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ATTACHMENT NAME: APPENDIX - Appendix: Appendix		
CASE NAME: STRONG COMMUNITIES et al v YAVAPAI/ARIZONA	CASE NUMBER: CV-26-0156	
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nor/Appellees.)
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PENDIX TO RESPONSE TO PETITIO

V.

YAVAPAI COUNTY, et al.,

and

Intervenor/Appellees.

Court of Appeals Division One No. 1
CA CV-25-010

Yavapai County Superior Court
Case No.: S1300CV202400175

SEPARATE APPENDIX TO RESPONSE TO PETITION FOR REVIEW

No.	Date	Item	Page Nos.
1.	03/26/2026	Arizona Free Enterprise Club, et al. v. Fontes, et al., 2025 WL 2468352	I_APP001-006
2.	04/25/2024	Under Advisement Ruling and Order	I_APP007-013

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2025 WL 2462952

Only the Westlaw citation is currently available.
This Decision Does Not Create Legal Precedent And May
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Not For Publication

See Ariz. R. Sup. Ct. 111(c)(1);

Ariz. R. Civ. App. P. 28(a)(1), (f).

Court of Appeals of Arizona, Division 2.

ARIZONA FREE ENTERPRISE CLUB,
an Arizona nonprofit corporation; Restoring
Integrity and Trust in Elections, a Virginia
nonprofit corporation; [Republican Party
of Arizona, LLC](#), a statewide political
party committee; and Dwight Kadar,
an individual, Plaintiffs/Appellants,

v.

Adrian FONTES, in his official capacity as
the Secretary of State, Defendant/[Appellee](#),
Arizona Alliance For Retired
Americans and Mi Familia Vota,
Intervenor-Defendants/Appellees.

No. 2 CA-CV 2024-0221

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Filed August 27, 2025

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Review Denied March 26, 2026

Appeal from the Superior Court in Yavapai County, No.
S1300CV202300202, The Honorable [John Napper](#), Judge.

AFFIRMED

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of the Arizona House of Representatives Benjamin Toma and
Arizona Senate President Warren Peterson

Judge [Sklar](#) authored the decision of the Court, in which
Presiding Judge [Eckerstrom](#) and Judge [Vásquez](#) concurred.

MEMORANDUM DECISION

*1 ¶1 Plaintiffs Arizona Free Enterprise Club, Restoring
Integrity and Trust in Elections, Republican Party of Arizona,
LLC, and Dwight Kadar appeal from the superior court's
summary-judgment ruling in favor of the Arizona Secretary
of State, Arizona Alliance for Retired Americans, and Mi
Familia Vota. Because the plaintiffs lack standing, we affirm
the grant of summary judgment.

BACKGROUND

¶2 The plaintiffs are two social-welfare corporations
concerned about election security and protecting the “rule of
law” in the voting process, as well as the state Republican
party and an elector. They challenge a provision of the
2023 and 2019 Elections Procedures Manuals that allows
county recorders and election officials to compare early-
ballot-affidavit signatures with known signatures outside
those on registration-related forms. The plaintiffs argue that
this provision contravenes [A.R.S. § 16-550\(A\)](#), which limits
the signatures available for comparison to those in a voter's
“registration record.” The plaintiffs seek mandamus relief
via an injunction preventing the secretary from enforcing the
provision and declaratory relief invalidating it.

¶3 The defendants moved to dismiss on various grounds, including the plaintiffs' asserted lack of standing. The trial court denied the motions, rejecting the argument that the plaintiffs lacked standing. After all parties moved for summary judgment, the superior court granted the defendants' summary-judgment motion. The plaintiffs appealed.

¶4 While this appeal was pending, this court invalidated the 2023 Elections Procedures Manual for failure to provide a proper notice-and-comment period as required by the Administrative Procedure Act. *Republican Nat'l Comm. v. Fontes*, ___ Ariz. ___, ¶¶ 2, 8, 28, 566 P.3d 984 (App. 2025). A petition for review has been granted. Nevertheless, the parties have asked us to decide this case, in part because the next version of the manual may include the same provision. This arguably amounts to a request for an advisory opinion in a case that may be moot, depending on our supreme court's resolution of the EPM's validity. See *Progressive Specialty Ins. Co. v. Farmers Ins. Co. of Ariz.*, 143 Ariz. 547, 548 (App. 1985) (appellate court should not give advisory opinions or decide issues other than those required to dispose of appeal under consideration). We are therefore reluctant to resolve the case. But we do so because we may resolve it on the separate justiciability doctrine of standing. The parties addressed this issue in their briefing, which was completed before this court invalidated the 2023 manual.

STANDING

¶5 We review de novo whether a party has standing to sue. *Home Builders Ass'n of Cent. Ariz. v. Kard*, 219 Ariz. 374, ¶ 8 (App. 2008). The case may proceed if only one of the plaintiffs has standing. See *City of Tucson v. Pima County*, 199 Ariz. 509, ¶ 14 (App. 2001). Because the plaintiffs appeal from the superior court's grant of summary judgment, we review that grant de novo, considering all facts in the light most favorable to the plaintiffs. See *Dinsmoor v. City of Phoenix*, 251 Ariz. 370, ¶ 13 (2021).

I. General background on standing inquiry

*2 ¶6 The standing inquiry addresses whether a party has an interest in the litigation's outcome. *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, ¶ 8 (App. 2008). Generally, to establish standing, a party must demonstrate "an injury in fact, economic or otherwise, caused by the complained-of conduct, and resulting in a distinct and palpable injury giving

the plaintiff a personal stake in the controversy's outcome." *Id.*

¶7 We are not constitutionally required to "decline jurisdiction based on lack of standing." *Sears v. Hull*, 192 Ariz. 65, ¶ 24 (1998). Compare Ariz. Const. art. VI with U.S. Const. art. III, § 2, cl. 1. But we waive standing and consider the merits "only in exceptional circumstances, generally in cases involving issues of great public importance that are likely to recur." *Id.* ¶ 25. The few cases in which our supreme court has done so show its "reluctance" to waive standing and "the narrowness of this exception." *Id.*

¶8 Different standing requirements exist for the forms of relief sought by the plaintiffs—an injunction in the nature of mandamus relief and a declaratory judgment. Compare *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, ¶ 11 (2020) (requiring plaintiff seeking mandamus relief to demonstrate beneficial interest in action to have standing), with *Ariz. Sch. Bds. Ass'n v. State*, 252 Ariz. 219, ¶ 16 (2022) (requiring plaintiff seeking declaratory relief to demonstrate actual or real interest in action to have standing), and *Ariz. Creditors Bar Ass'n v. State*, 257 Ariz. 406, ¶ 12 (App. 2024) (requiring plaintiff seeking declaratory relief to demonstrate existing facts showing how challenged statute affects plaintiff's "rights, status, or other legal relations" to have standing (quoting A.R.S. § 12-1832)). We therefore evaluate the plaintiffs' standing under the rules applicable to those forms of relief. See *Ariz. Pub. Integrity All.*, 250 Ariz. 58, ¶¶ 10-12.

II. Standing to seek mandamus or injunctive relief

¶9 In Count One, the plaintiffs seek an injunction and mandamus relief under A.R.S. § 12-2021. That statute allows a party "beneficially interested, to compel, when there is not a plain, adequate and speedy remedy at law, performance of an act which the law specially imposes as a duty." *Id.* Standing in mandamus actions is liberally construed. *Ariz. Pub. Integrity All.*, 250 Ariz. 58, ¶ 11. It is generally sufficient to confer standing on Arizona voters if they seek to compel an elections official to "comply with Arizona law." *Id.* ¶¶ 11-12.

¶10 While this inquiry is somewhat relaxed, it is premised upon the relief being sought actually being in the nature of mandamus. See *Sears*, 192 Ariz. 65, ¶ 11 (declining to determine whether plaintiffs had standing under mandamus statute because plaintiffs' requested relief was not in nature of mandamus). We must therefore evaluate whether the remedy sought by the plaintiffs—invalidation of the relevant EPM provision—fits the definition of mandamus relief.

¶11 A mandamus action “seeks to compel a public official to perform a non-discretionary duty imposed by law.” *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 231 Ariz. 366, ¶ 19 (2013). Mandamus relief is not available where the complainant alleges that a public officer misapplied or misinterpreted the applicable regulations. *See id.* ¶ 21. Moreover, mandamus actions generally require that the duty be “purely ‘ministerial,’ ” leaving the public official with no discretion in exercising the legally-imposed duty. *Ponderosa Fire Dist. v. Coconino County*, 235 Ariz. 597, ¶ 19 (App. 2014) (quoting *El Paso Nat. Gas Co. v. State*, 123 Ariz. 219, 221 (1979)). Where the law provides the official with discretion, mandamus is available only to remedy an arbitrary act or abuse of that discretion. *Bd. of Cnty. Supervisors v. Rico Volunteer Fire Dist.*, 119 Ariz. 361, 364 (App. 1978).

*3 ¶12 Here, the secretary’s duty is to create the EPM. A.R.S. § 16-452. He must “prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency” in voting procedures and “issue[]” the manual. § 16-452(A), (B). He also must submit the manual to the governor and attorney general for their approval within a certain timeframe before the general election. § 16-452(B).

¶13 The plaintiffs do not allege that the secretary failed to “prescribe rules,” “issue[]” the manual, or timely submit the manual to the governor and attorney general as required by Section 16-452. These are the types of claims that might sound in mandamus. *See Ariz. Pub. Integrity All.*, 250 Ariz. 58, ¶¶ 15-16 (summarizing required procedures to promulgate manual). They instead allege that the secretary exceeded his legal authority by adopting a provision that, in their view, conflicts with Arizona law. But as our supreme court recently noted, albeit in a case involving different issues, mandamus relief is “typically unavailable” for a claim that the EPM conflicts with relevant statutes. *Ariz. Republican Party v. Richer*, 257 Ariz. 237, ¶ 23 (2024).

¶14 This case has parallels to *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458 (App. 2007). There, the plaintiffs requested mandamus relief based on an attorney general’s opinion that they alleged erroneously stated the law. *Id.* ¶ 11. They asserted that the attorney general violated his duty by issuing the opinion. *Id.* This court rejected their argument, explaining that mandamus generally cannot compel a public official “to perform a function in a particular way if the official is granted any discretion about how to perform it.” *Id.* ¶ 12. Mandamus relief, therefore, is available in such cases only when a public

official “abuses that discretion.” *Id.* Because the attorney-general opinion did not make law but “merely opine[d]” about it and was not “so deficient as to be a complete failure to fulfill” his legal obligation, the court concluded the attorney general did not abuse his discretion. *Id.* ¶¶ 13-17.

¶15 Here too, the secretary has at least some discretion in drafting the EPM. *See* § 16-452(A) (stating secretary must enact EPM provisions to attain and maintain “maximum degree of correctness, impartiality, uniformity and efficiency” on voting and ballot procedures (emphasis added)). Otherwise, there would be no need for an EPM; it would simply reiterate the statutory scheme. *See id.* Although the plaintiffs allege that the secretary exceeded his authority by enacting an unlawful EPM provision, these allegations derive from their claim that the secretary “misapplied or misinterpreted” A.R.S. § 16-550(A). That is not a sufficient basis for mandamus relief. *See Stagecoach Trails MHC, L.L.C.*, 231 Ariz. 366, ¶ 21 (concluding that property owner was not entitled to mandamus relief against zoning administrator that had not issued permit because administrator had complied with duty to consider and act upon permit application).

¶16 In that regard, this case differs from *Arizona Public Integrity Alliance*, 250 Ariz. 58, upon which the plaintiffs rely heavily. The plaintiffs in that case, an interest group and an elector, sought mandamus relief against the Maricopa County Recorder. *Id.* ¶¶ 2, 12. The recorder had sent mail-in voters an instruction about overvotes that was inconsistent with the instruction contained in the EPM. *Id.* ¶¶ 1-4. Our supreme court concluded that the plaintiffs had standing to seek mandamus relief because they challenged the recorder’s authority to provide an instruction that differed from the EPM. *Id.* ¶ 12.

*4 ¶17 In this case, by contrast, the secretary has the authority to promulgate the EPM. *See* §§ 16-452(A), (B); 16-550(A). The plaintiffs simply allege that in doing so, he misinterpreted applicable law. But mandamus relief is unavailable to resolve disputes about the law’s meaning. *See Yes on Prop 200*, 215 Ariz. 458, ¶ 26 (stating that “mandamus is not an appropriate method to use to obtain a definition of duties that are otherwise subject to dispute”); *Sears*, 192 Ariz. 65, ¶ 14 (explaining that mandamus relief is unavailable for claim constituting mere disagreement with public official’s statutory interpretation). The plaintiffs therefore do not contend the conflict amounts to a failure by the secretary to perform a legally imposed duty. Nor do

the plaintiffs argue that the secretary abused his discretion in adopting the provision at issue. Thus, mandamus relief is not available, and the standard for mandamus standing is not applicable.

III. Standing to seek declaratory relief

¶18 In Count Two, the plaintiffs seek declaratory relief under A.R.S. § 12-1832 to resolve the meaning of the phrase “registration record.” Declaratory relief is governed by the Uniform Declaratory Judgments Act. A.R.S. §§ 12-1831 to 12-1846. Section 12-1832 of that act allows a party “whose rights, status or other legal relations are affected by a statute” to have a court determine “any question of construction or validity” concerning the statute and “obtain a declaration of rights, status or other legal relations thereunder.” The act is “remedial,” and “its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” § 12-1842. Thus, we must construe and administer it “liberally.” *Id.*

¶19 Actual injury is not required to confer standing under the Act. *Ariz. Creditors Bar Ass’n*, 257 Ariz. 406, ¶ 12. A plaintiff “need not demonstrate past injury or prejudice so long as the relief sought is not advisory.” *Ariz. Sch. Bds. Ass’n*, 252 Ariz. 219, ¶ 16. Instead, standing requires (1) “an actual controversy ripe for adjudication” and (2) “parties with a real interest in the questions to be resolved.” *Ariz. Creditors Bar Ass’n*, 257 Ariz. 406, ¶ 12 (quoting *Bd. of Supervisors v. Woodall*, 120 Ariz. 379, 380 (1978)).

¶20 That interest must be more than a speculative fear. *Id.* ¶ 14. Similarly, “merely asserting an interest” is insufficient to demonstrate standing, and a party lacks standing when the impaired right, status, or legal obligation is simply issue advocacy. See *Ariz. Sch. Bds. Ass’n*, 252 Ariz. 219, ¶ 18; § 12-1842.

¶21 The plaintiffs focus their argument concerning standing under the act on the individual plaintiff, Dwight Kadar, and the state Republican party. We examine these parties’ standing separately. See *City of Tucson*, 199 Ariz. 509, ¶ 14. Because they do not argue that the other entity plaintiffs have standing, we do not address that issue. See *Ariz. Sch. Bds. Ass’n*, 252 Ariz. 219, ¶ 15 (plaintiff bears burden of demonstrating standing to seek declaratory relief).

A. Dwight Kadar

¶22 The individual—Dwight Kadar—alleges that he is a “resident and qualified elector of Yavapai County and the State of Arizona.” His asserted interest is “in the proper and uniform enforcement by the county recorders of statutory strictures governing the verification of early ballot affidavit signatures.” We must therefore determine whether this constitutes “actual controversy” or “a real interest in the questions to be resolved.” See *Ariz. Creditors Bar Ass’n*, 257 Ariz. 406, ¶ 12 (quoting *Woodall*, 120 Ariz. at 380).

¶23 Two recent cases illustrate the types of potential, particularized interest that can satisfy these standards. First is *Arizona Creditors Bar Association*, where the plaintiffs were creditors that had to comply with a new law concerning debt collection. 257 Ariz. 406, ¶¶ 2-5, 16. This court concluded that the creditors had standing to seek declaratory relief. *Id.* ¶¶ 16, 19. An actual controversy existed because the creditors were required to comply with the challenged statute and were “squarely in the group of businesses impacted by” it. *Id.* ¶ 16. Moreover, the creditors had alleged a particularized interest because the statute negatively impacted the amount the creditors could garnish. *Id.*

*5 ¶24 Likewise, in *Mills v. Arizona Board of Technical Registration*, 253 Ariz. 415, ¶ 26 (2022), our supreme court held that an engineer had standing to challenge the requirement that he register with the Arizona Board of Technical Registration. The court reached this conclusion even though the board had not begun enforcement proceedings. *Id.* ¶ 30. It reasoned that the engineer had an interest in having that legal question resolved because he had “a real and present need to know” if he would be allowed to practice engineering without registering. *Id.*

¶25 Kadar, by contrast, fails to demonstrate an actual controversy or real interest necessary to confer standing. His rights and duties as an elector are neither affected nor regulated by the challenged EPM provision. Unlike the creditors in *Arizona Creditors Bar Association*, Kadar has no duty to comply with the EPM provision at issue. 257 Ariz. 406, ¶ 16. And unlike the engineer in *Mills*, Kadar has not identified any right, status, or legal obligation impaired by the EPM provision that would provide him with “a real and present need to know” whether the provision is legally erroneous. 253 Ariz. 415, ¶ 30; § 12-1842.

¶26 Nor has Kadar articulated any interest in the issue that could not be generalized to all other Arizona voters. Cf. *Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 16 (stating plaintiffs “are squarely in the group of businesses impacted by” challenged statute). He instead asserts a concern that could be asserted by anyone—a disagreement with the secretary about what the law requires. See *Mills*, 253 Ariz. 415, ¶ 24 (stating that “a generalized harm shared by all or by a large class of people is generally insufficient” to demonstrate standing). This amounts to issue advocacy, which as we have explained, cannot confer standing. See *Ariz. Sch. Bds. Ass'n*, 252 Ariz. 219, ¶ 18. Kadar thus lacks standing to seek declaratory relief.

B. State Republican party

¶27 Most of the analysis above also applies to the state Republican party. The Republican party asserts the same interest as Kadar “in the proper and uniform enforcement by the county recorders of statutory strictures governing the verification of early ballot affidavit signatures.” As we have explained, this interest does not confer standing.

¶28 The Republican party also argues that it has an “integral role in the electoral infrastructure,” which in its view is an independent basis for standing. It points to two such roles—it may obtain a list of voters whose signatures are inconsistent, and it may nominate people for appointment to early-ballot boards.

¶29 In asserting this argument, the Republican party points to *Arizona School Boards Association*, 252 Ariz. 219, ¶ 20. There, three plaintiffs, including a school-board trade association, challenged a bill prohibiting local jurisdictions from imposing mask mandates during the COVID-19 pandemic. *Id.* They alleged that the bill caused the Pima County Board of Supervisors to refuse to impose mask mandates in schools, which impeded local government’s “ability to exercise local control to protect its residents.” *Id.* Our supreme court noted that plaintiffs, including the “trade association with members living and working in Pima County,” were sufficiently affected by the bill to have standing to challenge it. *Id.* (citing *State v. Direct Sellers Ass'n*, 108 Ariz. 165, 166-67 (1972) (stating that trade association with “some” members who “conduct home sales solicitation” had standing to challenge home-sales-solicitation statute’s constitutionality)).

*6 ¶30 Here, the Republican party analogizes its interest to that of the trade associations, which it says had a real interest merely because its members resided in a county that wanted to issue mask mandates. But it misconstrues our supreme court’s reasoning. The trade association’s interest did not arise from them merely living and working in Pima County. *Ariz. Sch. Bds. Ass'n*, 252 Ariz. 119, ¶ 20. It instead arose because their members worked in schools, which were directly affected by the county’s inability “to exercise local control” by implementing COVID-19 protection measures due to the challenged bill. *Id.*

¶31 The Republican party also cites *Pena v. Fullinwider*, 124 Ariz. 42, 43-44 (1979). In that case, consumer plaintiffs challenged as unconstitutional the repeal of a prior statute that had required prices to be displayed on a per-unit basis. *Id.* Our supreme court concluded that they had standing because the repeal deprived them of access to information to which they had previously been entitled. *Id.* The repeal thus directly impacted their rights and provided them a real interest in its constitutionality. *Id.*

¶32 Here, by contrast, the Republican party has focused primarily on its interest in uniform enforcement of the statutory scheme. This too is the type of interest that could be asserted by any Arizona voter. Although the Republican party has identified specific rights it has in the election system—the abilities to obtain a list of voters whose signatures are inconsistent and nominate people for appointment to early-ballot boards—it did not explain at the trial court or in its briefing how the EPM provision might impair these rights.

¶33 For the first time at oral argument, the Republican party did attempt to do so, pointing to its entitlement to the list of voters with inconsistent signatures. That entitlement is set forth in *Section 16-550(A)*, which provides that during the period in which signatures may be cured, political parties are entitled to a daily list of “all voters whose signatures are inconsistent with the voter’s signature on the voter’s registration record and all voters who voted with a conditional provisional ballot.” The Republican party explained that based on that list, it engages in “chase” operations to encourage Republican voters to cure their signatures. Because the universe of signatures in the “registration record” could affect the size of that list, and consequently the Republican party’s expenditure of resources in its chase operation, it argues that it has a real interest in the issue.

¶34 We generally deem arguments waived when raised for the first time at oral argument. *Mitchell v. Gamble*, 207 Ariz. 364, ¶ 16 (App. 2004). This rule is procedural rather than jurisdictional and may be suspended. *Id.* But we decline to do so here. At least on this record, the Republican party's argument amounts to little more than a hypothetical interest in the dispute, which we lack the ability to evaluate. *See Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 20 (concluding that “[t]here is no actual controversy between interested parties alleging existing facts to support a declaratory judgment” where alleged injury is hypothetical).

¶35 We express no opinion on whether the Republican party might be able to assert standing on a more complete record in a subsequent proceeding, such as a challenge to a future version of the EPM. And given that the current EPM has been invalidated, we see no basis for remanding to the superior court for the parties to develop a record on the issue, as suggested at oral argument.

*7 ¶36 At oral argument, the Republican party also pointed to *Republican National Committee v. Fontes*, ___ Ariz. ___, 566 P.3d 984 (App. 2025), this court's decision that

invalidated the EPM. That case concluded that the Republican National Committee had standing to seek a declaratory judgment that the EPM was enacted in violation of the Administrative Procedure Act. *Id.* ¶¶ 13-15. But because the APA has its own standing requirement and that case concerned a broader range of procedures than the specific EPM provision at issue here, we do not find that its analysis aids us here. Thus, the Republican party has failed to identify “an existing state of facts” demonstrating any direct effect the provision has had or will have on it. *See Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 12. It has therefore failed to demonstrate a real interest necessary to have standing to seek declaratory relief.

DISPOSITION

¶37 We affirm the superior court's grant of summary judgment.

All Citations

Not Reported in Pac. Rptr., 2025 WL 2462952

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**SUPERIOR COURT, STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

ARIZONA FREE ENTERPRISE CLUB,
an Arizona nonprofit corporation, and
MARY KAY RUWETTE, individually,

Plaintiffs,

vs.

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

Defendant,

ARIZONA ALLIANCE OF RETIRED
AMERICANS; and MI FAMILIA VOTA,

Intervenors-Defendants.

ARIZONA FREE ENTERPRISE CLUB,
an Arizona nonprofit corporation;
RESTORING INTEGRITY AND TRUST
IN ELECTIONS, a Virginia nonprofit
corporation; and DWIGHT KADAR, an
individual,

Plaintiffs,

vs.

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

Defendant.

Case No. S1300CV202300872
S1300CV202300202

**UNDER ADVISEMENT
RULING AND ORDER**

HONORABLE JOHN NAPPER
DIVISION 2

BY: Felicia L. Slaton, Judicial Assistant
DATE: April 25, 2024

The Court has received and reviewed the parties' cross-*Motions for Summary Judgment*, *Motions to Dismiss*, the *Responses*, and the *Replies*. The Court also held oral arguments and reviewed supplemental pleadings and evidentiary submissions. The Court has reviewed the files in both cause numbers. In both cases, the Court finds the 2023 Elections Procedures Manual complies with Arizona law. Accordingly, the Plaintiffs' *Motions for Summary Judgment* are **denied**, and the Defendants' *Motions for Summary Judgment* are **granted**.

I_APP007

Facts and Procedural History

The Arizona Legislature is responsible for passing laws controlling elections. *Ariz. Const. Art. VII §1, Moore v. Harper*, 143 S. Ct. 2065, 2090 (2023). Conducting elections is a complicated process and the Legislature has required the Secretary of State (the elections officer for the State)(“Secretary”), to draft an election procedures manual (“EPM”). *A.R.S. § 16-452(A)*. The purpose of this manual is to “achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots.” *Id.* Once signed by the Governor, the Attorney General, and the Secretary, the EPM is binding and violating its requirements is a criminal offense. *A.R.S. §16-452(C)*. However, any section of the EPM which violates an election statute does “not have the force of law.” *Leibsohn v. Hobbs*, 254 Ariz. 1, ¶22 (2022).

The issues before the court are: (1) did the Legislature intend for a prior ballot envelope to be a part of a voter’s registration record pursuant to A.R.S. §16-550 and §16-550.01 (Cause # P1300CV202300202); and (2) does the use of unmonitored drop-boxes to collect early ballots violate Arizona law. (Cause # P1300CV202200872)

Application of Law

Registration Record

This part of the litigation involves how early ballots are verified based on the definition of the phrase “registration record” in A.R.S. §16-550 and §16-550.01. In a prior ruling on a Motion to Dismiss, the Court found the signature on a previous ballot envelope did not meet the definition of a registration record in A.R.S. §16-550. Since this ruling, a new EPM has been adopted and the Arizona Legislature has relied on the new EPM when reenacting and amending the relevant statute. As explained below, based on these changes, the Court finds the Legislature intends for a previous ballot envelope to be included in a voter’s registration record.

Verification

In order to have his/her early vote counted, a voter must fill out their ballot and place it in a pre-printed envelope. *A.R.S. §16-547(A)*. The outside of this envelope contains an affidavit indicating the voter is: (1) registered to vote in the county; (2) has not voted and will not vote anywhere else; and (3) personally filled out the ballot within the envelope. *Id.* The voter signs the envelope attesting to these facts under penalty of perjury. *Id.*

When the early ballot is received by the county recorder, they then go about trying to determine if the signature on the envelope is the signature of the registered voter. *A.R.S. § 16-550(A)*. This is done by comparing the ballot envelope to the signature “on the elector’s registration record.” If the two signatures are clearly consistent, then the vote is counted. *A.R.S. §16-550.01(B)*. If the two signatures are not consistent, the voter is notified and given the opportunity to confirm the signature. *Id.*

The current EPM allows a county recorder to compare the signature on the current voter envelope to the signature on the envelope from prior early votes. The signature from the prior early vote envelopes being a part of the “registration record.” Meaning, the 2023 EPM includes in the definition of “registration record” the previous act of early voting.

Legislative Reenactment

When this litigation began, the 2019 EPM remained in effect. The 2019 EPM did not include this method for verifying a signature. However, the parties do not dispute the Secretary told recorders that a prior verified vote was a proper tool for comparison. The 2023 EPM formally adopts this process and includes “prior early ballot affidavits” as part of the registration record. *Ariz. Sec. State. 2023 Elec. Pro. Man. VI.(A)(1)*.

As mentioned above, the Legislature recently amended several elections statutes. These include changes to A.R.S. §16-550 and the addition of A.R.S. §16-550.01. These statutory amendments came after the 2023 EPM was implemented. The amendments rely heavily on the text from the 2023 EPM. In some places the statutes outright adopt language directly from the 2023 EPM. The new statutes also use the phrase “registration record” multiple times.

The Legislature had every opportunity to eliminate “prior early ballot affidavits” as a comparison tool but chose not to do so. Nothing in these amendments suggests the Legislature found the EPM’s working definition of registration record was improper. The Legislature also chose not to provide a definition of registration record in the amended or newly enacted statutes.

The Legislature is presumed “to know how an administrative department interprets the statutes it is responsible to administer.” *State, ex rel., Arizona Dept. Revenue v. Short*, 192 Ariz. 322, 325 ¶14 (App. 1998). In a different context, the Arizona Supreme Court has held courts can infer that the legislature approves of another body’s definition of a statute when there, “is some reason to believe that the legislature has considered and declined to reject that interpretation.” *Lowing v. Allstate Ins. Co.*, 176 Ariz. 101, 106 (1993). More directly, when the, “legislature re-enacts a statute after uniform construction by the officers required to act under it, the presumption is that the legislature knew of such construction and adopted it in re-enacting the statute.” *Jenny v. Arizona Express, Inc.*, 89 Ariz. 343, 346 (1961) (*see also, Mummert v. Thunderbird Lanes, Inc*, 107 Ariz. 244 (1971)).

This is exactly what has happened here. The Arizona Legislature tasked the Secretary of State, the Attorney General and the Governor with constructing the EPM. When they did so in 2023, they included prior ballot envelopes in the working definition of “registration record.” There can be little doubt the Legislature was aware of this definition because they included much of the language from the EPM into this new legislation, including the phrase registration record.

This Court may or may not have been correct about the definition of registration record when it ruled on the previous Motion to Dismiss. However, its prior reasoning is no longer sound based on the Legislature’s adoption of the definition of registration record from the 2023 EPM when reenacting A.R.S. §16-550(A) and enacting of A.R.S. §16-550.01. Regardless of the prior ruling of this Court, it is now presumed from these legislative changes that the Legislature intended to adopt the EPM’s use of prior ballot envelopes to verify signatures.

Off the Rolls

This reading of registration record also complies with Arizona statute in other ways. Intervenor *Mi Familia Vota* points out: a person that requests to vote by early ballot must actually do so or they will be removed from the early voting rolls. *A.R.S. §16-544(H)(4)*. This failure to early vote could ultimately cause a

voter to be dropped from the voting rolls altogether. Meaning, the act of early voting keeps an individual registered to vote in future elections. In Arizona, early voting is simultaneously registering.

Plaintiffs acknowledge the failure to early vote across time can result in a person no longer being able to vote. They argue this path to being off the rolls is so byzantine that it could not have been on the Legislature's mind when they used the phrase "registration record." However, there is no factual record before the Court substantiating this argument. Even though somewhat convoluted, in the system constructed by the Legislature, the act of early voting operates to ensure a voter remains registered.

While not conclusive of legislative intent, this voting/registration paradigm is consistent with the Legislature adopting the 2023 EPM's use of prior ballot envelopes to verify signatures as registration records. Courts are to "harmonize and give effect" to all provisions of a statutory scheme. *Marsh v. Atkins*, 256 Ariz. 233, ¶14 (App. 2023). Including prior ballot envelopes in the definition of registration accomplishes this goal.

Database Argument

The Secretary argues signatures on prior ballot envelopes are registration records because they are kept in a database containing other records related to voters and elections. This database must be kept pursuant to federal statute. The Court is not compelled by this argument. Where or how something is stored does not define the item. Whether or not a record is a "registration record" can only be determined by the content of its character, as defined by the Legislature, and not by the company it keeps.

Conclusion

The Court finds the Legislature intended to adopt the 2023 EPM's use of prior voting envelopes in the definition of registration record when it reenacted A.R.S. §16-550 and adopted A.R.S. §16-550.01. Using this definition also harmonizes other portions of the Arizona elections statutes. Accordingly, the Plaintiffs' *Motion for Summary Judgment* is **denied**. The cross-*Motions for Summary Judgment* are **granted**.

Drop Boxes

Staffed vs. Monitored

When this litigation began, the 2019 EPM was also still in effect. The prior version of the EPM allowed for "unstaffed drop-boxes." The Plaintiffs objected to this portion of the EPM arguing unstaffed drop boxes were not allowed by Arizona statute. The direction of this litigation was also impacted by the enactment of the 2023 EPM and the Legislature amending several voting statutes.

The 2023 EPM creates a process for counties to use drop boxes for the collection of early ballots. *2023 Elections Procedures Manual II(I) pg. 71*. A county recorder may opt to use drop-boxes and the location of the drop-boxes must be approved by the board of supervisors for the county. *Id.* Any county choosing to utilize drop-boxes must comply with the EPM's drop-box requirements. *Id.*

The EPM requires that, "a ballot drop-box shall be located in a secure location such as inside or in front of a federal, state, local or tribal government building." *Id.* At issue here are drop-boxes that are placed outside government buildings. As to these drop-boxes, the EMP states, "A drop-box staffed by elections officials may be placed outdoors and shall be securely fastened in a manner to prevent moving or tampering." *Id.* at II(I)(1)(a).

The section of the EPM matches A.R.S. §16-1005(E) which states, “a person or entity that knowingly solicits the collection of voted or unvoted” that is found “to be serving as a ballot drop off site, other than those established and staffed by certain election officials” is guilty of a class 5 felony. The text of the 2023 EPM does not deviate from Arizona statute.

The issue before the Court is: what is the definition of the word “staffed” as used in the EPM and Arizona statute. The Arizona code states, “in order to be valid and counted, the ballot affidavit must be delivered to the office of the county recorder or other officer in charge of elections or may be deposited at any polling place in the county not later than 7:00 p.m. on election day.” *A.R.S. §16-547(D)*. From this, Plaintiffs argue “staffed” must mean the ballot must be delivered to a drop-box which is monitored by an officer in charge of elections. Plaintiffs appear to be arguing “staffed” and “monitored” are equivalents.

While not defining the term “staffed,” the EPM does not require that staffed drop-boxes always be monitored by an election worker. For instance, the EPM mandates that a fire suppression device be placed inside all ballot drop-boxes, “that are placed outdoors or not within the sight of elections officials.” *2023 Elections Procedures Manual Sec. I(5) pp. 7*. Therefore, the definition of staffed in the EPM clearly does not require a drop-box to be indoors or be monitored at all times.

The Arizona Legislature recently amended A.R.S. §16-547(D). This amendment occurred after the creation of the 2023 EPM. As outlined above, the Legislature is presumed to be aware of the EPM’s use of staffed but unmonitored drop-boxes. *State, ex rel., Arizona Dept. Revenue v. Short*, 192 Ariz. 322, 325 ¶14 (App. 1998). Further, the reenactment of A.R.S. §16-547(D) without providing an alternative definition for deliver or staffed, indicates the Legislature was adopting the use of these types of drop-boxes for the delivery of ballots. *Jenny v. Arizona Express, Inc.*, 89 Ariz. 343, 346 (1961) (*see also, Mummert v. Thunderbird Lanes, Inc.*, 107 Ariz. 244 (1971).) The leaving of item for another to pick up later is also consistent with the dictionary definition of deliver. (*See, Merriam Dictionary* <https://www.merriam-webster.com/Dictionary/Deliver>, searched 4/23/2024 “to take and hand over to or leave for another.”).

The Legislature has delegated to the Secretary the responsibility to “prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting,” including the “collecting of ballots.” *A.R.S. §16-452(A)*. In this instance, the Secretary has included as a method for collecting ballots the use of drop-boxes that are not always monitored by elections officials. After the reenactment of the A.R.S. §16-547(D), the use of these drop-boxes to collect ballots is well within the discretion of the Secretary.

Standing

The 2019 EPM contained a definition of “unstaffed” drop-box and outlined the requirements for their use. Plaintiffs argued these drop-boxes violated the text of Arizona statute. Therefore, the Plaintiffs sought to force the Secretary to perform the non-discretionary act of following Arizona law. A writ of mandamus may be an appropriate tool in these circumstances. *State Board of Technical Registration v. Bauer*, 84 Ariz. 237, 239 (1958).

The 2019 EPM is no longer in effect and the 2023 EPM no longer uses unstaffed drop-boxes. The 2023 EPM requires all drop-boxes to be staffed. The 2023 EPM does not require the staffed drop-boxes to always be monitored. As outlined above, the Legislature was aware of the use of this type of drop-box when it reenacted A.R.S. §16-457(D). At a very minimum, the reenactment of this statute indicates the legislative intent that the

use of these drop-boxes is well within the discretion of the Secretary. While mandamus is a tool to require a government official to, “compel a public officer to perform a discretionary act” it cannot be used to require the official “to exercise that discretion in a particular manner.” *Blankenbaker v. Marks*, 231 Ariz. 575, 577 ¶7 (App. 2013).

The Secretary, the Attorney General and the Governor exercised their discretion in the defining of drop-boxes in the 2023 EPM. The Legislature adopted this definition when it reenacted and amended the statute at issue. Accordingly, Plaintiffs do not have standing to require the Secretary to exercise his discretion in a particular manner. *Blankenbaker*, at ¶ 7.

Conclusion

It is within the Secretary’s discretion to allow counties to choose to use drop-boxes. The Legislature has not required that these drop-boxes always be monitored. The decision to use staffed but unmonitored drop-boxes is within the discretion of the Secretary. Accordingly, the Plaintiffs’ *Motion for Summary Judgment* is **denied**. The cross-*Motions for Summary Judgment* are **granted**.

IT IS THEREFORE ORDERED, in Cause # P1300CV202300202, the Plaintiffs’ *Motion for Summary Judgment* is **denied**.

IT IS FURTHER ORDERED, in Cause # P1300CV202300202, the Defendant and Intervenor’s *Cross-Motion for Summary Judgment* is **granted**.

IT IS FURTHER ORDERED, in Cause # P1300CV202200872, the Plaintiffs’ *Motion for Summary Judgment* is **denied**.

IT IS FURTHER ORDERED, Cause # P1300CV202200872, the Defendants’ *Motion for Summary Judgment and Intervenor’s Motion to Dismiss* are **granted**.

IT IS FURTHER ORDERED, Defendants are to file a form of Judgment with the Court within 10 days of this Order. The Judgment shall contain the appropriate language from Rule 54 of the Arizona Rules of Civil Procedure.

DATED this 25th day of April, 2024.



eSigned by NAPPER, JOHN 04/25/2024 13:23:35 I18T1OaJ

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