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**Admitted Pro Hac Vice*

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

REPUBLICAN NATIONAL COMMITTEE; REPUBLICAN PARTY OF ARIZONA, LLC; and YAVAPAI COUNTY REPUBLICAN PARTY, Plaintiffs, v. ADRIAN FONTES, in his official capacity as the Secretary of State of Arizona, Defendant.	No. CV2024-050553 **INTERVENORS ARIZONA ALLIANCE FOR RETIRED AMERICANS AND VOTO LATINO'S OMNIBUS MOTION TO DISMISS AND OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** (Assigned to the Hon. Frank Moskowitz)

DEMOCRATIC NATIONAL COMMITTEE; ARIZONA DEMOCRATIC PARTY; ARIZONA ALLIANCE OF RETIRED AMERICANS; and MI FAMILIA VOTA,

Intervenors.

INTRODUCTION

For nearly fifty years, Arizona's election processes have been governed by an Elections Procedures Manual ("EPM") issued by the Secretary of State and approved by the Attorney General and the Governor using a statutory procedure designed to ensure both that the resulting guidance is informed by those most knowledgeable about Arizona elections and the laws that govern them, and that the state's elections are conducted with "the maximum degree of correctness, impartiality, uniformity and efficiency." A.R.S. § 16-452(A). Plaintiffs the Republican National Committee ("RNC"), the Republican Party of Arizona ("RPAZ"), and the Yavapai Republican Party now argue that—although, since its inception, the EPM has been created according to its own unique statutory process—all this time the Administrative Procedures Act ("APA") governed and, because the 2023 EPM was ultimately approved after a 15-day notice-and-comment period (not a 30-day period), it is summarily invalid. Plaintiffs do *not* argue that they were unable to offer comments on the draft EPM—both the RNC and RPAZ did, to detailed effect. Nor do they argue that, had the notice-and-comment period been longer, the EPM would be any different. Nevertheless, they ask the Court to throw out all 286 pages of the 2023 EPM, a result that would inject chaos and uncertainty into the administration of Arizona's elections by leaving election officials without the extensive guidance that is designed to ensure and protect Arizonans' fundamental right to equal political participation. Perhaps recognizing that the Court is unlikely to grant such sweeping and unprecedented relief, in the alternative Plaintiffs challenge various individual EPM provisions, but, even then, their theories are unfounded.

At the threshold, Plaintiffs have a fatal problem: they fail to identify any injury to them resulting from either their lack of notice-and-comment theory or any of the specific

provisions they challenge, beyond a generic interest in the government following the law. As a result, they lack standing and the Court should deny their motion for preliminary relief and dismiss their Complaint at the outset. On the merits, too, Plaintiffs cannot succeed. Their APA theory is flat-out wrong, but even if the APA applied, Plaintiffs far overstate its impact. In no reasonable world would it require invalidation of the EPM. As for Plaintiffs' more targeted challenges, EPM provisions are invalid only if they exceed statutory authorization or directly contradict a specific Arizona statute. Of all the provisions Plaintiffs challenge, only two involve an actual conflict, but the relevant statutes were found by a federal court to be preempted by federal law—in a case in which the RNC is a party. As to the rest of the challenged provisions, each are fully consistent with the underlying statutes.

As a result, not only are Plaintiffs unlikely to succeed on the merits of their claims, but their complaint should also be dismissed in full with prejudice. Even apart from the legal shortcomings of Plaintiffs' suit, the equities militate strongly against relief that would undermine the administration of Arizona's elections and disenfranchise lawful voters.[1]

BACKGROUND

Arizona law charges the Secretary with the biennial task of "prescrib[ing] rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting . . . in an official instructions and procedures manual" known as the EPM. A.R.S. § 16-452(A)–(B). The Secretary must consult with local election officials during the drafting process, and the EPM must be "approved by the governor and the attorney general" before issuance. A.R.S. § 16-452(B). Once approved and issued, the EPM's regulations generally have the "force of law[.]" *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63 ¶ 16 (2020) ("*APIA*").

While drafting the 2023 EPM, Secretary Adrian Fontes opened the draft to public

[1]Per the March 14, 2024, Joint Stipulated Briefing Schedule, Intervenors the Arizona Alliance for Retired Americans and Voto Latino submit this consolidated Motion to Dismiss and Opposition to Motion for Preliminary Injunction. Intervenors move to dismiss Plaintiffs' Complaint in its entirety and oppose preliminary relief on each of the counts for which Plaintiffs seek such relief: I, II, VI, VII, VIII, IX. As noted in the March 6, 2024, Notice of Conferral, Plaintiffs no longer seek preliminary relief on Count III.

comment from August 1 through August 15, 2023. Hundreds of comments were submitted, totaling 460 pages, all of which are available at the Secretary's website.[2] The RNC and RPAZ were among those who submitted comments during this period, and their comments were extensive. Despite claiming that the 15-day comment period was "unnecessarily restrictive," they submitted not only a four-page letter but also a nearly 50-page redline of the EPM in which they described dozens of other purported concerns, including nearly all their claims in this case (all except Count VIII, relating to ballot challenges). *See* Compl. ¶ 25 & n.2. Nearly all the provisions Plaintiffs challenge in the 2023 EPM also appeared in similar form in the 2019 EPM (all except the challenged provisions in Counts V and IX).[3]

Following the public comment period and a "rigorous period of consultation with county and tribal officials, as well as legislators from both parties and voting rights advocates," Secretary Fontes—consistent with A.R.S. Section 16-452—submitted the draft 2023 EPM to Governor Katie Hobbs and Attorney General Kris Mayes on September 30, 2023.[4] The Governor and Attorney General approved it on December 30, 2023, after which the EPM took effect. This marked the first time since 2019 that the Secretary, Governor, and Attorney General had agreed on a uniform set of rules to govern Arizona's elections.

The final 2023 EPM contains a comprehensive set of guidelines that address the various ways in which Arizona's election laws should be implemented to ensure that elections are administered fairly and consistently across the state. Plaintiffs now seek to invalidate the EPM in its entirety or, in the alternative, many of its component parts.

LEGAL STANDARDS

A complaint must be dismissed if it fails to allege particularized harm sufficient to confer standing or fails to state a claim upon which relief can be granted. *See Arcadia*

[2] *See EPM – Public Comment*, ARIZ. SEC'Y OF STATE (Aug. 26, 2023), https://apps.azsos.gov/election/files/epm/epm_public_comments_2023_august.pdf.

[3] *See 2019 EPM*, ARIZONA SEC'Y OF STATE (Dec. 2019), https://apps.azsos.gov/election/files/epm/2019_elections_procedures_manual_approved.pdf, at 33(Count III), 36 (Count II), 45 (Count VI), 49 (Count IV), 50 (Count VII), 67 (Count VIII).

[4] *See* Letter from Adrian Fontes, Ariz. Sec'y of State, to Katie Hobbs, Governor of Ariz., and Kris Mayes, Ariz. Att'y Gen. (Sept. 30, 2023), https://apps.azsos.gov/election/files/epm/cover_letter_epm_submission_20230930a.pdf.

Osborn Neighborhood v. Clear Channel Outdoor, LLC, 256 Ariz. 88 ¶ 8 (App. 2023); *Stauffer v. Premier Serv. Mortg., LLC*, 240 Ariz. 575, 577–78 ¶ 9 (App. 2016). Although the court "must assume the truth of all the complaint's material allegations" and "accord the plaintiffs the benefit of all inferences [that] the complaint can reasonably support," *Stauffer*, 240 Ariz. at 577 ¶ 9 (alteration in original; quotation omitted), it cannot "accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Jeter v. Mayo Clinic Arizona*, 211 Ariz. 386, 389 ¶ 4 (App. 2005).

A preliminary injunction may be granted only if the movant establishes "(1) a strong likelihood of success on the merits, (2) the possibility of irreparable harm if the relief is not granted, (3) the balance of hardships favors the party seeking injunctive relief, and (4) public policy favors granting the injunctive relief," which requires demonstrating either "(1) probable success on the merits and the possibility of irreparable injury; or (2) the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party." *Fann v. State*, 251 Ariz. 425, 432 ¶ 16 (2021) (cleaned up).

ARGUMENT

Plaintiffs ask the Court to issue expedited relief invalidating the *entire* 2023 EPM or in the alternative key provisions—a drastic remedy that would undermine the proper administration of Arizona elections—but their arguments fail as a matter of both law and equity. Plaintiffs' claims fail at the outset because they lack standing to bring them. But even if the Court were to reach the merits, their claims cannot survive as a matter of law, and their complaint should be dismissed. Moreover, the relief that they seek would risk disenfranchisement, confusion, and disparate treatment of voters across the state in upcoming elections, such that the equities also weigh heavily against granting Plaintiffs' request for a preliminary injunction.

I. Plaintiffs lack standing.

Arizona employs "a rigorous standing requirement." *Fernandez v. Takata Seat Belts,*

Inc., 210 Ariz. 138, 140 ¶ 6 (2005). Plaintiffs have the burden of establishing that they have standing at the threshold, a question that must be resolved before reaching the merits. *See Sears v. Hull*, 192 Ariz. 65, 68 ¶ 9 (1998) ("Because we agree that the plaintiffs lack standing, we do not address the merits of their claims."). To establish standing, plaintiffs generally must demonstrate "a distinct and palpable injury giving the[m] a personal stake in the controversy's outcome." *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406 ¶ 8 (App. 2008) (citation omitted). The same principles apply in declaratory judgment actions: courts lack "jurisdiction to render a judgment" unless the complaint "set[s] forth sufficient facts to establish that there is a justiciable controversy." *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 310 (1972); *see also Klein v. Ronstadt*, 149 Ariz. 123, 124 (App. 1986) (similar); *Dail v. City of Phoenix*, 128 Ariz. 199, 201 (App. 1980) (refusing to interpret Declaratory Judgments Act "to create standing where standing did not otherwise exist"). "A contrary approach would inevitably open the door to multiple actions asserting all manner of claims against the government." *Bennett v. Napolitano*, 206 Ariz. 520, 524 ¶ 16 (2003). Here, Plaintiffs fail to show that they suffered any injury at all because of Defendant's purported wrongs, and their complaint must be dismissed.

Plaintiffs RNC and RPAZ each claim that because they support Arizona political candidates, "[n]aturally" their "resources will necessarily be diverted if election rules are not made consistent with Arizona law," Compl. ¶¶ 6–7, and assert general interests in election officials following the law and in the "administration of elections and the competitive environment affecting their candidates," Plaintiffs' Motion for Preliminary Injunction ("PI") at 16–17. The Yavapai County Republican Party adds an allegation that it "routinely appoints poll observers and ballot challengers directly affected by the EPM." Compl. ¶ 8. These barebones allegations fall short of establishing an injury sufficient to challenge the EPM.

As the Arizona Supreme Court has held, a party cannot satisfy standing "by merely asserting an interest" in a government policy, as this would "eviscerate[e] the standing requirement[.]" *Arizona Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 18 (2022).

Instead, they must show that enforcement of the challenged policy would actually "affect[]" them. *Id.* at 225 ¶ 20. Plaintiffs' rote recital that they possess an interest in "election rules" being "consistent with Arizona law," Compl. ¶¶ 6–7, fails to demonstrate any injury at all; they do not allege, let alone explain, what specific injury either the enactment of the EPM or enforcement of any of its provisions inflicts upon them or their candidates. *See id.* Nor do Plaintiffs claim that they were harmed in past elections by similar provisions that were also in the 2019 EPM or explain how they are harmed if qualified voters can cast their ballots. More is required.

First, Plaintiffs cannot show that they were affected by the process by which the EPM was enacted. In Count I, Plaintiffs seek to invalidate the entire EPM because the Secretary offered a 15-day public notice and comment period instead of a purportedly required 30-day period, Compl. ¶ 48, but they fail to allege *any* injury as a result. Instead, Plaintiffs admit that they submitted a lengthy public comment during that period, *id.* ¶ 32, and they do not claim that the 15-day comment period prevented them—or anyone else—from providing *any* "'critically important' feedback on the draft EPM," *id.* What is more, Plaintiffs do not claim that a longer comment period would have resulted in the 2023 EPM being different in any way at all. While Plaintiffs may not like the EPM, they are not cognizably affected by how it was enacted.

The same problem pervades Plaintiffs' challenges to individual EPM provisions. Plaintiffs fail to explain how the enforcement of any of those provisions would injure them or what they will need to do (e.g., divert resources) to combat any resulting harm. Counts II–V challenge EPM provisions involving county recorders' treatment of voters that are flagged for lack of citizenship or federal-only voters. Plaintiffs fail to demonstrate that this will harm them in any way. Count VI challenges the provision limiting public access to voter signatures, and while Plaintiffs observe that signatures are required for "verification on mail ballots," Compl. ¶ 82, they do not claim any role in conducting signature verification, nor identify any harm to them from the enforcement of this provision. Count VII challenges a provision confirming that voters can make one-time requests to have early

ballots sent to a temporary residence out-of-state, but again Plaintiffs do not allege that they will be harmed as a result. Count VIII alleges that the EPM unlawfully restricts the times at which early ballots may be challenged, but Plaintiffs do not allege any harm to them resulting from such restriction. Finally, Count IX seeks to prohibit counting the ballots of eligible voters who appear at the wrong precinct, but again, Plaintiffs do not explain how they are affected by lawful voters casting ballots.

In sum, because Plaintiffs identify no cognizable injury, they lack standing to assert their claims; for this reason alone, Plaintiffs are unlikely to prevail on the merits of their claims and their Complaint should be dismissed.

II. Plaintiffs fail to state a claim upon which relief may be granted.

The 2023 EPM was promulgated consistent with longstanding practice that satisfies all relevant procedural requirements and each of its challenged provisions are fully consistent with the underlying statutes. Plaintiffs' arguments to the contrary misread both the EPM and its governing statutes and are nowhere near sufficient to state a cognizable claim, let alone sufficient to establish a likelihood of success on the merits.

A. The 2023 EPM was properly promulgated. (Count I)

Plaintiffs' novel argument that the 2023 EPM was promulgated in violation of the APA, *see* Compl. ¶¶ 30–48; PI at 8–10, is inconsistent with statute, Arizona Supreme Court precedent, and the 45-year history of the EPM, which has always been issued according to specific statutory requirements functionally indistinguishable from those followed in creating the 2023 EPM and has never been found to require notice-and-comment rulemaking under the APA. *See* Laws 1979, Ch. 209, § 3 (establishing process). But even if all along everyone has been wrong, and the APA supersedes the specific statutory process the Legislature has enacted to govern the creation of the EPM, Plaintiffs' claims are not well-founded.

The statutory context shows that the Legislature did not intend for the EPM to be issued through the APA process. As the Arizona Supreme Court has recognized, "[t]he Secretary must follow a specific procedure in promulgating election rules." *APIA*, 250 Ariz.

at 63 ¶ 16. The Supreme Court in *APIA* described that procedure as including four steps: consulting local election officials; compiling the rules into a manual; timely issuing the manual; and, "finally," obtaining approval from the Attorney General and the Governor. *Id.* The Supreme Court notably did *not* suggest that any other procedural steps are required. *Id.* Moreover, the APA specifies that it does *not* apply to "the legislature, the courts or the governor." A.R.S. § 41-1001(1). The Legislature's decision to make the EPM's adoption dependent on the Governor's approval is further reason to find that the process for its enactment falls outside the APA process. A.R.S. § 16-452(B) (requiring Governor and Attorney General approval for EPM to issue).[5]

Even *if* promulgation of the EPM were subject to the APA, Plaintiffs far overreach. Plaintiffs primarily take issue with just one alleged procedural misstep—that the Secretary offered a 15-day public notice-and-comment period instead of a 30-day period. Such a minor deviation does not require summary invalidation of the entire 268-page EPM, because the statutory process provides equivalent procedural protections to the public. A.R.S. § 41-1030(A). Indeed, the Secretary provided more opportunity for public input than required, and Plaintiffs themselves provided substantial, detailed input, including raising many of the objections that they identify in their complaint.[6]

A rule is procedurally invalid under the APA only if it was not "made and approved in substantial compliance" with rulemaking requirements. A.R.S. § 41-1030(A). While the statute does not define "substantial compliance," and there does not appear to be meaningful

[5] The APA recently has been amended to require approval from the Governor before any rule is promulgated. *See* A.R.S. § 41-1039. That approval, however, occurs *within* the APA process; when the rule's organic statute instead makes a rule conditional on the Governor's approval, the APA process does not apply at all. *See* A.R.S. § 41-1001(1).

[6] Although Plaintiffs requested additional time to submit comments during the EPM's enactment process, they never claimed that the EPM was subject to the APA or that a 30-day notice-and-comment period was required by law. The APA specifies that "a person may waive any right conferred on that person by this chapter," A.R.S. § 41-1004, and waiver may be "established by evidence of acts inconsistent with an intent to assert the right," *Am. Cont'l Life Ins. Co. v. Ranier Const. Co.*, 125 Ariz. 53, 55 (1980). Plaintiffs neglected to assert any purported rights under the APA (however unfounded) during the EPM's enactment process, and they should not at this late date be allowed to claim it was improperly promulgated after it has already been implemented and elections have been conducted under it. Nor do Plaintiffs identify any EPM provision they would have submitted comments on had there been 15 additional days for public comment.

caselaw addressing this standard in the context of the APA, cases interpreting this term in other contexts suggest that "[a] proper substantial-compliance test should give 'meaning to every part of the statute' without producing unduly harsh results." *State v. Galvez*, 214 Ariz. 154, 157 ¶ 19 (App. 2006) (quoting *Aesthetic Prop. Maint., Inc. v. Capitol Indem. Corp.*, 183 Ariz. 74, 78 (1995)) (discussing substantial compliance analysis with respect to contractor licensing statute). When evaluating "whether an [action] substantially complies[,] . . . a court should consider several factors, including the nature of the . . . statutory requirements, the extent to which the [challenged action] differ[s] from the requirements, and the purposes of the requirements." *Feldmeier v. Watson*, 211 Ariz. 444, 447 ¶ 14 (2005) (discussing substantial compliance analysis for initiative petitions).

The Legislature's prescribed process for the EPM's enactment and the procedure by which the 2023 EPM was actually promulgated both meet this standard. This is because the purpose of the APA is "to ensure that those affected by a rule have adequate notice of the agency's proposed procedures and the opportunity for input into the consideration of those procedures." *Carondelet Health Servs., Inc. v. Arizona Health Care Cost Containment Sys. Admin.*, 182 Ariz. 221, 226 (App. 1994). The statutory process enacted by the Legislature for promulgation of the EPM—which Plaintiffs do not dispute Defendant followed here—more than fulfills this objective. While drafting the EPM, the Secretary must consult "with each county board of supervisors or other officer in charge of elections." A.R.S. § 16-452(A). This ensures that the EPM reflects input from "those affected" by the EPM—local election officials—as well as the Arizonans they are democratically elected to represent and to whom they are accountable. *See* A.R.S. § 11-211. The statute further requires the EPM be submitted to the Governor and the Attorney General by October 1, kicking off a period of review that lasts more than two months. A.R.S. § 16-452(B). The Governor and the Attorney General, of course, are both elected by and accountable to the public—and each has unilateral authority to demand changes or prevent the EPM from going into effect, as occurred in 2021. *Id.*; *see Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 25 n.3 (2022). In these ways, the EPM adoption procedures ensure "that those affected by a rule have adequate notice"

and "the opportunity for input into the consideration of those procedures" before promulgation, *Carondelet Health Servs.*, 182 Ariz. at 226, "guard[ing] against administrative excess." Compl. ¶ 41. Because the 2023 EPM was issued according to this process it "substantial[ly] compl[ies]" with the APA and cannot be struck down on procedural grounds even if the APA applies. A.R.S. § 41-1030(A).

Here, the Secretary went even further than was required, providing an additional opportunity for direct public input. Plaintiffs' only objection is that it lasted 15 days instead of 30 days as contemplated by the APA. PI at 7. But that period was clearly sufficient for "substantial compliance" with the APA—hundreds of public comments were submitted, including from Plaintiffs who offered four pages of detailed argument and nearly 50 pages of markups addressing dozens of topics. *See* Compl. ¶ 25 & n.2. When considered alongside the statutory process, this additional public comment period ensured that key stakeholders and the general public had both notice of and an opportunity to provide input into the drafting of the EPM, ensuring the EPM process sufficiently complied with the APA.

Finally, even if Plaintiffs' unprecedented arguments had merit, the remedy would not be to throw out the entire EPM. Given the "extraordinary disruptive consequences that would accompany vacatur"—eliminating critical guidance that ensures the "correctness, impartiality, uniformity and efficiency" of all aspects of Arizona's elections—the proper remedy would be to "remand without vacatur," keeping the current EPM in place while the APA process moves forward. *Solar Energy Indus. Ass'n v. FERC*, 80 F.4th 956, 969 (9th Cir. 2023); A.R.S. § 16-452(A). Indeed, even Plaintiffs appear to implicitly recognize this. *See* PI at 7 (requesting vacatur "unless the Secretary complies with the APA's rulemaking procedures").

B. Each of Plaintiffs' remaining counts fail because the challenged EPM provisions comport with Arizona statutes and federal law.

Each of Plaintiffs remaining claims obscures a critical legal reality: It is squarely within the Secretary's authority to prescribe rules related to voter registration and elections. This includes the EPM, which once approved by the Attorney General and Governor,

obtains the force of law. It is only in the rare circumstance where a provision of the EPM squarely and directly contradicts with a specific provision of state law or exceeds the scope of the Secretary's authority that it may be invalidated. Here, the challenged EPM provisions are entirely consistent with law. Plaintiffs' claims accordingly fail.

Arizona law mandates that the Secretary prescribe rules ensuring the "maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting[,]" including for the handling and counting of ballots. A.R.S. § 16-452(A); *see also APIA*, 250 Ariz. at 62 ¶ 15 (noting that "[t]he Legislature has expressly delegated to the Secretary the authority to promulgate" voting-related rules). Consistent with this delegation, the Secretary may prescribe rules interpreting and implementing statutory commands. *See Griffith Energy, LLC v. Arizona Dep't of Revenue*, 210 Ariz. 132, 137 ¶ 23 (App. 2005) ("Although the legislature cannot delegate the authority to enact laws to a government agency, it can allow the agency 'to fill in the details of legislation already enacted.'" (quoting *State v. Arizona Mines Supply Co.*, 107 Ariz. 199, 205 (1971))). "Once adopted, the EPM has the force of law." *APIA*, 250 at 63 ¶ 16. Only in the rare instances where the EPM "contradicts" state law or exceeds the scope of the Secretary's statutory provisions does it lose that distinction. *Leibsohn*, 254 Ariz. at 7 ¶ 22; *Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021). This is not that rare case.

1. Plaintiffs fail to state a claim in Counts III and IV because they allege violations of an unenforceable statute.

Plaintiffs fail to state a claim in Counts III and IV that the EPM conflicts with A.R.S. Section 16-127, not least of all because that statutory provision is no longer enforceable as a matter of law. Last fall, in a case in which Plaintiff RNC was a party, a federal court held that A.R.S. Section 16-127—the sole basis for Counts III and IV—is preempted because it violates the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20507(b)(1). *See Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2023 WL 8181307 (D. Ariz. Sept. 14, 2023). Accordingly, the EPM states that it does not enforce Section 16-127 because "a

federal court has declared these provisions preempted by the NVRA" "and they may not be enforced." 2023 EPM at 14 n.11 (citing *Mi Familia Vota*, 2023 WL 8181307).[7]

The conflict between federal and Arizona law arises because Arizona requires registrants to provide DPOC while the NVRA, which requires states to accept the National Mail Voter Registration Form (the "federal form") to register voters for federal elections, does not. 52 U.S.C. § 20505(a)(1). As a result, Arizona voters who register using the federal form and whose citizenship county recorders are unable to verify ("federal-only voters") have the right to vote in federal elections under the NVRA, but are barred by Arizona law from voting for Arizona state offices. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14 (2013). In 2022, Arizona enacted A.R.S. Section 16-127, which purported to prohibit federal-only voters from voting in presidential elections or by mail. Several civil rights organizations—including Voto Latino—challenged the new laws, and the RNC intervened to defend them. The federal court held that both parts of Section 16-127 that underlie Counts III and IV are preempted by the NVRA, meaning that Arizona cannot prohibit federal-only voters from either voting in presidential elections or voting by mail. *See Mi Familia* Vota, 2023 WL 8181307, at *7.

Undeterred, Plaintiffs challenge two provisions of the EPM that enforce the NVRA and the decision in *Mi Familia Vota*—Chapter 1, Section 2 allowing federal-only voters to vote in presidential elections (Count III) and Chapter 2, Section 1(B)(1), allowing federal-only voters to vote by mail (Count IV)—arguing that these portions of the EPM violate the now-preempted statute, A.R.S. § 16-127. *See* Compl. ¶¶ 61, 68. But not only is Section 16-127 preempted, the Secretary has a duty to uphold federal law, is statutorily required to oversee the state's compliance with the NVRA, and is thus required by law to enforce the federal court's determination in *Mi Familia Vota*. A.R.S. § 16-142(A)(1).

[7] Plaintiffs acknowledge that at least "[o]ne of these [counts] is, for the moment, foreclosed by the federal district court's decision in *Mi Familia Vota v. Fontes*, --- F. Supp. 3d ---, 2023 WL 8181307 (D. Ariz. Sept. 14, 2023)." PI at 8 n.3.

As the federal court in *Mi Familia Vota* explained, Section 16-127 impermissibly prohibits federal-only voters from voting in presidential elections in violation of federal law because "[t]he plain language of the NVRA reflects an intent to regulate all elections for '[f]ederal office.'" 2023 WL 8181307, at *6 (second alteration in original) (citation omitted). Presidential elections, including the presidential preference election, are elections for federal office, and the NVRA therefore requires states to allow federal-only voters to participate in them. As a result, Section 16-127(A)(1)'s "restriction on Federal Form users voting in presidential elections is expressly preempted by Section 6 [of the NVRA]." *Id.* at *7; *cf. Inter Tribal Council*, 570 U.S. at 14 ("[W]hen Congress legislates with respect to the 'Times, Places and Manner' of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States." (emphasis in original) (quoting U.S. Const. Art. I, § 4)). Plaintiffs seek a ruling that would directly conflict with that federal court judgment. But because Section 16-127(A) is preempted by the NVRA, this Court cannot indulge Plaintiffs' request.

For the same reasons, the statutory provision underlying Count IV, which purports to prohibit federal-only voters from receiving mail ballots, is unenforceable. "The text of the NVRA provides for circumstances where a state may limit voting by mail, implying that a state may not limit absentee voting outside of these prescribed circumstances." *Mi Familia Vota*, 2023 WL 8181307, at *8. If the NVRA had "intended to permit states that allow absentee voting to require in-person voting under additional circumstances—including when a[] registrant fails to provide DPOC—it could have said so." *Id*. The federal court concluded that A.R.S. Section 16-127(A)(2)'s "limitation on voting by mail frustrates the purpose of the NVRA, as it impedes Arizona's 'promot[ion] of the right' to vote," and is thus preempted and unenforceable. *Id*. at *8 (quoting 52 U.S.C. § 20501(a)).

In other words, the EPM correctly states that Section 16-127 is preempted under federal law and may not be enforced. *See Hook v. Ariz.*, 907 F. Supp. 1326, 1335 (D. Ariz.) ("A state statute that has the effect of thwarting a federal court order enforcing federal rights 'cannot survive the command of the Supremacy Clause of the United States Constitution.'"

(quoting *Washington v. Washington State Comm'l Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 695 (1979))). As a result, Plaintiffs fail to state a claim in either Count III or IV upon which relief can be granted.

2. Plaintiffs fail to state a claim for relief as to all remaining Counts (Counts II, V, VI, VII, VIII, and IX).

For the rest of Plaintiffs' claims—Counts II, V, VI, VII, VIII, and IX—Plaintiffs fail to state a claim upon which relief can be granted, as their contention that the EPM provisions challenged are inconsistent with statute is simply wrong. Not only are Plaintiffs unlikely to succeed on these claims, they also should be dismissed.[8]

i. Count II fails to state a claim.

Plaintiffs' contention that the EPM unlawfully conflicts with A.R.S. Section 16-165(A)(10), Compl. ¶¶ 50-55 (Count II); PI at 8-10, lacks merit. In fact, both the statute and the EPM require that county recorders confirm that a voter is not a citizen before commencing removal procedures. Because there is no direct conflict, Plaintiffs have no cognizable legal claim.

Under Arizona law, county recorders are notified when a voter in their jurisdiction fills out a jury questionnaire indicating that they are not a U.S. citizen. A.R.S. § 21-314. As Plaintiffs concede, the controlling statute, A.R.S. Section 16-165(A)(10), instructs that "[w]hen the county recorder obtains information pursuant to this section *and confirms that the person registered is not a United States citizen*," *see* PI at 9 (emphasis added), they must notify the voter that their registration may be cancelled, and cancel it if no evidence of citizenship is provided. The challenged EPM provision, Chapter 1, Section 9(C)(2)(b) requires just that—the cancellation process goes forward only *after* the recorder determines that the person registered is not a citizen; where the voter has previously confirmed their citizenship, the statutory prerequisite to cancellation has by definition not been met. *See* 2023 EPM at 43.

[8] As to these remaining Counts, Plaintiffs move for a preliminary injunction on all but Count V. *See* PI at 4–16.

Plaintiffs try to paint these instructions as conflicting, suggesting that the statute imposes an automatic requirement that county recorders initiate cancellation procedures upon receipt of this kind of jury report. *See* Compl. ¶ 53; PI at 10. But the statute and the EPM say the same thing: where "the voter has previously provided [documentary proof of citizenship]," 2023 EPM at 43, the recorder has failed to confirm that the person registered is not a U.S. citizen and cannot move forward with cancellation, A.R.S. § 16-165(A)(10). Plaintiffs' strained interpretation requires excising the language requiring a county recorder to first "confirm[] that the person registered is not a United States citizen." *Id.* But it is a basic tenet of statutory interpretation that "each word or phrase of a statute must be given meaning so that no part is rendered void, superfluous, contradictory or insignificant." *Pinal Vista Properties, L.L.C. v. Turnbull*, 208 Ariz. 188, 190 ¶ 10 (App. 2004).[9]

Finally, to the extent Plaintiffs take issue with *how* the EPM instructs county recorders to verify citizenship before initiating cancellation procedures, Plaintiffs fail to carry their burden of showing that the EPM "contradicts" Arizona statute or exceeds the scope of the Secretary's authority. *Leibsohn*, 254 Ariz. at 7 ¶ 22; *Leach*, 250 Ariz. at 576 ¶ 21. Indeed, it is the Secretary's statutory obligation to issue guidance to ensure county recorders apply the law uniformly, including in voter registration. *See Ariz. Democratic Party*, 2016 WL 6523427, at *6 (imposing on Secretary legal obligations to promulgate rules in EPM ensuring uniformity in voter registration (citing A.R.S. § 16-452(A))). Far from "depart[ing] from" statute," PI at 9, the EPM guidance on this point is statutorily required.

ii. Count V fails to state a claim.

Plaintiffs' claim that the EPM fails to instruct county recorders to review databases that they cannot access when verifying voter registration information, Compl. ¶¶ 71-78, rests on the fallacy that Arizona law imposes such an impossible obligation. Because it does

[9] A voter who registered prior to 2004—when Arizona began requiring documentary proof of citizenship ("DPOC") to register to vote—cannot have their registration cancelled for lack of DPOC because A.R.S. Section 16-166 provides anyone who registered before that statute was adopted "is deemed to have provided satisfactory evidence of citizenship." *Cf.* PI at 10.

not, Plaintiffs have no cognizable claim.

Subsections of two statutes, A.R.S. Sections 16-165 and 16-121.01, describe county recorders' obligation to verify information in the voter registration database against various other databases, including those maintained by federal immigration and citizenship services ("USCIS"), the Social Security Administration ("SSA"), and the national association for public health statistics ("NAPHSIS").[10] Chapter 1, Section 2(9)(C)(2) of the EPM exempts some of these databases from county recorder review, "[b]ecause the [statutory] obligation to check these sources applies only to the extent practicable (or, in the case of NAPHSIS, only if accessible)." 2023 EPM at 43. As the Secretary is "not aware that County Recorders currently have access to those databases [USCIS, SSA, and NAPHSIS]," he cannot direct recorders to review them. *Id.*; *see also id*. 43 n.28 (explaining how the USCIS database, per Arizona's agreement with the federal government, "shall not be used for list maintenance purposes" so its use "for this purpose is not currently practicable").

Plaintiffs claim that this guidance is illegal because it "affirmatively remove[s] any obligation of the county recorder to check the databases provided in statute," but concede *within the same sentence* that this obligation exists *only* "if practicable and accessible." Compl. ¶ 76. Indeed, the relevant statutes all state that any such obligation is conditioned on the practicability of verification and the county recorder's ability to access the databases in question. *See* A.R.S. § 16-165(H) (requiring SSA verification "[t]o the extent practicable"); *id.* § 16-165(I) (same for USCIS); *id.* § 16-165(K) (same for "relevant city, town, county, state and federal databases to which the county recorder has access"); *id.* § 16-165(J) (requiring verification against NAPHSIS "if accessible"); *id.* § 16-121.01(D) (requiring verification against "all *available* resources," including above databases "provided the county has access" (emphasis added)). If verification is not "practicable" or the database is not "accessible" or "available," no obligation exists, as the EPM confirms.

[10] A.R.S. Section 16-165(I) directs county recorders to perform these checks on registered voters whom the county recorder has "reason to believe are not United States citizens." However, on February 29, a federal court ruled that this application violated the Civil Rights Act, but left the rest of the statute intact. *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *57 (D. Ariz. Feb. 29, 2024).

Plaintiffs do not dispute the Secretary's assessment that accessing these databases is impracticable, nor do they allege any facts that would suggest this assessment is in error. Moreover, a federal court recently determined that the Secretary's conclusion is well-supported. *See Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *5 (D. Ariz. Feb. 29, 2024) (crediting evidence that "county recorders currently do not have access to NAPHSIS or the SSA database"); *id*. at *7 ("[T]he Court finds that it is impracticable for county recorders to obtain citizenship information from the SSA database . . . as the federal government does not allow access to this information."). The underlying premise of Plaintiffs' claim appears to be that the Secretary cannot clarify for county recorders that they do not need to check databases that the statutes themselves do not require them to check. But the EPM's guidance is within the Secretary's statutory authority, and far from "directly conflict[ing]" with statute, *Arizona All. for Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823 (Ariz. Ct. App. 2023), it precisely aligns.

iii. Count VI fails to state a claim.

Plaintiffs' claim that the EPM's explanation of public access to voter signatures conflicts with statute, Compl. ¶¶ 79-84; PI at 11-13, fails for the simple reason that the EPM and statute both allow only the same limited public access to typically confidential voter signatures. As a result, Plaintiffs have no cognizable claim.

A.R.S. Section 16-168(F) permits limited third-party access to "the records containing a voter's signature" for specific individuals and in specific circumstances:

> by an authorized government official in the scope of the official's duties, for any purpose by an entity designated by the secretary of state as a voter registration agency pursuant to the national voter registration act of 1993 (P.L. 103-31; 107 Stat. 77), for signature verification on petitions and candidate filings, for election purposes and for news gathering purposes by a person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station or pursuant to a court order.

The EPM provision at issue, Chapter 1, Section 11(C)(1), first reproduces nearly verbatim the five statutorily limited circumstances under which third parties may access a voter's otherwise confidential records containing a voter's signature: (1) a government official

conducting official duties, (2) state-designated voter registration agencies, (3) public access for signature verification on petitions and candidate filings, (4) for election purposes and news gathering purposes by individuals affiliated with the media, and (5) pursuant to a court order. The EPM then provides additional guidance with respect to the only category that permits members of the public to access voter signatures, "signature verification on petition and candidate filings," explaining what qualifies as such filings: "[a] registrant's signature may be viewed or accessed by a member of the public only for purposes of verifying signatures on a candidate, initiative, referendum, recall, new party, or other petition or for purposes of verifying candidate filings." 2023 EPM at 53.

Plaintiffs misread the statute and claim that it gives the public unfettered access to signatures for any "election purposes" which "necessarily includes signature verification on mail ballots." Compl. ¶ 82; PI at 11. But by the statute's plain language, a registrant's signature can be accessed "for election purposes and for news gathering purposes" only by a person connected with the media; the statute provides no standalone right of access "for election purposes" for a member of the general public. A.R.S. § 16-168(F).

Plaintiffs appear to want the Court to rewrite the statute by inserting a comma after "election purposes" to create such a right, but a court's "goal in statutory interpretation is to effectuate the legislature's intent," *Shepherd v. Costco Wholesale Corp*., 250 Ariz. 511, 515 ¶ 20 (2021) (citing *State ex rel. DES v. Pandola*, 243 Ariz. 418, 419 ¶ 6 (2018)), and "[t]he best indicator of that intent is the statute's plain language," *SolarCity Corp. v. Arizona Dep't of Revenue*, 243 Ariz. 477, 480 ¶ 8 (2018). If the Legislature intended for the public to be able to freely access signature records for any tangentially election-related purpose, it could have authorized such access by inserting a comma after the phrase "for election purposes," creating a separate category of public access. It did not, and this Court is bound by that legislative determination. *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interp. of Legal Texts 141 (1st ed. 2012) ("Punctuation is a permissible indicator of meaning."); *Boyd v. State*, 540 P.3d 1228, 1232 (Ariz. Ct. App. 2023) (applying a modifier to two terms in a list "[b]ecause there is a conjunction rather than a comma between [them]"

(citing *Szeto v. Arizona Pub. Serv. Co*., 252 Ariz. 378, 383 ¶ 11 (App. 2021) (depublished in part))).[11]

Plaintiffs also assert that the EPM provision allows access to only a single signature even if multiple are in the precinct register because the EPM "is phrased in the singular." Compl. ¶ 82; PI at 12–13. This bizarre argument assumes that because the EPM refers to a singular "signature," the EPM necessarily forbids access to other signatures. Compl. ¶ 82; PI at 12–13. But "[w]ords in the singular number include the plural." A.R.S. § 1-214(B). In this case, both the EPM provision and the statute reference the singular form of signature, but neither purports to limit access to a single signature. *See Boyd*, 540 P.3d at 1231 (courts "interpret the statutory language in view of the entire text, considering the context and related provisions." (citation omitted)). Where a right to view a voter's signature otherwise exists, neither the 2023 EPM nor the statute limits access to a single signature.

iv. Count VII fails to state a claim.

EPM guidance confirming that voters on the Active Early Voting List ("AEVL") can make one-off requests to have their ballots mailed outside of Arizona, Count VII, Compl. ¶¶ 85-90; PI at 13–14, does not conflict with Arizona law because voters on the AEVL, like all Arizonans, possess such a right, *see* A.R.S. § 16-542(E). Accordingly, Plaintiffs' challenge to this aspect of the EPM also fails to state a claim.

Any Arizona voter may sign up for the AEVL to automatically receive an early ballot for every election in which they are eligible to vote. A.R.S. § 16-544(A). The voter must submit a written application with their "name, residence address, mailing address in the[ir] county of residence, date of birth and signature," and attest that they are "a registered voter who is eligible to vote in the county of residence." A.R.S. § 16-544(B). While most AEVL applicants "shall not list a mailing address that is outside of this state for the purpose of the active early voting list," *id.*, all voters may request to have their ballots sent out of state,

[11] Plaintiffs appear to seek to expand public access to voter signatures to participate in "signature verification on mail ballots." PI at 12. But the procedures for signature verification for mail ballots contained in A.R.S. Sections 16–550 and 16–550.01 provide no role for members of the general public in signature verification.

A.R.S. § 16-542(E) (an elector may submit a "request that an early ballot be mailed to the elector's residence or temporary address").[12]

Plaintiffs claim that, because voters cannot list a permanent out-of-state address when they sign up for the AEVL, they may never request that their ballots be mailed out of state and that Chapter 2, Section 1(B)(1) of the EPM conflicts with statute by allowing voters on the AEVL to make such one-off requests. 2023 EPM at 59. But it is apparent from the plain language of the statute that the EPM is consistent with relevant law. Under Section 16-544(B) it is clear that the "mailing address" that must be within Arizona is the one that will be listed on the AEVL and to which early ballots will be automatically sent before every election, and the phrase "for the purpose of the active early voting list" means that a voter cannot apply to the AEVL using an out-of-state address. Accordingly, the EPM confirms that voters "may not request that ballots be automatically sent to an out-of-state address for each election," and does not suggest that "one-time requests" for a ballot to be mailed to out of state will result in any changes to the list itself. 2023 EPM at 59. Indeed, if Plaintiffs' interpretation was correct, a voter who is *not* on the AEVL could request an early ballot be sent outside of the state, but a voter who *is* on the AEVL could not. There is no indication that the Legislature intended such an absurd result, and Plaintiffs' claim fails.[13]

v. Count VIII fails to state a claim.

Plaintiffs wrongly assert that the EPM conflicts with A.R.S. Section 16-552(D) by requiring challenges to early mail ballots to "be submitted in writing after an early ballot is returned to the County Recorder and prior to the opening of the early ballot affidavit envelope," and specifying that challenges to early ballots outside of that time frame "must be summarily denied as untimely." Compl. ¶¶ 91-96; PI at 14. There is no conflict.

Plaintiffs' claim that Chapter 2 Section 5(A) of the EPM conflicts with statute is

[12] Military personnel and other limited categories of voters may list an address outside of Arizona for purposes of the AEVL. *See* A.R.S. § 16-544(B).

[13] What is more, Plaintiffs' contorted interpretation of Arizona law would force elections officials to violate the NVRA because they would be barred from distributing mail ballots to federal-only voters on the AEVL who happen to be outside of the state during a particular election. 52 U.S.C. § 20501, *et seq*. As explained *supra* Part II.B.1, the NVRA preempts state laws that prevent mailing federal ballots outside of Arizona to federal-only voters.

based on an artificially isolated reading of language in the statute, which Plaintiffs wrongly contend authorizes challenges anytime "before the early ballot is placed in the ballot box." Compl. ¶ 94; PI at 14. When read in context, it is clear that the statute does not contemplate challenges to early ballots before they are returned to counties or after they are removed from the affidavit envelope. *See City of Tucson v. Clear Channel Outdoor, Inc*., 218 Ariz. 172, 183 ¶ 33 (App. 2008) (courts "consider the words, context, subject matter, effects and consequences, spirit and reason of the law, and other acts *in pari materia*" (quoting *Kahn v. Thompson*, 185 Ariz. 408, 412 (App. 1995))).

Consistent with the EPM, Section 16-552 provides a challenge process that necessarily occurs only once an early ballot has been returned to the county and is thus in the possession of a county recorder at the time of a challenge.[14] *See* A.R.S. § 16-552(C)–(E). Section 16-552(D) explains that upon challenge, a ballot "shall be set aside and retained in the possession of the early election board or other officer" until the time for adjudication and that following adjudication of a challenge, "[i]f the vote is allowed, the board shall open the envelope," A.R.S. § 16-552(F), and "[i]f the vote is not allowed, the mail ballot affidavit envelope containing the early ballot shall not be opened," A.R.S. § 16-552(G). This process would be impossible if an early ballot has not been returned to a county before it is challenged. Because courts "interpret the statutory language in view of the entire text, considering the context and related provisions," *Boyd*, 540 P.3d at 1231 (citing *Fann*, 251 Ariz. at 434 ¶ 25), Plaintiffs' suggestion that early ballots may be challenged *before* they are in the possession of a county recorder fails. *See State v. Digeno*, 251 Ariz. 549, 553 ¶ 20 (App. 2021) (court is "required to give effect to all parts of a statute"); *Douglass v. Gendron*, 199 Ariz. 593, 596 ¶ 10 (App. 2001) (courts "apply a practical and commonsensical construction" (quoting *State v. Alawy*, 198 Ariz. 363, 365 ¶ 8 (App. 2000))).

[14] A.R.S. Section 16-591, which sets the procedure for challenges against in-person voters employs a similar timing requirement allowing challenges only against a person "offering to vote[,]" rather than *before* a person attempts to vote. A.R.S. § 16-591 (emphasis added); *cf*. A.R.S. § 16-552 (describing process for challenging "[a]n early ballot" rather than an early ballot voter).

Although they admit that "the power to make laws is lodged with the legislative branch," PI at 2, Plaintiffs nonetheless ask the Court to authorize ballot challenges that the Legislature did not. But "[i]t is a basic principle that courts will not read into a statute something which is not within the manifest intention of the legislature as indicated by the statute itself." *Town of Scottsdale v. State ex rel. Pickrell*, 98 Ariz. 382, 386 (1965); *see Mussi v. Hobbs*, 255 Ariz. 395 ¶ 34 (2023) (court will not read into statutes certain processes and methods not in the statutory language). Because the Legislature did not create a procedure to challenge early ballots before they are submitted to counties, the Court should not "inflate, expand, stretch or extend" the statute "to matters not falling within its expressed provisions." *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133 (1965).

Plaintiffs' suggestion that early ballot challenges may also take place "after the affidavit envelope containing the ballot has been opened" but "before the ballot is placed in the ballot box," PI at 14 (quotation omitted), similarly defies the statutory process governing early ballot challenges. When a challenge has been made, election officials must notify a voter of such a challenge. A.R.S. § 16-552(E). But if a ballot has been separated from its affidavit envelope there is no way to identify who it belongs to or provide the statutorily required notice to the voter who has a right to defend the challenge. *Id.* Prohibiting challenges "after the affidavit envelope . . . has been opened," EPM at 79, also serves the paramount interest of ballot secrecy. *See Huggins v. Superior Ct. In & For Cnty. of Navajo*, 163 Ariz. 348, 351 (1990) (noting Arizona constitution "assures secrecy in voting[,]" and the state has a "commitment to ballot secrecy[,]" because forcing voters to reveal their votes would be "offensive to democratic sensibilities and assumptions").

In promulgating guidance for challenges to early ballots, the Secretary followed the statutory command of the Legislature; it is Plaintiffs who pluck a phrase out of its statutory context and ask the Court to rewrite Arizona law. The Court should reject Plaintiffs' request.

vi. Count IX fails to state a claim.

Plaintiffs' claim that the EPM conflicts with A.R.S. Section 16-122, Compl. ¶ 99; PI at 15–16, by instructing county recorders to count provisional ballots cast by voters who

appear at the wrong precinct fails because Arizona law allows such a ballot to be counted as long as the voter is in the correct county and is confirmed to otherwise be eligible.

Even a cursory reading of the plain language of A.R.S. Section 16-122 reveals that there is no conflict between the EPM and statute. Section 16-122 states that "[n]o person shall be permitted to vote unless such person's name appears as a qualified elector in both the general county register and in the precinct register . . . *in which such person resides*." (emphasis added). The statute does not purport to base voter eligibility on where the voter *appears* to vote. As Plaintiffs acknowledge, so long as a voter's name is on the precinct list "in which such person resides," PI at 15 (citing A.R.S. § 16-122), the statute does not bar a voter from casting a provisional ballot in another precinct and having it counted. Chapter 9, Section 6(B)(1)(f) of the EPM requires the same and provides procedures for how county recorders should ensure compliance with the law. 2023 EPM at 190.

Moreover, because A.R.S. Section 16-122 defines a voter's eligibility based on their precinct of *residence*—not the precinct where they attempt to vote—adopting Plaintiffs' reading of the statute would violate the federal Help America Vote Act ("HAVA"). Section 302(a) of that statute requires that provisional ballots cast by an eligible voter whose name "does not appear on the official list of eligible voters for the polling place" nevertheless be counted so long as they are "eligible under State law to vote," 52 U.S.C. § 21082(a)(4). Because Arizona law does not base eligibility on where a person appears to vote, Plaintiffs' misreading would violate both Arizona and federal law.

III. Plaintiffs fail to establish that they will be irreparably injured in the absence of an injunction or that the balance of equities supports the requested relief.

For all the reasons discussed above, Plaintiffs are not entitled to a preliminary injunction because they are unlikely to succeed on their claims. Plaintiffs barely address the remaining preliminary injunction factors, claiming they are exempt from showing irreparable injury at all because they allege a statutory violation. PI at 16 (citing dicta in *APIA*, 250 Ariz. at 64, ¶ 26). But as the Court of Appeals recently clarified, a showing of irreparable harm is still required if the act is declared potentially unlawful for the first time

by the trial court at the preliminary injunction stage. *See City of Flagstaff v. Arizona Dep't of Admin.*, 255 Ariz. 7, ¶ 24 (App. 2023) (holding "failure to show irreparable harm is dispositive" where challenged assessment had first been declared unlawful "by the trial court itself"). In any event, as explained above, because no legal violations have occurred, Plaintiffs have suffered no injury, and they are not entitled to preliminary injunctive relief.

Rather than identifying any irreparable injury, Plaintiffs largely rehash their insufficient standing allegations: they claim general interests "in state election officials faithfully applying federal and state law" and "in the administration of elections and the competitive environment affecting their candidates." PI at 16–17. Not only are these insufficient to show irreparable harm on their face, *see supra* Part I, Plaintiffs also entirely fail to show how invaliding the EPM in full or in part would redress their injuries. The 2019 EPM was enacted by largely the same process as the 2023 EPM and contains similar provisions for many of the Counts on which Plaintiffs seek emergency relief. For example, the provision purportedly limiting public access to voter signatures challenged in Count VI was in the 2019 EPM, *see* 2019 EPM at 45 ("A registrant's signature may be viewed or accessed by a member of the public only for purposes of verifying signatures on a candidate, initiative, referendum, recall, new party, or other petition or for purposes of verifying candidate filings."), as was the provision clarifying that voters on the AEVL can make one-time requests for their ballots to be sent out-of-state challenged in Count VII, *see* 2019 EPM at 50 ("[An AEVL] voter may make one-time requests to have their ballot mailed to an address outside of Arizona for specific elections."). Having explained *no harm* inflicted by these same provisions in prior elections, Plaintiffs cannot now claim any irreparable injury absent their injunction.

Finally, all equitable considerations militate against a preliminary injunction issuing unprecedented relief eliminating thousands of election administration procedures and rules. Before issuing preliminary injunctions in election-related matters, courts must "consider fairness not only to those who challenge [election rules], but also to . . . the election officials[] and the voters of Arizona." *Sotomayor v. Burns*, 199 Ariz. 81, 83 ¶ 9 (2000).

Plaintiffs' requested relief would indisputably confuse election officials and voters alike. The EPM is a 286-page document that guides all manner of election administration in Arizona, ensuring that election officials accurately and uniformly implement Arizona election law and that voters are not subject to arbitrary and disparate treatment. *See* A.R.S. § 16-452(A). The relief Plaintiffs request threatens the very voting rights of lawful voters. Take Count IX, which would result in the rejection of out-of-precinct provisional ballots cast by lawful voters. While Plaintiffs entirely fail to explain how they are harmed if qualified voters can cast their ballots, such a result would indisputably irreparably injure voters: "The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm." *Arizona All. for Retired Americans v. Hobbs*, 630 F. Supp. 3d 1180, 1198 (D. Ariz. 2022) (quoting *Jones v. Governor of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020)). Such a result would also undermine the strong public interest in "permitting as many qualified voters to vote as possible," *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012). The balance of equities clearly weighs against the requested relief and Plaintiffs' request should be rejected.

CONCLUSION

For these reasons, Plaintiffs have failed to demonstrate that a preliminary injunction is warranted, and Intervenors' motion to dismiss should be granted and the Complaint dismissed with prejudice.

RESPECTFULLY SUBMITTED this 18th day of March, 2024.

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