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SUPREME COURT OF ARIZONA

STRONG COMMUNITIES FOUNDATION
OF ARIZONA INCORPORATED, et al.,

Plaintiffs/Appellants,

v.

YAVAPAI COUNTY, et al.,

Defendants/Appellees,

and

ARIZONA ALLIANCE FOR RETIRED
AMERICANS, et al.,

Intervenors/Appellees.

Arizona Supreme Court
No. CV-26-0156-PR

Arizona Court of Appeals
Division One
No. 1 CA-CV 25-0310

Yavapai County
Superior Court
No. S1300CV202400175

INTERVENORS-APPELLEES' RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

The Court should deny Plaintiffs' petition for review because they failed to demonstrate that any important issue of law was incorrectly decided or provide any other basis to grant review. *See* Ariz. R. Civ. App. P. 23(d)(3).

Plaintiffs sought a writ of mandamus—"an extraordinary remedy" available only when "the law specifically imposes a [mandatory] duty" on a public official, *Sears v. Hull*, 192 Ariz. 65, 68, ¶ 11 (1998)—to compel the continuous physical staffing of every ballot drop box with at least two election officials. But no state law, regulation, or judicial decision imposes such duty on Defendant election officials. The sole basis for Plaintiffs' claim, A.R.S. § 16-1005(E), a criminal statute prohibiting impersonating an election official or running an unauthorized ballot drop-off site, does not regulate election officials at all or direct Defendants to do anything. The superior court therefore correctly determined that the statute did not support Plaintiffs' claim and the Court of Appeals affirmed.

Plaintiffs misread the Court of Appeals' decision and now seek review based on the mistaken premise that it required every mandamus plaintiff to identify a private cause of action as a prerequisite for relief. That is not what that court held. It simply required Plaintiffs to identify what mandamus claims have always required—a legally imposed nondiscretionary duty—and found that Plaintiffs' failure to do so

doomed their claim. That decision was correct, and the Court should deny Plaintiffs' petition.

ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly dismiss Plaintiffs' mandamus claim where no state law—including A.R.S. § 16-1005(E)—creates a nondiscretionary duty requiring Defendants to continuously staff all ballot drop boxes?
2. Is review of “whether mandamus relief depends on the existence of a separate cause of action” unwarranted when the Court of Appeals did not so hold?

BACKGROUND¹

Plaintiffs initially brought sweeping challenges to election administration rules and practices across three Arizona counties, seeking extraordinary relief that included appointing a special master to oversee Arizona's 2024 elections, and requesting the superior court invalidate those election results if Plaintiffs' numerous demands were not met. App.3-46. The superior court dismissed all of Plaintiffs' claims, and the Court of Appeals affirmed. Plaintiffs now seek review of one narrow issue from that originally sprawling case: Yavapai County's use of ballot drop boxes that election officials do not continuously physically staff. App.40-41.

¹ App.___ citations refer to Plaintiffs' appendix. Intervenors' separate appendix is cited by page numbers I_APP__.

Plaintiffs' complaint sought a writ of mandamus requiring Defendants to staff all ballot drop boxes with "at least two election officials . . . positioned close enough to be able to view each person who deposits ballots into the box," App.40-41, and barring Defendants from collecting or counting ballots deposited in drop boxes not meeting Plaintiffs' monitoring requirements. App.44-45.

The sole purported basis Plaintiffs identified for their claim was a criminal statute, A.R.S. § 16-1005(E), that prohibits unauthorized individuals from masquerading as election officials and illegally collecting ballots: "[a] person or entity that knowingly solicits the collection of voted or unvoted ballots by misrepresenting itself as an election official or as an official ballot repository or is found to be serving as a ballot drop off site, other than those established and staffed by election officials, is guilty of a class 5 felony."

The superior court dismissed Plaintiffs' claim with prejudice finding it was not a cognizable mandamus claim. App.145-49. The court explained that mandamus is an "extraordinary remedy" requiring Plaintiffs to identify a nondiscretionary duty imposed on a public official, App.146 (quoting *Sears*, 192 Ariz. at 68, ¶ 11), and found that A.R.S. § 16-1005(E) does not "compel [Defendants to perform] an act required by law." App.147. The court also found § 16-1005(E) was "designed to prevent a 'person' from committing ballot fraud" and not "designed to regulate election officials." App.149. In addition, Plaintiffs' claim improperly asked "the

Court to define [the term ‘staffed’] in the way that [Plaintiffs’] wished,” which was “not an appropriate request for mandamus relief.” App.149.

Plaintiffs appealed, and the Court of Appeals affirmed. It, too, concluded that Plaintiffs failed to establish a mandamus claim’s basic requirement—a nondiscretionary duty that the law specifically imposes on a defendant. App.155. The court held that § 16-1005(E) “proscribes criminal conduct related to ballots” and “does not mandate [that] election officials perform a nondiscretionary duty.” App.156. In addition, § 16-1005(E) could not support a mandamus claim because Title 16’s criminal provisions are enforceable only by “the attorney general, county attorney or city or town attorney.” App.156. The absence of a private cause of action further supported the court’s conclusion that a criminal statute imposing no affirmative duty on anyone to perform any nondiscretionary duty could not support Plaintiffs’ mandamus claim. *Id.* Finally, the court’s review of Arizona’s Elections Procedures Manual (“EPM”) reinforced its conclusion that state law did not impose the staffing requirement that Plaintiffs sought to impose on Defendants. App.156-57.²

² When Plaintiffs filed the operative complaint, the 2023 EPM was in effect, so the Court of Appeals treated that version as “applicable to this case.” App.156 (referencing EPM, Ariz. Sec’y of State (Dec. 2023), https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf). A new EPM took effect on December 22, 2025, but does not affect the analysis of the issues presented here.

REASONS TO DENY REVIEW

Plaintiffs' petition for review should be denied because Plaintiffs do not come close to satisfying any of the enumerated grounds for granting such a petition. *See* Ariz. R. Civ. App. P. 23(d)(3). They have not shown that "no Arizona decision controls the point of law in question," "a decision of the Supreme Court should be overruled or qualified," "there are conflicting decisions by the Court of Appeals," or that "important issues of law have been incorrectly decided." *Id.*

Plaintiffs offer only one mistaken argument in support of their petition: that the Court of Appeals held that a separate private cause of action is a prerequisite to mandamus relief. It did not. Instead, the court straightforwardly applied settled mandamus principles, recognized that § 16-1005(E) does not regulate election officials, and correctly concluded that mandamus could not lie because Plaintiffs identified no mandatory duty to continuously staff all ballot drop boxes.

I. The Court of Appeals correctly affirmed dismissal of Plaintiffs' mandamus claim under longstanding precedent governing such claims.

A. Mandamus relief requires Plaintiffs to identify a mandatory duty.

A writ of mandamus "is an extraordinary remedy issued by a court to compel a public officer to perform an act which the law specifically imposes as a duty." *Sears*, 192 Ariz. at 68, ¶ 11. Mandamus "does not lie if the public officer is not specifically required by law to perform the act." *Id.* (quoting *Board of Educ. v. Scottsdale Educ. Ass'n*, 109 Ariz. 342, 344 (1973)). A mandamus plaintiff must first

identify such a mandatory duty and then must demonstrate that they are “beneficially interested” in its performance, and that “there [is] no other plain, speedy, and adequate remedy at law.” *Rhodes v. Clark*, 92 Ariz. 31, 35 (1962) (quoting *State Bd. of Tech. Registration v. Bauer*, 84 Ariz. 237, 239 (1958)). Plaintiffs’ claim fails at the start because Plaintiffs identify no nondiscretionary duty to continuously staff ballot drop boxes. *Infra* § I.B.

In seeking this Court’s review, Plaintiffs misunderstand mandamus’s threshold requirement. Specifically, they contend that “as long as the Plaintiffs are beneficially interested, they are entitled under the statute to bring this mandamus action.” See Pet. 4 (quotations omitted). But whether a plaintiff is “beneficially interested” depends on the existence and nature of a mandatory duty. When a plaintiff fails to identify a legally imposed duty, “mandamus relief is not available, and the [beneficial interest] standard for mandamus standing is not applicable.” I_APP004, *Ariz. Free Enter. Club v. Fontes*, No. 2 CA-CV 2024-0221, 2025 WL 2462952, at *4 ¶ 17 (Ariz. Ct. App. Aug. 27, 2025), *review denied* (Mar. 26, 2026).

B. Section 16-1005(E) does not require Defendants to continuously staff drop boxes.

The Court of Appeals correctly held that § 16-1005(E) imposes no nondiscretionary duty on election officials regarding drop boxes, let alone the specific staffing requirements that Plaintiffs demand. See App.156-57. Plaintiffs allege that all ballot drop boxes must be staffed with “at least two election officials

. . . positioned close enough to be able to view each person who deposits ballots into the box,” App.40-41, but that claim rests on four erroneous premises: (i) that § 16-1005(E) regulates election officials’ provision of drop boxes at all; (ii) that the term “ballot drop off site” used in § 16-1005(E) refers to ballot “drop box[es]”; (iii) that “staffed” means continuous in-person monitoring by at least two election officials; and (iv) that a continuous staffing requirement can be inferred from a now-repealed provision in the bill enacting § 16-1005(E). Each premise fails, and each failure independently precludes Plaintiffs’ mandamus claim.

First, § 16-1005(E) regulates the unauthorized solicitation and collection of ballots, not election officials’ provision of drop boxes. The statute provides that: “A person or entity that knowingly solicits the collection of voted or unvoted ballots by misrepresenting itself as an election official or as an official ballot repository or is found to be serving as a ballot drop off site, other than those established and staffed by election officials, is guilty of a class 5 felony.” A.R.S. § 16-1005(E). As the superior court and Court of Appeals correctly concluded, this statute prohibits individuals from misrepresenting themselves as election officials or unlawfully operating unauthorized drop-off sites. *See* App.149, 156. It says nothing about how officials must administer official ballot drop boxes, much less impose a continuous-staffing duty. *See* App.149, 156-57. As for the phrase “other than those established and staffed by election officials,” A.R.S. § 16-1005(E), it simply distinguishes

unauthorized or fake ballot drop-off sites from official ones; it does nothing to impose the continuous-staffing mandate Plaintiffs insist on.

Section 16-1005(E)'s absence from the EPM underscores that the statute was not intended to regulate election officials' provision of drop boxes. The EPM is designed to "set[] forth the law governing elections in a single reference guide," 2025 EPM, Ariz. Sec'y of State, at pdf 2 (Dec. 2025), <https://tinyurl.com/2svv8aeu> ("2025 EPM"), and to "provide the maximum degree of correctness . . . in election procedures across Arizona," *id.* The EPM's only reference to § 16-1005 cites the statute as authority for the prohibition on handling or returning another voter's ballot. *Id.* at 435. The EPM does not mention subsection (E), and, as discussed *infra* § I.C., other provisions affirmatively establish the requirements for ballot drop boxes—none of which include continuous staffing.

Second, the plain language of § 16-1005(E) refers to "ballot drop off site[s]," not "drop boxes." In fact, *nowhere* does this statute—which Plaintiffs claim regulates drop boxes—even once use the term "drop box." That omission is material. Arizona law treats "ballot drop off site[s]," and "ballot drop boxes" as distinct. Chapter 2, Section I(I), of the EPM, titled "Ballot Drop-Off Locations and Drop Boxes," repeatedly refers to them as distinct ballot receipt locations. *See, e.g.*, 2023 EPM at 71 (setting procedures for the security of "drop-off locations *and/or* drop-boxes," including, *e.g.*, that "[a] ballot drop-off location *or* drop-box shall be located

in a secure location”); *see also* 2025 EPM at 78 (same); 2023 EPM at 66-67; 2025 EPM at 72-73. If every drop box were a ballot drop-off site, the EPM’s repeated separate references to ballot drop-off locations and drop boxes would create surplusage, violating the “cardinal principle” that courts give meaning to every statutory word and provision. *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019). Because § 16-1005(E) does not mention drop boxes, it cannot support any mandatory duty related to drop boxes.

Third, the staffing requirements that Plaintiffs allege § 16-1005(E) imposes appear nowhere in § 16-1005(E) or any other Arizona law. Plaintiffs allege that “a drop box only qualifies as being ‘staffed’” under § 16-1005(E) “if at least two election officials are 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.” App.41. But the statute neither defines “staffed,” nor directs officials to “staff” ballot drop boxes in any particular manner. Section 16-1005(E) thus cannot be read to impose *any* physical-monitoring requirement, much less the specific directives Plaintiffs decree.

Plaintiffs’ own dictionary definition of “staffed” does not help; it merely defines “staffed” as “[t]o provide . . . with staff,” not as requiring two officials to monitor each drop box continuously and physically. *See* Pet. 10. Nor does their reliance on nonbinding guidance from the U.S. Election Assistance Commission

(“EAC”), a federal agency created by the Help America Vote Act (“HAVA”), fare any better. Pet. 10-11. Although Arizona incorporates HAVA’s technical standards for voting machines, *see* A.R.S. § 16-442, HAVA does not mention drop boxes, and Plaintiffs do not contend otherwise. The EAC’s guidance has no bearing on the meaning of “staffed” in § 16-1005(E) that helps Plaintiffs’ mandamus claim.

Finally, Plaintiffs’ reference to the “historical development” of § 16-1005(E) fails to establish any mandatory duty on election officials. Plaintiffs note that the 2011 bill enacting § 16-1005(E) included a separate provision requiring any person “delivering more than ten early ballots to an election official” to provide photo identification to that official. Pet. 11 (quoting S.B. 1412 § 3 (2011)). Plaintiffs argue that provision “presupposes” that all ballot drop boxes must be staffed, *id.* at 11-12, but there are several problems with that theory. First, the 2011 provision referred to deliveries “to an election official” and said nothing about ballots delivered to drop boxes. Second, it did not contain the staffing requirement that Plaintiffs demand here. And third, the Legislature repealed it the following year, as Plaintiffs concede. *Id.* at 12. A repealed statutory provision that made no reference to drop boxes cannot provide the basis for a mandatory duty to continuously staff them.

C. No other Arizona law creates a nondiscretionary duty to continuously staff drop boxes.

No other Arizona law imposes a continuous in-person staffing requirement for drop boxes. The details of ballot drop box regulation are largely left to the EPM.

See A.R.S. § 16-452(A) (directing Secretary of State to prescribe rules for early voting and for the “collecting, counting, tabulating and storing” of ballots). The 2023 EPM (like the 2025 EPM) authorizes drop boxes and imposes detailed security requirements—including that they must be secured against moving or tampering, locked so that only election officials can access the ballots, and designed so that ballots cannot be removed through the deposit slot—none of which require an election official to be physically present at all times. See 2023 EPM at 71-74. The EPM also distinguishes drop boxes “within the view and monitoring” of election workers from those that are not, and boxes that are “within the sight of election officials at all times” from those that are not. *Id.* at 71-72. Those distinctions would be meaningless if every lawful drop box had to be continuously staffed in person.

As other election statutes make clear, when the Legislature wants to mandate physical presence, visibility, or in-person handling requirements, it says so. See, e.g., A.R.S. § 16-564(B) (two board members must accompany an emergency-moved ballot box); § 16-562(A) (ballot boxes and voting booths may not be hidden from view); § 16-566(A) (voting booths must be in clear view of election officers); § 16-570(B) (voting machines must be in full view of officers and observers). No comparable requirement exists for drop boxes, and the Legislature does not “hide elephants in mouseholes.” *Carter Oil Co. v. Ariz. Dep’t of Revenue*, 248 Ariz. 339, 345 ¶ 19 (App. 2020) (citing *Whitman v. Am. Trucking Ass’n*s, 531 U.S. 457, 468

(2001)). The Court should not read a secret, silent, and onerous continuous staffing requirement for all ballot drop boxes into § 16-1005(E), a statute that does not regulate election officials' duties at all, but instead criminalizes unlawful tampering with ballots, when the affirmative regulations addressing drop boxes contain no such requirement.

The superior court and the Court of Appeals both rejected Plaintiffs' theory, finding that "no provision in the [EPM] . . . supports Plaintiffs' arguments." App.156. And in separate litigation over the 2023 EPM, the Yavapai County Superior Court likewise held that Arizona law permits "the use of drop-boxes that are not always monitored by election officials." I_APP011, Under Advisement Ruling & Order at 5–6, *Ariz. Free Enter. Club v. Fontes*, No. S1300-CV-2023-00872 (Yavapai Cnty. Super. Ct. Apr. 25, 2024). Plaintiffs' disagreement with that policy choice is not a basis for mandamus; such arguments are "more appropriately directed to the legislative and executive branches of the state government." *Sears*, 192 Ariz. at 69 ¶ 16 n.6.

II. The Court of Appeals did not hold that a separate cause of action is a prerequisite to mandamus relief.

A. Plaintiffs misread the Court of Appeals' decision.

Plaintiffs' assertion that the decision below adopted a categorical private-cause-of-action requirement for mandamus misreads the opinion. Pet. 3-9. The Court of Appeals began with a mandamus claim's threshold requirement—a

nondiscretionary duty imposed by law—not a freestanding rule about private rights of action. *See* App.156-57. The Court of Appeals’ observation that § 16-1005(E) contains no private right of action was not, standing alone, the basis for its holding; it simply reinforced the conclusion that Plaintiffs could not rely on that criminal statute to conjure a nondiscretionary duty necessary for a mandamus claim. That reasoning proceeded in two steps.

First, the Court of Appeals explained that § 16-1005(E) is a criminal statute, enforceable only by “the attorney general, county attorney or city or town attorney.” App.156 (citing A.R.S. § 16-1021). It cited that enforcement structure not to impose a private-cause-of-action requirement, but because a statute enforced exclusively by prosecutors generally does not support mandamus relief. *See, e.g., Sensing v. Harris*, 217 Ariz. 261, 263, ¶ 7 (App. 2007) (“Law enforcement activities by police and prosecutors are generally considered to be discretionary and not appropriate for mandamus relief.”). Thus, even if Plaintiffs sought to compel enforcement of § 16-1005(E) against the third parties it regulates, mandamus relief would remain unavailable.³

³ For this reason, Plaintiffs’ suggestion that the decision below “assume[s] that public officials and bodies in this State do not have a duty to comply with this State’s criminal laws,” Pet. 13, badly misreads the Court of Appeals’ order. As the court made clear, § 16-1005(E) simply imposes no duty on election officials.

Second, the Court of Appeals’ citation to *Phoenix Baptist Hospital & Medical Center, Inc. v. Aiken*, 179 Ariz. 289 (App. 1994), confirmed that § 16-1005(E)’s criminal prohibition creates no affirmative duty enforceable by Plaintiffs. In *Phoenix Baptist*, the court applied the “general rule is that ‘no private cause of action should be inferred based on a criminal statute’” absent clear legislative intent to protect a special group through private enforcement. 179 Ariz. at 294-95 (quoting *Ward v. Fireman's Fund Ins. Cos.*, 152 Ariz. 211, 216 (App. 1986)). The plaintiff hospital based its civil claim on a criminal statute that made it a felony for a person to fail to provide their spouse with necessary medical care, and the court held that the statute created no civil liability allowing a hospital to sue to collect the cost of the medical care from the non-patient spouse. *Id.* The Court of Appeals cited *Phoenix Baptist* for the narrow proposition it necessarily reflects—a statute criminalizing conduct without directing a defendant to perform any specific act creates no affirmative duty a court can compel. *See supra* § I.B. The absence of a private cause of action evidenced that absence of duty; it did not impose an independent requirement.

B. The Court of Appeals’ conclusion is in line with Arizona state law, rendering review by this Court unwarranted.

The out-of-state authority Plaintiffs cite does not address the question this petition presents. Plaintiffs rely on California and federal decisions for the proposition that a writ of mandamus may issue absent an independent cause of action. Pet. 5. But no one disputes that proposition, and the Court of Appeals did not

hold otherwise. The question is not whether Plaintiffs need a separate cause of action; it is whether they identified a nondiscretionary duty in the first place. Plaintiffs' failure to do so doomed their claim.

CONCLUSION

Because Plaintiffs have identified no basis for this Court's review, this Court should deny the petition.

RESPECTFULLY SUBMITTED this 21st day of August, 2026.

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