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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Kathleen Winn, *et al.*,

Plaintiffs,

v.

Adrian Fontes, *et al.*

Defendants.

No. CV-26-03108-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:

4 1. Paragraph 1 contains argument and legal conclusions to which no response
5 is required. To the extent a response is required, Defendants admit that this action
6 challenges provisions of the 2025 EPM and that the quoted text appears in the preface of
7 the EPM. Defendants otherwise deny the allegations. Defendants affirmatively allege
8 that the EPM contains instructions and guidance in addition to rules. *See McKenna v.*
9 *Soto*, 481 P.3d 695, 699, ¶ 20 (2021). Defendants further allege that not every provision
10 of the EPM is a rule and has the force of law. *See id.* Defendants further allege that the
11 EPM is directed to "state, county, and local election officials" and that, unless the EPM
12 expressly states otherwise, it "does not create rules that govern the conduct of members
13 of the public not engaged in the work of conducting elections." 2025 EPM preface.

14 2. Deny.

15 3. Paragraph 3 contains legal conclusions to which no response is required.
16 To the extent a response is required, Defendants admit that "no electioneering may occur
17 within the seventy-five foot limit" under A.R.S. § 16-515(A), and Defendants admit that
18 Plaintiffs accurately quote the definition of "electioneering" in A.R.S. § 16-515(I).

19 4. Deny.

20 5. Defendants admit the quoted text appears in Chapter 9, Section III.D of the
21 2025 EPM.

22 6. Defendants admit the quoted text appears in Chapter 9, Section III.D of the
23 2025 EPM. Defendants affirmatively allege that the portions of Section III.D quoted in
24 paragraph 6 do not prohibit any activity and are merely examples of activities that,
25 depending on context, may constitute violations of federal and state voter intimidation
26 statutes. Defendants affirmatively allege that Section III.D does not regulate Plaintiffs or
27 any member of the public.

28 7. Paragraph 7 contains argument and legal conclusions to which no response

1 is required. To the extent a response is required, Defendants admit that the quoted text
2 appears in Chapter 9, Section III.D of the 2025 EPM, but otherwise deny the allegations.

3 8. Deny.

4 9. Admit.

5 10. Defendants admit that the quoted text appears in A.R.S. § 16-452(C).
6 Defendants affirmatively allege that the EPM contains instructions and guidance for
7 election officials in addition to rules applicable to election officials. *See McKenna*, 481
8 P.3d at 699, ¶ 20; 2025 EPM preface. Defendants further allege that the criminal penalty
9 outlined in A.R.S. § 16-452 applies only to rules promulgated pursuant to A.R.S. § 16-
10 452, and that an individual can only violate a rule if the rule regulates him or her.

11 11. Paragraph 11 contains argument and legal conclusions to which no response
12 is required. To the extent a response is required, Defendants admit that the quoted text
13 appears in the cited U.S. Supreme Court case and Arizona statute, but otherwise deny the
14 allegations.

15 12. Paragraph 12 contains argument and legal conclusions to which no response
16 is required. To the extent a response is required, Defendants admit that the Arizona
17 Supreme Court held that the EPM need not follow the notice-and-comment rulemaking
18 provisions of Arizona's Administrative Procedure Act, but otherwise deny the
19 allegations. Defendants affirmatively allege that the Arizona Supreme Court issued its
20 opinion in *Republican Nat'l Comm. v. Fontes*, No. CV-25-0089-PR, 2026 WL 2069131
21 (Ariz.), on July 17, 2026.

22 13. Deny.

23 14. Admit on information and belief.

24 15. Defendants lack knowledge or information sufficient to form a belief about
25 the truth of the allegations in paragraph 15.

26 16. Defendants lack knowledge or information sufficient to form a belief about
27 the truth of the allegation in paragraph 16.

28 17. Defendants admit that the Pima County Republican Party is a political

1 organization based in Tucson, Arizona. Defendants lack knowledge or information
2 sufficient to form a belief about the truth of the remainder of the allegations in paragraph
3 17.

4 18. Defendants lack knowledge or information sufficient to form a belief about
5 the truth of the allegations in paragraph 18.

6 19. Defendants lack knowledge or information sufficient to form a belief about
7 the truth of the allegations in paragraph 19.

8 20. Defendants lack knowledge or information sufficient to form a belief about
9 the truth of the allegations in paragraph 20.

10 21. Deny.

11 22. Deny. Defendants affirmatively allege that the EPM is addressed to election
12 officials. Defendants further allege that the EPM contains instructions and guidance in
13 addition to rules, and not every provision of the EPM is a rule that has the force of law.
14 *See McKenna*, 481 P.3d at 699, ¶ 20; 2025 EPM preface.

15 23. Deny.

16 24. Deny.

17 25. Defendants lack knowledge or information sufficient to form a belief about
18 the truth of the allegations in paragraph 25.

19 26. Deny.

20 27. Admit, except to the extent that paragraph 27 contains a typographical error
21 (“party” instead of “part”).

22 28. Defendants admit the first sentence but deny the second sentence of
23 paragraph 28. Defendants affirmatively allege that the EPM is addressed to election
24 officials, not members of the public. Defendants further allege that the EPM contains
25 instructions and guidance in addition to rules, and not every provision of the EPM is a
26 rule that has the force of law. *See McKenna*, 481 P.3d at 699, ¶ 20; 2025 EPM preface.

27 29. Admit.

28 30. Admit.

1 31. Defendants admit that this suit seeks injunctive relief and not money
2 damages, and therefore may be subject to the Eleventh Amendment immunity exception
3 first recognized in *Ex Parte Young*. Defendants affirmatively allege that the EPM does
4 not violate federal law.

5 32. Admit. Defendants affirmatively allege that the Attorney General's
6 enforcement authority as stated in A.R.S. § 16-1021 provides for both civil and criminal
7 enforcement, applies only to federal and statewide elections, and is shared with county
8 attorneys.

9 33. Admit.

10 34. Defendants admit that this action presents federal questions for purposes of
11 28 U.S.C. § 1331, but deny that this action presents a case or controversy as required for
12 the Court's exercise of Article III jurisdiction.

13 35. Defendants admit that Plaintiffs purport to assert claims arising under 28
14 U.S.C. § 1343(a)(3), but deny that this action presents a case or controversy as required
15 for this Court's Article III jurisdiction.

16 36. Admit.

17 37. Admit.

18 38. Admit.

19 39. Admit.

20 40. Defendants admit that the Arizona House Speaker and Arizona Senate
21 President submitted a comment asserting that a prior version of the EPM infringed on
22 First Amendment rights. Defendants deny the accuracy of this characterization by the
23 House Speaker and Senate President.

24 41. Defendants Admit that Arizona Representative Alexander Kolodin
25 submitted a comment opposing what he deemed political speech restrictions in the draft
26 2025 EPM. Defendants deny the accuracy of this characterization by Representative
27 Kolodin.

28 42. Admit. Defendants affirmatively allege that Mr. Mussi is the President of

1 the Arizona Free Enterprise Club, which challenged Chapter 9, Section III of the 2023
2 EPM, but later voluntarily dismissed that action based on the changes to that section that
3 appear in the 2025 EPM.

4 43. Defendants admit that several organizations, including the ACLU of
5 Arizona, All Voting is Local, and Progress Arizona, submitted recommended revisions
6 for Chapter 9, Section III of the EPM. Defendants deny that the EPM imposes an
7 “Electioneering Ban.”

8 44. Defendants admit that the version of the EPM that the Secretary submitted
9 to the Governor and Attorney General on October 1, 2025 did not incorporate any changes
10 to Chapter 9, Section III based on public comments. Defendants affirmatively allege that
11 the 2025 EPM includes changes to Chapter 9, Section III in the 2023 EPM.

12 45. Deny.

13 46. Admit.

14 47. Admit.

15 48. Paragraph 48 contains legal conclusions to which no response is required.
16 To the extent a response is required, Defendants admit that the quoted text appears in the
17 cited Ninth Circuit case. However, Defendants affirmatively allege that the EPM contains
18 instructions and guidance in addition to rules and that not every provision of the EPM is
19 a rule and has the force of law. *See McKenna v. Soto*, 481 P.3d at 699, ¶ 20; 2025 EPM
20 preface. Defendants further allege that the EPM is addressed to election officials, not
21 members of the public, that the criminal penalty outlined in A.R.S. § 16-452 applies only
22 to rules promulgated pursuant to A.R.S. § 16-452, and that an individual can only violate
23 a rule if the rule regulates him or her.

24 49. Deny.

25 50. Admit.

26 51. Defendants admit that the quoted text appears in the cited letter, but
27 affirmatively allege that the cited letter includes additional text in its conclusion.

28 52. Deny. Defendants affirmatively allege that the EPM is addressed to

1 election officials, not members of the public. *See* 2025 EPM preface. Defendants further
2 allege that the criminal penalty outlined in A.R.S. § 16-452 applies only to rules
3 promulgated pursuant to A.R.S. § 16-452, and that an individual can only violate a rule if
4 the rule regulates him or her. Defendants further allege that a statute, not the EPM,
5 proscribes electioneering within the 75-foot limit.

6 53. Deny.

7 54. Defendants deny that the 2025 EPM is the source of election officials'
8 authority to contact law enforcement and/or remove voters or political party observers
9 from voting locations. Defendants affirmatively allege that Arizona and federal statutes
10 are the source of such authority. Defendants admit that the 2025 EPM provides guidance
11 concerning when and how election officials should take steps to prevent illegal
12 electioneering, voter intimidation and interference. Defendants otherwise deny the
13 allegations in paragraph 54.

14 55. Deny.

15 56. Deny.

16 57. Deny. Defendants affirmatively allege that, following this Court's Order
17 partially granting and partially denying a preliminary injunction on July 9, 2026 (Doc.
18 54), Secretary Fontes notified County Election Directors and Recorders of the Order.

19 58. Paragraph 58 contains argument and legal conclusions to which no response
20 is required. To the extent a response is required, Defendants admit that the quoted text
21 appears in the cited Supreme Court case.

22 59. Deny.

23 60. Admit.

24 61. Deny. Defendants affirmatively allege that the Fifth Amendment does not
25 contain the word "depraved."

26 62. Paragraph 62 contains argument and legal conclusions to which no response
27 is required. To the extent a response is required, Defendants admit that the quoted text
28 appears in the cited concurrence by a Supreme Court justice.

1 63. Paragraph 63 contains argument and legal conclusions to which no response
2 is required. To the extent a response is required, Defendants admit that the quoted text
3 appears in the cited Supreme Court case.

4 64. Deny.

5 65. Defendants admit that the quoted text appears in the 2025 EPM, but
6 Defendants affirmatively allege that the quoted text refers specifically to the inspector
7 and marshal, not all election officials. Defendants further affirmatively allege that the
8 source of the inspectors' and marshals' authority is Arizona statutes, not the EPM.

9 66. Defendants admit that the 2025 EPM provides examples of actions that,
10 depending on context, may be considered "intimidating conduct" within the meaning of
11 federal or state law, and such examples include those quoted in paragraph 66. Defendants
12 affirmatively allege that this section does not regulate Plaintiffs or members of the public.

13 67. Deny.

14 68. Deny.

15 69. Deny.

16 70. Defendants deny the first sentence of paragraph 70. Defendants admit that
17 the quoted text in the second sentence appears in the 2025 EPM, but affirmatively allege
18 that the quoted text refers specifically to the inspector and marshal, not all election
19 officials.

20 71. Deny.

21 72. Deny.

22 73. Deny.

23 74. Deny.

24 75. Defendants admit that the quoted text appears in the 2025 EPM, but deny
25 that the EPM imposes an "Electioneering Ban."

26 76. Deny.

27 77. Deny.

28 78. Deny.

1 79. Deny.

2 80. Deny.

3 81. Paragraph 81 contains argument and legal conclusion to which no response
4 is required. To the extent that a response is required, Defendants admit that the Equal
5 Protection Clause of the Fourteenth Amendment requires states to apply equal treatment
6 under the law. Defendants further affirmatively allege that *Bush v. Gore* does not stand
7 for a principle of general applicability.

8 82. Paragraph 82 contains argument and legal conclusion to which no response
9 is required. To the extent that a response is required, Defendants deny the allegations and
10 affirmatively allege that *Bush v. Gore* does not stand for a principle of general
11 applicability.

12 83. Deny.

13 84. Deny.

14 85. Deny.

15 86. Paragraph 86 contains argument and legal conclusions to which no response
16 is required. To the extent a response is required, Defendants admit that the allegations
17 accurately summarize some of *Anderson*.

18 87. Paragraph 87 contains argument and legal conclusions to which no response
19 is required. To the extent a response is required, Defendants admit that the allegations
20 accurately summarize some of *Burdick*.

21 88. Deny.

22 89. Deny.

23 90. Deny.

24 91. Defendants incorporate the preceding paragraphs of this Answer as if fully
25 set forth herein.

26 92. Deny.

27 93. Deny.

28 94. Deny.

1 95. Defendants lack knowledge or information sufficient to form a belief about
2 the truth of the allegations in paragraph 95.

3 96. Deny.

4 97. Deny.

5 98. Deny.

6 99. Defendants incorporate the preceding paragraphs of this Answer as if fully
7 set forth herein.

8 100. Deny.

9 101. Deny.

10 102. Deny.

11 103. Defendants lack knowledge or information sufficient to form a belief about
12 the truth of the allegations in paragraph 103.

13 104. Deny.

14 105. Deny.

15 106. Deny.

16 107. Defendants deny each and every allegation not expressly admitted herein.

17 **AFFIRMATIVE DEFENSES**

18 108. This Court lacks subject matter jurisdiction to issue the relief Plaintiffs
19 seek because this action does not present a case or controversy to satisfy Article III's
20 requirements as Plaintiffs lack standing.

21 109. Plaintiffs have failed to state any claim upon which relief may be granted.

22 110. Plaintiffs' claims are barred by laches.

23 111. Defendants reserve the right to modify their defenses or to assert additional
24 defenses.

25 **PRAYER FOR RELIEF**

26 Wherefore, having answered Plaintiffs' Complaint, Defendants respectfully
27 request that the Court:

28 A. Dismiss all of Plaintiffs' claims, either for lack of subject matter

1 jurisdiction, for failure to state a claim upon which relief may be granted, or other reason;

2 B. Enter judgment in favor of Defendants and against Plaintiffs on all claims,
3 denying Plaintiffs' requests for declaratory and injunctive relief;

4 C. Award Defendants their attorneys' fees and costs and denying Plaintiffs the
5 same; and

6 D. Order any other further relief as the Court deems just and appropriate.

7 RESPECTFULLY SUBMITTED this 23rd day of July, 2026.

8
9 Kristin K. Mayes
Attorney General

10
11 By /s/ Karen J. Hartman-Tellez
12 Karen J. Hartman-Tellez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of July, 2026, I filed the forgoing document electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Emilia Serrata

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