

1 Christopher O. Murray (*pro hac forthcoming*)  
2 Julian R. Ellis, Jr. (*pro hac forthcoming*)  
3 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
4 675 15th Street, Suite 2900  
5 Denver, Colorado 80202  
6 Telephone: (303) 223-1100  
7 Email: cmurray@bhfs.com;  
8 jellis@bhfs.com

9 Kurt Altman (015603)  
10 Ashley Fitzwilliams (035555)  
11 KURT M. ALTMAN, P.L.C.  
12 ALTMAN LAW + POLICY  
13 12621 N. Tatum Boulevard, Suite 102  
14 Phoenix, Arizona 85032  
15 Telephone: (602) 491.0088  
16 Email: admin@altmanaz.com

17 *Attorneys for Plaintiffs*

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

16 REPUBLICAN NATIONAL  
17 COMMITTEE; REPUBLICAN PARTY  
18 OF ARIZONA, LLC, and YAVAPAI  
19 COUNTY REPUBLICAN PARTY,

20 Plaintiffs,

21 v.

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

24 Defendant.

No.

**VERIFIED SPECIAL ACTION  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

25 Plaintiffs bring this verified special action complaint and allege:

26 **SUMMARY OF THE CASE**

27 1. Every other year, the chief election officer for the State of Arizona, the  
28 Secretary of State, is tasked with the statutory responsibility of “prescrib[ing] rules” for  
administering federal and state elections in the state. The Secretary’s charge: (1) to adopt

1 rules “to achieve and maintain the maximum degree of correctness, impartiality, uniformity  
2 and efficiency on the procedures for early voting and voting, and of producing, distributing,  
3 collecting, counting, tabulating and storing ballots” and (2) to outline those rules in “an  
4 official instructions and procedures manual” (Elections Procedures Manual or EPM).

5 2. Over the years, the EPM has grown. Today, it spans 268 pages of substance  
6 on a range of election topics, including voter registration, early voting, ballot-by-mail  
7 elections, voting equipment, accommodating voters with disabilities, regulation of petition  
8 circulators, presidential preference elections, pre-election procedures, conduct of elections  
9 and election day operations, central counting place procedures, hand count audits, post-  
10 election day procedures, certifying election results, and campaign finance.

11 3. Indeed, Defendant Secretary of State Adrian Fontes described the EPM as  
12 “one of the most important documents to ensure consistent and efficient election  
13 administration across our state.” In his words, it directs “county, city, and town election  
14 officials throughout Arizona” in administering elections and exercising one of the “most  
15 important jobs in our democracy.”

16 4. Considering the import of this fundamental document, one would expect  
17 maximum notice and public participation in its drafting and adoption, and for the Secretary  
18 to hew closely to the authority the Arizona Legislature delegated to his office. He did neither  
19 in finalizing the 2023 version of the EPM. (*See generally* 2023 Arizona Elections  
20 Procedures Manual (Dec. 30, 2023) (2023 EPM), attached as **Exhibit 1**.) He ignored the  
21 process required under Arizona’s Administrative Procedure Act, A.R.S. §§ 41-1001 to -  
22 1092.12, for promulgating legislative “rules” that carry the force of law—here, criminal  
23 sanctions—and shirked calls from interested stakeholders like Plaintiffs for more time to  
24 meaningfully review, comment, and engage with the important topics covered in the 2023  
25 EPM. In fact, critical portions of the 2023 EPM were not disclosed to the voting public until  
26 the final version was released on December 30, 2023. Still other provisions, as explained  
27 below, stand in direct conflict with governing statutes.

28





## GENERAL ALLEGATIONS

13. The Arizona Legislature is constitutionally vested with the authority to enact “laws to secure the purity of elections and guard against abuses of the elective franchise.” Ariz. Const. art. 7, § 12.

14. The legislature has delegated limited rulemaking authority for the conduct of elections to the Secretary of State. Specifically, the legislature has empowered the Secretary to “prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots” and to “adopt rules regarding fax transmittal of unvoted ballots, ballot requests, voted ballots and other election materials to and from absent uniformed and overseas citizens and shall adopt rules regarding internet receipt of request for federal postcard applications ... .” A.R.S. § 16-452(A).<sup>1</sup>

15. These statutory delegations are specific and exhaustive, meaning that if a provision of the EPM is not authorized by one of these delegations, then it cannot carry the force of law. *Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021).

16. These rules are required to “be prescribed in an official instructions and procedures manual” known as the EPM, and must “be issued not later than December 31 of each odd-numbered year immediately preceding the general election.” A.R.S. § 16-452(B).

17. The Secretary must submit a draft EPM to the governor and attorney general, and the governor and attorney general must approve it before it takes effect. *Id.*

18. “Once adopted, the EPM has the force of law; any violation of an EPM rule is punishable as a class two misdemeanor.” *Ariz. Pub. Integrity Alliance v. Fontes*, 250 Ariz. 58, 63 ¶ 16 (2020) (citing A.R.S. § 16-452(C)).

---

<sup>1</sup> The Secretary’s limited rulemaking authority includes other topics to be addressed in the EPM. *See also* A.R.S. §§ 16-168(I), 16-246(G), 16-315(D), 16-341(H), 16-411(B)(5)(b), 16-449(A)–(B), 16-543(A)–(C), 16-544(B), 16-579(A)(2), (E), 16-602(B), 16-926(A), 16-938(B), 19-118(A), 19-121(A)(5), 19-205.01(A).

1           19.     Since 1952, the Legislature has required that where agencies or agency heads  
2 act to prescribe rules of general applicability, they do so in accordance with Arizona’s  
3 Administrative Procedure Act (APA). A.R.S. § 41-1001.

4           20.     The Department of the Secretary of State is an “agency” under the APA.  
5 A.R.S. § 41-1001(1).

6           21.     Among other requirements, the APA mandates that any agency proposing  
7 “rules” provide at least 30 days for public comment on the proposed rules after their  
8 publication in draft form.

9           22.     Under the APA, a rule is invalid unless “it is consistent with the statute,  
10 [granting rulemaking authority] reasonably necessary to carry out the purpose of the  
11 statute[,] and is made and approved in substantial compliance with [sections] 41-1021  
12 through 41-1029.” A.R.S. § 41-1030(A).

13           23.     On or around July 31, 2023, the Secretary published a 259-page draft EPM  
14 for public comment.

15           24.     The Secretary permitted only 15 days of public comment, from August 1  
16 through August 15, 2023.

17           25.     On August 15, 2023, Plaintiffs submitted a public comment objecting to the  
18 artificially short period for public comment and various specific provisions of the draft EPM  
19 on grounds that those provisions conflicted with Arizona statutes or otherwise exceeded the  
20 Secretary’s authority.<sup>2</sup>

21           26.     On September 30, 2023, without allowing additional public comment, the  
22 Secretary published a 253-page updated draft EPM and transmitted the same to the governor  
23 and attorney general for their review and approval under A.R.S. § 16-452.

24           27.     Three months later, on Saturday, December 30, 2023, the Secretary published  
25 the “final” EPM, now 268 pages, which includes multiple provisions that were not present  
26 in the July or September drafts, with the approval of the governor and attorney general. The

27 \_\_\_\_\_  
28           <sup>2</sup> [https://prod-static.protectthevote.com/media/document/rulemaking/RNC\\_RPAZ\\_EPM\\_Comment\\_8.15.23\\_q49m6n3f.pdf](https://prod-static.protectthevote.com/media/document/rulemaking/RNC_RPAZ_EPM_Comment_8.15.23_q49m6n3f.pdf)

1 Secretary did not permit public comment on these new additions to the final EPM. On  
2 January 11, 2024, the Secretary published an updated “final” EPM, correcting and adding  
3 dates in Chapter 15 in the 2023 EPM.

4 28. Several provisions of the 2023 EPM lack statutory authorization or are in  
5 direct conflict with statute, including several provisions that were never published for public  
6 comment and were added last minute. Two such last-minute additions are specifically  
7 challenged in Counts IV and VII of this lawsuit.

8 **COUNT I**  
9 **Failure to Comply with Notice-and-Comment Rulemaking**  
10 **Under Arizona’s Administrative Procedures Act**  
11 **(Declaratory Relief; Injunctive Relief)**  
12 **(A.R.S. §§ 41-1034, 41-1030(A); Ariz. R. Civ. P. 65)**

13 29. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
14 forth herein.

15 30. On July 31, 2023, the Secretary released the draft EPM. The July 31 draft  
16 EPM spanned 259-pages, covering a broad range of topics central to administering state  
17 and federal elections in the State of Arizona, including voter registration, early voting,  
18 ballot-by-mail elections, voting equipment, accommodating voters with disabilities,  
19 regulation of petition circulators, presidential preference elections, pre-election procedures,  
20 conduct of elections and election day operations, central counting place procedures, hand  
21 count audits, post-election day procedures, certifying election results, and campaign  
22 finance. (*See generally* Ex. 1.)

23 31. Throughout the July 31 draft EPM, the Secretary purported to exercise  
24 delegated authority under various state statutes. Most prominently is the specific delegation  
25 in A.R.S. § 16-452(A): “the secretary of state ***shall prescribe rules*** to achieve and maintain  
26 the maximum degree of correctness, impartiality, uniformity and efficiency on the  
27 procedures for early voting and voting, and of producing, distributing, collecting, counting,  
28 tabulating and storing ballots.” (Emphasis added.) To be sure, the Secretary cites other  
statutory delegations in the July 31 draft EPM, including A.R.S. §§ 16-138(I), 16-246(G),

1 16-315(D), 16-341(H), 16-411(B)(1)(b), 16-449(A), 16-513.01, 16-453(A), 16-544(B), 16-  
2 579(A)(2), 16-602(B), 16-926(A), and 16-926(A).

3 32. Despite the breadth of the rulemaking, the Secretary allowed for only 15 days  
4 for the public to review the July 31 draft EPM and provide comments. Multiple interested  
5 individuals and stakeholders raised with the Secretary the brevity of time allowed to review  
6 the 259-page EPM and provide meaningful comment. Among those who objected to the  
7 public comment period were the RNC and the RPAZ, describing the period as  
8 “unnecessarily restrictive” and imploring the Secretary to extend the deadline to allow  
9 “critically important” feedback on the draft EPM.

10 33. The Secretary turned away calls for extending the comment period on the July  
11 31 draft EPM. Indeed, in his September 30, 2023 transmittal letter to the governor and  
12 attorney general, the Secretary described any public engagement as gratuitous and “[i]n  
13 keeping with the good practice of the prior Administration.”<sup>3</sup>

14 34. On September 30, 2023, the Secretary submitted the revised proposed EPM  
15 to the governor and attorney general for review. The September 30 proposed EPM was 253  
16 pages.

17 35. Three months later, on December 30, 2023, without any additional public  
18 participation, the Secretary announced the final 2023 EPM. The Secretary stated the EPM  
19 “has been one of my Administration’s highest priorities” and opined that the EPM would  
20 guide “county, city, and town election officials throughout Arizona” and would “provide  
21 the maximum degree of correctness, impartiality, uniformity, and efficiency in election  
22 procedures across Arizona.”

23 36. The 2023 EPM includes 268 pages of rules and procedures governing the  
24 administration of elections in the state. This means the 2023 EPM includes 15 pages of new  
25 rules and content that the Secretary added in consultation with Governor Hobbs and  
26 Attorney General Mayes, which the public never reviewed and never had the opportunity  
27 to comment on.

28 \_\_\_\_\_  
<sup>3</sup> [https://apps.azsos.gov/election/files/epm/cover\\_letter\\_epm\\_submission\\_20230930a.pdf](https://apps.azsos.gov/election/files/epm/cover_letter_epm_submission_20230930a.pdf)



1           37.     The state’s APA was first adopted in 1952. Ariz. Sess. Laws 1952, ch. 97.  
2 Thus, like many states following the federal APA, Arizona has a long history of requiring  
3 “agencies” to follow certain procedures when adopting positive law through the exercise of  
4 delegated authority from the legislature.

5           38.     In that regard, the APA applies to “agencies,” which are defined as “any  
6 board, commission, *department*, officer or other administrative unit of this state, *including*  
7 *the agency head* and one or more members of the agency head or agency employees or  
8 other persons directly or indirectly purporting to act on behalf or under the authority of the  
9 agency head, whether created under the Constitution of Arizona or by enactment of the  
10 legislature.” A.R.S. § 41-1001(1) (emphasis added).

11           39.     The APA also defines a “rule” and a “rulemaking.” A “rule” is “an agency  
12 statement of general applicability that implements, interprets or prescribes law or policy, or  
13 describes the procedure or practice requirements of an agency.” § 41-1001(21). A  
14 “rulemaking” is “the process to make a new rule or amend, repeal[,] or renumber a rule.”  
15 § 41-1001(22).

16           40.     For rulemakings, the APA sets forth detailed and necessary procedures  
17 agencies must follow before their pronouncements become law. The agency must prepare  
18 and make available to the public a regulatory agenda, § 41-1021.02(A); it must provide  
19 notice of the proposed rulemaking, following a statutorily prescribed format for consistency  
20 and clarity, and publish the notice in the register, § 41-1022(A); it must provide 30 days at  
21 least after publication for the public to comment on the proposed rulemaking, § 41-1023(B);  
22 it must hold an oral proceeding on the proposed rule if one is requested during the comment  
23 period, § 41-1023(C); in most circumstances, it must submit the proposed rule to the  
24 governor’s regulatory review council or the attorney general for review, § 41-1024(B)(1);  
25 and it must maintain an official rulemaking record, § 41-1029(A).

26           41.     Courts interpreting the federal APA around the time Arizona adopted its  
27 version of the APA have pointed out that “[t]he [APA] was framed against a background of  
28 rapid expansion of the administrative process as a check upon administrators whose zeal

1 might otherwise have carried them to excesses not contemplated in legislation creating their  
2 offices.” *United States v. Morton Salt Co.*, 338 U.S. 632, 644 (1950). The APA therefore  
3 guards against administrative excess by requiring agencies, before they adopt rules with the  
4 force of law, to notify the public of the proposed rule, invite the public to comment on the  
5 proposed rule’s shortcomings, consider and respond to the public’s comments and  
6 arguments, and explain its final decision in a statement of the rule’s basis and purpose.

7 42. The Department of the Secretary of State of Arizona is an agency under  
8 A.R.S. § 41-1001(1).

9 43. The 2023 EPM is a rule as defined in A.R.S. § 41-1001(21). Not only does  
10 the substance of the 2023 EPM fit the definition of a rule under the APA, but the legislative  
11 delegation makes explicit that “the secretary of state shall prescribe **rules**” covering the  
12 administration of elections, and “[t]he **rules** shall be prescribed in an official instructions  
13 and procedures manual.” § 16-452(A), (B).

14 44. A violation of these rules is punishable as a class 2 misdemeanor, § 16-  
15 452(C), which further illustrates that the rules are intended to have the force of law.

16 45. The Secretary was therefore required to follow the APA’s rulemaking process  
17 outlined in Ariz. §§ 41-1021 to -1029, in adopting the 2023 EPM. Additionally, section 16-  
18 452(B) required an additional step before the 2023 EPM could be finalized: “approv[al] by  
19 the governor and the attorney general.”

20 46. The Secretary skipped almost every step in the notice-and-comment  
21 rulemaking process under the APA. *See* Ariz. §§ 41-1021 to -1029. He did not provide  
22 notice of the proposed rulemaking in the statutorily prescribed format or publish it in the  
23 register, § 41-1022(A); he did not provide the public 30 days comment on the proposed  
24 rulemaking after publication, § 41-1023(B); he did not hold an oral proceeding on the  
25 proposed rule, nor did he give the public an opportunity to request one, § 41-1023(C); and  
26 he did not maintain an official rulemaking record, § 41-1029(A).

27 47. The APA makes clear that “[a] rule is invalid unless it is consistent with the  
28 statute, reasonably necessary to carry out the purpose of the statute[,] and is made and

1 approved in substantial compliance with [sections] 41-1021 through 41-1029.” § 41-  
2 1030(A). Further, the APA applies to all agencies and proceedings unless expressly  
3 exempted. A.R.S. § 41-1002(a). The 2023 EPM is neither consistent with statute nor was  
4 it adopted in substantial compliance with sections 41-1021 through -1029.

5 48. The Secretary’s violation of the APA’s notice-and-comment rulemaking  
6 process is remediable through a declaratory judgment in this Court. § 41-1034(A).  
7 Accordingly, Plaintiffs request that this Court declare that the 2023 EPM is a rule subject  
8 to the APA’s notice-and-comment rulemaking process, that the Secretary failed to follow  
9 the prescribed rulemaking process, and, therefore, the 2023 EPM is invalid. Plaintiffs also  
10 request that this Court award injunctive relief, enjoining enforcement of the 2023 EPM  
11 (including by criminal prosecution) until and unless the Secretary complies with the  
12 rulemaking process outlined in sections 41-1021 through -1029.

13 49. Plaintiffs separately request their reasonable attorneys’ fees and costs under  
14 sections 12-348(3) and 41-1034.

15 **COUNT II**  
16 **(In the Alternative)**  
17 **Rule Permitting use of Previously Submitted Documentary Proof of Citizenship to**  
18 **Avoid Application of Juror Non-Residency Law Conflicts with Statute**  
19 **(Special Action; Declaratory Relief; Injunctive Relief)**  
20 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-165(A)(10); Ariz. R. Civ. P. 65)**

21 50. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
22 forth herein.

23 51. Chapter 1, Section 9, Subsection C(2)(b) of the 2023 EPM states that upon  
24 reviewing the summary report of juror questionnaires and identifying a true match between  
25 a juror who declared themselves a noncitizen and a registered voter, “the County Recorder  
26 shall determine whether the voter has previously provided DPOC [Documentary Proof of  
27 Citizenship]. If the person has previously provided DPOC [or was registered at vote at the  
28 time the DPOC requirement went into effect in 2004], the County Recorder *shall not cancel*  
*the registration.*” (Ex. 1 at 43 (56 of the pdf)) (emphasis added).)

52. A.R.S. § 16-165(A)(10) provides:

1 When the county recorder obtains information pursuant to this section and  
2 confirms that the person registered is not a United States citizen, including  
3 when the county recorder receives a summary report from the jury  
4 commissioner or jury manager pursuant to § 21-314 indicating that a person  
5 who is registered to vote has stated that the person is not a United States  
6 citizen. Before the county recorder cancels a registration pursuant to this  
7 paragraph, ***the county recorder shall send the person notice by forwardable  
8 mail that the person’s registration will be canceled in thirty-five days unless  
9 the person provides satisfactory evidence of United States citizenship  
10 pursuant to § 16-166.*** The notice shall include a list of documents the person  
11 may provide and a postage prepaid preaddressed return envelope. ***If the  
12 person registered does not provide satisfactory evidence within thirty-five  
13 days, the county recorder shall cancel the registration and notify the county  
14 attorney and attorney general for possible investigation.***

15 (Emphasis added.)

16 53. Hence, this provision of the 2023 EPM conflicts with A.R.S. § 16-165(A)(10)  
17 because the EPM requires the county recorder to forego cancellation of the registration of  
18 the voter who answered a juror questionnaire saying he or she is a non-citizen where that  
19 voter has provided DPOC in the past (or been registered to vote since 2004). The statute  
20 requires the county recorder to send such a voter notice that their registration will be  
21 cancelled if they do not submit evidence of citizenship in response to that notice.

22 54. If an “EPM provision ... directly conflicts with the express and mandatory  
23 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore  
24 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);  
25 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that  
26 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action  
27 Proc. 3(b).

28 55. Plaintiffs therefore request that, in the event the Court does not grant the relief  
requested under Count I, the Court declare the Rule Permitting use of Previously Submitted  
Documentary Proof of Citizenship to Avoid Application of Juror Non-Residency Law void  
and award special action and injunctive relief to enjoin its implementation.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT III**  
**(In the Alternative)**  
**Rule Permitting Federal Only Voters Without DPOC to Vote in Presidential**  
**Elections**  
**(Special Action; Declaratory Relief; Injunctive Relief)**  
**(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-127; Ariz. R. Civ. P. 65)**

56. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

57. Chapter 1, Section 2, Subsection A of the 2023 EPM states that an “otherwise eligible registrant who does not submit DPOC and whose U.S. citizenship cannot be verified ... is registered as a ‘federal-only’ voter.” It goes on to provide that a “federal-only voter is eligible to vote solely in races for federal office in Arizona (including the Presidential Preference Election (PPE)).” (Ex. 1 at 3 (16 of the pdf).)

58. Chapter 10, Section 2, Subsection F(1)(f)(i), which addresses the processing of provisional ballots submitted by “federal-only” voters confirms that “federal-only” voters are entitled to have their votes counted in all federal races, including the race for President of the United States (Presidential Electors) under the EPM. (Ex. 1 at 215 (228 of the pdf).)

59. The PPE is held on the Tuesday immediately following March 15 of each year in which the President of the United States is elected (or on such later date as provided for in a gubernatorial proclamation). A.R.S. § 16-241. “Every act that is an offense pursuant to the election laws of this state is an offense for purposes of a presidential preference election ... .” *Id.* “All provisions of other laws governing elections not in conflict and including registrations and qualifications of voters are made applicable to and shall govern primary elections.” A.R.S. § 16-401(A).

60. A.R.S. § 16-127 provides: “A person who has registered to vote and who has not provided satisfactory evidence of citizenship as prescribed by § 16-166 is not eligible to vote in presidential elections.”

61. By permitting “federal-only” voters to vote in presidential elections this provision of the 2023 EPM conflicts with A.R.S. § 16-127.





1  
2 (Ex. 1 at 13 (26 of the pdf) (footnote omitted) (emphasis added).)

3 73. Chapter 1, Section 2, Subsection C(2)(a) of the 2023 EPM addressing the duty  
4 of county recorders to cancel voter registrations on evidence of non-citizenship similarly  
5 states:

6 Although the statute lists other databases for County Recorders to check, the  
7 Secretary of State is unaware of County Recorders currently having access  
8 to those databases for citizenship verification purposes. This includes the  
9 Social Security Administration database, the National Association for Public  
10 Health Statistics Information and Systems (NAPHSIS) electronic  
11 verification of vital events system, and the Electronic Registration  
12 Information Center (ERIC) database. *See* A.R.S. § 16-121.01(D)(2), (D)(4),  
13 (D)(5). Because the obligation to check databases applies only when County  
14 Recorders have access to citizenship data through the database, ***County  
15 Recorders currently have no obligation to check these databases.***

16 (Ex. 1 at 43 (56 of the pdf) (emphasis added).)

17 74. A.R.S. § 16-165 provides:

18 ***H. To the extent practicable, each month the county recorder shall compare***  
19 ***the county's voter registration database to the social security administration***  
20 ***database.***

21 ***I. To the extent practicable, each month the county recorder shall compare***  
22 ***persons who are registered to vote in that county and who the county recorder***  
23 ***has reason to believe are not United States citizens and persons who are***  
24 ***registered to vote without satisfactory evidence of citizenship as prescribed***  
25 ***by section 16-166 with the systematic alien verification for entitlements***  
26 ***program maintained by the United States citizenship and immigration***  
27 ***services to verify the citizenship status of the persons registered.***

28 ***J. For persons who are registered to vote without satisfactory evidence of***  
***citizenship as prescribed in section 16-166, the county recorder shall***  
***compare the electronic verification of vital events system maintained by a***  
***national association for public health statistics and information systems, if***  
***accessible, with the information on the person's voter registration file.***

***K. To the extent practicable, the county recorder shall review relevant city,***  
***town, county, state and federal databases to which the county recorder has***  
***access to confirm information obtained that requires cancellation of***  
***registrations pursuant to this section.***

(Emphasis added.)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

75. A.R.S. § 161-121.01(D) provides:

Within ten days after receiving an application for registration on a form produced by the United States election assistance commission that is not accompanied by satisfactory evidence of citizenship, ***the county recorder or other officer in charge of elections shall use all available resources to verify the citizenship status of the applicant and at a minimum shall compare the information available on the application for registration with the following, provided the county has access:***

1. The department of transportation databases of Arizona driver licenses or nonoperating identification licenses.
2. The social security administration databases.
3. The United States citizenship and immigration services systematic alien verification for entitlements program, if practicable.
4. A national association for public health statistics and information systems electronic verification of vital events system.
5. Any other state, city, town, county or federal database and any other database relating to voter registration to which the county recorder or officer in charge of elections has access, including an electronic registration information center database.

(Emphasis added.)

76. Hence, these provisions of the 2023 EPM conflict with A.R.S. §§ 16-165 and 16-121.01(D) because they affirmatively remove any obligation of the county recorder to check the databases provided in statute while the statute affirmatively requires that they be checked if practicable and accessible.



1 government official in the scope of the official's duties, for any purpose by  
2 an entity designated by the secretary of state as a voter registration agency  
3 pursuant to the national voter registration act of 1993 (P.L. 103-31; 107 Stat.  
4 77), **for signature verification on petitions and candidate filings, for**  
5 **election purposes and for news gathering purposes by a person engaged in**  
6 **newspaper, radio, television or reportorial work, or connected with or**  
7 **employed by a newspaper, radio or television station or pursuant to a court**  
8 **order.** Notwithstanding any other law, a voter's e-mail address may not be  
9 released for any purpose. A person who violates this subsection or  
10 subsection E of this section is guilty of a class 6 felony.

(Emphasis added.)

11 82. This provision of the 2023 EPM conflicts with A.R.S. § 16-168(F) in at least  
12 two ways. First, it limits public access to a “registrant’s signature” for only the purposes of  
13 “verifying signatures on a candidate, initiative, referendum, recall, new party, or other  
14 petition or for purposes of verifying candidate filings.” But the statute expressly provides  
15 that the public shall have access to “records containing a voter’s signature” for these  
16 purposes and for “election purposes” which necessarily includes signature verification on  
17 mail ballots. Second, the 2023 EPM provision is phrased in the singular: “the registrant’s  
18 signature” when multiple signatures are currently being consulted for the purpose of ballot  
19 and petition verification by the Secretary. Indeed, litigation is currently pending challenging  
20 the Secretary’s practice of consulting signatures outside the voter registration record. *See*  
21 *Arizona Free Enterprise Club v. Fontes*, (Yavapai County Super. Ct. docket no.  
22 S1300CV2023-00202). Until and unless a singular signature is to be referenced by elections  
23 officials for petition and ballot verification, access to all signatures which may be used by  
24 the County Recorder to verify a registrant’s vote (or petition signature) is critical.

25 83. If an “EPM provision ... directly conflicts with the express and mandatory  
26 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore  
27 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);  
28 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that  
contradicts statutory requirements does not have the force of law.”); *Ariz. R. Special Action*  
*Proc. 3(b)*.



1 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action  
2 Proc. 3(b).

3 90. Plaintiffs therefore request that, in the event the Court does not grant the relief  
4 requested under Count I, the Court declare Rule Permitting Active Early Voting List Ballot  
5 Mailing Out of State void and award special action and injunctive relief to enjoin its  
6 implementation.

7 **COUNT VIII**  
8 **(In the Alternative)**

9 **Rule Barring Early-Ballot Challenges Received Before the Early**  
10 **Ballot is Returned and After the Affidavit Envelope is Opened, but**  
11 **Before the Ballot is Placed in the Ballot Box**  
12 **(Special Action; Declaratory Relief; Injunctive Relief)**  
13 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-552(D); Ariz. R. Civ. P. 65)**

14 91. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
15 forth herein.

16 92. Chapter 2, Section 5, Subsection A of the 2023 EPM states:

17 Challenges to early ballots must be submitted in writing after an early ballot  
18 is returned to the County Recorder and prior to the opening of the early ballot  
19 affidavit envelope. ***Challenges received before the early ballot is returned***  
20 ***or after the affidavit envelope containing the ballot has been opened must***  
21 ***be summarily denied as untimely.***

22 (Ex. 1 at 79 (92 of the pdf) (emphasis added).)

23 93. A.R.S. § 16-552(D) provides:

24 An early ballot may be challenged on any grounds set forth in section 16-  
25 591. All challenges shall be made in writing with a brief statement of the  
26 grounds ***before the early ballot is placed in the ballot box.*** A record of all  
27 challenges and resulting proceedings shall be kept in substantially the same  
28 manner as provided in section 16-594. If an early ballot is challenged, it shall  
be set aside and retained in the possession of the early election board or other  
officer in charge of early ballot processing until a time that the early election  
board sets for determination of the challenge, subject to the procedure in  
subsection E of this section, at which time the early election board shall hear  
the grounds for the challenge and shall decide what disposition shall be made  
of the early ballot by majority vote. If the early ballot is not allowed, it shall  
be handled pursuant to subsection G of this section.

(Emphasis added.)

1 94. This provision of the 2023 EPM conflicts with A.R.S. § 16-552(D) because  
2 while the statute allows challenges to early ballots to be submitted at any time “before the  
3 early ballot is placed in the ballot box,” the EPM bars challenges “received before the early  
4 ballot is returned or after the affidavit envelope containing the ballot has been opened” The  
5 EPM thus bars challenges that are timely under the statute.

6 95. If an “EPM provision ... directly conflicts with the express and mandatory  
7 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore  
8 void.” *Ariz. All. For Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823-24 (Ariz. App. 2023);  
9 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that  
10 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action  
11 Proc. 3(b).

12 96. Plaintiffs therefore request that, in the event the Court does not grant the relief  
13 requested under Count I, the Court declare the Rule Barring Early-Ballot Challenges  
14 Received Before the Early Ballot is Returned and After the Affidavit Envelope is Opened,  
15 but Before the Ballot is Placed in the Ballot Box void and award special action and  
16 injunctive relief to enjoin its implementation.

17 **COUNT IX**  
18 **(In the Alternative)**  
19 **Rule Authorizing Out-of-Precinct Voting in Precinct-Based Counties**  
20 **(Special Action; Declaratory Relief; Injunctive Relief)**  
21 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-122, 16-135, 16-584; Ariz. R. Civ.**  
22 **P. 65)**

23 97. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
24 forth herein.

25 98. Chapter 8, Section 8, Subsection B of the 2023 EPM, addressing the signature  
26 statement for a provisional ballot affidavit requires that the voter signing the affidavit attest  
27 to the following statement:  
28

“I swear or affirm under penalty of perjury that the above information is  
correct, that I have resided in the precinct and/or district listed at least 29  
days before the election, that I am eligible to vote in this election, and that I  
have not previously voted in this election.

1  
2 I know that my provisional ballot will only be *fully counted* if I have voted  
3 the correct ballot style for my assigned precinct, which is based on where I  
4 currently live. **I understand that voting the wrong ballot style in the**  
5 **wrong precinct means that my ballot will not be counted. I also**  
6 **understand that voting in the wrong county means my ballot will not be**  
7 **counted.”**

8 (Ex. 1 at 165 (178 of the pdf) (italicized emphasis added).)

9 99. Chapter 9, Section 6, Subsection B(1)(f) of the 2023 EPM addresses out-of-  
10 precinct voters in counties that conduct assigned polling place elections and states, in  
11 pertinent part:

12 If the voter’s name does not appear on that precinct’s signature roster because  
13 the voter resides in another precinct (in counties that conduct assigned  
14 polling place elections), an election official shall:

- 15 • *Permit the voter to vote a provisional ballot* (in the correct ballot  
16 style for the voter’s assigned precinct) using an accessible voting  
17 device that is programmed to contain all ballot styles, *and inform the*  
18 *voter that their provisional ballot will be counted* after it is processed  
19 and if it is confirmed the voter is otherwise eligible to vote and did not  
20 vote early or at another voting location and had that other ballot  
21 counted.

22 (Ex. 1 at 190 (203 of the pdf) (italicized emphasis added).)

23 100. A.R.S. § 16-122 provides: “*No person shall be permitted to vote unless such*  
24 *person’s name appears as a qualified elector in both the general county register and in*  
25 *the precinct register* or list of the precinct and election districts or proposed election  
26 districts in which such person resides, except as provided in sections 16-125, 16-135 and  
27 16-584.” (Emphasis added.)

28 101. While HAVA requires provisional ballots to be offered to out-of-precinct  
voters, nothing in A.R.S. § 16-125, 16-135, or 16-584 permits a voter in a precinct-based  
county to have their provisional ballot counted if cast in another precinct.

102. These provisions of the 2023 EPM conflict with A.R.S. § 16-122 because they  
purport to permit voting by out-of-precinct voters in direct contravention of the statute.





1 Circulator Registrations Rule, and Duty to Canvass Rules (*see* Ex. 1 at Chapter 1,  
2 Section 9, Subsections C(1) and C(2)(a), Chapter 2, Section 1, Subsection B(7),  
3 Chapter 6, Section 2, Subsection C, Chapter 13, Section 2, Subsections A(2) and  
4 B(2)): (i) exceed the Secretary's specific statutory authorization and lawful authority  
5 because these provisions conflict with specific statutes; (ii) do not carry the force of  
6 law; and (iii) are void.

7 2. A preliminary and permanent injunction under Ariz. R. Civ. P. 65 or  
8 other applicable law prohibiting the Secretary from enforcing or implementing the  
9 2023 EPM's Non-Residency of Juror Questionnaire Rule, Investigations of  
10 Citizenship Status Rule, AEVL Effective Date Rule, Validity of Circulator  
11 Registrations Rule, and Duty to Canvass Rules (*see* Ex. 1 at Chapter 1, Section 9,  
12 Subsections C(1) and C(2)(a), Chapter 2, Section 1, Subsection B(7), Chapter 6,  
13 Section 2, Subsection C, Chapter 13, Section 2, Subsections A(2) and B(2)).

14 3. An award of reasonable attorneys' fees and costs under A.R.S. §§ 12-  
15 341, 12-348.01, 12-2030, the private attorney general doctrine, and other applicable  
16 law.

17 C. Such other relief as the Court deems necessary, equitable, proper, and just.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED this 9th day of February, 2024.

BROWNSTEIN HYATT FARBER SCHRECK  
LLP

By: /s/ Christopher O. Murray  
Christopher O. Murray  
Julian R. Ellis, Jr.  
675 15th Street, Suite 2900  
Denver, Colorado 80202

KURT M. ALTMAN, P.L.C.  
ALTMAN LAW + POLICY

By: /s/ Kurt Altman  
Kurt Altman  
12621 N. Tatum Boulevard, Suite 102  
Phoenix, Arizona 85032  
*Attorneys for Plaintiffs*

RETRIEVED FROM DEMOCRACYDOCS.COM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I, Mike Reed, certify that I have read the foregoing Verified Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 9<sup>th</sup> day of February 2024.

Mike Reed  
[Name] Mike Reed  
RNC chief of staff

RETRIEVED FROM DEMOCRACYDOCKET.COM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I, Gina Swoboda, certify that I have read the foregoing Verified Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 9th day of February 2024.

Gina Swoboda  
[Name]

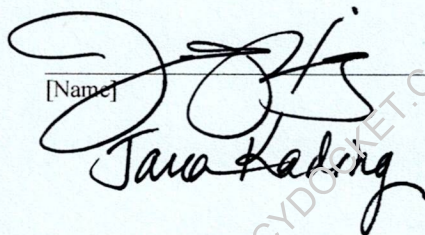
RETRIEVED FROM DEMOCRACYDOCKET.COM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VERIFICATION

I, Jawa Kading, certify that I have read the foregoing Verified Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 8<sup>th</sup> day of February 2024.

[Name]   
Jawa Kading

RETRIEVED FROM DEMOCRACYDOCKET.COM