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18 **Pro Hac Vice Application Pending*

19 **ARIZONA SUPERIOR COURT**

20 **YAVAPAI COUNTY**

21 ARIZONA FREE ENTERPRISE CLUB, an) No. S1300CV202300872
22 Arizona nonprofit corporation, and MARY)
23 KAY RUWETTE, individually,) **INTERVENOR-DEFENDANTS'**
24) **COMBINED MOTION TO**
25) **DISMISS FOR LACK OF**
26) **STANDING AND MOTION FOR**
27) **SUMMARY JUDGMENT**
28) (Assigned to the Hon. John Napper)
ADRIAN FONTES, in his official capacity as)
the Secretary of State of Arizona,)
Defendant.)

1 ARIZONA ALLIANCE OF RETIRED)
2 AMERICANS; and MI FAMILIA VOTA,)
3 Intervenor-Defendants)

4 **INTRODUCTION**

5 While Plaintiffs Arizona Free Enterprise Club and Mary Kay Ruwette (“Plaintiffs”)
6 express a policy disagreement with Arizona’s long-established use of unstaffed drop boxes,
7 they do not and cannot credibly contend that *any* Arizona voters—let alone Plaintiffs
8 themselves—have been harmed by this voting method. Instead, Plaintiffs assert only a
9 generalized interest in what they view as the “proper” enforcement of Arizona law, which
10 is insufficient to confer standing. Nor can Plaintiffs invoke the more relaxed standing
11 requirement for mandamus actions, as their request to prohibit the Secretary of State from
12 exercising his discretion to allow unstaffed drop boxes does not sound in mandamus.
13 Because Plaintiffs lack standing to bring their claim, this Court should dismiss this case on
14 that ground alone.

15 Even if this Court were to reach the merits of Plaintiffs’ claims, Plaintiffs are simply
16 wrong that Arizona law prohibits the use of unstaffed drop boxes. To the contrary, the
17 legislature has specifically delegated to the Secretary the authority to prescribe rules for the
18 delivery and collection of ballots without limitations on the method of returning ballots.

19 Plaintiffs’ lawsuit is not only meritless but also threatens severe harm to Arizona
20 voters and the public interest. Plaintiffs’ requested relief would make it needlessly harder
21 for Arizona voters—including the members and constituents of Intervenor-Defendants
22 Voto Latino and Arizona Alliance for Retired Americans—to ensure that their ballots are
23 returned to election officials in time to be counted. The voters who stand to suffer most
24 significantly are those in Arizona’s most vulnerable and marginalized communities,
25 including underserved Latinx communities, elderly voters, and Native voters, for whom
26 access to the franchise is already difficult and burdensome.

27 For all these reasons, this Court should dismiss Plaintiffs’ complaint for lack of
28 standing or grant Intervenor-Defendants summary judgment.

1
2
3 **ARGUMENT**

4 **I. Plaintiffs lack standing to bring their claims.**

5 Arizona employs “a rigorous standing requirement.” *Fernandez v. Takata Seat Belts,*
6 *Inc.*, 210 Ariz. 138, 140 (2005). Standing is a threshold question that must be resolved
7 before reaching the merits. *Sears v. Hull*, 192 Ariz. 65, 68 (1998) (“Because we agree that
8 the plaintiffs lack standing, we do not address the merits of their claims.”). Here, Plaintiffs
9 fail to allege any particularized injury that would entitle them to pursue their claims. While
10 Plaintiffs attempt to avoid this result by claiming to bring a mandamus action, which would
11 invoke a relaxed standing requirement, Plaintiffs’ claims provide no basis for mandamus
12 relief. Because Plaintiffs have not alleged and cannot establish standing to sue, they are not
entitled to redress.

13 **A. Plaintiffs’ Complaint fails to allege any distinct and palpable injury.**

14 Plaintiffs’ Complaint should be dismissed at the outset for failure to allege any injury
15 from Arizona’s use of drop boxes. “To gain standing to bring an action, a plaintiff must
16 allege a distinct and palpable injury.” *Sears*, 192 Ariz. at 69 (citation omitted). “An
17 allegation of generalized harm that is shared alike by all or a large class of citizens generally
18 is not sufficient to confer standing.” *Id.*

19 Plaintiffs’ Complaint fails to allege *any* injury resulting from unstaffed drop boxes,
20 much less a “distinct and palpable injury” sufficient to confer standing. *Id.* Plaintiff Arizona
21 Free Enterprise Club does not allege that it has somehow been harmed by the use of drop
22 boxes. Nor does Plaintiff Mary Kay Ruwette allege that she has ever used a drop box or that
23 her rights have somehow been hindered by other Arizona voters using drop boxes.

24 The closest Plaintiffs come to alleging *any* injury on behalf of *anyone* is their vague
25 assertion that “[a] person” who avails himself of the drop box voting method *may be* “an
26 easy or vulnerable target for voter intimidation.” Compl. ¶ 48. At no point do Plaintiffs
27 allege that *they* have experienced voter intimidation. In fact, the only “alleged victims of
28 voter intimidation” Plaintiffs identify is *Intervenor-Defendant* Arizona Alliance for Retired

1 Americans, *id.* ¶ 45 (citing *Ariz. All. for Retired Ams. v. Clean Elections USA*, No. CV-22-
2 01823-PHX-MTL, 2022 WL 17088041, at *1 (D. Ariz. Nov. 1, 2022)), who Plaintiffs do
3 not represent. *See Fernandez*, 210 Ariz. at 141 (a plaintiff “cannot predicate standing on
4 injury which he does not share” (quoting *Allee v. Medrano*, 416 U.S. 802, 828–29 (1974))).

5 Instead of alleging a particularized injury, Plaintiffs assert only a generalized interest
6 in ensuring the Secretary follows the law. *See, e.g., Compl.* ¶ 82 (alleging “interest in the
7 proper and uniform enforcement by election officials of statutory requirements for
8 completed early ballots”) (citing A.R.S. § 12-1832). But the allegation that “the law . . . has
9 not been followed” is “precisely the kind of undifferentiated, generalized grievance about
10 the conduct of government” that is insufficient to confer standing. *Lance v. Coffman*, 549
11 U.S. 437, 442 (2007); *see also Mecinas v. Hobbs*, 30 F.4th 890, 897 (9th Cir. 2022) (“harm
12 to the common concern for obedience to law” is “too generalized for standing purposes”
13 (quoting *Sisley v. U.S. Drug Enf’t Admin.*, 11 F.4th 1029, 1034 (9th Cir. 2021));¹ *Arcadia*
14 *Osborn Neighborhood v. Clear Channel Outdoor, LLC*, 256 Ariz. 88, 93 (App. 2023).
15 Plaintiffs’ apparent disagreement with the Secretary’s policy choices, therefore, falls
16 outside the purview of this Court and is “more appropriately directed to the legislative and
17 executive branches of the state government.” *Sears*, 192 Ariz. at 69 n.6. Because Plaintiffs
18 fail to allege any “particularized injury to themselves,” they lack standing, and this Court
19 must dismiss their Complaint. *Bennett v. Brownlow*, 211 Ariz. 193, 196 (2005) (remanding
20 with instructions to dismiss where plaintiff did not “suffer[] personal harm”); *see also*
21 *Arcadia Osborn Neighborhood*, 535 P.3d at 937 (dismissing complaint where plaintiffs
22 “have not alleged particularized harm causing palpable injuries”).

23 **B. Plaintiffs cannot demonstrate any injury from unstaffed drop boxes.**

24 Plaintiffs not only *do not* allege injury sufficient for standing, they *cannot* establish
25 any injury from the use of unstaffed drop boxes. Thus, even if the Complaint could survive
26 dismissal, this Court should grant summary judgment against Plaintiffs for lack of standing.

27 _____
28 ¹ Although “not bound by federal jurisprudence on the matter of standing,” Arizona courts
find “federal case law instructive.” *Fernandez*, 210 Ariz. at 141 (citation omitted).

1 First, Plaintiffs cannot demonstrate that they are injured by other voters' use of
2 unstaffed drop boxes. *See Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp.
3 3d 331, 391 (W.D. Pa. 2020) (finding failure to staff drop boxes “doesn’t directly infringe
4 or burden Plaintiffs’ rights to vote at all”). Courts have routinely held that expanding access
5 to the franchise does not injure any voters. *Cf. Short v. Brown*, 893 F.3d 671, 677 (9th Cir.
6 2018) (finding no burden on right to vote from law that “makes it easier for some voters to
7 cast their ballots by mail”); *Tully v. Okeson*, 977 F.3d 608, 616 (7th Cir. 2020) (finding
8 absentee voting scheme that made it easier for some voters to vote “does not affect
9 Plaintiffs’ right to vote”); *see also Paher v. Cegavske*, No. 320CV00243MMDWGC, 2020
10 WL 2748301, at *9 (D. Nev. May 27, 2020) (finding plan that “make[s] it easier or more
11 convenient [for some voters] to vote . . . does not have any adverse effects on the ability of
12 [other voters] to vote”); *Election Integrity Project Cal., Inc. v. Weber*, No. 2:21-CV-00032-
13 AB-MAA, 2023 WL 5357722, at *9 (C.D. Cal. July 18, 2023) (allowing online registration
14 “does not restrict Plaintiffs’ right to vote and instead expands the right to vote”).

15 While Plaintiffs allege that “absentee voting” may allow for “potential voter fraud,”
16 Compl. ¶¶ 37–44, the perceived risk of voter fraud is insufficient to establish standing to
17 challenge Arizona’s drop box rules. Voter fraud is illegal in Arizona and punishable as a
18 felony. A.R.S. § 16-1005. Plaintiffs cannot establish standing by speculating that some
19 unknown future bad actors could theoretically use unstaffed drop boxes to violate Arizona
20 law. *See Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1028–29 (D. Ariz. 2022) (finding plaintiffs’
21 alleged injury based on claim “that voting machines may be hackable” too speculative to
22 confer standing because “a long chain of hypothetical contingencies must take place for any
23 harm to occur”); *Boockvar*, 493 F. Supp. 3d at 376 (finding plaintiffs’ allegation that mail-
24 in voting creates “a risk of voter fraud by other voters” is too “speculative” an injury to
25 confer standing); *Stein v. Cortés*, 223 F. Supp. 3d 423, 432 (E.D. Pa. 2016) (finding
26 plaintiffs’ allegation that voting machines are “vulnerable, hackable, [and] antiquated”
27 failed to articulate actual injury sufficient to confer standing).

28 Nor can Plaintiffs establish standing based on the prospect of voter intimidation.

1 Even if Plaintiffs could assert an injury of a hypothetical voter victimized by voter
2 intimidation, *but see supra* I.A, such voter intimidation would neither result from the use of
3 drop boxes nor be traceable to Defendant. Rather, the proper defendants in a voter
4 intimidation case are the third-party bad actors doing the intimidation. *See Ariz. All. for*
5 *Retired Ams.*, 2022 WL 17088041, at *1 (enjoining group that orchestrated intimidation at
6 drop boxes from intimidating voters); *see also Fernandez*, 210 Ariz. at 140 (explaining that
7 plaintiff must allege injury traceable to defendant’s conduct). By Plaintiffs’ logic, the risk
8 of voter intimidation at polling places would be injury sufficient to bring a claim to shut
9 down polling places. Neither law nor logic supports such an attenuated theory of injury.

10 Finally, Plaintiffs’ purported concern that some voters in some counties may have
11 access to more drop boxes than other voters in other counties, Compl. ¶¶ 51-53, is
12 nonsensical in the context of their requested relief. To the extent Plaintiffs contend that they
13 are injured by an insufficient number of drop boxes in Yavapai County, *see id.* ¶ 52, the
14 redress for that injury would be the establishment of *more* drop boxes in Yavapai County,
15 not the elimination of all drop boxes in every county. *See Townley v. Miller*, 722 F.3d 1128,
16 1135 (9th Cir. 2013) (holding plaintiffs lacked standing where “the relief plaintiffs seek
17 would . . . [not] redress the injury they assert”).

18 Because Plaintiffs lack standing to bring their claims, this Court should grant
19 Intervenor-Defendants summary judgment. *See Dail v. City of Phoenix*, 128 Ariz. 199, 204
20 (App. 1980) (affirming summary judgment because plaintiff lacked standing).

21 **C. Plaintiffs cannot rely on a general “beneficial interest” to confer standing**
22 **because this is not a mandamus action.**

23 While courts apply “a more relaxed standard for standing in mandamus actions,”
24 *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 (2020), Plaintiffs’ action does not lie in
25 mandamus. “Mandamus is an extraordinary remedy issued by a court to compel a public
26 officer to perform an act [that] the law specifically imposes as a duty.” *Sears*, 192 Ariz. at
27 68 (cleaned up). The Supreme Court “has long held that mandamus will lie only ‘to require
28

1 public officers to perform their official duties when they refuse to act,’ and not ‘to restrain
2 a public official from doing an act.’” *Id.* (cleaned up).

3 Yet Plaintiffs plainly seek to “restrain [the Secretary] from doing an act.”
4 Specifically, Plaintiffs seek an injunction “prohibiting the Secretary of State . . . from
5 enforcing or implementing any provision of the EPM [Elections Procedures Manual]”
6 authorizing the use of unstaffed ballot drop-boxes. Compl. at 17; *see also* Appl. for Order
7 to Show Cause at 13 (asking the Court to “enjoin the Defendant and his agents from
8 implementing or enforcing” portions of EPM allowing unstaffed drop boxes). Plaintiffs’
9 request for injunctive relief thus falls outside the well-established mandamus rubric. *Sears*,
10 192 Ariz. at 69 (finding that plaintiffs “actually seek injunctive relief, which is not available
11 through an action for mandamus or any other form of special action”); *see also Smoker v.*
12 *Bolin*, 85 Ariz. 171, 173 (1958) (distinguishing between mandamus actions, which “compel
13 the performance of an act,” and injunctions, which “restrain action”).²

14 Plaintiffs cannot rely on the more forgiving standing standard that governs
15 mandamus actions by framing their request for an injunction as one to “compel the
16 Secretary to carry out his nondiscretionary legal duties.” Compl. ¶ 12. The Supreme Court
17 firmly rejected a similar attempt in *Sears*. In *Sears*, the plaintiffs purported to seek
18 mandamus to enjoin the Governor from entering into a gaming compact that they alleged
19 violated federal law. 192 Ariz. at 67–68. The Court held that the plaintiffs’ “disagree[ment]
20 with the Governor’s interpretation of [the law]” could not entitle them to mandamus relief—
21 otherwise any “dissatisfied plaintiff” “could challenge any action of any public officer
22 under the mandamus statute” by claiming that the officer has failed to uphold or fulfill the
23 plaintiff’s interpretation of the law. *Id.* at 69. *Sears* forecloses Plaintiffs’ attempted
24 mandamus action.

25
26 ² Relatedly, mandamus is unavailable to seek a declaration about the scope of an official’s
27 duties. *See Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 467 (App. 2007) (“[M]andamus
28 is not an appropriate method to use to obtain a definition of duties that are otherwise subject
to dispute.”). Plaintiffs’ claim for declaratory relief therefore is not a proper basis for
mandamus.

1 Plaintiffs “also fail to show that the requested limitation on the [Secretary’s] actions
2 involves the performance of a non-discretionary act.” *Id.* (noting that two “basic
3 requirements” of a mandamus action are “the requested relief . . . must be the performance
4 of an act and such act must be non-discretionary”). Here, rather than compel performance
5 of a mandatory action, Plaintiffs ask the Court to dictate *how* the Secretary should exercise
6 his discretionary authority to “prescribe rules to achieve and maintain the maximum degree
7 of correctness, impartiality, uniformity and efficiency on the procedures for early voting
8 and voting, and of . . . collecting . . . and storing ballots.” A.R.S. § 16-452(A). “[T]he
9 general rule is that if the action of a public officer is discretionary that discretion may not
10 be controlled by mandamus.” *Sears*, 192 Ariz. at 68 (cleaned up); *see also Yes on Prop*
11 *200 v. Napolitano*, 215 Ariz. 458, 465 (App. 2007) (special action seeking mandamus relief
12 “cannot be used to compel a government employee to perform a function in a particular
13 way if the official is granted any discretion about how to perform it”).

14 Plaintiffs’ reliance on *Arizona Public Integrity Alliance v. Fontes* is misplaced. *See*
15 *Compl.* ¶¶ 76–77. There the Supreme Court applied the relaxed standard for standing in a
16 proper mandamus action: The county recorder was required by law to provide precise ballot
17 instructions specified in the EPM, and plaintiffs sought to compel the recorder to perform
18 that specific act. *See* 250 Ariz. at 61 (explaining that “the Recorder has a non-discretionary
19 duty to provide the Overvote Instruction authorized by the Arizona Secretary of State” in
20 the EPM). Because *Fontes* involved the compelling of a nondiscretionary duty, its holding
21 is consistent with *Sears*’ instruction that mandamus actions may be brought only when they
22 seek to “compel a public officer to perform ‘an act which the law specially imposes as a
23 duty resulting from an office.’” *Sears*, 192 Ariz. at 69 (citation omitted).

24 Plaintiffs’ attempt to control the Secretary’s discretion thus falls outside the scope of
25 mandamus relief, and Plaintiffs cannot rely on a “beneficial interest” to confer standing.
26 Lacking any other basis for standing, Plaintiffs’ complaint should be dismissed.

27 **II. Arizona law allows the Secretary to establish unstaffed drop boxes.**

28 Even assuming they did have standing, Plaintiffs’ arguments fail as a matter of law.

1 Based on a plain reading of the relevant statutes, the Secretary did not exceed his statutory
2 authority by regulating unstaffed drop boxes in the 2019 EPM.

3 **A. Arizona law authorizes the Secretary to prescribe rules for ballot**
4 **collection.**

5 It is squarely within the Secretary’s authority to prescribe rules for ballot collection,
6 including through secure, unstaffed drop boxes. Arizona law mandates that:

7 The [Secretary] shall prescribe rules to achieve and maintain the maximum
8 degree of correctness, impartiality, uniformity and efficiency on the
9 procedures for early voting and voting, and of producing, distributing,
10 *collecting*, counting, tabulating and storing ballots.

11 A.R.S. § 16-452(A) (emphasis added). The legislature has thus “expressly delegated to the
12 Secretary the authority to promulgate rules and instructions for early voting.” *Fontes*, 250
13 Ariz. at 62. Consistent with this delegation of authority, the Secretary established rules
14 authorizing unstaffed drop boxes in the 2019 EPM. Statement of Facts (“SOF”) ¶¶ 9–22;
15 Ex. A at 5–7 (providing rules and procedures for drop boxes, including instructions that
16 unstaffed drop boxes shall be secured to prevent moving, tampering, or unauthorized
17 removal of the physical boxes or the ballots inside). These rules provide for the “maximum
18 degree of correctness,” “uniformity,” and “efficiency” for “collecting” lawful ballots
19 submitted via drop box during early voting. A.R.S. § 16-452(A).

20 Plaintiffs’ contention that the drop box guidelines in the EPM are *ultra vires* not only
21 ignores the plain language of the statute but also misconstrues the caselaw. Plaintiffs rely
22 on *Leach v. Hobbs*, 250 Ariz. 572, 576 (2021), and *Leibsohn v. Hobbs*, 254 Ariz. 1, 7 (2022),
23 but neither is applicable here. In *Leach*, the Court considered a challenge to EPM guidance
24 that allowed registered petition circulators required by A.R.S. § 19-118(E) to appear at an
25 election contest in response to a subpoena to avoid that requirement by “de-registering”
26 before trial. 250 Ariz. at 576. The Court found that this de-registration loophole directly
27 contravened the statute’s purpose in regulating the initiative process and therefore did not
28 have the force of law. *Id.* *Leibsohn* involved the EPM’s electronic registration procedures
for petition circulators that, by its terms, “made it impossible” for circulators to comply

1 with A.R.S. § 19-118(B)(5): While the statute requires a new circulator affidavit for each
2 new initiative petition, the EPM guidance effectively precluded circulators from doing so.
3 *Leibsohn*, 254 Ariz. at 7. Here, the unstaffed drop box provisions of the EPM neither
4 undermine the purpose of A.R.S. § 16-452(A)'s broad delegation to the Secretary to
5 prescribe rules defining the methods of early voting, nor make it impossible for anyone to
6 comply with the terms of the statute.

7 Plaintiffs stretch their thin legal arguments even thinner by relying on two other
8 inapposite cases. First, Plaintiffs argue that the Secretary's regulation of drop boxes invades
9 the legislature's prerogative to regulate federal elections. *See* Compl. ¶ 74 (citing *Moore v.*
10 *Harper*, 143 S. Ct. 2065, 2090 (2023)). But here the legislature exercised its prerogative by
11 delegating authority to the Secretary. *See* A.R.S. § 16-452(A) (requiring that "the secretary
12 of state shall prescribe rules. . . . on the procedures for early voting and voting") (emphasis
13 added); *see also Griffith Energy, L.L.C. v. Ariz. Dep't of Revenue*, 210 Ariz. 132, 137 (App.
14 2005) ("Although the legislature cannot delegate the authority to enact laws to a government
15 agency, it can allow the agency to fill in the details of legislation already enacted.") (cleaned
16 up). Plaintiffs cannot complain that the Secretary is encroaching on the legislature's
17 function when it has been expressly authorized to do so.³

18 Next, Plaintiffs rely yet again on *Arizona Public Integrity Alliance v. Fontes*, but that
19 reliance is once again misplaced. Compl. ¶ 32 (citing 250 Ariz. at 63). *Fontes* involved an
20 unusual situation where a county recorder issued guidance that conflicted with the EPM's
21 instructions on how to instruct voters who accidentally overvoted their ballots. While the
22 Maricopa County Recorder had originally issued an instruction consistent with the 2019
23 EPM's instructions advising mail-in voters to contact the Recorder's office for a new ballot
24 in the event of an overvote error, he later issued a different instruction, this time divorced
25 from the EPM guidance, advising voters to manually correct errors on their ballots. 250

26 _____
27 ³ Unlike in *Moore*, where legislative defendants asserted injury to the legislative
28 prerogative, here Plaintiffs do not purport to represent the legislature's institutional
interests, nor would they have standing to do so. *Cf. Corman v. Torres*, 287 F. Supp. 3d
558, 569 (M.D. Pa. 2018) (dismissing individual plaintiffs' claims "premised on an
institutional injury to the General Assembly" for lack of standing).

1 Ariz. at 60. The Supreme Court found that the County Recorder’s new instruction was
2 contrary to the Secretary’s EPM guidance. *Id.* at 63. In doing so, moreover, the Court
3 expressly distinguished the county recorder’s “limited” authority to “supply the EPM’s
4 instructions to early voters” from the Secretary’s broad authority to devise the EPM rules.
5 *See id.* at 62–63 (noting that while “[t]he legislature has expressly delegated to the Secretary
6 the authority to promulgate rules and instructions for early voting,” “[t]he Recorder . . . is
7 not empowered to promulgate rules regarding instructions for early voting, nor does he have
8 the authority to change or supplant the EPM’s prescribed instructions”). Thus, *Fontes* only
9 confirms that the Secretary has extensive rulemaking authority.

10 The statutory text and binding precedent thus speak as one: The Secretary’s actions
11 in regulating unstaffed drop boxes fall well within his delegated authority. Intervenor-
12 Defendants are therefore entitled to judgment as a matter of law.

13 **B. Unstaffed drop boxes are entirely consistent with Arizona law governing**
14 **early ballot returns.**

15 The EPM’s instructions regarding unstaffed drop boxes are entirely consistent with
16 the statutory requirement that early ballots be “delivered or mailed to the county recorder.”
17 A.R.S. § 16-548(A). The statute provides:

18 The early voter shall . . . deposit the voted ballot in the envelope . . . which
19 shall be securely sealed and, together with the affidavit, *delivered* or mailed
20 *to the county recorder* or other officer in charge of elections of the political
21 subdivision in which the elector is registered or deposited by the voter or the
22 voter’s agent at any polling place in the county.

23 *Id.* (emphases added).⁴ Nothing in the statutory scheme prescribes or proscribes the means
24 by which voted ballots must be “delivered . . . to the county recorder,” *id.*, and drop boxes
25 are simply one such means of ballot delivery. The 2019 EPM provides instructions for
26 secure ballot retrieval and chain of custody procedures for ballots from unstaffed ballot drop
boxes, Ex. A at 6–7, ensuring that ballots deposited in a drop box are “delivered . . . to the

27 ⁴ A.R.S. § 16-547(D), which requires elections officials to provide printed instructions to
28 early voters, is consistent, providing that early ballots “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 not later than 7:00 p.m. on election day.”

1 county recorder” with the “maximum degree of correctness, impartiality, uniformity and
2 efficiency.” A.R.S. § 16-452(A).

3 Plaintiffs’ constrained definition of the term “delivery” is belied by basic tenets of
4 statutory construction. Arizona law requires that “[w]ords and phrases shall be construed
5 according to the common and approved use of the language.” A.R.S. § 1-213(A). “Absent
6 statutory definitions, courts generally give words their ordinary meaning . . . and may look
7 to dictionary definitions.” *DBT Yuma, L.L.C. v. Yuma Cnty. Airport Auth.*, 238 Ariz. 394,
8 396 (2015) (citations omitted). Here, neither the statutory code’s general definitions, A.R.S.
9 § 1-215, nor the provisions of Title 16 define the word “deliver,” so the dictionary definition
10 provides the word’s acceptable ordinary meaning. “Deliver” means to “to take and hand
11 over to or leave for another,” to “hand over, surrender,” or “to send (something aimed or
12 guided) to an intended target or destination.” Ex. J, Merriam-Webster.com Dictionary,
13 <https://www.merriam-webster.com/dictionary/deliver> (last visited Nov. 13, 2023).
14 Consistent with this definition, voters “deliver” their ballots when they “leave” them in a
15 drop box for the county recorder as the “intended target or destination.”

16 Plaintiffs’ insistence that the statute requires a *direct* delivery from voter to the
17 county recorder is not supported by either the statute’s plain language or the dictionary
18 definition of “deliver.” Indeed, in order to support this argument, Plaintiffs carefully alter
19 the statutory language to assert that “[t]he voter may ‘[1] deliver[] or [2] mail[] [the ballot]
20 to the county recorder.” Compl. ¶ 5 (quoting A.R.S. § 16-548(A)). But Arizona law does
21 not require that the *voter* deliver an absentee ballot to a specific destination, just that the
22 ballot “be . . . delivered or mailed” to the county recorder. *See* A.R.S. § 16-548(A). And it
23 certainly does not prohibit the Secretary and Attorney General from directing—as they have
24 in the EPM—that depositing a ballot in a secure drop box maintained by the county election
25 officials constitutes “delivery.” In fact, while the statute does not specify who can deliver
26 ballots to the county recorder, it expressly contemplates that ballots may be delivered
27 through third parties such as U.S. postal workers. The EPM’s instruction that only “an
28 election official or designated ballot retriever” shall be able to access and retrieve ballots

1 from drop boxes, Ex. A at 6, is thus entirely consistent with the law.

2 Conversely, the statute *does* specify that only “the voter or voter’s agent” can deposit
3 a ballot at a polling place. A.R.S. § 16-548(A); *see Ariz. Bd. of Regents v. State ex rel. Ariz.*
4 *Pub. Safety Ret. Fund Manager Adm’r*, 160 Ariz. 150, 157 (App. 1989) (“Where the
5 legislature has specifically used a term in certain places within a statute and excluded it in
6 another place, courts will not read that term into the section from which it was excluded.”).
7 Because the plain language of the statute provides that ballots shall be “delivered or mailed
8 to the county recorder” without specifying the *means* by which the ballot is “delivered,” the
9 Secretary’s decision to allow drop boxes is entirely lawful.

10 Plaintiffs confusingly point to A.R.S. § 16-579.02, the statute governing “Election
11 day early ballot on-site tabulation procedure,” to support their preferred interpretation of
12 A.R.S. § 16-548’s instructions on the “[p]reparation and transmission of ballot[s].” *See*
13 *Compl. ¶ 5*. This argument fails on multiple levels. As an initial matter, the two statutory
14 provisions pertain to two entirely different methods of voting—“early voting” and “polling
15 place” voting. *Compare* 16 AZ ST Ch. 4, Art. 8 (early voting), *with* 16 AZ ST Ch. 4, Art. 9
16 (polling place procedures). The polling place procedures that take place on election day—
17 including instructions for on-site tabulation—make no sense in the context of early votes
18 delivered or mailed to election officials.

19 In any event, the plain terms of A.R.S. § 16-579.02 only *support* the Secretary’s
20 authority to establish unstaffed drop boxes for the delivery of early ballots. The statute
21 makes clear that voters must present identification to vote at a polling place on election day;
22 those who do not must either vote a provisional ballot on-site *or* “deposit” their “early ballot
23 in its affidavit envelope in an official drop box.” A.R.S. § 16-579.02(A)(1). Similarly, the
24 statute provides that, because voters may not be “in possession of another voter’s ballot
25 within the on-site early ballot tabulation area,” anyone in possession of “another elector’s
26 voted early ballot that is sealed in its affidavit envelope” must “deposit” it in “the
27 appropriate ballot drop box” *before* entering the on-site tabulation area. *Id.* § 16-579.02(G).
28 In both instances, the statute expressly contemplates drop boxes as an alternative to on-site

1 voting.⁵

2 In sum, the plain text of Arizona law does not prohibit the use of drop boxes, meaning
3 that Plaintiffs’ statutory arguments fail as a matter of law. Intervenor-Defendants are
4 entitled to summary judgment.

5 **III. Plaintiffs cannot satisfy the standard for obtaining injunctive relief.**

6 This Court’s authority to award injunctive relief “allows it discretion to craft an
7 equitable remedy to promote fairness between the parties in any appropriate case.”
8 *Hamberlin v. State by & through Ariz. Game & Fish Dep’t*, 249 Ariz. 31, 35–36 (App.
9 2020). Equitable considerations include the “relative hardships and injustice,” the public
10 interest, and “delay on the part of the plaintiff.” *Id.* (citation omitted). These considerations
11 all support the denial of Plaintiffs’ requested injunction.

12 **A. Plaintiffs will not suffer irreparable injury absent injunctive relief.**

13 To be entitled to an injunction, Plaintiffs must demonstrate irreparable harm. *See IB*
14 *Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P’ship*, 228 Ariz. 61, 65 (App.
15 2011); *Champie v. Castle Hot Springs Co.*, 27 Ariz. 463, 465–66 (1925). For the same
16 reason that Plaintiffs lack standing to bring these claims in the first place, they fail to satisfy
17 this prerequisite to obtaining injunctive relief: Unstaffed drop boxes have not caused and
18 will not cause Plaintiffs any injury, let alone irreparable injury. *See supra* I.A–I.C. On this
19 basis alone, the Court should deny Plaintiffs’ request for injunctive relief. *See City of*
20 *Flagstaff v. Ariz. Dep’t of Admin.*, 526 P.3d 152, 159 (App. 2023) (vacating trial court’s
21 grant of injunctive relief because plaintiff failed to show irreparable harm). Because
22 Plaintiffs’ “failure to show irreparable harm is dispositive,” it is “unnecessary for this Court
23 to consider the other equitable factors.” *Id.*

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25
26 _____
27 ⁵ A.R.S. § 16-579.02 also requires that polling locations provide a “drop box” for voters to
28 “deposit the[ir] empty completed affidavit envelopes” after “remov[ing] the early ballot
from the completed affidavit envelope.” *Id.* § 16-579.02(E)–(F). Plaintiffs can hardly
contend that these “drop box[es]” serve the same function as drop boxes provided for the
submission of ballots themselves pursuant to A.R.S. § 16-548.

1 **B. The balance of hardships and public interest weigh against granting**
2 **injunctive relief.**

3 Even if this Court considers the remaining equitable factors, they weigh decidedly
4 against Plaintiffs. Indeed, while Plaintiffs suffer no hardship from the existence of unstaffed
5 drop boxes, the elimination of drop boxes would significantly harm Intervenor-
6 Defendants, their members and constituents, and Arizona voters, many of whom rely on
7 unstaffed drop boxes to exercise their right to vote. *See* SOF ¶¶ 27–53.

8 “The fundamental right to vote guarantees that voters will ‘participate in state
9 elections on an equal basis with other qualified voters.’” *State ex rel. Brnovich v. City of*
10 *Tucson*, 251 Ariz. 45, 51 (2021) (citations omitted); *see also* Ariz. Const. art. 2, § 2 (“All
11 political power is inherent in the people”); *id.* art. 2, § 21 (“All elections shall be free and
12 equal.”)); *cf. Chavez v. Brewer*, 222 Ariz. 309, 319 (App. 2009) (interpreting “‘free and
13 equal’ election guarantee” broadly to protect voters). Enjoining the use of unstaffed drop
14 boxes would run directly contrary to these principles, making it harder for many qualified
15 Arizonans to vote—and preventing some from voting altogether. Arizona has had no-
16 excuse early voting since 1991. SOF ¶ 1. Today, the vast majority of Arizonans vote early.
17 *Id.* ¶ 6 (88% of Arizona voters voted early in 2020 general election). And many rely on drop
18 boxes to ensure that their ballots are timely delivered to be counted. Yavapai County is no
19 exception: in the 2022 election, more than half of all ballots cast (57.45%) were voted via
20 drop box. *Id.* ¶ 25.

21 Intervenor-Defendants would be severely prejudiced if the Court granted Plaintiffs’
22 requested relief. For example, Arizona Alliance member Raymond Frey, a resident of
23 Yavapai County, routinely casts his ballot via drop box. SOF ¶ 30. Mr. Frey’s work hours
24 and familial responsibilities often make it infeasible for him to vote in person on election
25 day; he relies on being able to drop off his ballot at the drop box outside of his grocery store
26 to ensure he will be able to vote. *Id.* ¶ 31. The same goes for Julie Horwin, a 71-year-old
27 lifelong Arizona resident. *Id.* ¶ 34. Ms. Horwin and her husband, who has significant health
28 issues that require him to rely on Ms. Horwin for assistance in voting, rely on drop boxes,

1 which alleviate the difficulties of standing in line or walking into a government office,
2 ensuring they are able to vote. *Id.* ¶ 33; *see also id.* ¶ 44 (drop boxes are indispensable to
3 those with mobility issues).

4 Further, many of Voto Latino’s constituents with limited English proficiency vote
5 early because they require voting assistance from online tools that are more accessible at
6 home or people who are not available to accompany them to a polling location on election
7 day. *Id.* ¶ 47. Many members of the Latinx community that Voto Latino serves struggle
8 with poverty, are without access to reliable transportation, and work multiple jobs, making
9 it difficult or impossible to vote in person or visit the post office during regular business
10 hours. *Id.* ¶ 48.

11 The burdens that would result from eliminating drop boxes are heightened in the
12 context of Arizona’s election day ballot receipt deadline, which requires that ballots “must
13 be received” by the relevant election officer “no later than 7:00 p.m. on election day.”
14 A.R.S. § 16-548(A). A voter who drops his ballot in the mailbox has no control over when
15 the U.S. Postal Service delivers that ballot to election officials and has to contend with the
16 risk of having his ballot rejected for arriving too late. Drop boxes, by contrast, allow for
17 voter control over when their ballots are delivered to election officials—and more
18 confidence that their votes will be counted. SOF ¶ 57.

19 Unstaffed drop boxes are particularly important for Native voters who live in rural
20 areas that are not reliably serviced by USPS mail and miles away from in-person voting
21 centers. *See Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2372, n. 15 (2021)
22 (Kagan, J., dissenting) (noting the record showed “Native Americans in rural Arizona ‘often
23 must travel 45 minutes to 2 hours just to get to a mailbox’”). For instance, as a member of
24 the Navajo Nation, Lorencita Marshall lives in a remote area of White Clay, Arizona, twenty
25 miles away (entirely by dirt road) from the nearest highway, and about an hour away from
26 the nearest post office. SOF ¶ 55. In her role as Director of Campaigns and Engagement for
27 the Northeast Arizona Democrats, Ms. Marshall knows firsthand the difficulties Native
28 voters have in accessing the franchise, many of whom do not have traditional mailing

1 addresses or easy access to mail service. *Id.* ¶ 56. The unstaffed drop box on the Hopi
2 Reservation, meanwhile, enables Native voters to more easily return their ballots, a
3 necessity especially for those who have transportation issues or work schedules that prevent
4 them from being able to visit a polling place or post office during regular business hours.
5 *Id.* ¶¶ 50–54. There is no doubt that many Native voters would not be able to exercise their
6 constitutionally protected right to vote without unstaffed drop boxes. *Id.* ¶ 49.

7 Allowing for more unstaffed drop boxes is also in the public interest. This is so not
8 only because they allow more voters to access the franchise, but also because they allow
9 election administrators greater flexibility in collecting early ballots, *see, e.g., Lake*, 623 F.
10 Supp. 3d at 1020 n.1 (additional burdens to electoral process is not in the public interest),
11 and bolster voter confidence in the electoral process, *cf. Fontes*, 250 Ariz. at 61 (noting
12 importance of “public confidence in our democratic system”). The availability of unstaffed
13 drop boxes mitigates voter concerns over polling place closures, location changes, and
14 issues with mail delivery. SOF ¶¶ 38–39, 43, 52, 58. Voting via drop box ensures ballots
15 are delivered to the appropriate county officials in a timely manner—allowing the voters to
16 rest easy knowing their votes will be counted and voices heard. *See Mi Familia Vota v.*
17 *Hobbs*, 492 F. Supp. 3d 980, 989 (D. Ariz. 2020) (holding public interest and balance of
18 equities favors voting procedures that allow more voters’ “voices [to] be heard through the
19 democratic process”).

20 Finally, Plaintiffs’ delay in bringing this lawsuit—years after Arizonans have come
21 to rely on drop boxes for exercising the right to vote—further weighs against their claim for
22 injunctive relief. *See Faulkner v. Bank of N.Y. Mellon*, No. CV11-1070, 2011 WL 2621076,
23 at *1 (D. Ariz. July 5, 2011) (finding that plaintiffs’ delay in seeking relief weighed against
24 granting injunction). Unstaffed drop boxes have been used in Arizona for decades. SOF ¶¶
25 24–26. In that time countless Arizona voters have grown to rely on unstaffed drop boxes to
26 return their early ballots and access the franchise. *See generally* SOF. Plaintiffs’ new-found
27 policy disagreement with a long-standing voting method cannot overcome Arizona voters’
28 reliance interest in secure and easy access to drop boxes.

1 Because unstaffed drop boxes present no hardship to Plaintiffs, and because
2 enjoining drop boxes would harm Intervenor-Defendants, Arizona voters, and the public
3 interest by making it harder or even impossible for some voters to vote, Plaintiffs are not
4 entitled to their requested injunctive relief.

5 RESPECTFULLY SUBMITTED this 17th day of November, 2023.

6 **COPPERSMITH BROCKELMAN PLC**

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