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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

ARIZONA FREE ENTERPRISE CLUB, *et al.*,

Plaintiffs,

v.

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

Defendant,

and

ARIZONA ALLIANCE OF RETIRED
AMERICANS; and MI FAMILIA VOTA,

Intervenor-Defendants.

No. S-1300-CV-202300202

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

(Assigned to the Hon. John Napper)

Pursuant to Arizona Rule of Civil Procedure 56, Plaintiffs Arizona Free Enterprise Club, Restoring Integrity and Trust in Elections, Republican Party of Arizona, LLC, and Dwight Kadar respectfully move for the entry of summary judgment in their favor.

This Court already answered the sole legal question at the crux of this case when it concluded that the "registration record" used to verify early ballot affidavit signatures, *see*

1 A.R.S. § 16-550(A), consists only of “documents the putative voter used to register.”
 2 Ruling on Motion to Dismiss, Sept. 1, 2023 (“MTD Ruling”) at 3. Because the 2019
 3 Elections Procedures Manual (“EPM”) defines the term to include polling place signature
 4 rosters and envelopes of early ballots cast in prior elections—neither of which can be “used
 5 to register,” either initially or to update an existing registration—it is *ultra vires* and invalid.

6 Neither a factual disagreement nor subsequent legal developments supply any reason
 7 to revisit the Court’s sound analysis. This case pivots entirely on a pure question of statutory
 8 construction—namely, the scope of the term “registration record” in A.R.S. § 16-550(A)—
 9 that is impervious to the Defendants’ policy objections to the Legislature’s chosen
 10 framework for early ballot signature verification.

11 The Court accordingly should reaffirm its finding that the EPM “contains an
 12 incorrect definition of registration record,” MTD Ruling at 4, which, in turn, impels the
 13 entry of summary judgment in Plaintiffs’ favor.

14 **FACTUAL BACKGROUND**

15 When a voter casts an early ballot, she must complete and sign an affidavit on the
 16 ballot envelope verifying her qualified elector status and affirming that she has not
 17 previously voted in the same election. *See* A.R.S. § 16-547(A); Separate Statement of Facts
 18 (“SSOF”) ¶ 6. Upon receiving a submitted early ballot, the county recorder must “compare
 19 the signature[] thereon with the signature of the elector on the elector’s registration record.”
 20 *Id.* § 16-550(A). If the county recorder is “satisfied that the signatures correspond,” the
 21 ballot is forwarded for further processing and eventual tabulation. If the county recorder
 22 determines that the signatures are “inconsistent,” the voter will be contacted by mail, phone,
 23 email or text message, and asked to “correct” or “confirm” the signature on the ballot
 24 envelope. *See id.* § 16-550(A); EPM at 68; SSOF ¶¶ 7–10 .

25 The EPM’s effort to implement this statutory scheme instructs that, when conducting
 26 early ballot signature verification, “[i]n addition to the voter registration form, the County
 27 Recorder should also consult additional known signatures from other official election
 28 documents in the voter’s registration record, such as signature rosters or early ballot/PEVL

1 request forms.” EPM at 68. In other words, the EPM simply deems “other official election
 2 documents” to be incorporated within the voter’s “registration record.” It is undisputed that
 3 this EPM provision authorizes the county recorders to use as exemplar signatures those
 4 contained on “other official election documents” like polling place signature rosters and
 5 early ballot envelopes cast and accepted in prior elections. *See* SSOF ¶ 12.

6 **STANDARD OF REVIEW**

7 “The court shall grant summary judgment if the moving party shows that there is no
 8 genuine dispute as to any material fact and the moving party is entitled to judgment as a
 9 matter of law.” Ariz. R. Civ. P. 56(a); *see also Orme School v. Reeves*, 166 Ariz. 301, 305
 10 (1990) (“Clearly, summary judgment should be granted when the evidence presents no
 11 genuine issue of material fact.”); *S. Point Energy Ctr. LLC v. Ariz. Dept of Revenue*, 253
 12 Ariz. 30, 33, ¶ 10 (2022).

13 **ARGUMENT**

14 **I. “Registration Record” Means Documents That Effectuate or Update a**
 15 **Voter’s Registration**

16 The text and structure of the controlling statutes fortify the intuitive proposition that
 17 a “registration record” consists only of those documents that “the putative voter used to
 18 register.” MTD Ruling at 3. No uncertainty inheres in the term “registration record.” *See*
 19 *Stambaugh v. Killian*, 242 Ariz. 508, 510, ¶¶ 9–10 (2017) (“disagree[ing]” that statute was
 20 ambiguous merely because the relevant phrase wasn’t explicitly defined). In the absence of
 21 a bespoke, codified definition, the court simply “use[s] the common meaning of th[e]
 22 words,” *id.*, and supplements its semantic assessment by “examining the entire statute and
 23 considering ‘statutes that are in pari materia—of the same subject or general purpose—for
 24 guidance.’” *State v. Sorensen*, 255 Ariz. 316, ¶ 8 (App. 2023) (citation omitted); *see also*
 25 *State v. Bon*, 236 Ariz. 249, 251, ¶ 6 (App. 2014) (“If statutory terms are defined, we apply
 26 that definition; otherwise, we interpret statutory terms ‘in accordance with their commonly
 27 accepted meanings.’” (citation omitted)); *Porter v. Cont’l Cas. Co.*, 156 Ariz. 488, 491
 28

1 (App. 1988) (noting in contract context that “[t]he fact that a term is not defined . . . does
2 not render it ambiguous”).

3 Here, the Legislature strictly cabined “record” with the qualifier “registration.” In
4 other words, not just any “record” in the county recorder’s custody can be utilized to verify
5 an early ballot affidavit signature; only a “registration” record is suitable for that purpose.
6 In its most elementary formulation, “registration” is “[t]he act of recording or enrolling”.
7 BLACK’S LAW DICTIONARY (11th ed. 2019). Recurring textual and structural attributes of
8 Arizona’s Title 16 corroborate that “registration,” as used in those statutes, denotes the
9 written process of qualifying oneself to vote in Arizona elections. *See, e.g.*, A.R.S. §§ 16-
10 101 (“Qualifications of registrant”), 16-112 (“Driver license voter registration”), 16-121.01
11 (“Requirements for proper registration”), 16-131 (“Registration of electors”), 16-132
12 (“Voter registration assistance”), 16-138 (“Voter registration database”). It follows that a
13 “registration record” is a document used to qualify an individual to vote in Arizona
14 elections.

15 A holistic appraisal of Title 16 yields a discrete set of documents that satisfy this
16 criterion:

- 17 (1) a properly completed federal voter registration form or state-specific Arizona
18 voter registration form, whether to register in the first instance or to change a
19 prior registration, *see* 52 U.S.C. § 20505(a), A.R.S. § 16-121.01(A);
- 20 (2) an amendment submitted through the Motor Vehicles Division, *see* 52 U.S.C. §
21 20504(c)(2); A.R.S. §§ 16-112, 16-121.01, 16-136;
- 22 (3) a formal early ballot request or response to an Active Early Voting List
23 Notification, A.R.S. §§ 16-135(E), 16-542(F); and
- 24 (4) a provisional ballot submission envelope, *see id.* §§ 16-137, 16-584(C), (D).

25 Signature rosters at polling locations and historical early ballot envelopes are not
26 “registration” records because those documents cannot be, and are not, used to enroll an
27 individual to vote in Arizona elections. Indeed, they are part of wholly distinct aspects of
28

1 the electoral process—aspects that rely, in full, upon registration as a precondition.

2 When, as here, there is no textual ambiguity, the Court’s “inquiry begins and ends
3 with the plain meaning of the legislature’s chosen words.” *AUDIT-USA v. Maricopa Cnty.*,
4 254 Ariz. 536, ¶ 10 (App. 2023) (quoting *Welch v. Cochise Cnty. Bd. of Supr’rs.*, 251 Ariz.
5 519 (2021)). It accordingly should reaffirm its prior finding that the EPM provision is
6 inconsistent with controlling statutes and hence invalid to the extent it authorizes the
7 verification of early ballot affidavit signatures by reference to polling place signature rosters
8 or early ballot envelopes cast in prior elections. *See Leach v. Hobbs*, 250 Ariz. 572, 576, ¶
9 21 (2021) (“[A]n EPM regulation that exceeds the scope of its statutory authorization or
10 contravenes an election statute’s purpose does not have the force of law.”).

11 **II. Even If “Registration Record” Were Ambiguous, the Court Could Not and**
12 **Should Not Defer to the Secretary’s Construction or Public Policy**
13 **Preferences**

14 Even if the Defendant and Intervenors’ exertions to manufacture opacity from clarity
15 were successful, the Court’s conclusion that the term “registration record” includes only
16 “the documents the putative voter used to register,” MTD Ruling at 3, remains correct. The
17 defending parties’ fixation on unearthing an ambiguity in the phrase “registration record”
18 seemingly is premised on their belief that any such uncertainty would allow—if not
19 compel—the Court to (1) defer to the Secretary’s formulation of the term in the EPM and/or
20 (2) subordinate statutory text to the Secretary and Intervenors’ public policy penchants.
21 Both suppositions are unfounded. Even to the extent it concludes the term may be
22 ambiguous, the Court is compelled to give the term its best meaning—that is, the meaning
23 that most closely accords to the text, not merely any plausible meaning put forward by the
24 Secretary. *See generally Jenkins v. Hale*, 218 Ariz. 561, 563, ¶ 10 (2008) (emphasizing that
25 a “statute’s text is the best evidence of [legislative] intent”).

26 **A. The Court Cannot Defer to the EPM’s Construction of Statutory Terms**

27 First, the EPM’s interpretations of statutory words and phrases receive no judicial
28 deference. It is axiomatic that when “the legislature has directly and clearly spoken to the

1 question at issue, this Court owes no deference to the [agency]’s interpretation.”
 2 *Stambaugh*, 242 Ariz. at 512, ¶ 21. In 2018, moreover, the Legislature ended notions of
 3 judicial acquiescence in the face of statutory ambiguities when it mandated that courts “shall
 4 decide all questions of law, including the interpretation of a constitutional or statutory
 5 provision or rule adopted by an agency, without deference to any previous determination
 6 that may have been made on the question by the agency.” A.R.S. § 12-910(F), as amended
 7 by 2018 Ariz. Laws ch. 180, § 1. Under this framework, Arizona courts simply “do not
 8 defer to [an] agency’s interpretation of a rule or statute.” *Saguaro Healing LLC v. State*,
 9 249 Ariz. 362, 364, ¶ 10 (2020).

10 The EPM is entitled to no special solicitude. To the contrary, Arizona appellate
 11 courts have on four occasions in the last three years invalidated an EPM provision as either
 12 inconsistent with a relevant statute or beyond the scope of the Secretary’s lawful authority.
 13 *See Leibsohn v. Hobbs*, 254 Ariz. 1, ¶ 22 (2022) (finding that statute requires a new affidavit
 14 each time a petition circulator amends a registration, emphasizing that “[w]e are not
 15 persuaded to reach a different interpretation . . . simply because the Secretary may construe
 16 the requirement differently”); *Leach*, 250 Ariz. at 576, ¶ 21 (EPM could not authorize a “de-
 17 registration” process for petition circulators); *McKenna v. Soto*, 250 Ariz. 469, 473, ¶ 20
 18 (2020) (EPM provision relating to nomination petition signature requirements was
 19 unenforceable). Most recently, the Court of Appeals held just weeks ago that the EPM was
 20 inconsistent with superseding statutes to the extent it permitted county recorders to conduct
 21 supplemental post-election hand count audits of voted ballots. *See Ariz. All. for Retired*
 22 *Americans v. Crosby*, -- Ariz. --, 2023 WL 6854102, at *4, ¶ 17 (Ariz. App. Oct. 18, 2023)
 23 (finding that the EPM’s “grant of discretion on which the County relies is not provided for
 24 in Title 16”). In short, whether “registration record” is ambiguous or not, it is the Court’s
 25 understanding of the term—not the Secretary’s—that controls the disposition of this case.

26 **B. Public Policy Notions Cannot Justify the EPM’s Disregard of the**
 27 **Statutory Text and Structure**

28 Textual ambiguity does not license judicial policymaking. To be sure, genuine

1 opacity in a particular statutory word or phrase may justify resort to “secondary
 2 interpretation methods, such as the statute’s subject matter, historical background, effect
 3 and consequences, and spirit and purpose.” *Rosas v. Ariz. Dept. of Econ. Sec.*, 249 Ariz.
 4 26, 28, ¶ 13 (2020). But a court may not, under the façade of an interpretive effort, “read
 5 into a statute anything not within the clear intent of the legislature as indicated by the statute
 6 itself,” or “inflate, expand, stretch[,] or extend a statute to matters not falling within its
 7 express provisions.” *Hiskett v. Lambert in and for Cnty. of Mohave*, 247 Ariz. 432, 435, ¶
 8 12 (App. 2019) (citation omitted).

9 Thus, even if the term “registration record” were ambiguous—and it’s not—this
 10 Court’s interpretation in its September 1 ruling captures a sound distillation of the statutory
 11 structure, legislative intent, and common sense far better than anything proffered by the
 12 Secretary. Unsubstantiated assertions that properly limiting signature exemplars to actual
 13 *registration* documents will (1) create more work for the county recorders, and/or (2) cause
 14 more early ballot signatures to be flagged as potential mismatches are not colorable
 15 justifications for discarding the statutory text.

16 The statute’s evolution underscores the Legislature’s intent to cabin the types of
 17 documents that may be used to validate early ballot affidavit signatures. Until just a few
 18 years ago, early ballot signature verifications were confined exclusively to the voter’s
 19 “registration form.” A.R.S. § 16-550(A) (2018). Notably, there is no evidence that Arizona
 20 elections prior to 2019 were plagued by disenfranchisement or incapacities in the county
 21 recorders’ offices. Recognizing that an individual’s signature may evolve over time,
 22 however, the Legislature in 2019 broadened the corpus of signature exemplars to encompass
 23 the voter’s “registration record”—*i.e.*, documents that update or amend a registration (*e.g.*,
 24 change of address information provided in a transaction with the MVD), in addition to the
 25 initial registration itself. But—crucially—it retained the “registration” modifier. While the
 26 Legislature could have authorized the recorders to validate signatures using any voting-
 27 related record—or indeed any record deemed reliable by the Secretary—it did not do so,
 28 instead specifying that the referent “record” must still be a “registration” record. Expanding

1 the pool of signature exemplars beyond a registration “form” but limiting it still to only
 2 “registration” records embodies a sensible equilibrium between flexibility and integrity in
 3 the signature verification process.

4 In any event, a signature validation process that relies exclusively on actual
 5 “registration” records still affords ample safeguards to voters. A facial mismatch between
 6 an early ballot affidavit signature and the signature in the corresponding “registration
 7 record” does not consign the ballot to disqualification. Rather, the county recorder will
 8 promptly contact the voter, who can—simply by responding to a phone call, text message
 9 or email—confirm the signature’s authenticity at any time up to five business days *after* the
 10 election. *See* A.R.S. § 16-550(A). In coupling a rigorous signature verification regime that
 11 relies exclusively on formal registration records with accommodating signature curing
 12 mechanisms, the Legislature devised a carefully calibrated balance that protects the rights
 13 of qualified electors while safeguarding the integrity of the early voting process.

14 Finally, and perhaps most fundamentally, the EPM’s conception of “registration
 15 record” is simply illogical. As the Court observed, “[n]o English speaker would
 16 linguistically confuse the act of signing up to participate in an event with the act of
 17 participating in the event.” MTD Ruling at 3. A “registration record” inarguably is the
 18 document to which an early ballot envelope signature is compared. *See* A.R.S. § 16-550(A).
 19 The envelope is not—and, by definition, cannot be—*itself* a “registration record.” To posit,
 20 as the EPM does, that an early ballot envelope from a prior election can serve as a signature
 21 exemplar necessarily implies that the document mutates from something that is extrinsic to
 22 a “registration record” into an actual “registration record” through some kind of extra-
 23 statutory osmosis. This curious construction is untethered from A.R.S. § 16-550(A)’s text,
 24 the larger infrastructure of Title 16’s voter registration provisions, and common sense.

25 In sum, the term “registration record” encompasses only those documents that can,
 26 by law, effectuate or amend a voter’s “registration,” *i.e.*, eligibility to vote in Arizona
 27 elections. Because polling location signature rosters and historical early ballot envelopes
 28 are not mechanisms for qualifying an individual to vote, they are not “registration records,”

1 as a matter of law. “If this is believed to be a serious omission [in the statute], then it is up
2 to the legislature to cure the defect.” *Mecham Recall Comm., Inc. v. Corbin*, 155 Ariz. 203,
3 205–06 (1987). The EPM cannot, under the pretense of implementation, modify the plain
4 meaning of statutory terms.

5 **CONCLUSION**

6 For the foregoing reasons, the Court should enter summary judgment in Defendants’
7 favor, and issue declaratory, injunctive and/or mandamus remedies providing that the EPM
8 is invalid and cannot be enforced to the extent it authorizes or instructs county recorders to
9 validate early ballot affidavit signatures by reference to documents—including without
10 limitation polling location signature rosters and historical early ballot affidavits—that
11 cannot be used to effectuate or amend a voter’s registration.

12
13 RESPECTFULLY SUBMITTED this 17th day of November, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2023, I electronically transmitted the attached document to the Clerk's Office using the TurboCourt System for filing and transmittal of a Notice of Electronic Filing to the following TurboCourt registrants:

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