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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

WARREN PETERSEN, in his official capacity as the President of the Arizona State Senate; and BEN TOMA, in his official capacity as the Speaker of the Arizona House of Representatives,

Plaintiffs,

v.

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

Defendant.

No. CV2024-001942

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

(Assigned to the Hon. Scott Blaney)

Plaintiffs Warren Petersen, in his official capacity as President of the Arizona State Senate, and Ben Toma, in his official capacity as the Speaker of the Arizona House of Representatives, respectfully submit this Reply in support of their Motion for a Preliminary Injunction.

As set forth below and in the Motion, the 2023 Elections Procedures Manual ("EPM") is an *ultra vires* executive act in derogation of the legislative power to the extent it purports to (1) prohibit canceling the registrations of voters who affirmed on a juror questionnaire that they do not reside in the relevant county and have not responded to correspondence from the county recorder within 35 days; (2) delay the implementation of 2021 Ariz. Laws ch. 359, § 6 (S.B. 1485)'s list maintenance protocols for two years; (3) excuse errors in petition circulator registrations that the Legislature has mandated must strictly comply with applicable laws; and (4) abridge the statutory canvassing authority of county boards of supervisors while concomitantly codifying the extra-statutory notion of a statewide canvass that excludes the votes of one or more counties.[1]

I. Because the Challenged Provisions Are Inconsistent with Controlling Statutes, the Court May and Should Enjoin Their Enforcement

Because the challenged EPM provisions deviate from their predicate statutes, injunctive relief is warranted. As the Arizona Supreme Court has explained, when plaintiffs have established that a government official "has acted unlawfully and exceeded his constitutional and statutory authority, they need not satisfy the standard for injunctive relief." *Ariz. Pub. Integrity All.* ["AZPIA"] *v. Fontes*, 250 Ariz. 58, 64 ¶ 26 (2020). The Secretary's exertions against this unequivocal enunciation of Arizona law—which can be condensed to an argument that the Supreme Court did not actually mean what it said—fall flat. According to the Secretary (at 4), *AZPIA* was a "mandamus action" and hence "subject to different standards," whereas this case "concerns the Secretary of State's exercise of the

[1] As discussed at the status conference on March 5, 2024, Plaintiffs agreed to stay Count II of the Complaint, which contests the EPM's prohibition on the use of third party complaints as a basis for initiating voter citizenship inquiries pursuant to A.R.S. § 16-165(I), pending appellate proceedings in *Mi Familia Vota v. Hobbs*, No. 2:22-cv-00509-SRB (D. Ariz.).

discretion A.R.S. § 16-452(A) grants him."

There are three errors embedded in this rationalization. First, *AZPIA* featured claims for ***both*** mandamus ***and*** injunctive remedies. *See AZPIA*, 250 Ariz. at 62 ¶ 12, 64–65 ¶¶ 26–27. Second, the Secretary's supposition that he properly used his ostensible "discretion" under A.R.S. § 16-452 is an exercise in circularity. The legal sufficiency of the challenged EPM provisions under A.R.S. § 16-452 and other applicable statutes is precisely the question in dispute; the crux of Plaintiffs' claims is that the Secretary did ***not*** have discretion to adopt the challenged EPM provisions. Third (and relatedly), in this context the standards governing mandamus and injunctive remedies are effectively coterminous. Either judicial corrective is appropriate if a governmental defendant has failed to lawfully discharge a statutory duty ***or*** improperly wielded statutorily conferred discretion. *Compare Yes on Prop. 200 v. Napolitano*, 215 Ariz. 458, 465 ¶ 12 (App. 2007) (mandamus remedies can apply to the exercise of discretionary functions "if the official abuses that discretion" (citation omitted)) *with Boruch v. State ex rel. Halikowski*, 242 Ariz. 611, 619 ¶ 30 (App. 2017) (injunctive relief may be granted "when public officers act 'unlawfully' by *either* exceeding their authority *or* exercising discretionary authority arbitrarily or unreasonably").

The *AZPIA* standard is, at bottom, a distillation of the traditional "sliding scale" rubric in the context of a government official's abnegation of a statutory duty. Under the canonical test, "[t]he greater and less reparable the harm, the less the showing of a strong likelihood of success on the merits need be. Conversely, if the likelihood of success on the merits is weak, the showing of irreparable harm must be stronger." *Fann v. State*, 251 Ariz. 425, 433 ¶ 16 (2021); *see also City of Flagstaff v. Ariz. Dep't of Admin.*, 255 Ariz. 7, 12 ¶ 16 (App. 2023) (elaborating that "[t]he 'principles are not necessarily separate tests bur rather are extremes of a single continuum"). Once a public official's dereliction or misuse of a statutory responsibility is clearly established as a matter of law, the remaining factors are effectively subsumed into the plaintiff's success on the merits. *See AZPIA*, 250 Ariz. at 64 ¶ 27 ("[B]ecause the Recorder's action does not comply with Arizona law, public policy and the public interest are served by enjoining his unlawful action."). As the *AZPIA* court

explained, "when the acts sought to be enjoined have been declared unlawful or clearly are against the public interest, plaintiff need show neither irreparable injury nor a balance of hardship in his favor." *AZPIA*, 250 Ariz. at 64 ¶ 26 (quoting *Burton v. Celentano*, 134 Ariz. 594, 596 (App. 1982)).[2]

In short, if the Court is persuaded that one or more of the EPM provisions is inconsistent with, or exceeds the scope of, a governing statute, injunctive relief is warranted. *See AZPIA*, 250 Ariz. at 64 ¶ 26. To the extent they retain any independent significance, the remaining factors necessarily align in Plaintiffs' favor because the Secretary's extra-statutory actions exact a *per se* harm, contrary to equitable and policy interests.

II. Plaintiffs Have Standing to Maintain This Action.

Incorporating his Motion to Dismiss by reference, the Secretary argues (at 5) that Plaintiffs do not have standing to bring this action because they (a) have not demonstrated a sufficient institutional injury and (b) do not have "specific authorization" to bring this action. Though Plaintiffs will fully respond to the Secretary's arguments in their Response, neither restated argument is correct and overlooks what is required for standing in Arizona.

"Under Arizona's Constitution, standing is not jurisdictional, but instead is a prudential doctrine." *Dobson v. State ex rel. Comm'n on App. Ct. Appointments*, 233 Ariz. 119, 122 ¶ 9 (2013). Moreover, when plaintiffs are seeking a declaratory judgment, they are not required to "demonstrate past injury or prejudice so long as the relief sought is not advisory." *Ariz. Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 16 (2022) (citation omitted) (analyzing Arizona's Uniform Declaratory Judgments Act). As such, a claim is justiciable "if the plaintiff has incurred an injury" ***or*** "if there is an actual controversy between the parties." *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280 ¶ 36

[2] While uncertainty surrounding a plaintiff's ultimate likelihood of success can recommend reliance on other factors in the *preliminary* injunction context, *see City of Flagstaff*, 255 Ariz. at 13–14 ¶ 24, any such considerations are obviated here, given the parties' agreement to consolidate the motion for preliminary relief with a trial on the merits. Indeed, notwithstanding the Secretary's attempt to portray an inconsistency between *City of Flagstaff* and *AZPIA*, the former expressly acknowledged that "[a] plaintiff need not show irreparable injury or balance of hardship 'when the acts sought to be enjoined *have been declared unlawful*.'" *Id.* at 13 ¶ 24 (citation omitted).

(2019); *see also Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423 ¶ 25 (2022). Both are true here, and even so, prudential concerns demand resolution on the merits.

Institutional Injury. An institutional injury is "some injury to the power of the legislature as a whole rather than harm to an individual legislator." *Kerr v. Hickenlooper*, 824 F.3d 1207, 1214 (10th Cir. 2016); *accord Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482, 486 ¶ 14 (2006); *Biggs v. Cooper ex rel. County of Maricopa*, 236 Ariz. 415, 418–19 ¶¶ 12–13 (2014). Legislative institutional injuries include "disruption of the legislative process," "a usurpation of [legislative] authority," "nullification of votes" or an intrusion into the Legislature's constitutionally assigned role. *See Tenn. Gen. Assembly v. United States Dep't of State*, 931 F.3d 499, 508, 514 (6th Cir. 2019); *Ariz. State Legislature v. Indep. Redistricting Comm'n*, 576 U.S. 787, 803–04 (2015); *see also Coleman v. Miller*, 307 U.S. 433, 438 (1939); *U.S. House of Representatives v. Burwell*, 130 F. Supp. 3d 53, 67 (D.C. Cir. 2015); *Cochise Cnty. v. Kirschner*, 171 Ariz. 258, 261–62 (App. 1992) ("Any excursion by an administrative body beyond the legislative guidelines is treated as an usurpation of constitutional powers vested only in the major branch of government."). Importantly, an executive actor can cause legislative institutional injury when his action "improperly overrides a validly enacted law." *See Biggs*, 236 Ariz. 415 ¶ 9.

That is exactly what is occurring here. The Arizona Constitution specifically entrusts the Legislature with the authority to create laws to secure the purity of elections. ARIZ. CONST. art. VII, § 12, art. XX, § 21. While the Legislature has delegated the Secretary with limited authority to implement rules on specific topics, *see* A.R.S. § 16-452, that authority is not unlimited and cannot override other legislative directives. Unlike a garden variety disagreement between political branches, when an EPM provision conflicts with a statutory provision or exceeds the Secretary's statutory authority, those provisions serve to override and effectively nullify the Legislature's validly enacted laws. *See Biggs*, 236 Ariz. at 415 ¶ 9. Whether an executive action exceeds the executive's authority "raises legal, not political, issues." *Forty-Seventh Legislature*, 213 Ariz. at485 ¶ 9. "Denying the legislature standing to defend its own law[s] would allow the state executive to nullify a state statute

without any ultimate judicial determination," *Priorities USA v. Nessel*, 978 F.3d 976, 980–81 (6th Cir. 2020), and allow the Secretary to usurp the Legislature's lawmaking power. This institutional injury is sufficient to confer standing.[3]

Actual Controversy. Even if the Secretary is correct on institutional injury (he is not), a case is still justiciable "when there is an actual controversy ripe for adjudication and the parties have a real interest in the questions to be resolved." *Mills*, 253 Ariz. at 423–24 ¶ 25 (quotations and citation omitted)); *see also* A.R.S. § 12-1832 (authorizing court to determine "any question of construction or validity" if a law impacts a person's "rights, status or other legal relations").

The Legislature undoubtedly has an institutional interest in defending the proper scope of authority delegated to the Secretary and ensuring that its own laws are not nullified by executive action. *See Biggs*, 236 Ariz. at 418 ¶ 11 (citing with approval U.S. Supreme Court reasoning that the Legislature had an interest in "maintaining the effectiveness" of a vote); *Priorities USA*, 978 F.3d at 980–81. Because the challenged EPM provisions pose an existing threat to the application of the Legislature's conflicting statutes, the Legislature has a real and present need to know whether the challenged provisions are facially valid.

Prudential Concerns. Though Plaintiffs have presented both an institutional injury and an actual controversy, courts may waive standing requirements and proceed to their merits in exceptional circumstances involving issues of great public importance that are likely to recur. *Bennett v. Napolitano*, 206 Ariz. 520, 527 ¶ 31 (2003). The validity and correct interpretation of the EPM—a document relied on by all fifteen counites for uniform

[3] The Secretary's discounts this injury as reparable (at 12) because the Legislature can remedy it by passing legislation to correct the EPM or clarify the law. To the extent the Secretary is arguing this impacts the existence of an institutional injury, "standing jurisprudence does not demand that Plaintiffs engage in an obviously futile gesture." *Kerr*, 824 F.3d at 1213 (explaining that legislator plaintiffs did not need to try and pass a law purporting to raise taxes in violation of challenged law, but finding those plaintiffs were not authorized to represent their respective houses); *see also Ariz. State Legislature*, 576 U.S. at 801 (reasoning Legislature need not take futile action to establish standing). The Secretary has already demonstrated his willingness to disregard plain statutory language.

administration of election laws—is a matter of public importance and likely to recur. *Cf. Fraternal Order of Police Lodge 2 v. Phx. Emp. Rel. Bd.*, 133 Ariz. 126, 127 (1982) (holding interpretation and validity of board's rules an issue of great public importance to City residents and likely to recur).

Specific Authorization. The Secretary alleges that specific authorization is required, and that Plaintiffs do not have it. However, it is not manifest that legislative authorization is required for Plaintiffs to bring this suit. When courts consider lawsuits from individual legislators seeking to redress institutional injuries, they have only attached "some importance" to whether both houses authorize the suit. *Raines v. Byrd*, 521 U.S. 811, 829 (1997); *Ariz. State Legislature*, 576 U.S. at 802; *Forty-Seventh Legislature*, 231 Ariz. at 487 ¶ 16; *Tenn. Gen. Assemb.*, 931 F.3d at 510–11.

This Court need not reach that question, however, because majorities of both houses passed rules empowering Plaintiffs to "bring or assert in any forum on behalf of the[ir houses] any claim or right arising out of any injury to [their houses'] powers or duties under the Constitution or Laws of this state." State of Arizona, *Senate Rules*, 56th Legislature 2023-2024, Rule 2(N), https://bit.ly/3WXFLDv; State of Arizona, *Rules of the Ariz. House of Representatives*, 56th Legislature 2023-2024, Rule 4(K), https://bit.ly/3HuL9bz. Each challenged provision is either inconsistent with, or exceeds the scope of, a governing statute. As a result, and as explained above, those provisions cause an institutional injury to the validity and effectiveness of the Legislature's power to regulate elections. Vindicating this institutional injury falls squarely within the authorization.

Though the Secretary questions the sufficiency of this method because it has not been used before,[4] the Constitution empowers legislative houses to determine their own

[4] Many of the cases the Secretary relies on where legislators were denied standing involve legislators with no authorization whatsoever. *E.g.*, *Bennett*, 206 Ariz. at 527 ¶ 29 (no authorization at all); *Raines*, 521 U.S. at 829 (no authorization and actively opposed by both houses); *Morrow v. Bentley*, 261 So.3d 278, 294 (Ala. 2017) (no authorization whatsoever). The only cases that involve authorizations either do not evaluate its sufficiency, *Forty-Seventh Legislature*, 231 Ariz. at 487 ¶ 16, or feature an authorization similar to the present authorization in breadth and scope. *Arizona State Legislature*, 576 U.S. at 802; Joint Appendix, *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 2014 WL 6847178,

rules and procedures. ARIZ. CONST. art. IV, pt. 2 §§ 8–9. "That authority is absolute and continuous, meaning each successive embodiment of a house is empowered to establish its own procedures." *Puente v. Ariz. State Legislature*, 254 Ariz. 265, 270 ¶ 14 (2022). Because the Constitution commits the Legislature's procedural rules to its exclusive purview, the sufficiency of this authorization is a non-justiciable political question. *Id.* ¶¶ 10–12 (2022) (citing ARIZ. CONST. art. IV, p. 2 §§ 8–9); *Ariz. Sch. Bds. Ass'n*, 252 Ariz. at 225 ¶ 19 (Legislature's procedural rules are within its "exclusive purview").

As such, Plaintiffs have "authoriz[ation] [from] their respective chambers," *Bennett*, 206 Ariz. at 527 ¶ 29, to bring this action.

Instead of addressing these issues head on, the Secretary argues (at 6) that Plaintiffs' reliance on *McKenna v. Soto*, *Leach v. Hobbs*, and *Leibsohn v. Hobbs*—and the fact that non-legislative plaintiffs brought each case—somehow demonstrates that Plaintiffs do not have standing here. But another party's standing to bring certain challenges to the EPM is not mutually exclusive to other parties' standing to bring other claims. Here, Plaintiffs have demonstrated that they are authorized to vindicate the Legislature's institutional injuries and that an actual controversy exists. That is all that is required.

III. Plaintiffs Will Succeed in Establishing That the Challenged EPM Provisions Exceed the Secretary's Authority or Conflict with Controlling Law

Each of the contested EPM provisions either strays beyond the delimited scope of the Secretary's rulemaking authority or palpably conflicts with an express legislative pronouncement.

A. The Secretary Cannot Negate Clear Statutory Text to Suit His Interpretation of Federal Law

If a registered voter represents on a juror questionnaire that she does not reside in the relevant county and does not respond within 35 days to a follow-up request from the county

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at *27 (U.S. Sup. Ct. Dec. 2, 2014) (authorization from both chambers "file suit, and join or intervene in *any suit* in both state and federal court to defend the authority of the [Legislature] related to redistricting under the Constitutions of both the United States and the State of Arizona" (emphasis added)).

recorder for additional information, "the county recorder shall cancel the person's registration." A.R.S. § 16-165(A)(9)(b). Disregarding this legislative directive, the EPM instructs that the recorder must merely place the voter into "inactive" status, which allows her to remain on the voter rolls for up to an additional four years. *See* Compl. Ex. 1 at 41; A.R.S. §§ 16-166(C), 16-583.

Combating a strawman, the Secretary posits (at 7) that "Plaintiffs argue that the Secretary has improperly incorporated federal law into the EPM," and asserts a prerogative to "harmonize" state law with the National Voter Registration Act, 52 U.S.C. § 20501, *et seq.* ("NVRA"). The Secretary's framing of the dispute is incorrect for two reasons.

First, Plaintiffs have never asserted that the EPM cannot "incorporate" aspects of applicable federal laws. The defect in the challenged provision, rather, is that it conjures an illusory conflict between the federal and state enactments, which it then purports to adjudicate. The NVRA allows elections officials to bypass the four-year "inactive" period and directly cancel a registration for change of residence if the voter "confirms in writing that [he] has changed residence to a place outside the [county recorder]'s jurisdiction." 52 U.S.C. § 20507(d)(1)(A). Residency information harvested from juror questionnaires is provided not only in writing by the voter himself, but—critically—with notice and an express understanding that responding "that the person is not a resident . . . will result in the person's voter registration being canceled." A.R.S. § 21-314(B). In other words, a voter's avowal on a juror questionnaire that he does not reside in the county and that he understands that this certification may result in the cancelation of his registration is precisely the written "confirm[ation]" countenanced by the NVRA.

Second, and more fundamentally, the Secretary lacks both the statutory authority and institutional competence to divine and then codify in the EPM the judiciary's imagined resolution of a non-existent dispute. The Secretary is invested only with those "powers and duties" that are "prescribed by law." ARIZ. CONST. art. V, § 9. Among those responsibilities are summarizing and implementing, via the EPM, state laws regarding certain facets of election administration. *See* A.R.S. § 16-452(A). Construing those statutes—and, if

necessary, discerning their conformance to intersecting federal laws—belongs exclusively to the judicial branch. *See San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195, 212 ¶ 38 (1999) (affirming that "determining contested facts and applying the law to those facts . . . is strictly a judicial function"); *State v. Rios*, 225 Ariz. 292, 298 ¶ 19 (App. 2010) (another branch "usurps the function of the judiciary" if it purports to "declare[] the meaning of an existing law"). If an appropriate plaintiff believes A.R.S. § 16-165(A)(9)(b) conflicts with the NVRA, she may file suit and obtain a judicial answer. *See* 52 U.S.C. § 20510. Unless and until that happens, however, the Secretary cannot abrogate clear statutory text under the guise of "harmonizing" provisions that are already fully consonant.

B. The County Recorders' Issuance of Notices to Certain Voters in January 2025 Is Not a "Retroactive" Application of S.B. 1485

S.B. 1485, which became effective on September 29, 2021, requires the county recorders to issue no later than January 15, 2025 notices to each Active Early Voting List ("AEVL") registrant who has not cast an early ballot in either the 2022 or 2024 election cycles. *See* A.R.S. § 16-544(L). If the voter chooses not to respond and confirm his continued participation in the AEVL within 90 days after receiving the notice, he will be removed from the AEVL, but may re-enroll at any time and remains a qualified elector. *See id.* § 16-544(M). The EPM, however, purports to unilaterally postpone any issuance of these notices until 2027, *see* Compl. Ex. 1 at 61 n.34, on the grounds that any consideration of an AEVL registrant's voting history in the 2022 cycle would constitute a retroactive application of S.B. 1485 that "disturb[s] vested substantive rights." Resp. at 9.

This argument, however, is constructed on the fallacy that an AEVL registrant's voting decisions prior to September 29, 2021 will "divest" her of that status. One—and only one—legal consequence causally ensues from an AEVL registrant's decision not to vote an early ballot in any election in the 2022 or 2024 cycles: the county recorder incurs an obligation to issue her a notice asking whether she wishes to renew her AEVL membership. If—and only if—the voter answers in the negative or opts not to respond at all will she be removed from the AEVL. In other words, the operative acts or omissions

that determine an AEVL registrant's legal status necessarily will occur ***after*** January 15, 2025 and hence, by definition, ***after*** S.B. 1485's effective date. And when, as here, "the last moment that [affected persons] may choose to alter their behavior to avoid the application of" a statute occurs after the statute's effective date, retroactivity concerns are not implicated. *See Aranda v. Indus. Comm'n of Ariz.*, 198 Ariz. 467, 473 ¶ 28 (2000).

C. The EPM Cannot Excuse a Lack of Strict Compliance in Circulator Registrations

In announcing that "a mistake or inconsistency" in a ballot measure petition circulator's registration "does not mean that a circulator's signatures shall be disqualified," Compl. Ex. 1 at 119 n.58, the EPM purports to override the Legislature's express determination that proponents of statewide initiative or referendum petitions must "strictly comply with . . . constitutional and statutory requirements." A.R.S. § 19-101.01; *see also id.* § 19-102.01(A). The Secretary claims (at 9) that the EPM provision is "consistent with the Arizona Supreme Court's conclusion" in *Leibsohn v. Hobbs*, 254 Ariz. 1 (2022), in which the court sustained the validity of circulator registrations that omitted the apartment or unit number of a circulator's residence address. This defense of the EPM provision is unsound for two reasons.

First, and most fundamentally, the EPM provision does not simply codify the narrow holding of *Leibsohn*, but rather instead propounds a more comprehensive amnesty for sundry unspecified "mistake[s] or inconsistenc[ies]" in a circulator registration. This edict not only lacks any support in *Leibsohn* but is dissonant with the maxim of strict compliance itself. *See generally Arrett v. Bower*, 237 Ariz. 74, 81 ¶ 23 (App. 2015) ("This standard of strict compliance 'requires nearly perfect compliance with constitutional and statutory referendum requirements.'" (citation omitted)).

Second, the EPM provision does not even accurately encapsulate *Leibsohn*. The Supreme Court did not—as the EPM implies—regard certain circulators' omission of a unit number as an inconsequential "mistake." Rather, it held that a unit number is not a necessary component of the statutory term "residence address" in A.R.S. § 19-118(B)(1) at

all. *See* 254 Ariz. at 5 ¶ 12. In marked contrast, the court concluded that a unit number (if applicable) ***is*** a definitional attribute of the mailing address mandated in A.R.S. § 19-118(B)(4), and its omission is—contrary to the EPM's edict—fatal to a registration's validity. *See Mussi v. Hobbs*, 255 Ariz. 395, 399 ¶ 16 (2023). Thus, the EPM provision is both *ultra vires* and an objectively incorrect summation of the relevant caselaw.

D. The Secretary Cannot Exclude Any County's Returns from the Statewide Canvass

Because a statewide canvass must necessarily encompass the returns of all fifteen counties, Arizona law has never permitted the Secretary to certify a partial canvass. The EPM—citing what was then A.R.S. § 16-648(C)—announced for the first time that "[i]f the official canvass of any county has not been received by th[e] deadline, the Secretary of State must proceed with the state canvass without including the votes of the missing county." Compl. Ex. 1 at 252. Putting aside the Secretary's curious position that the *repeal* of the very statute on which the EPM provision relied somehow validates that same EPM provision, the amendments adopted in 2024 Ariz. Laws ch. 1, § 16 (H.B. 2785) still do not grant the Secretary the disenfranchising powers he now asserts. The predecessor provision allowed the Secretary to complete the canvass as late as 30 days after the general election, whereas current law imposes advances the ultimate deadline to the third Monday after the general election. *See* A.R.S. § 16-648(A). But the statewide canvass remains, intrinsically, the returns of "***all offices*** for which the nominees filed nominating petitions and papers with the secretary." *Id.* (emphasis added). Arizona law has never empowered the Secretary to certify a putative statewide canvass that excludes returns from any county, and the notion that such an extraordinary prerogative was smuggled in through H.B. 2785 finds no support in the text or legislative history of that enactment.

CONCLUSION

For the reasons set forth above and in the Motion, the Court should grant the injunctive relief requested in Count I, Count III, Count IV, and Count V of the Complaint.

RESPECTFULLY SUBMITTED this 18th day of March, 2024.

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