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ARIZONA SUPERIOR COURT

YAVAPAI COUNTY

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED, et al., Plaintiffs, v. YAVAPAI COUNTY, et al., Defendants, ARIZONA ALLIANCE FOR RETIRED AMERICANS; and VOTO LATINO, Intervenor-Defendants.	No. S1300CV202400175 **INTERVENOR-DEFENDANTS ARIZONA ALLIANCE FOR RETIRED AMERICANS AND VOTO LATINO'S MOTION TO DISMISS** (Assigned to the Hon. Tina R. Ainley)

INTRODUCTION

Plaintiffs Strong Communities Foundation of Arizona, Inc. and three individual voters seek to fundamentally reshape the administration of Arizona elections according to their own preferred policies, challenging a dozen election administration practices, including Defendant Counties' use of vote centers and drop boxes, ballot chain of custody practices and reconciliation procedures, and early ballot signature verification and curing processes. But Plaintiffs allege no actual violations of Arizona law: their real complaint is that Maricopa County, and to a lesser degree Yavapai and Coconino Counties, do not conduct elections according to Plaintiffs' strained interpretations of state law. The drastic relief Plaintiffs seek includes disenfranchising two-thirds of Arizona residents if Defendants do not conduct their elections precisely the way Plaintiffs would like, *see* Compl. at 39, 42, and to appoint Plaintiffs themselves to oversee aspects of Arizona's elections, *id.* at 42.

At the threshold, Plaintiffs have a fatal problem: None of the Plaintiffs allege *any* injury to themselves, past, present, or future, anywhere in their sprawling 12-count Complaint. As a result, they lack standing, and the Court should dismiss their Complaint. Plaintiffs fare no better on the merits. Their claims hinge on manufactured administrative deficiencies in long-past elections based on Plaintiffs' preferred election practices, and Plaintiffs assume, based on nothing more than pure conjecture, that these invented problems will persist in the 2024 elections. In other words, Plaintiffs not only mischaracterize previous elections, but also speculate about future hypothetical misconduct in elections that have not yet occurred. Plaintiffs also attempt to resurrect claims from failed gubernatorial candidate Kari Lake's 2022 election contest—claims that Arizona courts at all levels have already rejected. Without more than policy disputes, long-resolved claims, and hypothetical grievances, Plaintiffs fail to state a claim on which any of the extraordinary relief they seek can be granted.

As a result, the Court should dismiss Plaintiffs' complaint in its entirety with prejudice. Because Plaintiffs lack standing to pursue any of their claims, and because they do not to allege any violation of Arizona law, their Complaint fails on every level.

LEGAL STANDARD

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 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 (cleaned up), 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 Ariz.*, 211 Ariz. 386, 389 ¶ 4 (App. 2005).

ARGUMENT

I. Plaintiffs lack standing to bring their claims.

The Complaint must be dismissed in its entirety because Plaintiffs fail to meet Arizona's "rigorous standing requirement." *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140 ¶ 6 (2005). Standing is a threshold question that must be resolved before reaching the merits. *See Sears v. Hull*, 192 Ariz. 65, 68 ¶ 9 (1998). To have standing, a plaintiff must show "a distinct and palpable injury giving [it] 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). A plaintiff seeking declaratory judgment must show both that its "rights, status or other legal relations are affected by a statute," *Ariz. Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 16 (2022) (quoting A.R.S. § 12-1832), and "that there [is] an actual controversy ripe for adjudication," *Bd. of Sup'rs of Maricopa Cnty. v. Woodall*, 120 Ariz. 379, 380 (1978). "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). Because Plaintiffs allege no injury whatsoever from Defendants' purported transgressions and because this is not a proper mandamus action, their complaint should be dismissed at the outset.

A. Plaintiffs lack standing because they fail to allege any cognizable injury.

Plaintiffs' Complaint should be dismissed at the outset for failure to allege *any* injury to *any* plaintiff, much less a "distinct and palpable injury," *Sears*, 192 Ariz. at 69 ¶ 16, stemming from Maricopa, Coconino, or Yavapai Counties' election administration.

Plaintiffs' twelve-count Complaint dedicates only four short paragraphs to Plaintiffs' identities and never alleges any harm to them resulting from any of County Defendants' past, present, or future actions. *See* Compl. ¶¶ 13–16. As for the individual Plaintiffs, the Complaint merely alleges their resident counties and that they are registered to vote but lacks any allegation that any of these individuals experienced any of the harms Plaintiffs claim occurred in prior elections. *See id*. ¶¶ 14–16. Nor does the Complaint allege that the individual Plaintiffs will experience any injury in a future election. *Id.* In fact, the individual Plaintiffs do not even allege that they intend to vote in the 2024 elections, let alone explain how any of the County's allegedly illegal practices will harm them. *Id.*

Plaintiff Strong Communities similarly fails to allege suffering any injury at the hands of Defendants. Although organizational plaintiffs may sue in their representational capacity if they "identify particularized harm" to a "specific member" of their organization, *Arcadia*, 256 Ariz. 88, ¶ 25, Plaintiffs concede that Strong Communities is not a membership organization, *see* Compl. ¶ 13 (describing "donors, subscribers, and followers" of the organization, but no members). While organizations may sometimes sue to protect a specific constituency they represent from harm, Strong Communities fails to allege that is the case here—that it directly represents specific constituents who are actually harmed by the County Defendants' administration of Arizona elections. Without such individuals who "would have standing to sue in their own right," Strong Communities does not have representational standing to proceed. *Arcadia*, 256 Ariz. 88, ¶ 24. Nor does it have direct

standing to sue in its own right. The Complaint alleges no harm that the organization has or will experience because of the actions of Defendants. *See* Compl. ¶ 13.

Instead of alleging a particularized injury, Plaintiffs note a vague, generalized interest in ensuring Defendants follow the law. *See id*. (alleging part of Strong Communities' mission is to "ensur[e] that Arizona's elections are free, fair, and lawfully administered"). As explained *infra* Section II, while Plaintiffs repeatedly insist that their distorted interpretations of various election statutes are the correct readings, they do not identify any actual violations of Arizona law. But even if they had identified a genuine illegality, Plaintiffs' general allegation that they are harmed if elections are not "lawfully administered," Compl. ¶ 13, fails to identify any concrete injury resulting from the violation beyond a mere interest than the law be followed, and is accordingly a classic generalized grievance that does not suffice for standing. *See Sears*, 192 Ariz. at 70–71 ¶ 23 (declining to find standing where plaintiffs alleged a violation of law but failed to "show that they ha[d] been injured by the alleged . . . violation"). Plaintiffs' allegation of generalized harm if elections are not "lawfully administered," Compl. ¶ 13, "is shared alike by all or a large class of citizens generally" and thus "not sufficient to confer standing," *Arcadia*, 256 Ariz. at 88 ¶ 11 (quoting *Sears*, 192 Ariz. at 69 ¶ 16)). This is true not only under Arizona law, but federal law, too. *See Lance v. Coffman*, 549 U.S. 437, 442 (2007) (holding generic claim that "the law . . . has not been followed" in conducting elections is "precisely the kind of undifferentiated, generalized grievance about the conduct of government" that cannot confer standing).[1] Such "generalized grievances [] are more appropriately directed to the legislative and executive branches of the state government" than to this Court. *Sears*, 192 Ariz. at 69 ¶ 16 n.6 (quotation omitted).

Plaintiffs' speculation about possible future harm is also insufficient to create a cognizable injury. The ripeness doctrine "prevents a court from rendering a premature judgment or opinion on a situation that may never occur." *Winkle v. City of Tucson*, 190

[1] Although "not bound by federal jurisprudence on the matter of standing," Arizona courts find "federal case law instructive." *Fernandez*, 210 Ariz. at 141 ¶ 11 (quotation omitted).

Ariz. 413, 415 (1997); *see Bennett v. Brownlow*, 211 Ariz. 193, 196 ¶ 16 (2005) ("[T]he standing doctrine . . . ensures that courts refrain from issuing advisory opinions, that cases be ripe for decision."). Plaintiffs' claims of impending injury depend on pure speculation, including that errors that allegedly occurred in past elections will repeat in 2024. *See, e.g.*, Compl. ¶ 8 (alleging that "there is a near-certainty" that the 2024 election "will be marred by the same mistakes and maladministration as the 2020, 2022, and 2023 elections").[2] As just one example, Plaintiffs suggest that because *one* printer in Yavapai County experienced a technical error that led to *one* polling place that experienced a 45-minute wait time in 2022, *id*. ¶¶ 61–62, Yavapai voters in 2024 will be "unable to vote" because the "same problems are [] likely to recur," *id.* ¶¶ 164–165. And while Plaintiffs allege that Maricopa experienced broader printer technical difficulties in 2022, *id.* ¶¶ 63–64, Plaintiffs again offer no basis to presume the same mechanical errors will persist in future elections. Because courts may not "speculate about hypothetical facts that might entitle the plaintiff to relief," *Cullen v. Auto-Owners Ins.*, 218 Ariz. 417, 420 ¶ 14 (2008), Plaintiffs' conclusory allegations assuming future harms cannot survive a motion to dismiss; *see also Jeter*, 211 Ariz. at 389 ¶ 4 (holding "unreasonable inferences [and] unsupported conclusions" insufficient to survive a motion to dismiss).

Plaintiffs' allegations about the mere opportunity for possible election fraud are similarly too speculative to confer standing. *See, e.g.*, Compl. ¶ 52 (Count II) (alleging reconciliation procedures are important for "deterring election fraud," because it is "easy for mistakes to happen or for fraud to be perpetrated" "[i]f" reconciliation is not completed); Compl. ¶ 226 (Count XI) (alleging "signature inconsistency suggests possible fraud"); Compl. ¶ 142 (Count XII) (alleging unstaffed drop boxes "may be used to facilitate illegal

[2] *See also* Compl. ¶¶ 153, 156 (Count I) ("Maricopa Defendants' unlawful chain of custody procedures" which allegedly produced a "discrepancy of 25,000 ballots" between initial estimates and final count of ballots "will continue to be applied during the 2024 general election[.]"); Compl. ¶ 165 (Count III) (alleging Maricopa and Yavapai Defendants "have failed to take adequate measures to prevent the same problem from happening again" and thus "[t]hese same problems are thus likely to recur in the 2024 General Election"); Compl. ¶ 170 (Count IV) (similar); Compl. ¶ 176 (Count V) (similar); Compl. ¶ 181 (Count VI) (similar); Compl. ¶ 190 (Count VII) (similar); Compl. ¶ 198 (Count VIII) (similar); Compl. ¶ 207 (Count IX) (similar); Compl. ¶ 218 (Count X) (similar).

ballot harvesting or other fraud"). Plaintiffs complain only of the chance for possible misconduct by unknown third parties, but the Court "cannot predict" "troubles which do not exist; may never exist; and the precise form of which, should they ever arise." *Velasco v. Mallory*, 5 Ariz. App. 406, 411–12 (1967). The Court should decline Plaintiffs' invitation to eviscerate standing doctrine, adjudicate hypothetical disputes, and issue an advisory opinion. *Bennett*, 211 Ariz. at 196 ¶ 16.

At bottom, each of Plaintiffs' Counts amounts to nothing more than policy disagreements with Arizona's election laws. While it is clear that Plaintiffs do not like Arizona election law or Maricopa, Yavapai, and Coconino's lawful administration of those laws, the appropriate avenue to lodge those concerns is the Legislature—not this Court. *See Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013) ("[t]he presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself" for standing (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986))); *see also Sears*, 192 Ariz. at 69 ¶ 16 n.6. Because Plaintiffs fail to allege any concrete and particularized injury to themselves, they lack standing, and the Court should dismiss their Complaint on this basis alone.[3]

B. Plaintiffs cannot rely on a general "beneficial interest" to confer standing because this is not a proper mandamus action.

In mandamus actions, Arizona law requires a lesser showing of injury to confer standing, but Plaintiffs cannot rely on that more relaxed "beneficial interest" standard because this is not a proper mandamus action. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 ¶¶ 11–12 (2020). "Mandamus is an extraordinary remedy issued by a court to compel a public officer to perform an act which the law specifically poses as a duty," and does not

[3] Plaintiffs also seek to resurrect claims regarding the 2022 elections concerning conduct that has long passed. *See* Compl. at 40 (seeking declaration that Maricopa and Yavapai's use of printers in 2022 violated Arizona law); *id*. ¶¶ 57–73, 162–165 (Count III) (alleging printer malfunctions in Maricopa and Yavapai during the 2022 election only); Compl. ¶¶ 57–73, 166–170 (Count IV) (same in Maricopa County only). These claims lack merit in any event, *see infra* Section II, but are also moot: the time to seek relief for injury that occurred in 2022 was in 2022, not 2024. Because the "mootness doctrine directs that opinions not be given concerning issues which are no longer in existence," *Flores v. Cooper Tire & Rubber Co.*, 218 Ariz. 52, 57 ¶ 24 (App. 2008) (quotation omitted), the Court should not issue an advisory opinion on long-expired circumstances from prior elections.

apply "if the public officer is not specifically required by law to perform the act," *i.e.*, if the duty is discretionary. *Sears*, 192 Ariz. at 68 ¶ 11 (quotations omitted). For the same reason, mandamus is not appropriate to "restrain a public official from doing an act." *Id.* (quotation omitted).

Here, mandamus relief is inappropriate because Plaintiffs seek to compel Defendants to carry out discretionary responsibilities according to Plaintiffs' preferences—none of which "the law specifically imposes as a duty," *id.* (quotation omitted)—including to restrain Defendants' lawful conduct, *see infra* Part II; Compl. at 38–42 (seeking a writ of mandamus to "prohibit[]" or "forbid[]" conduct). Plaintiffs allege just once that Maricopa is failing to perform a "non-discretionary duty"—to verify signatures on early ballot envelopes. *See* Compl. ¶¶ 106–107. But Plaintiffs do not sufficiently allege that Maricopa will not conduct signature matching or that any county official has failed or will fail to perform any other mandatory duty. *See infra* Part II. Simply put, mandamus does not lie to force election officials to administer elections according to Plaintiffs' policy preferences, none of which Defendants are "required by law to perform." *Sears*, 192 Ariz. at 68 ¶ 11 (quotation omitted).

Because mandamus relief is not appropriate, the Court need not consider whether Plaintiffs are "beneficially interested" in the outcome of the Defendants' duties, as required to establish standing in a mandamus action. *Id*. Were the Court to reach that question, however, it should hold that Plaintiffs do not have a beneficial interest because as already explained, they allege no impact to themselves at all from Defendants' actions; they do not even allege that they intend to vote in 2024 or would be affected by any of Defendants' challenged conduct. Plaintiffs' mere disagreement with the law falls far short of what is required to bring a mandamus action: if Plaintiffs' allegations sufficed, "virtually any citizen could challenge any action of any public officer under the mandamus statute by claiming that the officer has failed to uphold or fulfill state or federal law, as interpreted by the dissatisfied plaintiff. Such a result would be inconsistent with section 12–2021," (the mandamus statute). *Id.* at 69 ¶ 14.

II. Plaintiffs fail to state a claim as to Counts I-IX; XI-XII.[4]

Count I (Chain of Custody Procedures). Plaintiffs fail to state a claim as to Count I because they do not and cannot identify any conflict between Maricopa County's chain of custody practices and Arizona law. Instead, they recycle previously rejected arguments from Kari Lake's 2022 failed election contest. Specifically, Plaintiffs assert that Section 16-621(E), which requires that election officials "maintain records that record the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation," requires that Maricopa County—which initially estimates the number of early ballots received before conducting a final, precise count—must instead precisely "count[]," and not estimate, "the number of ballots at each stage where the chain of custody records are required." Compl. ¶ 149. But Plaintiffs identify no legal authority that requires this, and accordingly fail to state a claim.

The Court of Appeals considered and rejected Plaintiffs' theory in Lake's 2022 election contest and found that Lake failed to identify any "authority imposing any express time requirement or otherwise explain how an initial estimate followed by precise count . . . does not qualify as 'count[ing]'" the ballots for the purposes of chain of custody. *Lake v. Hobbs*, 254 Ariz. 570, 576 ¶ 22 (App. 2023), *review granted in part, decision vacated in part*, No. CV-23-0046-PR, 2023 WL 7289352 (Ariz. Mar. 22, 2023). The same is true of Plaintiffs here. The statute's plain language imposes no requirement to precisely count ballots at any particular time and thus no such requirement can be inferred. *See State v. Christian*, 205 Ariz. 64, 66 ¶ 6 (2003) ("[T]he best and most reliable index of a statute's meaning is the plain text of the statute." (citation omitted)). Nor do Plaintiffs cite any other law that either requires what they demand or prohibits what Maricopa County does. And because no law prohibits estimates followed by exact counts, the Court of Appeals properly found in the *Lake* case that the "existence of [a] 25,000-ballot discrepancy" between Maricopa's initial estimate of ballots and the final count in 2022 failed to "prove[] that the

[4] Counts I–II, IV–VII, IX, are against Maricopa County only. Count III is against Maricopa and Yavapai Counties. Counts VIII, X–XII are against all Defendants.

Maricopa Defendants' current practice . . . is unlawful." Compl. ¶ 47; *see Lake*, 254 Ariz. at 576 ¶¶ 22–24. This Court has no basis to reach a different result.

Nor does any other authority prohibit initial estimates or require precise counts of ballots at any specific time. Plaintiffs assert that the Elections Procedures Manual ("EPM") supports their allegations, Compl. ¶ 148, but they fail to identify any EPM provision that requires the repeated and precise counts Plaintiffs demand, nor does such a provision exist, *see* EPM at 72–74 (describing required ballot retrieval and chain of custody procedures without imposing any specific time requirement for when ballots are counted).[5] Plaintiffs also cite the federal Help America Vote Act and "best practices" and "voluntary" guidelines from the U.S. Election Assistance Commission, Compl. ¶¶ 34, 36 & n.5, but neither imposes any requirement on Maricopa to count ballots the way Plaintiffs would prefer. And fatal to their claim, Plaintiffs admit that after initially estimating ballots in 2022, Maricopa "then counted" the ballots. *Id*. ¶ 45. The law requires nothing more. *See* A.R.S. § 16-621(A) (counting of ballots shall be conducted at the counting center in accordance with the EPM); EPM at 73 (when secure ballot container is opened by elections officials, "the number of ballots inside the container shall be counted").

Because Plaintiffs identify no legal authority that requires the precise counts of ballots they demand at the time they demand it, Count I should be dismissed.

Count II (Reconciliation Procedures). Plaintiffs fail to state a claim as to Count II because they identify no legal requirement that ballot reconciliation procedures take place at vote centers instead of at the Maricopa County Tabulation and Election Center ("MCTEC"), as they would prefer. *See* Compl. ¶¶ 48–56, 157–161. As Plaintiffs recognize, election officials must follow the reconciliation procedures outlined in A.R.S. Sections 16-602(A) and -608(A). *See* Compl. ¶ 158. Section 602(A) requires that for elections involving electronic voting machines or tabulators, election judges compare the number of votes cast on machines against the number of votes cast "as indicated on the poll list" and combined

[5] *See 2023 EPM*, ARIZONA SEC'Y OF STATE (Dec. 2023), https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf (last visited Apr. 9, 2024).

with the number of provisional ballots; this information must be documented in a written report and sent to the "officer in charge of elections." Section 16-608 requires that, after the close of polls and after compliance with Section 16-602, members of bipartisan election boards prepare a reconciliation report which must, together with the corresponding voted ballots, be sent to a designated location—for Maricopa, MCTEC. *See* A.R.S. § 16-608(A). Neither statute requires that these reconciliation procedures themselves happen at a particular location, much less "at voting locations" as Plaintiffs insist, Compl. ¶ 54. They require only that reconciliation occur "after the close of the polls" and that the reports and ballots be delivered to a designated place. A.R.S. § 16-608(A); *see* A.R.S. § 16-602(A) (imposing no specific location requirement). And Plaintiffs concede that Maricopa Defendants do in fact perform these reconciliation procedures shortly after polls close at MCTEC. Compl. at ¶ 54 (admitting Maricopa Defendants conduct reconciliation procedures at MCTEC); *see also id*. at ¶ 55 (citing Compl., Ex. A at 4, which includes correspondence from Maricopa confirming that "reconciliation. . . is conducted at MCTEC[.]"). As such, Plaintiffs fail to allege any violation of reconciliation procedures by Maricopa, and Count II should be dismissed.

Counts III and IV (Provision of Ballots at Vote Centers). Plaintiffs' Count III and IV, which allege printing malfunctions that caused some voters to wait in "long lines," *id.* ¶ 164 (Count III), or not be able to immediately tabulate their ballot at a vote center itself, *id.* ¶¶ 166–170 (Count IV), do not demonstrate any violation of A.R.S Section 16-411(B)(4), which allows counties to establish vote centers that give voters the flexibility to vote at any polling location they choose, rather than voting at an assigned precinct location.

Plaintiffs' Complaint wholly misunderstands A.R.S Section 16-411(B)(4), which allows counties to choose between a vote center model—where voters can appear at any polling location in the county to cast their ballot—and a precinct model—which requires voters to cast ballots at a particular polling location. In both models, the races, candidates, and issues that a voter may cast their ballot for depends on where the voter resides. Thus in counties that use vote centers, like Maricopa and Yavapai, Section 16-411(B)(4) requires

that vote centers "shall allow any voter in that county to receive the appropriate ballot *for that voter*"—*i.e.*, a ballot with the races, candidates, and issues for which that voter is eligible to vote. A.R.S § 16-411(B)(4) (emphasis added); *see also* EPM at 126 (defining a vote center as a location which "allows voters from any precinct within the county to cast a ballot with the correct ballot style on Election Day"). Arizona counties thus comply with Section 16-411(B)(4) when they provide—as Maricopa and Yavapai did—all voters within their jurisdiction who appear at a vote center with a ballot that contains the offices and issues they are eligible to vote for.

Plaintiffs suggest that any time a voter waits in a line at a vote center, the "voter[] could not vote" and has been "disenfranchised," violating Section 16-411(B)(4)'s requirement that "any" voter be "allowed" to vote. Compl. ¶¶ 65, 164 (Count III). Not so. Plaintiffs allege only that there were instances of long lines at vote centers (including just one 45-minute line in Yavapai County, *see id*. ¶ 62), and that some voters were "frustrat[ed]" and chose to leave a line. *Id*. ¶ 64; they critically do not allege that Maricopa or Yavapai took any action to prohibit—*i.e.*, not "allow,"—any voter from casting a ballot.

Plaintiffs also claim that if a voter is unable to electronically tabulate their ballot at a polling place, then they have not received an "appropriate ballot." *Id*. ¶¶ 66, 169. Plaintiffs' assertion requires the Court to interpret "appropriate ballot for that voter" to mean a ballot that must be able to be tabulated on site. 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). Moreover, courts "interpret the statutory language in view of the entire text, considering the context and related provisions," *Boyd v. State*, 256 Ariz. 414, ¶ 9 (App. 2023) (citing *Fann v. State*, 251 Ariz. 425, 434 ¶ 25 (2021)), and neither Section 16-411(B)(4) nor any other Arizona law requires that ballots be tabulated on site. *See* A.R.S. § 16-602 *et seq*. (no requirement for electronic tabulation at polling places); *see* 2023 EPM at 126 (presuming that ballot tabulation for vote centers will occur "exclusively at the central counting place" for the county, not at a vote center).

Indeed, the Court of Appeals in *Lake* confirmed that any ballots that could not be tabulated at vote centers in 2022 in Maricopa County were "duplicated onto a readable ballot by a bipartisan board at Maricopa County's central tabulation facility, and ultimately counted[.]" *Lake*, 254 Ariz. at 575 ¶ 15.

Counts III and IV thus fail because Plaintiffs do not sufficiently allege that "any" voter was not provided with an "appropriate ballot for that voter" or not "allowed" to vote under Section 16-411(B)(4).

Counts V and VI (Race Discrimination). Plaintiffs claim Maricopa's polling locations violate two provisions of the Arizona constitution—specifically, the "Free and Equal Elections" Guarantee (Count V) and the Suffrage Clause (Count VI)—based on their allegations that white and Native American voters purportedly must travel slightly farther, on average, to reach a vote center as compared to Hispanic and Black Arizonans. Compl. ¶¶ 69–70. Plaintiffs' allegations do not suffice to state a claim under either provision.

Arizona's Free and Equal Elections Clause states that "[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Ariz. Const. art. II, § 21. Courts have held that this clause is violated when "votes are not properly counted," or when a voter is prevented from casting a ballot by intimidation or violence. *Chavez v. Brewer*, 222 Ariz. 309, 319–20 ¶¶ 33, 34 (App. 2009); *see also Yazzie v. Hobbs*, No. CV-20-08222-PCT-GMS, 2020 WL 5834757, at *5 (D. Ariz. Sept. 25, 2020), *aff'd*, 977 F.3d 964 (9th Cir. 2020). Nothing of the sort is alleged here: Plaintiffs do not allege that white or Native American voters are unable to vote in Maricopa County, whether because of intimidation or otherwise, nor do Plaintiffs allege their votes were not counted. Count V should therefore be dismissed.

Count VI fails to state a claim under the Arizona Constitution's Suffrage Clause because Plaintiffs do not allege the state "enact[ed] any law restricting or abridging the right of suffrage *on account of* race . . ." Ariz. Const. art. XX, par. 7 (emphasis added). Although Arizona courts have not yet interpreted this provision, its plain language would appear to require intentional discrimination. *See, e.g.*, *State v. Urrea*, 244 Ariz. 443, 445 ¶¶ 8–9

(2018) (protection from being excluded from a jury "on account of race" requires a showing of "purposeful discrimination" (quotation omitted)); *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 211 Ariz. 337, 348 ¶ 34 (App. 2005) (law discriminates on the basis of race when the state actor is "predominantly motivated by race" in his decision making). Plaintiffs allege nothing of the sort here.

Instead, Plaintiffs' Complaint all but acknowledges the race-neutral reason for any alleged disparity: Maricopa locates its vote centers "disproportionately in urban areas," Compl. ¶ 68, presumably to reflect and ensure that there is access to voting for the dense population in those areas and their corresponding need for more vote centers. Such a need-based decision surely does not violate the Arizona Constitution.

Count VII (Use of Software in Signature Review). In Count VII, Plaintiffs allege that Maricopa County "retains[] the technical capability to use software to do signature comparisons," and thus speculates, without more, that Maricopa will use software to conduct signature matching in the 2024 election. Compl. ¶ 98. Such speculative allegations are wholly conclusory and may be disregarded. *See Cullen*, 218 Ariz. at 420 ¶ 14.[6] Moreover, Arizona law gives election officials discretion in how to determine whether a signature matches a record signature on file, and nothing in Arizona law prohibits election officials from using software to assist them in that process. *Contra* Compl. ¶¶ 186–187 (alleging, without basis, that Arizona law "*only* allows the judgment and discernment of human beings to be involved in the signature verification process" (emphasis added)). Count VII thus fails to state a claim.

Plaintiffs' claim is based solely on A.R.S. Section 16-550(A), which states that "the county recorder or other officer in charge of elections shall compare the signature[s]" on early ballot envelopes with the signature in the voter's registration record. County Defendants have broad discretion to determine how and whether a given signature is valid, requiring the "recorder or other officer in charge" simply to be "satisfied that the signatures

[6] The danger in relying on speculative allegations to state a claim is made plain by Maricopa's Answer, which confirms that Maricopa does *not* intend to use software for signature matching in future elections. *See* Maricopa County Defs.' Answer at ¶ 93.

correspond." A.R.S. § 16-550(A); *see also* A.R.S. § 16-552(B) (permitting counting of ballot if signature "is found to be sufficient"). Although Plaintiffs identify no prohibition against using software to conduct signature matching, notably, Plaintiffs' Complaint does not even allege that Maricopa actually did so; only that software was previously used to sort ballots into different batches. Compl. ¶ 81. But just as none of these statutes mentions or precludes the use of other humans besides "the county recorder" (such as election workers) to assist with signature matching, no statute precludes the use of software to assist election officials to streamline the process of comparing signatures. Plaintiffs' policy preference that no software be used in signature matching is one for the Legislature—not this Court.

Counts VIII and IX (Signature Verification Policies). In Counts VIII and IX, Plaintiffs blindly claim that, "on information and belief" alone, the Maricopa Defendants intend to violate Arizona law by "deeming valid all ballot affidavits" from voters who vote early in-person or voters who use an assistant to vote without comparing the signatures on the ballot. *See* Compl. ¶¶ 108, 114, 194, 202. But there are no well-pled facts that support this claim, and claims that are based on conclusory allegations rather than facts fail to state a claim. *See Cullen*, 218 Ariz. at 419 ¶ 7. Moreover, Plaintiffs' Count IX fails to grapple with recent statutory changes regarding signature verification for in-person early ballots, which will be exempted from additional signature verification beginning in the 2026 elections. *See* Maricopa County's Motion for Judicial Notice at ¶ 10. Under this new law, which clarifies that such matching *is* required for 2024, it is wildly speculative and premature to conclude that Maricopa will not comply with the law. Plaintiffs' allegations that Maricopa will not follow the law without *any* facts suggesting Maricopa's intention to do so in light of this statutory change is again conclusory and may be disregarded, *see Cullen*, 218 Ariz. at 419 ¶ 7. That these claims are—at best—far from ripe is confirmed by Maricopa's statement that they plan to conduct signature matching for all of the categories of ballots Plaintiffs raise. *See* Maricopa County Defs.' Answer ¶¶ 108, 110.

Count XI (Procedures for Curing Ballots). Count XI again attempts to substitute Plaintiffs' policy preferences for Arizona law. Here, Plaintiffs invent two curing procedures

for early ballots with insufficient signatures not found in Arizona law: (1) that election officials cannot use the phone number a voter writes on their early ballot envelope to contact them, and instead must use "the phone number listed in the voter's registration file or other authoritative government database," Compl. ¶¶ 221–222; and (2) that election officials cannot rely "on the purported voter's verbal affirmation" to confirm their ballot, but instead must "actually *show* a copy of the signature to the voter," *id*. ¶ 226. But Arizona law requires neither:

> If the signature is inconsistent with the elector's signature on the elector's registration record, the county recorder or other officer in charge of elections shall make *reasonable efforts* to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct *or the county to confirm the inconsistent signature*.

A.R.S. § 16-550(A) (emphases added). The process Plaintiffs allege Defendants employ—calling the voter on a number they provided to inform them of a signature issue and confirm their signature—constitutes "reasonable efforts" that allow "the county to confirm the inconsistent signature," as required by Arizona law. *Id.* The Court should decline Plaintiffs' request to impose their chosen procedures in place of the "reasonable efforts" to correct signature issues counties plainly have discretion to determine.

Count XII (Drop Boxes). Plaintiffs' allegations that Defendants are prohibited from establishing "unstaffed" drop boxes again entirely misreads Arizona law. Section 16-1005(E), the only provision Plaintiffs cite in support of their theory is a penal provision, not an election procedure. By its plain language, the statute prohibits "[a] person or entity" from soliciting the collection of ballots "by misrepresenting itself as an election official or as an official ballot repository or . . . as a ballot drop off site, other than those established and staffed by election officials[.]" A.R.S. § 16-1005(E). Ballot drop boxes established and maintained by County election officials are obviously not "misrepresenting" themselves whatsoever—they *are* "official ballot repositories." *Id.* Plaintiffs' proposed interpretation of this criminal statute that prevents nefarious non-governmental actors from impersonating election officials asks the Court to interpret the word "staffed" to mean that "at least two

election officials [be] present at the box and positioned close enough to be able to view each person who deposits ballots into the box such that the election officials can observe conduct that might be unlawful ballot harvesting." Compl. ¶ 231. But, critically, nothing in the language of the statute—and nothing in Arizona's election code—mandates how often drop boxes need to be physically monitored. The Court should reject Plaintiffs' invitation to violate the "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." *Scottsdale*, 98 Ariz. at 386; *see also Mussi*, 255 Ariz. 395 ¶ 34. In this context, "staffed" simply means a drop box that is maintained by election officials. *See Boyd*, 540 P.3d at 1231 (citing *Fann*, 251 Ariz. at 434 ¶ 25) (noting courts "interpret the statutory language in view of the entire text, considering the context and related provisions").

Plaintiffs again seek to displace Arizona election law in favor of their own policy preferences. But because such policy disputes must be directed to the Legislature, not the Court, *Sears*, 192 Ariz. at 69 ¶ 16 n.6, Count XII fails to state a claim for relief.

III. Plaintiffs' claims should be dismissed with prejudice.

Dismissal with prejudice is appropriate when amending the complaint could not cure its legal defects. *See Wigglesworth v. Mauldin*, 195 Ariz. 432, 439, ¶¶ 26–27 (App. 1999). As explained, Plaintiffs fail to allege any actual injury, *see supra* Part I(A), their allegations are based on rank speculation about Defendants' hypothetical future conduct, *see supra* Part I(C), and their claims fail as a matter of law, *see supra* Part II. With zero factual or legal basis for any legal violation or resulting injury, no amount of amendments will cure the fatal deficiencies in Plaintiffs' Complaint. Indeed, this is the *third* time Plaintiffs have brought these claims before a court: they previously filed a substantively identical action in Maricopa County before amending and then voluntarily dismissing that action. *See Strong Cmtys. Found. of Ariz., Inc. v. Maricopa Cnty.*, No. CV-2024-002441 (Maricopa Cnty. 2024). This Court should dismiss their claims with prejudice to ensure this same baseless action cannot simply be re-filed yet again in another county.

CONCLUSION

For these reasons, Intervenor-Defendants request that this Court dismiss all of Plaintiffs' claims with prejudice.

RESPECTFULLY SUBMITTED this 9th day of April, 2024.

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