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10 *Attorneys for Plaintiff Arizona*
11 *Secretary of State Adrian Fontes*

12 **SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF PINAL**

14
15 ADRIAN FONTES, in his official
capacity as Arizona Secretary of State,

16 Plaintiff,

17 v.

18 KEVIN CAVANAUGH, in his official
capacity as Pinal County Supervisor;
19 MIKE GOODMAN, in his official
capacity as Pinal County Supervisor;
20 STEPHEN MILLER, in his official
capacity as Pinal County Supervisor;
21 JEFFREY MCCLURE, in his official
capacity as Pinal County Supervisor;
22 JEFF SERDY, in his official capacity as
Pinal County Supervisor; DANA LEWIS,
23 in her official capacity as Pinal County
Recorder,

24 Defendants.
25
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27
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No:

**EMERGENCY VERIFIED
COMPLAINT FOR SPECIAL
ACTION RELIEF**

(Election Case)

(Expedited Relief Requested)

1 Arizona Secretary of State Adrian Fontes bring this Complaint and Special Action
2 against Kevin Cavanaugh, Mike Goodman, Stephen Q. Miller, Jeffrey McClure, and Jeff
3 Serdy, in their official capacities as the Pinal County Board of Supervisors, and Dana
4 Lewis, in her official capacity as the Pinal County Recorder (collectively, “Defendants”)
5 pursuant to Ariz. R. P. Special Action 3(a), (b). This Court should accept Emergency
6 Special Action jurisdiction, issue the order to show cause, and provide the necessary
7 relief to ensure that the Defendants follow the law.

8 **PARTIES**

9 1. The Petitioner is Arizona Secretary of State Adrian Fontes, in his official
10 capacity. The Secretary is charged by law with the authority to promulgate the 2023
11 Elections Procedures Manual (“EPM”) to “achieve and maintain the maximum degree of
12 correctness, impartiality, uniformity and efficiency on the procedures for early voting and
13 voting, and of producing, distributing, collecting, counting, tabulating and storing
14 ballots.” A.R.S. § 16-452.

15 2. The Defendants are the members of the Pinal County Board of Supervisors,
16 in their official capacities, and the Pinal County Recorder, in her official capacity, as the
17 elected officials who are charged by law with complying with the EPM and preparing
18 election equipment for use at voting locations.

19 **PROCEDURAL POSTURE**

20 3. Special action jurisdiction is appropriate because the County Defendants
21 are “threatening to proceed without or in excess of jurisdiction or legal authority,” by
22 their refusal to follow all the requirements in the EPM. Ariz. R. P. Special Action 3(b).

23 4. Alternatively, special action jurisdiction is appropriate because the County
24 Defendants are failing “to perform a duty required by law as to which [it] has not
25 discretion,” by their refusal to follow the requirements in the EPM. *Id.* at (a).

26 5. Emergency relief is necessary because the Secretary is mandated to perform
27 logic and accuracy testing (“L&A”) prior to the start of early voting in all fifteen counties
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1 throughout Arizona. A.R.S. § 16-449(A). This L&A testing of ballot tabulation
2 equipment and accessible voting devices must occur “within seven days before their use”
3 in early voting. *Id.* at (B). Early voting begins in Arizona on October 9. A.R.S. § 16-
4 542(C).

5 6. Venue is appropriate in Pinal County pursuant to A.R.S. § 12-401(15)-(16).

6 **FACTUAL ALLEGATIONS**

7 7. The instant dispute stems from the County Defendants’ refusal to comply
8 with Arizona law, the EPM,¹ and the decision in *RNC v. Fontes* (“*RNC*”), CV2024-
9 050553 (Maricopa Cty. Super. Ct. May 10, 2024).

10 8. The Arizona Legislature has authorized the Secretary to promulgate rules to
11 “achieve and maintain the maximum degree of . . . uniformity . . . on the procedures for
12 early voting and voting.” A.R.S. § 16-452(A).

13 9. The EPM was promulgated in accordance with the rules set forth in its
14 authorizing statute, and therefore, the EPM has the force of law. A.R.S. § 16-452.

15 10. The EPM was promulgated in 2023 to govern elections in 2024, across the
16 entire state.

17 11. One of those rules requires counties to provide voters the ability to cast the
18 correct ballot if they find themselves in the incorrect precinct, using the accessible
19 devices, and will be referred to herein as the “OOP Provision.” Exh. 1, EPM at 190.

20 12. The ballot can be cast as a provisional ballot, which requires additional
21 processing, or can be cast as a regular ballot. *Id.*; *see also* Exh. 3, Marra Decl. at ¶ 10.

22 13. All of the accessible voting devices in use in Arizona can be programmed
23 to hold the ballot styles for a single precinct or to hold the ballot styles for every precinct
24 within that county. All accessible voting devices used during early voting in every
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26 ¹ The EPM is available in its entirety from the Arizona’s Secretary of State website, and is
27 thus subject to judicial notice pursuant to Ariz. R. Evid. 201. The full EPM is available
28 at the following link: <https://tinyurl.com/yhhxvh4z>. Exhibit 1 is provided for the Court’s
convenience.

1 county, including Pinal, are programmed with all of that county's ballot styles. Exh. 3 at
2 ¶ 13.

3 14. Once programmed with the ballot styles of every precinct within a county,
4 an accessible voting device can provide the correct ballot style, with the correct
5 candidates and races, for any voter registered in that county, regardless of their precinct.
6 Pinal County is a precinct-based county, and its representatives have told the Secretary
7 that they will not program their accessible voting equipment with all of the precincts
8 within Pinal County. *Id.* at ¶¶ 13, 33.

9 15. The Defendants' unwillingness to comply with the EPM constitutes a class
10 2 misdemeanor, and violates Arizona law. A.R.S. § 16-452(C).

11 16. Additionally, the EPM provision at issue here was recently challenged by
12 the Republican National Committee, the Republican Party of Arizona, LLC, and the
13 Yavapai County Republican Party. Their claim that this provision of the EPM violated
14 state law was rejected by the Maricopa County Superior Court. Exh. 2, *RNC*, Order at 6.

15 17. Plaintiffs appealed the *RNC* case, but did not seek or receive temporary
16 relief from the Superior Court's judgment, nor did the Court of Appeals expedite the
17 case. *Republican Nat'l Comm. v. Fontes*, 2 CA-CV 2024-0241 (Ariz. Ct. App. Div. 2).²

18 18. Therefore, the Maricopa County Superior Court's judgment, which upheld
19 the EPM provision, is still in full force and effect.

20 19. Finally, if the Defendants do not comply with Arizona law, they will be the
21 only county that does not allow voters to cast the proper ballot on accessible devices at a
22 polling place on election day. Exh. 3 at ¶¶ 24-26.

23 20. This will cause significant equal protection issues, as all other Arizona
24 counties—including Apache County, which is the only other precinct-based county in
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26
27 ² The docket information for this case is publicly available and admissible pursuant to
28 Ariz. R. Evid. 201. The docket, reflecting a non-expedited schedule, is available at
<https://tinyurl.com/es9y2b7m>.

1 Arizona—are following Arizona law and allowing voters who arrive at the wrong
2 precinct to cast their correct ballot on an accessible voting device. *Id.*

3 21. Pinal County will be the only county in the state that does not allow voters
4 to use the accessible voting devices to vote their correct ballot. *Id.*

5 22. Moreover, the Defendants have had plenty of time to comply with this rule.
6 The EPM was published in its final form on December 31, 2023, after being approved by
7 the Arizona Attorney General and Governor, pursuant to A.R.S. § 16-452. Exh. 3 at ¶ 1.

8 23. The Secretary’s scheduled L&A testing in Pinal County is scheduled to
9 take place on October 3, 2024 at 11:10 a.m. *Id.* at ¶ 37.

10 24. To avoid having to conduct a second L&A, and any delay in early voting,
11 any order must be issued by this Court on or before October 4, 2024. *Id.* at ¶ 39.

12 25. This lawsuit was filed as a last resort to ensure all Arizona voters are
13 afforded an equal opportunity to have their votes counted.

14 **COUNT I**
(Special Action in Mandamus)

15 26. The Secretary incorporates all preceding allegations in full as though fully
16 set forth herein.

17 27. Courts may issue a writ of mandamus to any “person . . . on the verified
18 complaint of the party beneficially interested, to compel, when there is not a plain,
19 adequate and speedy remedy at law, performance of an act which the law specially
20 imposes as a duty resulting from an office . . .” A.R.S. § 12-2021.

21 28. In special actions, courts “may direct, order, or prohibit specified action by
22 the defendant” as judgment. Ariz. R. P. Special Actions 6.

23 29. The Defendants have only those powers conferred upon them by law. Ariz.
24 Const. art. 12, § 4.

25 30. The EPM has the force and effect of law. A.R.S. § 16-452.

26 31. Refusal to follow the EPM is a clear and plain violation of Arizona law.
27 A.R.S. § 16-452(C); *see also* Ariz. Public Integrity All. v. Fontes (“AzPIA”), 250 Ariz.
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1 58, 63, ¶ 16 (2020) (“One adopted, the EPM has the force of law; any violation of an
2 EPM rule is punishable as a class two misdemeanor.”).

3 32. The Secretary has been informed that the Defendants do intend to break
4 Arizona law by refusing to allow voters to use accessible voting devices, which are
5 available at every precinct, to cast the correct ballot for that voter, even if they present
6 themselves at a precinct polling place that is not in the voter’s assigned precinct.

7 33. The Secretary attempted one last time before the L&A to resolve this matter
8 without resorting to litigation. Exh. 4, Policy Director letter (Sept. 19, 2024).
9 Unfortunately, this overture was ultimately rebuffed by the Defendants.

10 34. The Defendants have confirmed that this is the position the Defendants will
11 take, in a letter from the Defendants’ attorney and the Pinal County Recorder. Exh. 5,
12 Pinal County Attorney letter (Sept. 27, 2024).

13 35. The Defendants are not excused from compliance with Arizona law.

14 36. The Secretary asks this Court to order the Defendants to comply with
15 Arizona law, and provide any other relief it deems just and proper.

16 **COUNT II**
17 **(Declaratory Judgment)**

18 37. The Secretary incorporates all preceding allegations in full as though fully
19 set forth herein.

20 38. The Defendants have no discretion to refuse to follow the law, which
21 includes the EPM. A.R.S. § 16-452.

22 39. An actual and justiciable controversy exists between the Parties. The
23 Secretary was charged by A.R.S. § 16-452 with promulgating the EPM, which carries
24 with it the force of law.

25 40. The Defendants refuse to comply with the OOP Provision of the EPM.

26 41. As a result, there is a justiciable controversy here, and the Secretary
27 respectfully requests an order declaring that the Defendants to comply with the OOP
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1 Provision of the EPM as more fully laid out in the Demand for Relief. *See* A.R.S. § 12-
2 1831.

3 **COUNT III**
4 **(Injunctive Relief)**

5 42. The Secretary incorporates all preceding allegations in full as though fully
6 set forth herein.

7 43. The Defendants have decided to violate Arizona law, unless an order issues
8 from this Court ordering Defendants to allow the use of accessible devices to vote in
9 whichever polling precinct at which the voter arrives, using the same process every other
10 county in Arizona—including precinct-based counties—are using in the 2024 General
11 Election.

12 44. Absent the entry of an injunction compelling the County Defendants and
13 their agents to appropriately program their accessible voting machines and process the
14 ballots of all Pinal County voters, these actions will harm Pinal County voters and the
15 state as a whole. *AzPIA*, 250 Ariz. at 61, ¶ 4 (“[W]hen public officials, in the middle of
16 an election, change the law based on their own perceptions of what they think it *should*
17 be, they undermine public confidence in our democratic system and destroy the integrity
18 of the electoral process.”).

19 45. Any Pinal County voters who arrive at the incorrect polling place, but who
20 are prohibited from casting their correct ballot, will be disenfranchised, which is
21 indisputably and irreparable harm. Disenfranchisement is the “infringement of a basic,
22 fundamental right.” *McDonald v. Bd. of Election Com’rs of Chicago*, 394 U.S. 802, 807
23 (1969).

24 46. Moreover, the Secretary will additionally face irreparable harm as Pinal
25 County’s flouting of the law undermines the Secretary’s authority to promulgate binding
26 rules pursuant to A.R.S. § 16-452, and creates grave equal protection issues. *See Bush v.*
27 *Gore*, 531 U.S. 98, 104-05 (2000) (“Having once granted the right to vote on equal terms,
28

1 the State may not, by later arbitrary and disparate treatment, value one person's vote over
2 that of another.”).

3 47. The fact that the law is clear here—and the Defendants are simply refusing
4 to follow it—tips the balance of hardships and public interest sharply in favor of the
5 Secretary in this case. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 64 (2020)
6 (explaining that plaintiffs satisfied the injunctive relief standard in a mandamus action to
7 compel a county official to perform his legal duty).

8 **DEMAND FOR RELIEF**

9 WHEREFORE, Petitioner Arizona Secretary of State Adrian Fontes, in his official
10 capacity, respectfully requests that this Court enter an order in Petitioner's favor and
11 against the Defendants on an expedited basis as follows:

- 12 A. Order the Defendants to comply with the EPM, including the EPM provisions
13 regarding voters who arrive at the incorrect precinct;
- 14 B. Require the Defendants to equip all the accessible voting devices in Pinal
15 County with ballot styles from the entire county, not limited to the ballot styles
16 in any particular precinct;
- 17 C. Order the Defendants to allow any voter or voters who arrive at an incorrect
18 precinct, but who are otherwise eligible to vote in Pinal County, to cast their
19 correct ballot on an accessible machine;
- 20 D. Order the Defendants that if any Pinal County voter who arrives at an incorrect
21 precinct but refuses to use the accessible voting device, which has their correct
22 ballot style, to cast their ballot at the wrong precinct, to inform the voter that
23 their vote will not be counted;
- 24 E. Require the Defendants to notify any Pinal County voter who arrives to vote at
25 the incorrect precinct but refuses to use the accessible voting device of the
26 address of their assigned precinct polling place;

- 1 F. Direct the Defendants to notify any voter who is not a Pinal County voter, but
2 who attempts to cast a vote at any Pinal County precinct polling place that their
3 vote will not be counted if it is not cast in their county of residence;
4 G. Award reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-348.01,
5 12-2030, and any other applicable law; and
6 H. Order whatever other relief this Court deems just and proper.
7
8

9 Respectfully submitted this 27th day of September, 2024:

10 Kristin K. Mayes
11 Attorney General

12 /s/ Kara Karlson

Kara Karlson

13 Karen J. Hartman-Tellez
14 Senior Litigation Counsel

Kyle Cummings

Assistant Attorney General

15 *Attorney for Defendant Arizona Secretary of*
16 *State Adrian Fontes*
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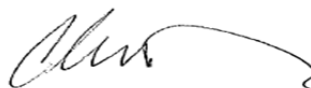
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VERIFICATION

I, Colleen Connor, make the following verification under penalty of perjury:

I have read the foregoing complaint and verify that the facts stated in it are true to the best of my knowledge and belief, except as to those matters alleged on information and belief, and as to them, I believe them to be true.

Executed on September 27, 2024.



Colleen Connor
Policy Director for Arizona
Secretary of State Adrian Fontes

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2 **ORIGINAL** of the foregoing filed
3 this 27th day of September, 2024, with:

4 Pinal County Superior Court Clerk
5 Pinal County Superior Court
6 971 N Jason Lopez Circle
7 Florence, AZ 85132

8 **COPIES** e-mailed this 27th day of
9 September, 2024, to:

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