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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

**ARIZONA SECRETARY OF
STATE'S MOTION FOR
SUMMARY JUDGMENT**

1 Pursuant to Ariz. R. Civ. P. 56 and the Court’s October 27, 2023 Order, defendant
2 Adrian Fontes, in his official capacity as Arizona Secretary of State (“Defendant” or the
3 “Secretary”), moves for summary judgment on the Verified Special Action Complaint
4 (the “Complaint”) filed by plaintiffs Arizona Free Enterprise Club and Mary Kay
5 Ruwette (collectively, “Plaintiffs”) because there is no genuine dispute of material fact
6 and Defendant is entitled to judgment as a matter of law. This Motion is supported by the
7 following Memorandum of Points and Authorities as well as the Secretary’s Separate
8 Statement of Facts and supporting declarations submitted contemporaneously herewith.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **Introduction**

11 Two decades after the first Arizona county began using drop boxes as a way for
12 voters to securely deliver their voted early ballots to their county recorder, and four years
13 after the Secretary issued rules to standardize drop box procedures across the state,
14 Plaintiffs seek to invalidate those rules and enjoin the use of drop boxes. But Plaintiffs
15 have not alleged and cannot allege any genuine issue of material fact that would bar this
16 Court from entering summary judgment in the Secretary’s favor.

17 Plaintiffs’ Complaint fails at the very first step because they cannot establish that
18 they have standing to maintain mandamus and declaratory relief claims. Plaintiffs assert
19 no particularized injury whatsoever. At best, they have the same generalized interest that
20 all Arizonans have in seeing that government officials follow the law. Such an interest,
21 however, does not afford Plaintiffs standing to advance their efforts to strip away a safe,
22 secure, and popular way that hundreds of thousands of Arizonans vote.

23 The Secretary is also entitled to judgment in his favor because the drop box
24 guidelines in the Elections Procedures Manual (the “Drop Box Rules”) are wholly
25 consistent with the Secretary’s statutory authority to “prescribe rules to achieve and
26 maintain the maximum degree of correctness, impartiality, uniformity and efficiency on
27 the procedures for early voting . . . and of . . . collecting . . . and storing ballots.” A.R.S.

1 § 16-452(A). The Drop Box Rules provide clear guidelines for counties that use drop
2 boxes. And those guidelines do not contravene the purpose of the statutes related to
3 transmission of early ballots. Indeed, the Drop Box Rules further the dual purposes of
4 Arizona’s election laws—broad voter access and safe and secure elections.

5 Because the Drop Box Rules are fully consistent with Arizona law and the
6 Plaintiffs can establish no cognizable injury from the Secretary’s issuance of those rules,
7 as explained more fully below, this Court should enter judgment in Defendant’s favor.

8 Factual Background

9 Early voting, and in particular early voting using a ballot received in the mail, is
10 far and away the most popular way that Arizona voters choose to cast their ballots. (*See*
11 *Sec’y of State’s Separate Statement of Facts (“SSOF”)*, ¶¶ 3-5.) While the early voting
12 period spans the 27 days leading up to each election day, ballots are not mailed until the
13 first day of the early voting period, and it can take several days or more for an early ballot
14 packet that is returned by mail to reach the county recorder. A.R.S. § 16-542(C); (SSOF,
15 ¶ 15.) To provide additional means of returning voted early ballots, two decades ago,
16 county election officials began to use secure ballot drop boxes. (SSOF, ¶ 6.)

17 In 2019, the Secretary included in the Elections Procedures Manual required by
18 A.R.S. § 16-452 (the “EPM”) the Drop Box Rules to standardize counties’ procedures
19 with respect to drop box use. (SSOF, ¶ 8.) The Drop Box Rules provide for the physical
20 security of drop boxes and secure transport of early ballot packets from drop boxes to the
21 county recorder so that they can be processed and tabulated. (*Id.*, ¶¶ 9-14.)

22 Voters choose to use drop boxes for many reasons, including lack of home mail
23 service, the assurance of timely delivery of their early ballots, and the comfort of a chain
24 of custody for voted ballots that goes directly from the voter to elections officials. (*Id.*,
25 ¶¶ 15, 18.) Drop boxes also save counties the not insignificant cost of return postage for
26 early ballot packets. (*Id.*, ¶ 16.) Moreover, the Secretary is not aware of any problems
27 with drop boxes in Arizona, such as theft or vandalism, that would put voters’ early
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1 ballots at risk. (*Id.*, ¶ 17) To the contrary, eliminating drop boxes is very likely to result
2 in late ballots that cannot be counted, increased cost to administer elections, long lines at
3 polling places, and substantial voter confusion. (*Id.*, ¶¶ 19-22.)

4 Argument

5 **I. Plaintiffs’ Generalized Grievance about Properly Promulgated Rules** 6 **Governing Elections does not State a Claim for Mandamus Relief or** 7 **Declaratory Judgment.**

8 “To gain standing to bring an action, a plaintiff must allege a distinct and palpable
9 injury. An allegation of generalized harm that is shared alike by all or a large class of
10 citizens generally is not sufficient to confer standing.” *Sears v. Hull*, 192 Ariz. 65, 69,
11 ¶ 16 (1998)) (citing *Warth v. Seldin*, 422 U.S. 490, 499, 501 (1975)). Plaintiffs allege
12 that they are a Yavapai County “qualified elector” and an organization that “engages in
13 public education and advocacy in support of free markets and economic growth.”
14 (Compl. ¶¶ 14-15.) These sparse allegations about Plaintiffs’ interest in the Drop Box
15 Rules, which include no allegations of particularized harm, do not establish standing.
16 Indeed, neither Plaintiff alleges that their right to cast a ballot or have their ballot counted
17 is harmed. Nor does the organizational Plaintiff allege that its mission to educate the
18 public about free markets and economic growth is harmed by the Drop Box Rules.
19 Instead, Plaintiffs assert only generalized grievances about the Secretary’s alleged non-
20 compliance with Arizona law. *Mills v. Ariz. Bd. of Technical Registration*, 235 Ariz.
21 415, 423, ¶ 24 (2022). As a matter of law, Plaintiffs have failed to establish standing.

22 Perhaps in recognition of the complete absence of any injury caused by the Drop
23 Box Rules, Plaintiffs seek to invoke the “more relaxed standard for standing in
24 mandamus actions.” *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62, ¶ 12 (2020).
25 Indeed, Plaintiffs assert that they have “a beneficial interest in ensuring that the Secretary
26 of State carries out his nondiscretionary legal duty to implement and act in a manner
27 consistent with, rather than contrary to, the terms of controlling Arizona statutes.”
28

1 (Compl. ¶ 76.) They allege that even absent any injury, let alone a concrete and
2 particularized one, this “beneficial interest” shared by all Arizona voters is enough to
3 establish standing for a mandamus claim. (*Id.*) But Plaintiffs have not stated a
4 mandamus claim and the only thing this case shares with *Arizona Public Integrity*
5 *Alliance* is the identity of the Defendant.¹

6 A plaintiff may only obtain mandamus relief—an extraordinary remedy—“to
7 compel a public officer to perform an act which the law specifically imposes as a duty.”
8 *Sears*, 192 Ariz. at 68, ¶ 11 (quoting *Board of Educ. v. Scottsdale Educ. Ass’n*, 109 Ariz.
9 342, 344 (1973)). The Arizona Supreme Court “has long held that mandamus will lie
10 only ‘to require public officers to perform their official duties when they refuse to act,’
11 and *not* ‘to restrain a public official from doing an act.’” *Id.* (quoting *Smoker v. Bolin*, 85
12 Ariz. 171, 173 (1958)). Here, Plaintiffs plainly seek to restrain the Secretary from acting.
13 Indeed, they ask this Court to “enjoin the Secretary of State and anyone acting in concert
14 with him from enforcing or implementing any provision of the EPM that authorizes
15 county recorders or other officers in charge of elections to install or receive voted ballots
16 from unstaffed ballot drop-boxes.”² (Compl., Prayer for Relief, ¶ B.)

17 Review of the two cases cited above shows why this case is not properly brought
18 under the mandamus statute, A.R.S. § 12-2021. In *Sears*, the plaintiffs sought to enjoin
19 the governor from entering into a gaming compact that they alleged violated federal law.
20 192 Ariz. at 68, ¶ 6. The Court held that the plaintiffs’ disagreement with the Governor’s
21 interpretation of the law could not entitle them to mandamus relief. If it could, “virtually
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23 ¹ In *Ariz. Pub. Integrity All.*, Defendant Fontes was the Maricopa County Recorder, who
24 plaintiffs alleged had not followed the EPM. 250 Ariz. at 60-61, ¶¶ 1-2. Here, Defendant
25 Fontes is the Secretary of State, who is responsible for promulgating the EPM. *See*
26 A.R.S. § 16-452(A).

27 ² The Drop Box Rules were “implemented” when the Governor and Attorney General
28 approved the EPM in 2019. If a county election official were to violate the Drop Box
Rules, a county attorney or the Attorney General, not the Secretary, would be responsible
for “enforcement.” *See* A.R.S. § 16-452(C) (making violations of EPM rules a class two
misdemeanor), -1021 (assigning enforcement authority for criminal provisions of title
16). Accordingly, it appears that the Plaintiffs have named the wrong party as defendant.

1 any citizen could challenge any action of any public officer under the mandamus statute
2 by claiming that the officer has failed to uphold or fulfill state or federal law, as
3 interpreted by the dissatisfied plaintiff.” *Id.* at 69, ¶ 14.

4 Plaintiffs ignore *Sears* and seek instead to rely on *Arizona Public Integrity*
5 *Alliance*, in which a county recorder sent early voters instructions regarding correcting
6 overvotes that differed from the ballot instructions specified in the EPM. The court
7 granted the requested mandamus relief—ordering provision of the instructions as set
8 forth in the EPM—because “with respect to overvotes, the Recorder has a non-
9 discretionary duty to provide the Overvote Instruction authorized by the Arizona
10 Secretary of State” in the EPM. *Id.*, 250 Ariz. at 61, ¶ 3. Here, Plaintiffs did not name
11 any county election officials as defendants and they do not allege that any county election
12 official is not complying with the Drop Box Rules. To the contrary, they take issue with
13 county officials choosing to provide drop boxes and follow the Drop Box Rules, which
14 allow for the “maximum degree of correctness, impartiality, uniformity and efficiency.”
15 A.R.S. § 16-452(A). Accordingly, *Arizona Public Integrity Alliance* is inapposite.

16 The Secretary’s only non-discretionary duty here is to issue the EPM, after
17 consultation with county election officials. *See* A.R.S. § 16-452(A). The Secretary has
18 done so. Mandamus cannot be used to require a public official to exercise discretion in a
19 particular way. *Sears*, 192 Ariz. at 68, ¶ 11 (“[I]f the action of a public officer is
20 discretionary that discretion may not be controlled by mandamus.”) (cleaned up) (quoting
21 *Collins v. Krucker*, 56 Ariz. 6, 13 (1940)); *see also Yes on Prop. 200 v. Napolitano*, 215
22 Ariz. 458, 465, ¶ 12 (App. 2007) (holding that mandamus “cannot be used to compel a
23 government employee to perform a function in a particular way if the official is granted
24 any discretion about how to perform it”). The Drop Box Rules carry out the Secretary’s
25 statutory discretion to “prescribe rules to achieve and maintain the maximum degree of
26 correctness, impartiality, uniformity and efficiency on the procedures for early voting . . .

1 and of . . . collecting . . . and storing ballots.” *Id.* As in *Sears*, Plaintiffs’ claims are not
2 mandamus claims, and Plaintiffs lack standing to bring this action.

3 In addition to their mandamus claim, Plaintiffs seek a declaratory judgment that
4 the Drop Box Rules are “inconsistent with” A.R.S. §§ 16-548(A), -547(D) and (E), and -
5 1005, and that, “because such provision is invalid and unenforceable, such programs may
6 not be utilized by elections officials in any federal, state, or local election in the State of
7 Arizona.” (Compl., Prayer for Relief, ¶ C.)

8 But a declaratory judgment is not available to any person who thinks a
9 government official has misinterpreted a law or acted beyond the official’s authority.
10 Instead, when a person’s “rights, status or other legal relations are affected by a statute,
11 municipal ordinance, contract or franchise,” that person “may have determined any
12 question of construction or validity arising under the instrument, statute, ordinance,
13 contract, or franchise and obtain a declaration of rights, status or other legal relations
14 thereunder.” A.R.S. § 12-1832. “[A] declaratory judgment must be based on an actual
15 controversy which must be real and not theoretical. To vest the court with jurisdiction to
16 render a judgment in a declaratory judgment action, the complaint must set forth
17 sufficient facts to establish that there is a justiciable controversy.” *Town of Wickenburg*
18 *v. State*, 115 Ariz. 465, 468 (App. 1977) (cleaned up) (holding that plaintiffs could not
19 maintain declaratory judgment action challenging a statute that required Arizona cities to
20 adopt financial disclosure rules for public officers).

21 “A ‘justiciable controversy’ arises where adverse claims are asserted upon present
22 existing facts, which have ripened for judicial determination.” *Id.* Plaintiffs’ Complaint
23 presents no facts that establish a justiciable controversy. Plaintiffs do not and cannot
24 allege that they are harmed by the Drop Box Rules, nor do they come within the universe
25 of people who could face an enforcement action for not following the Drop Box Rules.³

26
27 ³ “When declaratory relief is sought, all persons shall be made parties who have or claim
28 any interest which would be affected by the declaration, and no declaration shall
prejudice the rights of persons not parties to the proceeding.” A.R.S. § 12-1841(A). The

1 The individual Plaintiff can simply choose not to use a drop box if she dislikes them. The
2 organizational Plaintiff cannot be a qualified elector, and therefore is ineligible to cast a
3 vote, much less use a drop box to effectuate the delivery of its ballot.

4 Plaintiffs do not have standing to pursue these claims, and therefore are not
5 entitled to seek mandamus or declaratory relief.

6 **II. The Secretary is Expressly Empowered to Include the Drop Box Rules in the**
7 **Elections Procedures Manual.**

8 Even if Plaintiffs could establish standing to seek mandamus or declaratory relief,
9 their claims fail as a matter of law. Plaintiffs allege that the Drop Box Rules are beyond
10 the Secretary’s statutory authority, and therefore violate Arizona law. (Compl. ¶ 79.)
11 But Arizona law expressly empowers the Secretary to make rules about receipt of early
12 ballots. In particular, A.R.S. § 16-452(A) directs the Secretary to “prescribe rules to
13 achieve and maintain the maximum degree of correctness, impartiality, uniformity and
14 efficiency on the procedures for early voting . . . and of . . . collecting . . . and storing
15 ballots.”

16 To support their argument, Plaintiffs rely on a recent series of cases in which the
17 Arizona Supreme Court determined that “an EPM regulation that exceeds the scope of its
18 statutory authorization or contravenes an election statute’s purpose does not have the
19 force of law.” *Leach v. Hobbs*, 250 Ariz. 572, 576, ¶ 21 (2021) (citing *McKenna v. Soto*,
20 250 Ariz. 469, 473, ¶ 20 (2021) (stating that A.R.S. § 16-452 does not authorize
21 rulemaking pertaining to candidate nomination petitions and therefore EPM provisions on
22 that subject “were not adopted ‘pursuant to’ § 16-452.”); *see also Leibsohn v. Hobbs*, 254
23 Ariz. 1, 7, ¶ 22 (2022). Rules regarding petition circulators or candidate nomination
24 petitions at issue in *Leach*, *Leibsohn*, and *McKenna* are not specifically identified in
25 A.R.S. § 16-452. But the rules at issue in this case—relating to collecting and storing
26 early ballots—are expressly authorized by the statute. As such, unlike the petition-related

27 declaration that Plaintiffs’ seek—that elections officials must not use drop boxes—affects
28 all county and local elections officials in Arizona, who are not parties to this action.

1 rules in the cases on which Plaintiffs rely, the Drop Box Rules have the force of law
2 under A.R.S. § 16-452.

3 Plaintiffs’ argument that there must be express, precise statutory authority for
4 every procedure in the EPM flies in the face of the purpose of the EPM—to fill the gaps
5 left by the election statutes. *See* A.R.S. § 16-452(A). If Plaintiffs’ argument were
6 correct, then there would be no need at all for the EPM. But the Legislature has
7 recognized that the Secretary, in consultation with county election officials and the
8 approval of the Attorney General and Governor, is the subject matter expert who can
9 lawfully create rules to give guidance to county and local officials who carry out
10 elections. *Id.* By making uniform rules regarding receipt of early ballots, the Secretary
11 has done exactly what the law requires. In view of the express statutory authority to
12 make rules regarding ballot collection and early voting, the Drop Box Rules are
13 authorized as a matter of law.

14 **III. The Drop Box Rules Do Not Contravene the Purpose of Arizona’s Election**
15 **Statutes.**

16 Plaintiffs contort the language of A.R.S. §§ 16-547 and -548 to support their effort
17 to abolish drop boxes. But the cases on which Plaintiffs rely do not support their position
18 that in the absence of express statutory authority for every minute detail of election
19 administration, a rule in the EPM is illegal. It is only those rules that “contravene[] an
20 election statute’s purpose” that do not have the force of law. *Leach*, 250 Ariz. At 576, ¶
21 21.

22 At the highest level, the purpose of Arizona’s election laws is “to secure the purity
23 of elections and guard against abuses of the elective franchise.” Ariz. Const. art. 7, § 12
24 (authorizing enactment of voter registration and other laws relating to voting). In
25 addition, “[a]ll elections shall be free and equal, and no power, civil or military, shall at
26 any time interfere to prevent the free exercise of the right of suffrage.” Ariz. Const. art.
27 2, § 21; *see also Chavez v. Brewer*, 222 Ariz. 309, 319-20, ¶¶ 33-34 (interpreting the
28

1 right to a “free and equal” election implicated when people are denied the right to vote or
2 votes are not properly counted). Fulfilling these dual constitutional purposes of broad
3 voter access and election security, Arizona’s election statutes provide multiple ways for
4 voters to securely deliver their ballots to election officials. Nothing in the Drop Box
5 Rules contravenes these purposes.

6 Instead of searching for the overarching purpose of the statutes relating to early
7 ballots, Plaintiffs zero in on, then take out of context, the word “office” in A.R.S. § 16-
8 547(D) to argue that “Arizona law specifically authorizes two—and only two—
9 destinations for their ballots: (1) the office of the county recorder . . . or (2) a polling
10 place.” (App. for Order to Show Cause, at 6.) But no reasonable reading of the relevant
11 statutes leads to Plaintiffs’ conclusion.

12 First, A.R.S. § 16-548(A), the statute authorizing the “preparation and
13 transmission” of early ballots, requires that a voter “deliver” her early ballot “to the
14 county recorder.” The word “office” does not appear in the statute. The statute provides
15 in pertinent part that: “[t]he early voter shall . . . deposit the voted ballot in the envelope
16 provided for that purpose, which shall be securely sealed and, together with the affidavit,
17 *delivered* or mailed to the county recorder or other officer in charge of elections . . . or
18 deposited by the voter or the voter’s agent at any polling place in the county.” A.R.S.
19 § 16-548(A) (emphasis added).

20 The most basic rule of statutory construction requires that words in statutes be
21 given their ordinary meaning unless context requires otherwise. A.R.S. § 1-213(A)
22 (“Words and phrases shall be construed according to the common and approved use of
23 the language.”); *DBT Yuma, L.L.C. v. Yuma County Airport Authority*, 238 Ariz. 394,
24 396, ¶ 9 (2015) (“Absent statutory definitions, courts generally give words their ordinary
25 meaning . . . and may look to dictionary definitions.”) (citations omitted). Neither the
26 Arizona Revised Statutes’ general definitions section, A.R.S. § 1-215, nor the statutes in
27 title 16 define the word “deliver.” The dictionary definition of “deliver” appropriate to
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1 the context of voters providing voted early ballots to election officials is “to take and
2 hand over to or leave for another.” “Deliver,” Merriam-Webster.com Dictionary,
3 Merriam-Webster, <https://www.merriam-webster.com/dictionary/deliver> (accessed Oct.
4 24, 2023). Depositing a voted early ballot in a secure drop box, owned and controlled by
5 county election officials, and from which only election officials or their agents may
6 retrieve those ballots, fits squarely within this definition that contemplates leaving the
7 item being delivered for another to retrieve.

8 The word “office” does not appear in the statute that governs what voters must do
9 to timely return voted early ballots to county election officials. Instead, it appears only in
10 A.R.S. § 16-547(D), which provides the instructions that voters receive with an early
11 ballot. Section 16-547(D) directs the election officials who prepare instructions for
12 voters to inform voters that “[i]n order to be valid and counted, the ballot and affidavit
13 must be delivered to the office of the county recorder or other officer in charge of
14 elections or may be deposited at any polling place in the county not later than 7:00 p.m.
15 on election day.” While the precise wording of instructions to voters may be phrased
16 more restrictively, it is the statute governing return of early ballots that must control.

17 To the extent that the slight difference in language between A.R.S. § 16-548(A)
18 and the voter instructions in § 16-547(D) “is subject to two plausible interpretations,” it
19 may be considered ambiguous. *CNL Hotels & Resorts, Inc. v. Maricopa Cty.*, 230 Ariz.
20 21, 23, ¶ 9 (2012). “Accordingly, [the Court] must interpret the statute in light of its
21 context, subject matter, and historical background; its effects and consequences; and its
22 spirit and purpose.” *Id.* at 23-24, ¶ 9 (cleaned up).

23 With respect to “context,” and “spirit and purpose,” other statutes in title 16 do not
24 require Plaintiffs’ restrictive reading of where ballots may be delivered to the county
25 recorder. Indeed, the broad availability of early voting militates in favor of a broad
26 reading of the statutes regarding delivery of early ballots. *See* A.R.S. § 16-541(A) (“Any
27 qualified elector may vote by early ballot.”). The statute regarding signature verification
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1 of early ballots speaks only to the county recorder’s duties on “receipt of the envelope
2 containing the early ballot and the ballot affidavit” and does not specify where that
3 receipt must occur. A.R.S. § 16-550(A). For some all-mail elections, the board of
4 supervisors need not provide polling places, but “may designate one or more sites for
5 voters to deposit marked ballots until 7:00 p.m. on the day of the election.” A.R.S. § 16-
6 411(D). Finally, both A.R.S. § 16-621(E) and the Drop Box Rules require county
7 recorders to “maintain records that record the chain of custody for all ballots during early
8 voting.” Simply put, the laws relating to return of early ballots reflect the constitutional
9 guarantee of “free exercise of the right of suffrage” and the Drop Box Rules further that
10 purpose. Ariz. Const. art. 2, § 21. Plaintiffs’ interpretation does the opposite.

11 The legislative history of A.R.S. §§ 16-547 and -548 similarly does not establish
12 that the Drop Box Rules contravene the purpose of those statutes. For nearly 100 years,
13 Arizona law has provided that the voter shall deposit their voted absentee ballots in the
14 envelope provided to them, securely seal the envelope, and “deliver[] or mail[]” the
15 ballot. Ariz. Rev. Code 1928, § 1308; *see also* 1972 Ariz. Sess. Laws, ch. 218, § 47
16 (30th Leg., 2d Reg. Sess.) (A.R.S. § 16-1106 contained the same “deliver[] or mail[]”
17 language); 1979 Ariz. Sess. Laws, ch. 209, § 3 (34th Leg., 1st Reg. Sess.) (renumbering
18 A.R.S. § 16-1106 as § 16-548). The language in A.R.S. § 16-547(D) on which Plaintiffs
19 rely was not added until 1997. 1997 Ariz. Sess. Laws, ch. 5, § 25 (43rd Leg., 2d Spec.
20 Sess.). At the same time, the Legislature amended A.R.S. § 16-548(A) to add “any
21 polling place in the county” as one of the places voters could return early ballots, but it
22 did not change the “delivered or mailed to the county recorder” language. *Id.* § 26.
23 “[T]he legislature is presumed to know existing law when it enacts a statute.” *Wareing v.*
24 *Falk*, 182 Ariz. 495, 500 (App. 1995). If the Legislature had intended the early ballot
25 return instructions to control, and prohibit voters’ ability to deliver ballots to places
26 designated by the county recorder, they would have amended A.R.S. § 16-548 to include
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1 that restriction. That the Legislature did not do so reinforces that the Drop Box Rules do
2 not contravene the purpose of the statutes regarding return of early ballots.

3 **IV. Even if Plaintiffs Could Demonstrate that the Drop Box Rules are Unlawful,**
4 **the Harm of Immediate Injunctive Relief far Outweighs Harm to Plaintiffs.**

5 Plaintiffs seek a permanent injunction “prohibiting the Secretary of State and
6 anyone acting in concert with him from enforcing or implementing any provision of the
7 EPM that authorizes county recorders or other officers in charge of elections to install or
8 receive voted ballots from unstaffed ballot drop-boxes.” (Compl., Prayer for Relief, ¶ B.)
9 To warrant an injunction, Plaintiffs must establish: “(1) actual success on the merits;
10 (2) that [they] ha[ve] suffered an irreparable injury; (3) that remedies available at law are
11 inadequate; (4) that the balance of hardships justify a remedy in equity; and (5) that the
12 public interest would not be disserved by a permanent injunction.” *Luxury Auto*
13 *Collection LLC v. Walker*, No. CV-21-02025, 2022 WL 17361292, at *7 (D. Ariz. July 6,
14 2022). “The decision to grant or deny a permanent injunction is within the Court’s
15 equitable discretion.” *Id.*

16 As explained above, Plaintiffs’ claims fail as a matter of law. Consequently, they
17 cannot achieve actual success on the merits. But even if the court were to conclude that
18 the Drop Box Rules are not authorized by Arizona law, the harm to voters and the
19 administration of elections from enjoining the use of drop boxes without adequate time
20 and resources to plan for alternative ways for voters to vote far outweighs any harm to
21 Plaintiffs. Contrary to Plaintiffs’ assertion, injunctive relief is not a foregone conclusion.

22 Indeed, even upon determining that the state had failed to comply with laws
23 relating to voter registration, courts have concluded that an injunction was not warranted.
24 *See League of Women Voters (“LWV”) v. Reagan*, No. CV-18-02620, 2018 WL
25 4467891, at *6 (D. Ariz. Sept. 18, 2018) (finding violation of the National Voter
26 Registration Act, but declining to order injunctive relief). Importantly, in *LWV*, the court
27 declined to short circuit the factors for entering an injunction and concluded that those
28

1 factors weighed in favor of the Secretary. Like here, the plaintiffs faced no deprivation
2 of their right to vote. *Id.* The court also found that the expense of posting notices at all
3 polling locations, re-training poll workers, and sending mailers that would likely confuse
4 voters weighed heavily against an injunction. *Id.* at *8. Moreover, the plaintiffs’
5 unreasonable delay in bringing the lawsuit “tip[ped] the balance of equities in
6 Defendant’s favor. *Id.*

7 In this case, the equities favoring the Secretary are strikingly similar. Eliminating
8 a secure and popular way that voters have been voting for years will require substantial
9 voter education efforts, is highly likely to lead to many more ballots not delivered to the
10 county recorder in time to be counted, and may swamp polling places on election day,
11 leading to long lines. And like the plaintiffs in *LWV*, Plaintiffs waited nearly four years
12 after the Drop Box Rules were issued to file this suit, tipping the balance of equities in
13 the Secretary’s favor. In short, even if the Drop Box Rules were not authorized by
14 Arizona law (though they are), preparations for the March 2024 Presidential Preference
15 Election, August 2024 Primary, and November 2024 General Election are well underway.
16 Forcing elections officials (who are not parties to this action) to change course now will
17 harm voters but provide no benefit to Plaintiffs. As such, Plaintiffs cannot meet their
18 burden to show injunctive relief is warranted.

19 Conclusion

20 For the foregoing reasons, the Court should grant this Motion and enter judgment
21 in Defendant’s favor.

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

2 Kristin K. Mayes
3 Attorney General

4 /s/Karen J. Hartman-Tellez

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12 **ORIGINAL** of the foregoing filed
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