resources to educate its members on the new early voting changes and other early voting avenues available to them to ensure that its members are not deprived of the right to vote. Arizona Alliance will also need to divert time and resources from other priorities to ensure that their members who planned to vote via drop box are able to access the franchise through other means. The same goes for Voto Latino. Voto Latino, a 501(c)(4) grassroots non-profit organization focused on educating and empowering a new generation of Latinx voters, will have to change its mission-critical GOTV efforts and divert resources towards educating its constituents about these new restrictions to early voting (and the available means of early voting) to reduce the harm that Plaintiffs' actions will inflict on Voto Latino's organizational goal of empowering Latinx voters.

The resulting diversion of Proposed Intervenors' scarce resources is sufficient harm to give them an interest sufficient for intervention here. *See, e.g.*, *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) (organizations with mission of assisting migrants seeking asylum had direct standing to sue where defendant's behavior adopting interim final rule required organizations to divert resources "in response to the collateral obstacles it introduces for asylum-seekers"); Feb. 16, 2023 Order at 15–17, *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509, (D. Ariz. Feb. 16, 2023), ECF No. 304 (finding organizational plaintiffs had standing when voting laws would require them to divert resources from other activities to assist their supporters who could be disproportionately disenfranchised or discouraged from voting); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd* 553 U.S. 181 (2008) (finding that political party entity suffered injury in fact because challenged law "compell[ed] the party to devote resources" in response).

C. Proposed Intervenors are not adequately represented in this case.

The existing defendant does not adequately represent Proposed Intervenors' interests. Where an original party to the suit is a government entity, whose position is "necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it," the burden of establishing inadequacy of representation by existing parties is "comparatively light." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) and *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)). Though Secretary Fontes has an interest in defending Arizona's lawful voting procedures, his interests are informed by his general obligations as the chief election officer for Arizona's more than seven million inhabitants. Proposed Intervenors meanwhile have unique and specific organizational interests in mobilizing and educating retired voters or Latinx voters and advocating on their behalf; preventing the unreasonable and potentially insurmountable burden on their members and constituents' right to vote; and avoiding the diversion of mission-critical resources. The Secretary does not share these interests. And even if Proposed Intervenors' interests overlap with the Secretary's, the Secretary "must represent the interests of all people in [his jurisdiction]," such that he cannot give Proposed Intervenors or their members' interests "the kind of primacy" that Proposed Intervenors will themselves. *Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279 ¶ 58 (App. 2011) (permitting adversely affected groups to intervene in defense of a challenged statute). Nor will the Secretary have to undertake the educational and voter assistance burdens that will injure Proposed Intervenors as they attempt to ameliorate the significant harms that the relief Plaintiffs seek would cause their members and voters, all to the detriment of their other mission-critical activities.

Consistent with these principles, courts allow organizations to intervene on the same side as government officials in cases where the organization and its members have interests that are distinct from the public at large. *See, e.g.*, *Saunders v. Super. Ct. In & For Maricopa Cnty.*, 109

Ariz. 424, 426 (1973) (holding police officers and firefighters associations were not adequately represented by Attorney General in challenge to state pension system because "[t]he interest of petitioners is not common to other citizens in the state"); *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 899 (9th Cir. 2011) (allowing environmental group to intervene where it had different objectives than the U.S. Forest Service); *Utah Ass'n of Cntys.*, 255 F.3d at 1255–56 ("[T]he government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public merely because both entities occupy the same posture in the litigation."); *see also Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 (1972) (finding that union was not adequately represented by Secretary of Labor where its interests in the litigation were "related, but not identical."); *see also* Order Granting Mot. to Intervene, *Arizona Free Enterprise Club, et al., v. Fontes*, Case No. CV-202300202 (Yavapai Cnty. Sup. Ct. Apr. 21, 2023) (granting intervention to nonprofit organizations, including Arizona Alliance, in a case challenging election procedures). The same is appropriate here: the Court should grant Proposed Intervenors intervention because no party, including the Secretary, adequately represents their interests.

II. In the alternative, the Proposed Intervenors should be granted permissive intervention.

In the alternative, the Court should grant Proposed Intervenors permissive intervention because they have "a claim or defense that shares with the main action a common question of law or fact." Ariz. R. Civ. P. 24(b)(1). In particular, Proposed Intervenors' defenses turn on the same questions of law and fact surrounding the proper interpretation of Arizona election law as the Secretary's defenses will surely involve.

When this required common question of law or fact is present, Arizona courts may consider other factors to decide whether to grant permissive intervention, including: (1) "the nature and extent of the intervenors' interest," (2) "their standing to raise relevant legal issues," (3) "the legal position they seek to advance, and its probable relation to the merits of the case,"

(4) "whether the intervenors' interests are adequately represented by other parties," (5) "whether intervention will prolong or unduly delay the litigation," and (6) "whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Bechtel*, 150 Ariz. at 72 (1986) (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). Like Rule 24(a), Rule 24(b) should be liberally construed. *Id.* Here, each factor weighs in favor of granting the Proposed Intervenors permissive intervention.

First, Proposed Intervenors have distinct interests in ensuring that their members and constituents continue to have access to voting through secure, unstaffed drop boxes. Proposed Intervenors have an interest in ensuring that their members and constituents can continue using the legal voting procedures to which they are accustomed, and in avoiding the diversion of resources to last-minute efforts to educate voters on new voting restrictions during the 2023 local elections and long-term efforts to help voters navigate the loss of this crucial voting method. As discussed above, the elimination of unstaffed drop boxes would be severe and fall especially hard on the communities that Proposed Intervenors work with and on behalf of.

Second, Proposed Intervenors oppose Plaintiffs' tortured misrepresentation of Arizona law. Proposed Intervenors are uniquely poised to present the direct and associational harms posed by Plaintiffs' baseless lawsuit and to provide legal arguments and factual evidence that supplement the Secretary's advocacy in this case. *See, e.g.*, Proposed Intervenors' Joinder at § II.

Third, Proposed Intervenors' interests are distinct from those of other parties in this case. Arizona Alliance and Voto Latino represent their own organizational interests and missions, as well as the interests and rights of their individual members and constituents, many of whom rely on unstaffed drop boxes to access the franchise, and who would face additional voting barriers should Plaintiffs' requested relief be granted.

Fourth, Proposed Intervenors seek intervention promptly, and their intervention will not

delay the proceedings or prejudice any party. To the contrary, Proposed Intervenors have a particular interest in the expeditious resolution of this case to avoid the uncertainty and attendant harms to their organizations, member, and constituents.

Lastly, Proposed Intervenors will contribute to the full factual development of this case by providing sharp legal analysis to assist the Court with its duty to interpret Arizona law, and by presenting evidence regarding the impact of Plaintiffs' unsupported request to limit the use of drop boxes in Arizona's elections. As the only parties representing Arizona voters, Proposed Intervenors would be uniquely positioned to educate the court about the importance of drop boxes to voters, and about the detrimental impact Plaintiffs' requested relief would have on voters. Further, Proposed Intervenors and their counsel have significant experience litigating election matters in this court, and if granted intervention, would substantially contribute to the fulsome analysis of the relevant legal and factual issues.

Because Rule 24 is liberally construed to protect the rights of all interested parties, and because Proposed Intervenors satisfy the criteria for permissive intervention, the Court should permit intervention in this case.

CONCLUSION

For these reasons, Proposed Intervenors request that the Court grant their Motion to Intervene and participate in these proceedings as Defendants.

RESPECTFULLY SUBMITTED this 26th day of October, 2023.

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ARIZONA SUPERIOR COURT

YAVAPAI COUNTY

ARIZONA FREE ENTERPRISE CLUB, an Arizona nonprofit corporation, and MARY KAY RUWETTE, individually, Plaintiffs, v. ADRIAN FONTES, in his official capacity as the Secretary of State of Arizona, Defendant.	No. S1300CV202300872 **[PROPOSED] ANSWER IN INTERVENTION TO VERIFIED SPECIAL ACTION COMPLAINT** (Assigned to the Hon. John Napper)

Proposed Intervenor-Defendants the Arizona Alliance for Retired Americans and Voto Latino (collectively, "Proposed Intervenors") answer Plaintiffs' Verified Special Action Complaint ("Verified Complaint") as follows:

1. Paragraph 1 contains a legal contention to which no response is required. To the extent a response is required, the allegations are denied.

2. Paragraph 2 contains a legal contention to which no response is required. To the extent a response is required, Proposed Intervenors admit that Arizona requires early voting options in every election and that election officials must mail a ballot to every voter on an active early voting list, but otherwise deny the allegations in Paragraph 2 of the Verified Complaint.

3. Paragraph 3 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

4. Paragraph 4 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

5. Paragraph 5 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the cited statutory provision states that completed early ballots shall be "delivered or mailed to the county recorder or other officer in charge of elections of the political subdivision in which the elector is registered or deposited by the voter or the voter's agent at any polling place in the county." Proposed Intervenors also admit that printed instructions to early voters are to include the following statement: "In order to be valid and counted, the ballot and affidavit must be delivered to the office of the county recorder or other officer in charge of elections or may be deposited at any polling place in the county no later than 7:00 p.m. on election day." Proposed Intervenors deny that Arizona law allows for drop boxes only at polling places.

6. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 6 of the Verified Complaint and therefore deny them.

7. Proposed Intervenors admit that the Secretary of State has not repudiated the 2019 Elections Procedures Manual's ("EPM") drop box policies. Paragraph 7 of the Verified Complaint otherwise states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

8. Admitted.

9. Paragraph 9 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

10. Denied.

11. Denied.

12. Denied.

JURISDICTION

13. Proposed Intervenors admit that the Court has jurisdiction under Article 6, § 14 of the Arizona Constitution, but denies that jurisdiction is conferred by A.R.S. § 12-1831 or -2021, or Rule 4 of the Arizona Rules of Procedure for Special Actions.

14. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 14 of the Verified Complaint and therefore deny them.

PARTIES

15. Proposed Intervenors admit that Plaintiff Arizona Free Enterprise Club is an Arizona nonprofit corporation organized and operated pursuant to section 501(c)(4) of the Internal Revenue Code. Proposed Intervenors otherwise lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 15 of the Verified Complaint and therefore deny them.

16. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 16 of the Verified Complaint and therefore deny them.

17. Admitted.

GENERAL ALLEGATIONS

18. Proposed Intervenors admit that the majority of qualified electors who participate in Arizona elections vote via the State's early voting system. The remainder of Paragraph 13 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the quoted language appears in the cited case but otherwise deny the allegations.

19. Paragraph 19 contains a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the quoted language appears in the cited case but otherwise deny the allegations.

20. Paragraph 20 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are admitted.

21. Paragraph 21 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

22. Paragraph 22 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

23. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 23 of the Verified Complaint and therefore deny them.

24. Proposed Intervenors admit that the Commission on Federal Election Reform, led by President Jimmy Carter and former Secretary of State James Baker, was formed in 2004 and issued a report in 2005 titled "Building Confidence in U.S. Elections." Proposed Intervenors otherwise lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 24 of the Verified Complaint and therefore deny them.

25. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 25 of the Verified Complaint and therefore deny them.

26. Proposed Intervenors admit that A.R.S. § 16-548(A) authorizes "the voter or the voter's agent" to deposit a ballot at a polling place. Paragraph 26 of the Verified Complaint otherwise states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

27. Paragraph 27 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

28. Proposed Intervenors lack sufficient knowledge or information to form a belief about the Legislature's reasons for enacting A.R.S. § 16-547(A). Paragraph 28 of the Verified Complaint otherwise states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

29. Paragraph 29 of the Verified Complaint states a legal conclusion to which no response is required. Proposed Intervenors admit that the quoted language appears without emphasis in the cited statutes but otherwise deny the allegations.

30. Proposed Intervenors admit that the Secretary has issued rules for drop boxes through the EPM, and that the EPM instructs County Recorders or other elections officers to "develop and implement secure ballot retrieval and chain of custody procedures." Proposed Intervenors deny the remaining allegations.

31. Paragraph 31 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the EPM has the force of law and is punishable as a class two misdemeanor but deny the remaining allegations.

32. Paragraph 32 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the quoted language appears in the cited cases.

33. Proposed Intervenors admit that the most recent EPM approved by the Secretary of State, the Governor, and the Attorney General was published in December 2019 and remains in effect, that the 2021 EPM did not take effect, and that the Governor and Attorney General have not yet approved the 2023 EPM. Proposed Intervenors further

admit that the 2023 and 2019 EPMs contain substantially similar drop box provisions, but deny the characterization that changes to the 2019 EPM's provisions are "few," "minor," or "largely cosmetic." Paragraph 33 of the Verified Complaint otherwise states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

34. Denied

35. Denied.

36. Proposed Intervenors admit that the EPM regulates unstaffed drop boxes and allows them to be placed outdoors. Proposed Intervenors deny the remaining allegations in Paragraph 36.

37. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 37 of the Verified Complaint and therefore deny them.

38. Paragraph 38 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

39. Paragraph 39 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

40. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegation in Paragraph 40 of the Verified Complaint about USPS mail collection boxes and therefore deny it. Proposed Intervenors admit that the EPM requires all drop boxes to be "secured by a lock and/or sealable with a tamper-evident seal."

41. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 41 of the Verified Complaint and therefore deny them.

42. Paragraph 42 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

43. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 43 of the Verified Complaint and therefore deny them.

44. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 44 of the Verified Complaint and therefore deny them.

45. Proposed Intervenors admit that during the 2022 election, an Arizona court entered a restraining order against armed observers who intimidated Arizonans seeking to vote via drop box. Proposed Intervenors deny the remaining allegations in Paragraph 45.

46. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 46 of the Verified Complaint and therefore deny them.

47. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 47 of the Verified Complaint and therefore deny them.

48. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 48 of the Verified Complaint and therefore deny them.

49. Proposed Intervenors deny that the EPM suggests that election officials install drop boxes in the vicinity of a government building. Rather, the EPM requires that drop boxes are "located in a secure location, such as inside or in front of a federal, state, local, or tribal government building." Proposed Intervenors otherwise lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 49 of the Verified Complaint and therefore deny them.

50. Paragraph 50 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

51. Proposed Intervenors admit that the EPM does not dictate the numbers or geographic distribution of unstaffed drop-boxes that a county may or must provide, and that

counties and municipalities may decide how many drop boxes to establish, if any. To the extent Paragraph 51 alleges that the EPM lacks the authority to regulate drop boxes, that allegation is denied. Proposed Intervenors otherwise lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 51 of the Verified Complaint and therefore deny them.

52. Proposed Intervenors admit that the EPM does not regulate the apportionment of drop boxes based on county population or geography. Proposed Intervenors otherwise lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 51 of the Verified Complaint and therefore deny them.

53. Denied.

54. Denied.

55. Admitted.

56. Denied.

57. Denied.

58. Proposed Intervenors lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 58 of the Verified Complaint and therefore deny them.

59. Proposed Intervenors deny that Arizona's unstaffed drop boxes lack a statutory basis. Proposed Intervenors otherwise lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 59 of the Verified Complaint and therefore deny them.

60. Paragraph 60 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the Wisconsin Supreme Court held that Wisconsin drop boxes were illegal under Wisconsin state law.

61. Paragraph 61 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the quoted language appears in the cited case but deny that the cited statute remains law in

Wisconsin, as a Wisconsin court has held that the statutory provision quoted in Paragraph 61 of the Verified Complaint is preempted by the Voting Rights Act. *Carey v. Wisconsin Elections Comm'n*, 624 F. Supp. 3d 1020, 1032 (W.D. Wis. 2022).

62. Paragraph 62 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

63. Paragraph 63 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the quoted language appears in the cited case, though with different punctuation and capitalization.

64. Paragraph 64 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the quoted language appears in the cited case, but at ¶ 61 of the opinion. To the extent Paragraph 64 alleges that the cited statute remains law in Wisconsin, that allegation is denied.

65. Paragraph 65 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the quoted language appears in the cited case but deny that details of Arizona's drop box scheme are in memos prepared by WEC [Wisconsin Elections Commission] staff, or that Arizona's use of drop boxes lack statutory support.

66. Paragraph 66 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, Proposed Intervenors admit that the quoted language appears in the cited case.

67. Denied.

COUNT I

68. Proposed Intervenors incorporate by reference each of their preceding admissions, denials, and statements as if fully set forth in this paragraph.

69. Paragraph 69 of the Verified Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Proposed Intervenors admit that the quoted language appears in the cited statute.

70. Paragraph 70 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

71. Paragraph 71 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

72. Paragraph 72 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied, except that Proposed Intervenors admit that the quoted language appears in the cited case.

73. Paragraph 73 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied, except that Proposed Intervenors admit that the quoted language appears in the cited cases.

74. Denied.

75. Paragraph 75 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

COUNT II

80. Proposed Intervenors incorporate by reference each of their preceding admissions, denials, and statements as if fully set forth in this paragraph.

81. Denied.

82. Paragraph 82 of the Verified Complaint states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

83. Denied.

DEMAND FOR RELIEF

84. Proposed Intervenors deny that Plaintiffs are entitled to any relief.

GENERAL DENIAL

85. Proposed Intervenors deny every allegation in the Verified Complaint that is not expressly admitted herein.

AFFIRMATIVE DEFENSES

86. Plaintiffs' claims are barred in whole or in part for failure to state a claim upon which relief can be granted.

87. Plaintiffs' claims are barred because Plaintiffs lack standing.

88. Plaintiffs' claims are barred by laches.

89. Proposed Intervenors reserve the right to assert additional affirmative defenses, including, but not limited to, those set forth in Rule 8(d) of the Arizona Rules of Civil Procedure, as additional facts are discovered.

WHEREFORE, having fully answered Plaintiffs' Verified Complaint, Proposed Intervenors pray for judgment as follows:

A. That the Court dismiss Plaintiffs' Verified Complaint;

B. That judgment be entered in favor of Proposed Intervenors and against Plaintiffs on Plaintiffs' Verified Complaint and that Plaintiffs take nothing thereby;

C. That Proposed Intervenors be awarded reasonable attorneys' fees and costs; and

D. For such other and further relief as the Court, in its inherent discretion, deems appropriate.

RESPECTFULLY SUBMITTED this 26th day of October, 2023.

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* *Application Pro Hac Vice Forthcoming*

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** Application Pro Hac Vice Forthcoming*

ARIZONA SUPERIOR COURT

YAVAPAI COUNTY

ARIZONA FREE ENTERPRISE CLUB, an Arizona nonprofit corporation, and MARY KAY RUWETTE, individually, Plaintiffs, v. ADRIAN FONTES, in his official capacity as the Secretary of State of Arizona, Defendant.	No. S1300CV202300872 **PROPOSED INTERVENORS' JOINDER TO SECRETARY OF STATE'S RESPONSE IN OPPOSITION TO APPLICATION FOR ORDER TO SHOW CAUSE AND INJUNCTIVE RELIEF** (Assigned to the Hon. John Napper)

Proposed Intervenors the Arizona Alliance for Retired Americans and Voto Latino (together, "Proposed Intervenors") join in full the Secretary of State's ("Secretary") October 25, 2023 response in opposition to Plaintiffs Arizona Free Enterprise Club and Mary Kay Ruwette's ("Plaintiffs") application for order to show cause and injunctive relief.

In addition to the points raised by the Secretary, Proposed Intervenors submit that Plaintiffs' application for order to show cause and injunctive relief should be denied for the reasons that 1) Plaintiffs lack standing; and, 2) Plaintiffs' claims are barred by laches, and their unjustifiable delay in bringing this lawsuit prejudices Proposed Intervenors and their members and constituents.

I. Plaintiffs lack standing to bring their claims.

Plaintiffs cannot demonstrate a strong likelihood of success on the merits because they lack standing to bring their claims in the first place. Plaintiffs fail to allege any particularized injury that would entitle them to pursue any of their claims under this Court's standing jurisprudence. Plaintiffs attempt to avoid this result by claiming to bring a mandamus action, which would invoke a relaxed standing requirement. But Plaintiffs' claims provide no basis for mandamus relief. As a result, Plaintiffs' lawsuit should be dismissed for lack of standing.

A. Plaintiffs' alleged generalized interest in legal compliance is insufficient to confer standing.

Plaintiffs fail to allege any injury, let alone an injury sufficient to confer standing to challenge Arizona's drop box procedures.

Arizona employs a "rigorous standing requirement." *Fernandez v. Takata Seat Belts, Inc*., 210 Ariz. 138, 140 ¶ 6 (2005). It is black letter law that "a plaintiff must allege a distinct and palpable injury" to establish standing to bring an action. *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998) (citation omitted). "An allegation of generalized harm that is shared alike by all or a large class of citizens generally is not sufficient to confer standing." *Id*.

Here, Plaintiffs fail to allege *any* injury whatsoever. Plaintiff Arizona Free Enterprise

Club does not allege that it has somehow been harmed by the use of drop boxes, nor does Plaintiff Mary Kay Ruwette allege that she uses drop boxes or that her rights have somehow been hindered by the use of drop boxes by other Arizona voters. Indeed, Plaintiffs do not allege that *any* Arizona voters—let alone Plaintiffs themselves—have been harmed by the use of unstaffed drop boxes.

Instead, Plaintiffs assert only a generalized interest in ensuring that the Secretary of State follows the law. App. for Order to Show Cause at 12. Such allegations come far short of the requirement for "a distinct and palpable injury" necessary to confer standing. *Sears*, 192 Ariz. at 69 ¶ 16. Even if Plaintiffs' allegations can be construed as injurious, any injury resulting from the Secretary's execution of Arizona law are shared by all voters and not in any way specific to Plaintiffs. *See Arcadia Osborn Neighborhood v. Clear Channel Outdoor, LLC*, 535 P.3d 932, 937 (Ariz. Ct. App. 2023) (finding alleged harms related to traffic safety and loss of aesthetic value was generalized and insufficient to confer standing); *Freedom From Religion Found., Inc. v. Brewer*, No. 1 CA-CV 12-0684, 2013 WL 2644702, at *10 (Ariz. Ct. App. June 11, 2013) (appellants did not have standing because they failed to allege how their "feeling of offense" by governor's prayer proclamations "is any greater than that of a large segment of the general public" and failed to identify a "discrete and palpable injury"); *Mecinas v. Hobbs*, 30 F.4th 890, 897 (9th Cir. 2022) (finding that "a grievance too 'generalized' for standing purposes is one characterized by its abstract and indefinite nature—for example, harm to the common concern for obedience to law") (citation omitted). Because Plaintiffs fail to allege any "particularized injury to themselves," they cannot establish standing. *Bennett v. Brownlow*, 211 Ariz. 193, 196 ¶ 17 (2005) (holding plaintiff who did not "suffer[] personal harm" lacked standing to bring action).

Nor could Plaintiffs plausibly allege any injury from the use of drop boxes even if they had tried. Plaintiffs can hardly maintain that use of drop boxes in any way led to their disenfranchisement or that of their members or constituents. Expanding access to the franchise

for all voters does not injure any voters. *Cf. Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018) (finding no burden on right to vote where new law "makes it easier for some voters to cast their ballots by mail"). Moreover, Plaintiffs' purported concern that some voters in some counties may have access to more drop boxes than other voters in other counties, Verified Complaint at ¶¶ 51-53, is completely at odds with their request to eliminate the use of drop boxes for *all* voters in *all* counties.

It is thus hardly surprising that Plaintiffs fail to allege any actual injury as a result of Arizona's use of drop boxes. Any purported injury would not only violate black-letter law but also common sense.

B. This is not a mandamus action to which relaxed standing requirements apply.

While courts apply "a more relaxed standard for standing in mandamus actions," *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 ¶ 11 (2020), that relaxed standard does not apply here because Plaintiffs' action is not an action in mandamus. "Mandamus is an extraordinary remedy issued by a court to compel a public officer to perform an act which the law specifically imposes as a duty." *Sears*, 192 Ariz. at 68 ¶ 11 (1998) (quoting *Board of Educ. v. Scottsdale Educ. Ass'n*, 109 Ariz. 342, 344 (1973)). The Arizona Supreme Court "has long held that mandamus will lie only 'to require public officers to perform their official duties when they refuse to act,' and not 'to restrain a public official from doing an act.'" *Id.* (quoting *Smoker v. Bolin*, 85 Ariz. 171, 173 (1958)).

Plaintiffs' claim fails this fundamental requirement for mandamus actions. Plaintiffs squarely ask this Court "to restrain" Secretary Fontes "from doing an act," *id*., seeking an order "prohibiting the Secretary of State . . . . from enforcing or implementing any provision of the EPM [Elections Procedures Manual]" authorizing the receipt of "voted ballots from unstaffed ballot drop-boxes." Verified Complaint at 17. Plaintiffs acknowledge that Arizona Secretaries of State have continuously implemented the EPM's drop box procedures since 2019, App. for Order to Show Cause at 3, and filed this lawsuit for the express purpose of *preventing* the

Secretary from continuing to do so, *id.* at 13 ("The Court should declare the sections of the EPM purporting to establish unstaffed drop-boxes as illegal, and enjoin the Defendant and his agents from implementing or enforcing them.").[1]

Plaintiffs seek to avail themselves of the more forgiving legal standards that govern mandamus actions by framing their request for an injunction as one to "compel the Secretary to carry out his nondiscretionary legal duties." Verified Complaint ¶ 12. But the Arizona Supreme Court firmly rejected a similar attempt to pass off a request for injunction as a mandamus action in *Sears*, and this Court should do the same here. *Sears*, 192 Ariz. at 69.

In *Sears*, the plaintiffs purported to seek mandamus to enjoin the Governor from entering into a gaming compact that they alleged violated federal law. 192 Ariz. At 68 ¶ 6. The Court held that the plaintiffs' disagreement with the Governor's interpretation of the law could not entitle them to mandamus relief—if it could, "virtually any citizen could challenge any action of any public officer under the mandamus statute by claiming that the officer has failed to uphold or fulfill state or federal law, as interpreted by the dissatisfied plaintiff." *Id*. at 69 ¶ 14. This would be inconsistent with the mandamus statute, "which limits a cause of action to beneficially interested parties who seek to compel a public officer to perform 'an act which the law specially imposes as a duty resulting from an office.'" *Id*. (quoting A.R.S. § 12-2021). *Sears* forecloses Plaintiffs' attempted mandamus action here because Plaintiffs improperly "seek not to compel the [Secretary] to perform an act specifically imposed as a duty but rather to prevent the [Secretary] from acting." *Id.* at 69 ¶ 12.

Plaintiffs' reliance on *Arizona Public Integrity Alliance v. Fontes* is misplaced. There, the Arizona Supreme Court applied the relaxed standard for standing because it was a proper mandamus action: the county recorder was required by law to perform a non-discretionary act—

[1] Relatedly, mandamus is unavailable to seek a declaration as to the scope of an official's duties. *See Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 467 ¶ 26 (App. 2007) ("[M]andamus is not an appropriate method to use to obtain a definition of duties that are otherwise subject to dispute."). Therefore, Plaintiffs lack standing to bring their claim for declaratory relief.

to provide the precise ballot instructions specified in the EPM, and Plaintiffs sought to compel the recorder to perform that specific act and provide those precise instructions. *See* 250 Ariz. at 61 ¶ 3 (explaining that "with respect to overvotes, the Recorder has a non-discretionary duty to provide the Overvote Instruction authorized by the Arizona Secretary of State" in the Elections Procedures Manual). The case does not stand for the broad and untenable proposition that any voter may bring a mandamus action generally to compel public officials to comply with state election laws. *See* App. for Order to Show Cause at 10. To the contrary, the Court firmly rejected that exact theory in *Sears*. 192 Ariz. at 69 ¶ 14.

In contrast here, Plaintiffs do not seek to compel performance of a mandatory action, but instead to use mandamus to dictate how the Secretary exercises his statutorily-prescribed discretion. The Secretary has explicit statutory authority to "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, *collecting*, counting, tabulating and storing ballots." A.R.S. § 16-452(A) (emphasis added). While the statute requires the Secretary to prescribe rules, it is silent as to which rules he must prescribe, leaving it to the Secretary's discretion to determine how best to collect ballots so as to "achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency." *Id*.

Plaintiffs ask the Court to dictate *how* the Secretary should exercise his discretionary authority. That is not in the nature of mandamus, where "'the general rule is that if the action of a public officer is discretionary that discretion may not be controlled by mandamus.'" *Sears*, 192 Ariz. at 68 ¶ 11 (cleaned up) (quoting *Collins v. Krucker*, 56 Ariz. 6, 13 (1940)); *see also Yes on Prop. 200 v. Napolitano*, 215 Ariz. 458, 465 ¶ 12 (App. 2007) (holding that special action seeking mandamus relief "cannot be used to compel a government employee to perform a function in a particular way if the official is granted any discretion about how to perform it"). The relief sought by Plaintiffs thus falls outside the proper scope of mandamus relief and they cannot rely on a "beneficial interest" to confer standing. Since Plaintiffs have alleged no basis

for standing beyond this "beneficial interest," Plaintiffs have failed to establish they have standing to bring this lawsuit.

II. Plaintiffs' claims are barred by laches.

As the Secretary's response correctly points out, Resp. at 12–14, the laches principle shows that Plaintiffs' requested relief is not in the public interest. To put a finer point on the matter, the equitable doctrine of laches *bars* Plaintiffs' request for emergency injunctive relief—as well as their underlying claims—which could have been brought well before the promulgation of the 2023 EPM and certainly well before the current, ongoing election.

In considering whether laches bars a claim, courts (1) "examine the justification for delay, including the extent of plaintiff's advance knowledge of the basis for challenge"; (2) analyze "whether [the] delay . . . was unreasonable"; and (3) consider whether "the delay resulted in actual prejudice to the adverse parties." *Harris v. Purcell*, 193 Ariz. 409, 412 ¶ 16 (1998) (citing *Mathieu v. Mahoney*, 174 Ariz. 456, 459 (1993)). The first two factors weigh decidedly against Plaintiffs: Plaintiffs can offer no justification for their delay in filing four years after the 2019 EPM began regulating unstaffed drop boxes, let alone explain why there is sudden exigency warranting injunctive relief in the midst of an ongoing election. For these reasons, Plaintiffs' request for emergency injunctive relief is particularly confounding, and their "late filing defies explanation," *Sotomayor v. Burns*, 199 Ariz. 81, 83 ¶ 7 (2000).

Plaintiffs' delay in bringing these claims severely prejudices adverse parties, including Proposed Intervenors, and Arizona voters more broadly. In evaluating prejudice in the context of laches, Arizona courts consider fairness to litigants, election officials, the voters, and the Court. *See id* at 83 ¶ 9. Plaintiffs' belated filing seeks to upend the expectations and reliance interests of all of these individuals and entities in one fell swoop. Plaintiffs seek to take away a voting method that has been relied upon by thousands of Arizona voters for decades. The majority of Arizonans vote using early ballots, and the States's election system is set up to accommodate large quantities of early ballots as opposed to in-person voting—including fewer

in-person polling places. Scores of Arizona voters use drop boxes—for example, in the 2020 general election, eighty-eight percent of Arizona's more than four million voters cast early ballots, the vast majority of which voters delivered to their county election officials by mail or depositing in a ballot drop box. *See* Sec'y Resp. at 3. Suspending the use of unstaffed ballot drop boxes would undermine Arizona's early voting system, particularly for voters who have postal issues or concerns about postal delays. Access to drop boxes, especially unstaffed drop boxes, enables voters to vote without involving the postal service, a distinction that is especially helpful to voters without home mail services or those who return ballots later in the early voting period. Eliminating a widely-used voting method that Arizona voters have relied on for years, particularly in the middle of an ongoing election, would severely prejudice those who have become accustomed to this voting method and have planned their access to the franchise around the continued use of drop boxes, in this election and in future elections.

Proposed Intervenors, their members, and constituents are particularly prejudiced by Plaintiffs' late attempt to scale back voting opportunities for Arizona citizens. The Arizona Alliance has about 50,000 retiree members, including many with disabilities, illness, caretaking responsibilities and needs, and/or are non-native English speakers. Because of these circumstances, Alliance members are dependent on access to drop boxes to return their ballots, including because of mobility and access issues that make it difficult to navigate polling locations or postal services. Voto Latino's constituents also rely on drop boxes, including unstaffed drop boxes to exercise their right to the franchise. These constituents include young Latinos more likely to vote early, and hourly workers that need to rely on safe and accessible methods of voting including during atypical hours—not just hours when polling places are open or drop boxes are staffed. Plaintiffs' inexplicable delay will also prejudice County election officials who, in reliance on the lawful guidance in the EPM, have already invested resources in acquiring and installing ballot drop boxes and even video surveillance equipment for those drop boxes. *See* Sec'y Resp. at 14.

Proposed Intervenors and the Secretary are "entitled to a meaningful response" for claims of this scale, and the public is entitled to fair administration of justice—Plaintiffs' inexplicable delay has undermined both. *Ariz. Pub. Integrity All. Inc. v. Bennett*, No. CV–14–01044–PHX–NVW, 2014 WL 3715130, at *3 (D. Ariz. June 23, 2014); *see also McClung v. Bennett*, 225 Ariz. 154, 157 ¶ 15 (2010) (applying laches in election appeal, even though it fell within the statutory deadline, given prejudice to opponent and public). Plaintiffs' sudden urgency for injunctive relief also impacts this Court, which should be given an opportunity to carefully consider briefing and evidence from all parties, including impacted Arizona voters, before enjoining a well-established, widely-used voting method and EPM provisions supported by statutory authority. *See Sotomayor*, 199 Ariz. at 83 ¶ 9 ("The real prejudice caused by delay in election cases is to the quality of decision making in matters of great public importance.").

In sum, Plaintiffs' lawsuit is too little too late. They can provide no justification for waiting years before upending a well-established voting method that Arizonans have come to rely upon. At the very least, Plaintiffs' claim for emergency injunctive relief is barred by the doctrine of laches; where Plaintiffs' have sat on their hands, they can hardly ask this Court, the parties, and the public to rush to litigate and resolve their claims on an expedited basis.

* * *

For all the foregoing reasons, as well as those included in the Secretary's response in opposition, Proposed Intervenors respectfully request the denial of Plaintiffs' request for injunctive relief.

RESPECTFULLY SUBMITTED this 26th day of October, 2023.

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