

1 **KRISTIN K. MAYES**  
2 **ATTORNEY GENERAL**  
(Firm State Bar No. 14000)

3  
4 Nathan T. Arrowsmith (No. 031165)  
5 Joshua M. Whitaker (No. 032724)  
6 Luci D. Davis (No. 035347)  
7 Shannon Hawley Mataele (No. 029066)  
8 Office of the Arizona Attorney General  
9 2005 N. Central Avenue  
10 Phoenix, AZ 85004-1592  
11 (602) 542-3333  
[Nathan.Arrowsmith@azag.gov](mailto:Nathan.Arrowsmith@azag.gov)  
[Joshua.Whitaker@azag.gov](mailto:Joshua.Whitaker@azag.gov)  
[Luci.Davis@azag.gov](mailto:Luci.Davis@azag.gov)  
[Shannon.Mataele@azag.gov](mailto:Shannon.Mataele@azag.gov)  
[ACL@azag.gov](mailto:ACL@azag.gov)

12 *Attorneys for Arizona Attorney General*  
13 *Kristin K. Mayes*

14 **UNITED STATES DISTRICT COURT**  
15 **DISTRICT OF ARIZONA**

16 American Encore, an Arizona non-profit  
17 corporation; Karen Glennon, an Arizona  
18 individual; America First Policy Institute, a  
19 non-profit corporation,

20 Plaintiffs,

21 v.

22 Adrian Fontes, in his official capacity as  
23 Arizona Secretary of State; Kris Mayes, in  
24 her official capacity as Arizona Attorney  
25 General; Katie Hobbs, in her official  
26 capacity as Governor of Arizona,

27 Defendants.  
28

No. CV-24-01673-PHX-MTL

**DEFENDANTS' ANSWER**

1 For their Answer to Plaintiffs' Complaint (Doc. 1), Defendants Adrian Fontes, in  
2 his official capacity as Arizona Secretary of State, and Kristin K. Mayes, in her official  
3 capacity as Arizona Attorney General, admit, deny, and allege as follows<sup>1</sup>:

4 **INTRODUCTION**

5 1. Paragraph 1 contains argument and legal conclusions to which no response  
6 is required. To the extent a response is required, Defendants deny the allegations.  
7 Defendants affirmatively allege that the EPM contains instructions and guidance in  
8 addition to rules. Defendants further allege that, as Arizona courts have recognized, not  
9 every provision of the EPM is a rule and not every provision of the EPM has the force of  
10 law. Defendants further allege that EPM is addressed to county, city, and town election  
11 officials, not members of the public.

12 2. Deny. The Secretary affirmatively alleges that Chapter 13, section II(B)(2)  
13 of the EPM (the "Canvass Provision") describes the Secretary's non-discretionary duty  
14 to conduct the statewide canvass by a date certain, which arises from statute. *See* A.R.S.  
15 § 16-642(A)(2)(b). The Secretary further alleges that the Legislature has modified  
16 canvassing deadlines since the 2023 EPM took effect. The Secretary further alleges that  
17 under current law, the Secretary has a non-discretionary duty to conduct the statewide  
18 canvass by the third Monday following the general election. A.R.S. § 16-642(A)(2)(b).  
19 The Secretary further alleges that he is prohibited by law from extending the deadline for  
20 the statewide canvass (or any other election-related deadline set by statute). A.R.S. § 16-  
21 407.03. The Secretary further alleges that nothing in the 2023 EPM prevents the  
22 Secretary from pursuing all available legal remedies to ensure that the votes of every  
23 county are certified and included in the statewide canvass, including (1) pursuing a  
24 mandamus action under state law against any county board of supervisors that fails to  
25 perform its non-discretionary duty to canvass election results, or, (2) if necessary, asking  
26 a court to order the Secretary to certify a county's election results and include those

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28 \_\_\_\_\_  
<sup>1</sup> The Court dismissed the Attorney General as a defendant as to Count I. Doc. 62.

1 certified results in the statewide canvass. *See* Ariz. R. Civ. P. 70(a) (where a judgment  
2 requires a party to “perform” a “specific act and the party fails to comply, the court may  
3 order the act to be done ... by another person appointed by the court”). The Secretary  
4 further alleges that in all events, he will pursue any and all available legal remedies to  
5 ensure that the election results of all counties are certified and included in the statewide  
6 canvass.

7 3. Paragraph 3 contains argument and legal conclusions to which no response  
8 is required. To the extent a response is required, Defendants deny the allegations.  
9 Defendants affirmatively allege that Chapter 9, section III(D) of the EPM (hereafter  
10 “section III(D)”) contains a mixture of guidance, instructions, and rules applicable to  
11 elections officials. Defendants further allege that no part of section III(D) regulates  
12 Plaintiffs, voters, or members of the general public.

13 4. Paragraph 4 contains argument and legal conclusions to which no response  
14 is required. To the extent a response is required, Defendants deny the allegations.  
15 Defendants affirmatively allege that no part of section III(D) is a rule that governs  
16 Plaintiffs, voters, or members of the general public.

17 5. Paragraph 5 contains argument and legal conclusions to which no response  
18 is required. To the extent a response is required, Defendants deny the allegations.

### 19 **LEGAL BACKGROUND**

20 6. Defendants admit that the Secretary is required by A.R.S. § 16-452(A) to  
21 prescribe certain rules. Defendants affirmatively allege that Plaintiffs’ description of  
22 A.R.S. § 16-452(A) is incomplete. Defendants also allege that § 16-452(A) is not the  
23 only source of the Secretary’s authority for the EPM. Defendants also allege that the  
24 EPM contains guidance and instructions for election officials, not just rules.

25 7. Defendants admit that the Secretary is required by A.R.S. § 16-452(A) to  
26 prescribe certain rules and that rules promulgated pursuant to that authority are included  
27 in the Election Procedures Manual. Defendants affirmatively allege that in addition to  
28

1 rules promulgated by the Secretary pursuant to A.R.S. § 16-452, the EPM also contains  
2 guidance and instructions for election officials.

3 8. Defendants deny the first sentence of paragraph 8. Defendants admit the  
4 second sentence of paragraph 8, but clarify that A.R.S. § 16-452(C) means something  
5 quite different from the first sentence of paragraph 8. Defendants affirmatively allege  
6 that Arizona courts have recognized that the EPM contains instructions and guidance for  
7 election officials in addition to rules applicable to election officials. *See McKenna v.*  
8 *Soto*, 481 P.3d 695, 699 (2021). Defendants further allege that the criminal penalty  
9 outlined in A.R.S. § 16-452 applies only to rules promulgated pursuant to § 16-452 and  
10 that a person can only violate a rule if it regulates him or her.

11 9. Defendants deny that the EPM restricts any speech. Defendants  
12 affirmatively allege that no part of section III(D) regulates Plaintiffs, voters, or any  
13 member of the public. Defendants otherwise lack knowledge or information sufficient to  
14 form a belief about the truth of the allegations in paragraph 9 and therefore deny them.

15 10. Deny.

### 16 THE PARTIES

17 11. Admit on information and belief that American Encore is a 501(c)(4)  
18 nonprofit organization that is based in Arizona. Defendants are without knowledge or  
19 information sufficient to form a belief as to the remainder of the allegations in paragraph  
20 11 and therefore deny them.

21 12. Defendants are without knowledge or information sufficient to form a belief  
22 as to the remainder of the allegations in paragraph 12 and therefore deny them.

23 13. Defendants are without knowledge or information sufficient to form a belief  
24 as to the remainder of the allegations in paragraph 13 and therefore deny them.

25 14. Defendants are without knowledge or information sufficient to form a belief  
26 as to the remainder of the allegations in paragraph 14 and therefore deny them.

27 15. Defendants are without knowledge or information sufficient to form a belief  
28 as to the remainder of the allegations in paragraph 15 and therefore deny them.

1 Defendants affirmatively allege that no part of section III(D) regulates Plaintiff American  
2 Encore and that any costs incurred by Plaintiff American Encore are voluntary and not  
3 traceable to the 2023 EPM.

4 16. Defendants are without knowledge or information sufficient to form a belief  
5 as to the remainder of the allegations in paragraph 16 and therefore deny them.  
6 Defendants affirmatively allege that no part of section III(D) regulates Plaintiff American  
7 Encore and that any costs incurred by Plaintiff American Encore are voluntary and not  
8 traceable to the 2023 EPM.

9 17. Defendants are without knowledge or information sufficient to form a belief  
10 as to the remainder of the allegations in paragraph 17 and therefore deny them.  
11 Defendants affirmatively allege that no part of section III(D) regulates Plaintiff American  
12 Encore and that any trainings conducted or costs incurred by Plaintiff American Encore  
13 are voluntary and not traceable to the 2023 EPM.

14 18. Defendants are without knowledge or information sufficient to form a belief  
15 as to the remainder of the allegations in paragraph 18 and therefore deny them.

16 19. Admit on information and belief that Plaintiff Karen Glennon is an  
17 individual domiciled in Apache County, Arizona. Defendants are without knowledge or  
18 information sufficient to form a belief as to the truth of the remaining allegations in  
19 paragraph 19 and therefore deny them.

20 20. Deny.

21 21. Deny.

22 22. Deny. Defendants affirmatively allege that no part of section III(D)  
23 regulates Plaintiff Glennon or any member of the public.

24 23. Admit on information and belief that Plaintiff AFPI is a 501(c)(3) non-  
25 profit organization. Defendants are without knowledge or information sufficient to form  
26 a belief as to the truth of the remaining allegations in paragraph 23 and therefore deny  
27 them.

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1           24. Defendants are without knowledge or information sufficient to form a belief  
2 as to the allegations in paragraph 24 and therefore deny them. Defendants affirmatively  
3 allege that AFPI does not and cannot conduct “credentialing.”

4           25. Defendants are without knowledge or information sufficient to form a belief  
5 as to the allegations in paragraph 25 and therefore deny them.

6           26. Deny. Defendants affirmatively allege that no part of section III(D)  
7 regulates Plaintiff AFPI or its members and that any trainings conducted or costs incurred  
8 by Plaintiff AFPI are voluntary and not traceable to the 2023 EPM.

9           27. Defendants are without knowledge or information sufficient to form a belief  
10 as to the allegations in paragraph 27 and therefore deny them.

11           28. Defendants are without knowledge or information sufficient to form a belief  
12 as to the allegations in paragraph 28 and therefore deny them. Defendants affirmatively  
13 allege that section III(D) does not regulate Plaintiff AFPI or its members and that any  
14 changes to AFPI’s operations or communications are voluntary and not traceable to the  
15 2023 EPM.

16           29. Defendants are without knowledge or information sufficient to form a belief  
17 as to the allegations in paragraph 29 and therefore deny them. Defendants affirmatively  
18 allege that section III(D) does not regulate Plaintiff AFPI or its members and that no  
19 member of AFPI faces a “risk of enforcement.”

20           30. Paragraph 30 contains argument and legal conclusions to which no response  
21 is required. To the extent a response is required, Defendants deny the allegations.

22           31. Admit.

23           32. Admit that the Secretary is the chief state election officer and is responsible  
24 for issuing the EPM, but deny that every EPM provision has “the force of law.”  
25 Defendants affirmatively allege that the EPM contains guidance and information for  
26 election officials in addition to rules applicable to election officials.

27           33. Admit, except that the Attorney General’s enforcement authority as stated  
28 in A.R.S. § 16-1021 is more specific than Plaintiffs summarize in paragraph 33.



1                   **THE 2022 COCHISE COUNTY BOARD OF SUPERVISORS' ELECTION**  
2                                           **CERTIFICATION DELAY**

3                   44. Admit that events surrounding the 2022 election impacted some of the  
4 provisions in the 2023 EPM.

5                   45. The Secretary admits that in 2022, the Cochise County Board of  
6 Supervisors for a time refused to canvass Cochise County's election results and that the  
7 Cochise County Board of Supervisors failed to canvass Cochise County's election results  
8 by the statutory deadline (which, at the time, was November 28, 2022), but denies that  
9 the Cochise County Board of Supervisors' failure to canvass by the statutory deadline  
10 did, in fact, ultimately delay the statewide canvass. The Secretary affirmatively alleges  
11 that the Cochise County Board of Supervisors certified Cochise County's election results  
12 on December 1, 2022, after being ordered to do so by a court—two days after Cochise  
13 County's statutory deadline to certify (November 28, 2022). The Secretary further alleges  
14 that following Cochise County's delayed certification, then-Secretary Hobbs conducted  
15 the statewide canvass as scheduled on December 5, 2022—consistent with the Secretary's  
16 statutory deadline to canvass (which, at the time, was December 5, 2022, and could have  
17 been postponed by three days). The Secretary further alleges that the Legislature  
18 modified the deadlines for canvassing election results in early 2024. *See* H.B. 2785, 56th  
19 Leg., 2nd Reg. Sess. (Ariz. 2024). The Secretary further alleges that under current law,  
20 the Secretary has a non-discretionary duty to conduct the statewide canvass by the third  
21 Monday following the general election. A.R.S. § 16-642(A)(2)(b). The Secretary further  
22 alleges that the Secretary is prohibited by law from extending the deadline for the  
23 statewide canvass (or any other election-related deadline set by statute). A.R.S. § 16-  
24 407.03.

25                   46. The Secretary admits that the Cochise County Board of Supervisors  
26 certified Cochise County's election results on December 1, 2022, after being ordered to  
27 do so by a court—two days after Cochise County's statutory deadline to certify (which,  
28 at the time, was November 28, 2022). The Secretary also admits that following Cochise



1 County's certification, then-Secretary Hobbs conducted the statewide canvass as  
2 scheduled on December 5, 2022—consistent with the Secretary's statutory deadline to  
3 canvass (which, at the time, was December 5, 2022, and could have been postponed by  
4 three days). The Secretary further alleges that the court's order in that situation came as  
5 a result of then-Secretary Hobbs filing a mandamus action against the Cochise County  
6 Board of Supervisors on November 28, 2022. The Secretary further alleges that the  
7 Legislature has subsequently modified the deadlines for counties to certify their election  
8 results and for the Secretary to conduct the statewide canvass. *See* H.B. 2785, 56th Leg.,  
9 2nd Reg. Sess. (Ariz. 2024). The Secretary further alleges that under current law, county  
10 boards of supervisors have a non-discretionary duty to canvass general election results no  
11 later than the third Thursday following the general election, A.R.S. § 16-642(A)(1)(b),  
12 and the Secretary has a non-discretionary duty to canvass general election results no later  
13 than the third Monday following the general election, A.R.S. § 16-642(A)(2)(b). The  
14 Secretary further alleges that under current law, the Secretary is prohibited from  
15 modifying or agreeing to modify any election-related deadlines set by statute, including  
16 the aforementioned canvass deadlines. A.R.S. § 16-407.03.

17 47. Defendants admit that a grand jury has indicted two members of the  
18 Cochise County Board of Supervisors.

#### 19 **THE 2023 EPM**

20 48. Admit.

21 49. Admit that the public comment period for the 2023 EPM was 14 days and  
22 admit that many comments were received during that period. Defendants deny any  
23 suggestion that the Secretary improperly shortened the public comment period.

24 50. Admit that Speaker Toma and President Peterson submitted a comment on  
25 the draft 2023 EPM but deny that the Toma/Peterson comment accurately described the  
26 2023 EPM or its effect. Defendants affirmatively allege that Speaker Toma's and  
27 President Peterson's analysis of section III(D) is wrong as a matter of law.

28 51. Admit.

1           52. Admit that the Secretary did not revise section III(D) in response to the  
2 Toma/Peterson comment, but deny that the Toma/Peterson comment accurately described  
3 section III(D) or presented sound legal analysis, and deny that the Secretary was required  
4 to revise section III(D).

5           53. Deny.

6           54. Admit that the Secretary published an updated final EPM on January 11,  
7 2024, and allege that the sole update to the EPM was to the dates in the Election Calendar  
8 that accompanies the EPM. Defendants deny any suggestion that the Secretary was  
9 required to make any change to section III(D) or that Defendants have sought to enforce  
10 the 2023 EPM against any Plaintiff. Defendants affirmatively allege that neither the  
11 Secretary nor the Attorney General has ever sought to enforce the 2023 EPM against any  
12 Plaintiff.

13                           **THREAT OF ENFORCEMENT OF [SECTION III(D)]**

14           55. Deny. Defendants affirmatively allege that section III(D) is largely  
15 unchanged from the 2019 EPM, which was drafted by then-Secretary Katie Hobbs and  
16 approved by Attorney General Mark Brnovich and Governor Doug Ducey. Defendants  
17 affirmatively allege that in the letter exchanges between Plaintiffs and the Secretary and  
18 Attorney General, Defendants have affirmatively disavowed Plaintiffs' interpretation of  
19 section III(D) and any enforcement action by their Offices based on that interpretation.

20           56. Admit that Plaintiff AFPI and others sent a letter to the Secretary and  
21 Attorney General on May 21, 2024, and that a copy of the letter is Exhibit B to the  
22 complaint.

23           57. Deny the first sentence of paragraph 57. Admit the second sentence of  
24 paragraph 57.

25           58. Deny.

26           59. Admit that the Attorney General promptly disavowed the enforcement of  
27 section III(D) that Plaintiffs said they feared. Admit that a copy of the letter is Exhibit D  
28 to the complaint.

1           60. Deny the first, second, and fourth sentences of paragraph 60. Admit the  
2 third sentence of paragraph of 60. Defendants affirmatively allege that, on information  
3 and belief, Plaintiffs neither sent disavowal letters to any county attorney nor named any  
4 county attorney in a lawsuit regarding section III(D). Defendants further allege that no  
5 part of section III(D) regulates any Plaintiff or any member of the public.

6           61. Deny. Defendants affirmatively allege that section III(D) contains  
7 guidance for and rules applicable to election officials. Defendants further allege that no  
8 part of section III(D) regulates any plaintiff or any member of the public.

9           62. Deny. Defendants affirmatively allege that section III(D) contains  
10 guidance for and rules applicable to election officials. Defendants further allege that no  
11 part of section III(D) regulates any Plaintiff or any member of the public. Defendants  
12 further allege that the first sentence of section III(D) merely summarizes a criminal  
13 prohibition contained in statute; it does not create a separate criminal prohibition.

14           63. Deny. Defendants affirmatively allege that the EPM contains guidance and  
15 instructions for election officials in addition to rules applicable to election officials.  
16 Defendants further allege that it is well established that the criminal penalty in A.R.S.  
17 § 16-452 only applies to rules promulgated pursuant to A.R.S. § 16-452. Defendants  
18 further allege that section III(D) does not regulate any Plaintiff or any member of the  
19 general public.

20           64. Deny.

21           65. Deny. Defendants affirmatively allege that the EPM contains guidance and  
22 instructions for election officials in addition to rules applicable to election officials.  
23 Defendants further allege that it is well established that the criminal penalty in A.R.S.  
24 § 16-452 only applies to rules promulgated pursuant to A.R.S. § 16-452. Defendants  
25 further allege that section III(D) does not regulate any Plaintiff or any member of the  
26 general public. Defendants further allege that the first sentence of section III(D) merely  
27 summarizes a criminal prohibition contained in statute; it does not create a separate  
28 criminal prohibition. Defendants further allege that the Secretary is not authorized by

1 statute to enact a “universal prohibition on the conduct of everyone,” so to the extent  
2 section III(D) could reasonably be read as a “universal prohibition on the conduct of  
3 everyone,” it would exceed the Secretary’s statutory authorization.

4 66. Deny.

5 67. Deny and affirmatively allege that the Secretary is not authorized to modify  
6 or expand criminal statutes.

7 68. Deny and affirmatively allege that the Secretary is not authorized to modify  
8 or expand criminal statutes.

9 69. Deny and affirmatively allege that the Secretary is not authorized to modify  
10 or expand criminal statutes.

11 70. Deny and affirmatively allege that the Secretary is not authorized to modify  
12 or expand criminal statutes. Defendants further allege that the Secretary is not authorized  
13 to “make it a crime to raise one’s voice or use offensive or insulting language concerning  
14 any subject to any voter anywhere in the State.”

15 71. Deny. Defendants affirmatively allege that the Attorney General  
16 disavowed “enforcement” of section III(D) using the exact language requested by  
17 Plaintiffs.

18 72. Deny.

19 73. Deny.

20 74. Deny.

21 75. Paragraph 75 contains argument and legal conclusions to which no response  
22 is required. To the extent a response is required, Defendants deny the allegations.

23 76. Admit. Defendants affirmatively allege that the EPM provisions  
24 challenged in this lawsuit, when interpreted correctly, are lawful.

25 77. Deny. Defendants affirmatively allege that the EPM provisions challenged  
26 in this lawsuit, when interpreted correctly, are lawful.

27 78. Deny.

28

**[CANVASS] PROVISION**

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2  
3       79. Admit that EPM Ch. 13, § II(A)(2) states in part: “The Board of Supervisors  
4 has a non-discretionary duty to canvass the returns as provided by the County Recorder  
5 or other officer in charge of elections and has no authority to change vote totals, reject  
6 the election results, or delay certifying the results without express statutory authority or a  
7 court order.” Admit that EPM Ch. 13, § II(B)(2) states in part: “The Secretary of State  
8 may postpone the canvass on a day-to-day basis for up to three days if the results from  
9 any county are missing. A.R.S. § 16-648(C). All counties must transmit their canvasses  
10 to the Secretary of State, and the Secretary of State must conduct the statewide canvass,  
11 no later than 30 days after the election. A.R.S. § 16-648(C). If the official canvass of  
12 any county has not been received by this deadline, the Secretary of State must proceed  
13 with the state canvass without including the votes of the missing county (i.e., the Secretary  
14 of State is not permitted to use an unofficial vote count in lieu of the county’s official  
15 canvass).”

16       80. The Secretary denies the allegations in paragraph 80 to the extent they are  
17 inconsistent with the text of the 2023 EPM. The Secretary affirmatively alleges that the  
18 Canvass Provision describes the Secretary’s non-discretionary duty to conduct a  
19 statewide canvass by a date certain. *See* A.R.S. § 16-642(A)(2)(b). The Secretary further  
20 alleges that the Legislature modified canvassing deadlines after the 2023 EPM took effect.  
21 *See* H.B. 2785, 56th Leg., 2nd Reg. Sess. (Ariz. 2024). The Secretary further alleges that  
22 under current law, the Secretary has a non-discretionary duty to conduct the statewide  
23 canvass by the third Monday following the general election. *See* A.R.S. § 16-  
24 642(A)(2)(b). The Secretary further alleges that the Secretary has no authority to change  
25 the date of the statewide canvass, and is, in fact, prohibited by statute from doing so.  
26 A.R.S. § 16-407.03. The Secretary further alleges that nothing in the 2023 EPM prevents  
27 the Secretary from pursuing all available legal remedies to ensure that the votes of every  
28 county are certified and included in the statewide canvass, including (1) pursuing a

1 mandamus action against any county board of supervisors that fails to perform its non-  
2 discretionary duty to canvass county election results, or (2) asking a court to order the  
3 Secretary to certify a county's election results and include those certified results in the  
4 statewide canvass. *See* Ariz. R. Civ. P. 70(a) (where a judgment requires a party to  
5 "perform" a "specific act and the party fails to comply, the court may order the act to be  
6 done ... by another person appointed by the court"). The Secretary further alleges that in  
7 all events, he will pursue any and all available legal remedies to ensure that the election  
8 results of all counties are certified and included in the statewide canvass.

9 81. Deny. The Secretary affirmatively alleges that nothing in the EPM  
10 mandates the disenfranchisement of any voter. The Secretary further alleges that nothing  
11 in the 2023 EPM prevents the Secretary from pursuing all available legal remedies to  
12 ensure that the votes of every county are certified and included in the statewide canvass,  
13 including (1) pursuing a mandamus action under state law against any county board of  
14 supervisors that fails to perform its non-discretionary duty to canvass election results, or  
15 (2) asking a court to order the Secretary to certify a county's election results and include  
16 those certified results in the statewide canvass. *See* Ariz. R. Civ. P. 70(a) (where a  
17 judgment requires a party to "perform" a "specific act and the party fails to comply, the  
18 court may order the act to be done ... by another person appointed by the court"). The  
19 Secretary further alleges that in all events, he will pursue any and all available legal  
20 remedies to ensure that the election results of all counties are certified and included in the  
21 statewide canvass.

22 82. Deny. The Secretary affirmatively alleges that the hypothetical outlined in  
23 paragraph 82 is speculative and unripe. The Secretary further alleges that the Secretary  
24 does not canvass county offices. The Secretary further alleges that even under the  
25 circumstances described in paragraph 82, nothing in the EPM prevents the Secretary from  
26 pursuing all available legal remedies to ensure that the certified results of every county  
27 are included in the statewide canvass, including (1) pursuing a mandamus action against  
28 any county board of supervisors that fails to perform its non-discretionary duty to certify

1 election results, or, (2) asking a court to order the Secretary to certify a county's election  
2 results and include those certified results in the statewide canvass. *See* Ariz. R. Civ. P.  
3 70(a) (where a judgment requires a party to "perform" a "specific act and the party fails  
4 to comply, the court may order the act to be done ... by another person appointed by the  
5 court"). The Secretary further alleges that in all events, he will pursue any and all  
6 available legal remedies to ensure that the election results of all counties are certified and  
7 included in the statewide canvass.

8 83. Deny. The Secretary affirmatively alleges that the hypothetical outlined in  
9 paragraph 83 is speculative and unripe. The Secretary further alleges that nothing in the  
10 EPM or Arizona law requires the Secretary to disenfranchise any voter. The Secretary  
11 further alleges that even under the circumstances outlined in paragraph 83, nothing in the  
12 EPM prevents the Secretary from pursuing all available legal remedies to ensure the votes  
13 of all counties are certified and included in the statewide canvass, including asking a court  
14 to order the Secretary to certify the election results of any county that has not conducted  
15 its official canvass by the statutory deadline (the third Thursday following the general  
16 election) and include those certified results in the statewide canvass. The Secretary  
17 further alleges that in all events, he will pursue any and all available legal remedies to  
18 ensure the election results for all counties are certified and included in the statewide  
19 canvass.

20 84. Deny. The Secretary affirmatively alleges that the hypothetical outlined in  
21 paragraph 84 is speculative and unripe. The Secretary further alleges that even under the  
22 hypothetical circumstances described in paragraph 84, nothing in the EPM requires the  
23 Secretary to exclude any votes from the statewide canvass. The Secretary further alleges  
24 that in the hypothetical outlined in paragraph 84, nothing in the EPM prevents the  
25 Secretary from pursuing all available legal remedies to ensure that Maricopa County's  
26 votes are certified and included in the statewide canvass, including (1) pursuing a  
27 mandamus action against the county board of supervisors, or (2) if necessary, asking a  
28 court to order the Secretary to certify Maricopa County's election results and include



1 those certified results in the statewide canvass. The Secretary further alleges that in all  
2 events, he will pursue any and all available legal remedies to ensure that the election  
3 results of all counties are certified and included in the statewide canvass.

4 85. Deny. The Secretary affirmatively alleges that the hypothetical outlined in  
5 paragraph 85 is speculative and unripe. The Secretary further alleges that even under the  
6 hypothetical circumstances outlined in paragraph 85, nothing in the EPM prevents the  
7 Secretary from pursuing all available legal remedies to ensure the votes of all counties  
8 are certified and included in the statewide canvass, including (1) pursuing a mandamus  
9 action against any county board of supervisors that fails to perform its non-discretionary  
10 duty to canvass election results, or (2) if necessary, asking a court to order the Secretary  
11 to certify the election results of any county that has not conducted its official canvass by  
12 the statutory deadline (the third Thursday following the general election) and include  
13 those certified results in the statewide canvass. The Secretary further alleges that in all  
14 events, he will pursue any and all available legal remedies to ensure the election results  
15 for all counties are certified and included in the statewide canvass.

16 86. The Secretary admits that in 2022, the Cochise County Board of  
17 Supervisors for a time refused to canvass Cochise County's election results, but denies  
18 the balance of the paragraph. The Secretary affirmatively alleges that the Legislature  
19 subsequently modified the deadlines for canvassing election results. *See* H.B. 2785, 56th  
20 Leg., 2nd Reg. Sess. (Ariz. 2024). The Secretary further alleges nothing in the EPM  
21 prevents the Secretary from pursuing any and all available legal remedies to ensure that  
22 the election results from all counties are certified and included in the statewide canvass.  
23 The Secretary further alleges that he will, in fact, pursue all available remedies to ensure  
24 that the election results from all counties are certified and included in the statewide  
25 canvass, including (1) pursuing a mandamus action against any county board of  
26 supervisors that refuses to perform its non-discretionary duty to certify election results,  
27 or, (2) if necessary, asking a court to order the Secretary to certify the election results of  
28 any county that has not certified its election results by the statutory deadline (the third



1 Thursday following the general election) and include those certified results in the  
2 statewide canvass.

3 87. Admit that a grand jury has indicted two members of the Cochise County  
4 Board of Supervisors. Otherwise, deny.

5 88. Deny.

6 89. The Secretary is without knowledge or information sufficient to form a  
7 belief as to the allegations in paragraph 89 and therefore denies them.

8 90. Paragraph 90 contains argument and legal conclusions to which no response  
9 is required. To the extent a response is required, the Secretary denies the allegations.

10 **HARMS CAUSED BY THE [CANVASS] PROVISION**

11 91. Paragraph 91 contains argument and legal conclusions to which no response  
12 is required. To the extent a response is required, the Secretary denies the allegations.

13 92. Paragraph 92 contains argument and legal conclusions to which no response  
14 is required. To the extent a response is required, the Secretary denies the allegations.

15 93. Paragraph 93 contains argument and legal conclusions to which no response  
16 is required. To the extent a response is required, the Secretary denies the allegations.

17 94. Paragraph 94 contains argument and legal conclusions to which no response  
18 is required. To the extent a response is required, the Secretary denies the allegations.

19 95. Paragraph 95 contains argument and legal conclusions to which no response  
20 is required. To the extent a response is required, the Secretary denies the allegations.

21 96. Paragraph 96 contains argument and legal conclusions to which no response  
22 is required. To the extent a response is required, the Secretary denies the allegations.

23 97. Paragraph 97 contains argument and legal conclusions to which no response  
24 is required. To the extent a response is required, the Secretary denies the allegations.

25 98. Deny.

26 99. Defendants are without knowledge or information sufficient to form a belief  
27 as to the truth of the allegation that certain individuals will cast votes in the November 5,  
28 2024 general election. The remainder of paragraph 99 contains argument and legal

1 conclusions to which no response is required. To the extent a response is required,  
2 Defendants deny the allegations.

3 100. Paragraph 100 contains argument and legal conclusions to which no  
4 response is required. To the extent a response is required, Defendants deny the  
5 allegations.

6 101. Paragraph 101 contains argument and legal conclusions to which no  
7 response is required. To the extent a response is required, Defendants deny the  
8 allegations.

9 102. Paragraph 102 contains argument and legal conclusions to which no  
10 response is required. To the extent a response is required, Defendants deny the  
11 allegations.

12 103. Deny.

13 104. Deny.

14 105. Deny.

15 106. Paragraph 106 contains argument and legal conclusions to which no  
16 response is required. To the extent a response is required, Defendants deny the  
17 allegations.

18 107. Paragraph 107 contains argument and legal conclusions to which no  
19 response is required. To the extent a response is required, Defendants deny the  
20 allegations.

21 **THE 2023 EPM'S VIOLATIONS OF THE UNITED STATES CONSTITUTION**  
22 **The [Canvass] Provision is a Severe and Unconstitutional Burden on Arizonans'**  
**Right to Vote**

23 108. Paragraph 108 contains argument and legal conclusions to which no  
24 response is required.

25 109. Paragraph 109 contains argument and legal conclusions to which no  
26 response is required.

27 110. Paragraph 110 contains argument and legal conclusions to which no  
28 response is required.

1           111. Paragraph 111 contains argument and legal conclusions to which no  
2 response is required.

3           112. Paragraph 112 contains argument and legal conclusions to which no  
4 response is required. To the extent a response is required, the Secretary denies the  
5 allegations.

6           113. Paragraph 113 contains argument and legal conclusions to which no  
7 response is required. To the extent a response is required, the Secretary denies the  
8 allegations.

9           114. Paragraph 114 contains argument and legal conclusions to which no  
10 response is required. To the extent a response is required, the Secretary denies the  
11 allegations.

12           115. Paragraph 115 contains argument and legal conclusions to which no  
13 response is required. To the extent a response is required, the Secretary denies the  
14 allegations.

15           116. Paragraph 116 contains argument and legal conclusions to which no  
16 response is required. To the extent a response is required, the Secretary denies the  
17 allegations.

18           117. Deny. The Secretary affirmatively alleges that nothing in the 2023 EPM  
19 prevents the Secretary from pursuing all available legal remedies to ensure that the votes  
20 of every county are certified and included in the statewide canvass, including (1) pursuing  
21 a mandamus action under state law against any county board of supervisors that fails to  
22 perform its non-discretionary duty to canvass election results, or (2) asking a court to  
23 order the Secretary to certify a county's election results and include those certified results  
24 in the statewide canvass. *See* Ariz. R. Civ. P. 70(a) (where a judgment requires a party  
25 to "perform" a "specific act and the party fails to comply, the court may order the act to  
26 be done ... by another person appointed by the court"). The Secretary further alleges that  
27 in all events, he will pursue any and all available legal remedies to ensure that the election  
28 results of all counties are certified and included in the statewide canvass.

1           118. Deny. The Secretary affirmatively alleges that nothing in the 2023 EPM  
2 prevents the Secretary from pursuing all available legal remedies to ensure that the votes  
3 of every county are certified and included in the statewide canvass, including (1) pursuing  
4 a mandamus action under state law against any county board of supervisors that fails to  
5 perform its non-discretionary duty to canvass election results, or (2) asking a court to  
6 order the Secretary to certify a county's election results and include those certified results  
7 in the statewide canvass. *See* Ariz. R. Civ. P. 70(a) (where a judgment requires a party  
8 to "perform" a "specific act and the party fails to comply, the court may order the act to  
9 be done ... by another person appointed by the court"). The Secretary further alleges that  
10 in all events, he will pursue any and all available legal remedies to ensure that the election  
11 results of all counties are certified and included in the statewide canvass.

12           119. Deny. Defendants affirmatively allege that that it is unlawful for a county  
13 supervisor to refuse to certify election results by the statutory deadline pursuant to A.R.S.  
14 §§ 16-1009 and -1010, which provide that public officers and other persons who  
15 knowingly fail or refuse to perform election-related duties are guilty of either a class 3  
16 misdemeanor or a class 6 felony. The Secretary further alleges that nothing in the 2023  
17 EPM prevents the Secretary from pursuing all available legal remedies to ensure that the  
18 votes of every county are certified and included in the statewide canvass, including (1)  
19 pursuing a mandamus action under state law against any county board of supervisors that  
20 fails to perform its non-discretionary duty to canvass election results, or (2) asking a court  
21 to order the Secretary to certify a county's election results and include those certified  
22 results in the statewide canvass. *See* Ariz. R. Civ. P. 70(a) (where a judgment requires a  
23 party to "perform" a "specific act and the party fails to comply, the court may order the  
24 act to be done ... by another person appointed by the court"). The Secretary further  
25 alleges that in all events, he will pursue any and all available legal remedies to ensure that  
26 the election results of all counties are certified and included in the statewide canvass.

27           120. Admit that EPM Ch. 13, § II(A)(2) states in part: "The Board of Supervisors  
28 has a non-discretionary duty to canvass the returns as provided by the County Recorder

1 or other officer in charge of elections and has no authority to change vote totals, reject  
2 the election results, or delay certifying the results without express statutory authority or a  
3 court order.” Deny that this EPM provision renders the Canvass Provision “unnecessary.”  
4 The Secretary alleges that it is unlawful for a county supervisor to refuse to certify  
5 election results by the statutory deadline pursuant to A.R.S. §§ 16-1009 and -1010, which  
6 provide that public officers and other persons who knowingly fail or refuse to perform  
7 election-related duties are guilty of either a class 3 misdemeanor or a class 6 felony.

8       121. Deny. The Secretary affirmatively alleges that nothing in the 2023 EPM  
9 prevents the Secretary from pursuing all available legal remedies to ensure that the votes  
10 of every county are certified and included in the statewide canvass, including (1) pursuing  
11 a mandamus action under state law against any county board of supervisors that fails to  
12 perform its non-discretionary duty to canvass election results, or (2) asking a court to  
13 order the Secretary to certify a county’s election results and include those certified results  
14 in the statewide canvass. *See* Ariz. R. Civ. P. 70(a) (where a judgment requires a party  
15 to “perform” a “specific act and the party fails to comply, the court may order the act to  
16 be done ... by another person appointed by the court”). The Secretary further alleges that  
17 in all events, he will pursue any and all available legal remedies to ensure that the election  
18 results of all counties are certified and included in the statewide canvass.

19       122. Paragraph 122 contains argument and legal conclusions to which no  
20 response is required. To the extent a response is required, the Secretary denies the  
21 allegations.

22       123. Paragraph 123 contains argument and legal conclusions to which no  
23 response is required. To the extent a response is required, the Secretary denies the  
24 allegations.

25       124. Paragraph 124 contains argument and legal conclusions to which no  
26 response is required. To the extent a response is required, the Secretary denies the  
27 allegations.

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**[Section III(D)] is Unconstitutional**

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2 125. Paragraph 125 contains argument and legal conclusions to which no  
3 response is required.

4 126. Paragraph 126 contains argument and legal conclusions to which no  
5 response is required.

6 127. Paragraph 127 contains argument and legal conclusions to which no  
7 response is required. To the extent a response is required, Defendants deny the  
8 allegations.

9 128. Deny. Defendants affirmatively allege that section III(D) does not purport  
10 to regulate Plaintiffs or any member of the general public, and the quoted part of section  
11 III(D) does not purport to regulate anyone. Defendants further allege that the first  
12 sentence of section III(D) merely summarizes a criminal prohibition contained in statute;  
13 it does not create a separate criminal prohibition.

14 129. Deny. Defendants affirmatively allege that section III(D) does not regulate  
15 Plaintiffs or any member of the general public, nor do the rules and guidance contained  
16 in section III(D) apply to any activities conducted on any day other than election day.

17 130. Deny. Defendants affirmatively allege that section III(D) does not regulate  
18 Plaintiffs or any member of the general public, nor does it regulate any activity  
19 whatsoever that is not at or near a polling place.

20 131. Deny. Defendants affirmatively allege that the portions of section III(D)  
21 quoted in paragraph 131 do not prohibit any activity and are merely examples of activities  
22 that may constitute violations of federal and state voter intimidation statutes, under certain  
23 circumstances. Defendants affirmatively allege that section III(D) does not regulate  
24 Plaintiffs or any member of the public.

25 132. Deny. Defendants affirmatively allege that section III(D) does not regulate  
26 Plaintiffs or any member of the public.

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1           133. Paragraph 133 contains argument and legal conclusions to which no  
2 response is required. To the extent a response is required, Defendants deny the  
3 allegations.

4           134. Paragraph 134 contains argument and legal conclusions to which no  
5 response is required. To the extent a response is required, Defendants deny the  
6 allegations.

7           135. Deny. Defendants affirmatively allege that section III(D) does not prohibit  
8 any speech, nor does it regulate Plaintiffs or any member of the public. Defendants  
9 further allege that the Secretary does not have the authority to modify or amend criminal  
10 statutes.

11           136. Defendants admit that states may not criminalize speech “simply because  
12 some voters might find it ‘offensive’” but deny the balance of the allegations in paragraph  
13 136. Defendants affirmatively allege that section III(D) does not regulate Plaintiffs or  
14 any member of the general public, nor does it criminalize any speech.

15           137. Deny. Defendants affirmatively allege that section III(D) does not regulate  
16 Plaintiffs or any member of the general public or ban anything.

17           138. Paragraph 138 contains argument and legal conclusions to which no  
18 response is required. To the extent a response is required, Defendants deny the  
19 allegations. Defendants affirmatively allege that under a reasoned application of section  
20 III(D), it does not regulate Plaintiffs or members of the general public.

21           139. Deny. Defendants affirmatively allege that section III(D) does not regulate  
22 Plaintiffs or members of the general public.

23           140. Paragraph 140 contains argument and legal conclusions to which no  
24 response is required. To the extent a response is required, Defendants deny the  
25 allegations. Defendants affirmatively allege that section III(D) does not regulate  
26 Plaintiffs or any member of the general public and does not impose criminal liability on  
27 Plaintiffs or any member of the general public.

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1 events, the Secretary will pursue any and all available legal remedies to ensure that  
2 election results from all counties are certified and included in the statewide canvass.

3 148. Deny.

4 **COUNT II – [SECTION III(D)]**  
5 **Violations of the First and Fourteenth Amendments**  
6 **Asserted under 42 U.S.C. § 1983**  
7 **(Declaratory and Injunctive Relief)**

8 149. Defendants incorporate the preceding paragraphs of this Answer as if fully  
9 set forth herein.

10 150. Deny.

11 151. Deny.

12 152. Deny. Defendants affirmatively allege that section III(D) does not regulate  
13 Plaintiffs or any member of the general public. Defendants further allege they have  
14 affirmatively disavowed any enforcement action based on Plaintiffs' incorrect  
15 interpretation of section III(D).

16 153. Defendants are without knowledge or information sufficient to form a belief  
17 as to the truth of the allegations in paragraph 153 and therefore deny them.

18 154. Deny. Defendants affirmatively allege that section III(D) does not regulate  
19 Plaintiffs or any member of the general public.

20 155. Deny.

21 156. Paragraph 156 contains argument and legal conclusions to which no  
22 response is required. To the extent a response is required, Defendants deny the  
23 allegations.

24 Defendants deny each and every allegation not expressly admitted herein.

25 **DEFENSES**

26 Defendants assert that Plaintiffs' claims are barred by laches. Defendants further  
27 assert that the Court lacks subject-matter jurisdiction because Plaintiffs have not pleaded  
28 a case or controversy, and that Plaintiffs have failed to state a claim upon which relief  
may be granted. Defendants reserve the right to assert additional defenses.

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**PRAYER FOR RELIEF**

Wherefore, having answered Plaintiffs’ Complaint, Defendants respectfully request that the Court deny Plaintiffs’ requests for declaratory and injunctive relief, order that Plaintiffs take nothing, award Defendants their costs and such other and further relief as the Court deems just and appropriate, and enter judgment in favor of Defendants and against Plaintiffs on all claims.

RESPECTFULLY SUBMITTED this 11th day of October, 2024.

**KRISTIN K. MAYES**  
**ATTORNEY GENERAL**

By /s/ Nathan T. Arrowsmith  
Nathan T. Arrowsmith  
Joshua M. Whitaker  
Luci D. Davis  
Shannon Hawley Mataele  
Office of the Arizona Attorney General  
2005 N. Central Ave.  
Phoenix, Arizona 85004

*Attorneys for Arizona Attorney General  
Kristin K. Mayes*

By /s/ Karen J. Hartman-Tellez (with permission)  
Kara Karlson  
Karen J. Hartman-Tellez  
Kyle Cummings  
Office of the Arizona Attorney General  
2005 N. Central Ave.  
Phoenix, Arizona 85004

*Attorneys for Arizona Secretary of State  
Adrian Fontes*