

1 KRISTIN K. MAYES
Attorney General
2 Firm State Bar No. 14000

3 Kara Karlson, Bar No. 029407
4 Karen J. Hartman-Tellez, Bar No. 021121
Senior Litigation Counsel
5 Kyle Cummings, Bar No. 032228
Assistant Attorney General
6 2005 North Central Avenue
Phoenix, AZ 85004-1592
7 Telephone (602) 542-8323
8 Facsimile (602) 542-4385
Kara.Karlson@azag.gov
9 Karen.Hartman@azag.gov
Kyle.Cummings@azag.gov
10 adminlaw@azag.gov
11 *Attorneys for Defendant Arizona*
Secretary of State Adrian Fontes

12
13 **SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF YAVAPAI**

15
16 ARIZONA FREE ENTERPRISE CLUB,
an Arizona nonprofit corporation, and
17 MARY KAY RUWETTE, individually,
18
19 Plaintiffs,

20 v.

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

23 Defendant,

24 and

25 ARIZONA ALLIANCE FOR RETIRED
26 AMERICANS, and VOTO LATINO,

27 Intervenor-Defendants.
28

No: S-1300-CV-202300872

SECRETARY OF STATE'S ANSWER

1 Pursuant to Ariz. R. Civ. P. 8(c)-(d) and 12(a)-(b) and the Court’s October 27,
2 2023 Order, defendant Adrian Fontes, in his official capacity as Arizona Secretary of
3 State (“Defendant” or the “Secretary”), hereby answers the Verified Special Action
4 Complaint (the “Complaint”) filed by plaintiffs Arizona Free Enterprise Club and Mary
5 Kay Ruwette (collectively, “Plaintiffs” or “AZFEC”).

6 SUMMARY OF THE CASE

7 1. Paragraph 1 states multiple legal conclusions that are not susceptible to
8 admission or denial. To the extent that paragraph 1 states factual allegations, the
9 Secretary denies them.

10 2. Defendant admits the allegations in paragraph 2.

11 3. Answering paragraph 3, the Secretary admits that the Arizona Legislature
12 has established election laws. To the extent that the second sentence of paragraph 3
13 asserts that the “comprehensive protections” enacted by the Arizona Legislature are the
14 exclusive source of the legal regulation of elections in Arizona, the Secretary denies the
15 second sentence. Paragraph 3 states multiple legal conclusions that are not susceptible to
16 admission or denial. To the extent that paragraph states 3 factual allegations, the
17 Secretary denies them.

18 4. Defendant admits the allegations in paragraph 4.

19 5. Answering paragraph 5, the Secretary admits that the quoted language
20 appears in the cited statutes and that those statutes provide some of the rules relating to
21 delivery of voted early ballot packets to election officials. Defendant denies the
22 remaining allegations in paragraph 5.

23 6. Defendant denies the allegations in paragraph 6.

24 7. Answering paragraph 7, the Secretary admits that the 2019 Elections
25 Procedures Manual (the “EPM”) and the 2023 Draft EPM include requirements for ballot
26 drop-off locations and drop-boxes. The Secretary denies that these EPM provisions are
27 “wholly without authorization from the Legislature,” “[w]ith no basis in statute,” or that
28

1 they represent “another manner by which voters may cast their votes early.” The
2 Secretary affirmatively alleges that the challenged EPM provisions provide guidelines for
3 one way that voters may deliver voted early ballot packets to election officials. Except as
4 expressly admitted herein, the Secretary denies any remaining allegations in paragraph 7.

5 8. Answering paragraph 8, the Secretary admits that he transmitted the draft
6 2023 EPM to the Attorney General and Governor on or about September 30, 2023,
7 pursuant to A.R.S. § 16-452(B). The Secretary denies that the 2023 EPM is “final” until
8 it is approved by the Attorney General and Governor.

9 9. The Secretary denies the allegations in paragraph 9.

10 10. The Secretary denies the allegations in paragraph 10.

11 11. The Secretary denies the allegations in paragraph 11.

12 12. The Secretary denies the allegations in paragraph 12.

13 **JURISDICTION**

14 13. Defendant admits that this Court has jurisdiction over this action pursuant
15 to Ariz. Const. art. 6, § 14. Defendant denies the remaining allegations in paragraph 13.

16 14. Defendant lacks knowledge or information sufficient to form a belief as to
17 the truth of the allegation concerning Ms. Ruwette’s county of residence, and therefore
18 denies same. The Secretary denies the remaining allegations in paragraph 14.

19 **PARTIES**

20 15. The Secretary lacks knowledge or information sufficient to form a belief as
21 to the truth of the allegations in paragraph 15, and therefore denies same.

22 16. The Secretary lacks knowledge or information sufficient to form a belief as
23 to the truth of the allegations in paragraph 16, and therefore denies same.

24 17. Defendant admits the allegations in paragraph 17.

25 **GENERAL ALLEGATIONS**

26 18. The Secretary admits the allegations in paragraph 18.

1 19. Answering paragraph 19, Defendant admits the allegations in the first and
2 second sentences and that the quotation of A.R.S. § 16-548(A) is accurate, except to the
3 extent that it adds numbers in brackets that do not appear in the statute. The Secretary
4 lacks knowledge or information sufficient to determine the truth of the allegation in the
5 third sentence purporting to set forth legislative intent and therefore denies same.

6 20. Defendant admits the allegations in paragraph 20 and affirmatively alleges
7 that the quoted language is the language that A.R.S. § 16-547(D) requires election
8 officials include in the printed instructions provided to early voters.

9 21. The Secretary denies the allegations in paragraph 21.

10 22. The Secretary denies the allegations in paragraph 22.

11 23. Answering paragraph 23, Defendant admits that “Arizona ensures that the
12 chain of custody between voters and their counted ballots remains short, traceable, and
13 trustworthy.” The Secretary denies that what Plaintiffs describe as “these safeguards” are
14 the only way that the state regulates ballot chain of custody.

15 24. Answering paragraph 24, Defendant admits that the Commission on
16 Federal Election Reform issued a report in 2005, which is available at the url in
17 paragraph 24. To the extent that paragraph 24 states legal conclusions, they are not
18 susceptible to admission or denial. The Secretary lacks knowledge or information
19 sufficient to form a belief as to the truth of the remaining factual allegations in paragraph
20 24, and therefore denies them.

21 25. The Secretary lacks knowledge or information sufficient to form a belief as
22 to the truth of the factual allegations in paragraph 25, and therefore denies them.

23 26. Answering paragraph 26, Defendant admits that the quoted language
24 appears in A.R.S. § 16-548. The remainder of paragraph 26 states legal conclusions that
25 are not susceptible to admission or denial.

26 27. Defendant denies the allegations in paragraph 27.

1 28. Paragraph 28 states multiple legal conclusion that are not susceptible to
2 admission or denial.

3 29. The Secretary admits that the quoted language in paragraph 29 appears in
4 the cited statute. Otherwise, paragraph 29 states multiple legal conclusion that are not
5 susceptible to admission or denial.

6 30. Answering paragraph 30, the Secretary admits that the EPM includes rules
7 for drop boxes, including unstaffed drop boxes, and that the quoted language in the final
8 sentence of paragraph 30 appears in the EPM. Defendant denies the remaining
9 allegations in paragraph 30.

10 31. Paragraph 31 states a legal conclusion that is not susceptible to admission
11 or denial. To the extent that a response is required, the Secretary admits that the EPM
12 has the force of law and that violations thereof are punishable as class 2 misdemeanors.

13 32. Paragraph 32 states a legal conclusion that is not susceptible to admission
14 or denial.

15 33. The Secretary admits that the most recent EPM approved by the Secretary
16 of State, the Governor, and the Attorney General was published in December 2019 and
17 remains in effect, that the 2021 EPM did not take effect, and that the Governor and
18 Attorney General have not yet approved the 2023 EPM. Defendant further admits that
19 the 2023 and 2019 EPMs contain substantially similar drop box provisions.” Paragraph
20 33 otherwise states a legal conclusion that are not susceptible to admission or denial.

21 34. Defendant denies the allegation in paragraph 34.

22 35. Defendant denies the allegation in paragraph 35.

23 36. The Secretary admits that the EPM regulates unstaffed drop boxes and
24 provides that they may be placed outdoors. Defendant denies the remaining allegations
25 in Paragraph 36.

26 37. Defendant denies the allegations in paragraph 37.

1 38. Paragraph 38 contains legal conclusions which are not susceptible to
2 admission or denial. To the extent that paragraph 38 contains factual allegations
3 requiring a response, Defendant lacks knowledge or information sufficient to form a
4 belief as to the truth of those allegations and therefore denies them.

5 39. Paragraph 39 contains legal conclusions which are not susceptible to
6 admission or denial. To the extent that paragraph 39 contains factual allegations
7 requiring a response, Defendant lacks knowledge or information sufficient to form a
8 belief as to the truth of those allegations and therefore denies them.

9 40. The Secretary lacks knowledge or information sufficient to form a belief as
10 to the truth of the allegations in paragraph 40 regarding requirements for USPS mail
11 collection boxes, and therefore denies same. Defendant admits that the quoted language
12 appears in the EPM.

13 41. Defendant lacks sufficient knowledge or information to form a belief as to
14 the truth of the allegations in paragraph 41 and therefore denies same.

15 42. Paragraph 42 states legal conclusions that are not susceptible to admission
16 or denial. To the extent a response is required, the Secretary denies the allegations in
17 paragraph 42.

18 43. The Secretary lacks knowledge or information sufficient to form a belief as
19 to the truth of the allegations in paragraph 43, and therefore denies same.

20 44. The Secretary lacks knowledge or information sufficient to form a belief as
21 to the truth of the allegations in paragraph 44, and therefore denies same.

22 45. Answering paragraph 45, the Secretary admits that the federal district court
23 entered an order governing some activities near drop boxes in the cited case. The
24 Secretary lacks knowledge or information sufficient to form a belief as to the truth of the
25 remaining allegations in paragraph 45, and therefore denies same.

26 46. The Secretary lacks knowledge or information sufficient to form a belief as
27 to the truth of the allegations in paragraph 46, and therefore denies same.

1 47. The Secretary lacks knowledge or information sufficient to form a belief as
2 to the truth of the allegations in paragraph 47, and therefore denies same.

3 48. The Secretary lacks knowledge or information sufficient to form a belief as
4 to the truth of the allegations in paragraph 48, and therefore denies same.

5 49. Answering paragraph 49, Defendant states that the EPM requires that drop
6 boxes are “located in a secure location, such as inside or in front of a federal, state, local,
7 or tribal government building.” The Secretary otherwise lacks sufficient knowledge or
8 information to form a belief as to the truth of the allegations in paragraph 49, and
9 therefore denies same.

10 50. Paragraph 50 states a legal conclusion that is not susceptible to admission
11 or denial. To the extent a response is required, the Secretary denies the allegations in
12 paragraph 50.

13 51. Answering paragraph 51, the Secretary admits that the EPM does not
14 require that counties install drop boxes, nor does it dictate the number or geographic
15 distribution of drop boxes. Defendant lacks knowledge or information sufficient to form
16 a belief as to the truth of the remaining allegations in paragraph 51, and therefore denies
17 same.

18 52. The Secretary admits that the EPM does not regulate the apportionment of
19 drop boxes based on county population or geography. Defendant otherwise lacks
20 knowledge or information sufficient to form a belief as to the truth of the allegations in
21 paragraph 52, and therefore denies same.

22 53. Paragraph 53 states a legal conclusion that is not susceptible to admission
23 or denial. To the extent a response is required, the Secretary denies the allegations in
24 paragraph 53.

25 54. Paragraph 54 states a legal conclusion that is not susceptible to admission
26 or denial. To the extent a response is required, the Secretary denies the allegations in
27 paragraph 54.

1 55. The Secretary admits the allegations in paragraph 55.

2 56. The Secretary admits the allegations in paragraph 56.

3 57. Answering paragraph 57, the Secretary admits that there are no statutory
4 citations in EPM Chapter 2, § I.I. Paragraph 57 otherwise states a legal conclusion to that
5 is not susceptible to admission or denial. To the extent a response is required, the
6 Secretary denies the remaining allegations in paragraph 57.

7 58. The Secretary lacks knowledge or information sufficient to form a belief as
8 to the truth of the allegations in paragraph 58, and therefore denies same.

9 59. Defendant denies that Arizona's unstaffed drop boxes lack a statutory basis.
10 The Secretary lacks knowledge or information sufficient to form a belief as to the truth of
11 the remaining allegations in paragraph 59 and therefore denies same.

12 60. Paragraph 60 states a legal conclusion that is not susceptible to admission
13 or denial. To the extent a response is required, the Secretary admits that the Wisconsin
14 Supreme Court held in the cited case that Wisconsin drop boxes were illegal under
15 Wisconsin state law.

16 61. The Secretary admits that the statutory language quoted in paragraph 61
17 appears in the cited case.

18 62. The Secretary admits that the quoted language in paragraph 62 appears in
19 A.R.S. § 16-548(A). Paragraph 62 otherwise states a legal conclusion that is not
20 susceptible to admission or denial. To the extent a response is required, the Secretary
21 denies the remaining allegations in paragraph 62.

22 63. The Secretary admits that the language quoted in paragraph 63 appears in
23 the cited case. Paragraph 63 otherwise states a legal conclusion that is not susceptible to
24 admission or denial. To the extent a response is required, the Secretary denies the
25 remaining allegations in paragraph 63.

26 64. The Secretary admits that the language quoted in paragraph 64 appears in
27 the cited case. Paragraph 64 otherwise states a legal conclusion that is not susceptible to
28

1 admission or denial. To the extent a response is required, the Secretary denies the
2 remaining allegations in paragraph 64.

3 65. The Secretary admits that the language quoted in paragraph 65 appears in
4 the cited case. Paragraph 65 otherwise states a legal conclusion that is not susceptible to
5 admission or denial. To the extent a response is required, the Secretary denies the
6 remaining allegations in paragraph 65.

7 66. The Secretary admits that the language quoted in paragraph 66 appears in
8 the cited case. Paragraph 66 otherwise states a legal conclusion that is not susceptible to
9 admission or denial. To the extent a response is required, the Secretary denies the
10 remaining allegations in paragraph 66.

11 67. Paragraph 67 states legal conclusions that are not susceptible to admission
12 or denial. To the extent a response is required, the Secretary denies the allegations in
13 paragraph 67.

14 **COUNT I**

15 68. The Secretary incorporates by reference the responses to paragraphs 1
16 through 67 as if fully set forth herein.

17 69. Paragraph 69 states a legal conclusion that is not susceptible to admission
18 or denial. To the extent that a response is required, Defendant admits that the quoted
19 language appears in the cited statute.

20 70. Paragraph 70 states a legal conclusion that is not susceptible to admission
21 or denial. To the extent a response is required, the Secretary denies the allegations in
22 paragraph 70.

23 71. Paragraph 71 states a legal conclusion that is not susceptible to admission
24 or denial. To the extent a response is required, the Secretary denies the allegations in
25 paragraph 71.

1 72. Paragraph 72 states a legal conclusion that is not susceptible to admission
2 or denial. To the extent a response is required, Secretary admits that the quoted language
3 appears in the cited case.

4 73. Paragraph 73 states legal conclusions that is not susceptible to admission or
5 denial. To the extent a response is required, Secretary admits that the quoted language
6 appears in the cited cases.

7 74. Paragraph 74 states a legal conclusion that is not susceptible to admission
8 or denial. To the extent a response is required, the Secretary denies the allegations in
9 paragraph 74.

10 75. Paragraph 75 states a legal conclusion that is not susceptible to admission
11 or denial. To the extent a response is required, the Secretary denies the allegations in
12 paragraph 75.

13 76. Paragraph 76 states a legal conclusion that is not susceptible to admission
14 or denial. To the extent a response is required, the Secretary denies the allegations in
15 paragraph 76.

16 77. Paragraph 77 states a legal conclusion that is not susceptible to admission
17 or denial. To the extent a response is required, the Secretary denies the allegations in
18 paragraph 77.

19 78. Paragraph 78 states a legal conclusion that is not susceptible to admission
20 or denial. To the extent a response is required, the Secretary denies the allegations in
21 paragraph 78.

22 79. Paragraph 79 states a legal conclusion that is not susceptible to admission
23 or denial. To the extent a response is required, the Secretary denies the allegations in
24 paragraph 79.

25 **COUNT II**

26 80. The Secretary incorporates by reference the responses to paragraphs 1
27 through 79 as if fully set forth herein.
28

1 81. Paragraph 81 states a legal conclusion that is not susceptible to admission
2 or denial. To the extent a response is required, the Secretary denies the allegations in
3 paragraph 81.

4 82. Paragraph 82 states a legal conclusion that is not susceptible to admission
5 or denial. To the extent a response is required, the Secretary denies the allegations in
6 paragraph 82.

7 83. Paragraph 83 states a legal conclusion that is not susceptible to admission
8 or denial. To the extent a response is required, the Secretary denies the allegations in
9 paragraph 83.

10 **DEMAND FOR RELIEF**

11 84. The Secretary denies that Plaintiffs are entitled to any relief.

12 **GENERAL DENIAL**

13 85. The Secretary denies every allegation in the Complaint that is not expressly
14 admitted herein.

15 **AFFIRMATIVE DEFENSES**

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

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

19 88. Plaintiffs' claims are barred by laches.

20 89. The Secretary reserves the right to assert additional affirmative defenses,
21 including, but not limited to, those set forth in Ariz. R. Civ. P. 8(d), as additional facts are
22 discovered.

23 WHEREFORE, having fully answered Plaintiffs' Verified Complaint, Defendant
24 Secretary of State prays for judgment as follows:

25 A. That the Court dismiss Plaintiffs' Verified Complaint;

26 B. That judgment be entered in favor of the Secretary and against Plaintiffs on
27 Plaintiffs' Verified Complaint and that Plaintiffs take nothing thereby;

1 C. That the Secretary be awarded his costs; and

2 D. For such other and further relief as the Court deems just and proper.

3 RESPECTFULLY SUBMITTED this 17th day of November, 2023:

4 Kristin K. Mayes
5 Attorney General

6 /s/Karen J. Hartman-Tellez

7 Kara Karlson

8 Karen J. Hartman-Tellez

9 Senior Litigation Counsel

10 Kyle Cummings

11 Assistant Attorney General

12 *Attorneys for Defendant Arizona Secretary of*
13 *State Adrian Fontes*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
RETRIEVED FROM DEMOCRACYDOCKET.COM

1 **ORIGINAL** of the foregoing filed
2 this 17th day of November, 2023, with:

3 Yavapai County Superior Court
4 120 South Cortez Street
5 Prescott, Arizona 86303

6 **COPIES** e-mailed this 17th day of
7 November, 2023, to:

8 Hon. John Napper
9 Yavapai County Superior Court
10 120 South Cortez Street
11 Prescott, Arizona 86303
12 Div2@courts.az.gov

13 Timothy A. La Sota
14 Timothy A. La Sota PLC
15 2198 East Camelback Road, Suite 305
16 Phoenix, Arizona 85016
17 tim@timlasota.com

18 Thomas G. Olp
19 Thomas More Society
20 309 W. Washington St., Ste. 1250
21 Chicago, Illinois 60606
22 tolp@thomasmoresociety.org

23 *Attorneys for Plaintiffs*

24 D. Andrew Gaona
25 Austin C. Yost (034602)
26 Coppersmith Brockelman PLC
27 2800 North Central Avenue, Suite 1900
28 Phoenix, Arizona 85004
agaona@cblawyers.com
ayost@cblawyers.com

1 Abha Khanna
2 Makeba Rutahindurwa
3 Elias Law Group LLP
4 1700 Seventh Avenue, Suite 2100
5 Seattle, Washington 98101
6 akhanna@elias.law
7 mrutahindurwa@elias.law

8 Marilyn Gabriela Robb
9 Elena A. Rodriguez Armenta
10 Elias Law Group PLC
11 250 Massachusetts Ave NW, Suite 400
12 Washington, D.C. 20001
13 mrobb@elias.law
14 erodriguezarmenta@elias.law

15 *Attorneys for Intervenor-Defendants*

16
17
18
19
20
21
22
23
24
25
26
27
28
By: /s/ Monica Quinonez
Monica Quinonez, Legal Assistant

RETRIEVED FROM DEMOCRACYDOCKET.COM