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21  
22 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
23  
24 IN AND FOR THE COUNTY OF MARICOPA

25 WARREN PETERSEN, in his official  
26 capacity as President of the Arizona Senate;  
27 BEN TOMA, in his official capacity as  
28 Speaker of the Arizona House of  
Representatives,

Plaintiffs,

v.

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

Defendant.

No.

**VERIFIED SPECIAL ACTION  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiffs bring this verified special action complaint and hereby allege as follows:

**SUMMARY OF THE CASE**

1. "The legislature has the exclusive power to declare what the law shall be."

*State v. Prentiss*, 163 Ariz. 81, 85 (1989); *see also* Ariz. Const. art. IV.

1           2.     The Legislature has exercised this exclusive authority by constructing a  
2 detailed statutory scheme governing elections, codified in Titles 16 and 19, and specifically  
3 delegating the authority to the Secretary of State to create an Elections Procedures Manual  
4 (“EPM”) on a specified set of topics.

5           3.     Instead of creating an elections procedures manual, Secretary of State Adrian  
6 Fontes has created a vast, elections *policy* manual. While certain sections of this manual are  
7 authorized by statute, scores of the manual’s provisions are not specifically authorized by  
8 statute or are in direct conflict with other statutes.

9           4.     By issuing instructions to local elections officials throughout Arizona that  
10 exceed the scope, nullify or amend an express statutory provision through an EPM rule, the  
11 Secretary has exceeded his lawful jurisdiction to prescribe procedures pursuant to A.R.S.  
12 § 16-452 and other applicable laws. Because the integrity of Arizona’s elections and  
13 faithful adherence to the separation of powers are matters of fundamental importance under  
14 our State Constitution, *see* Ariz. Const. art. III & art. VII, § 12, the Secretary’s errors must  
15 be remedied.

### 16                                 **PARTIES**

17           5.     Plaintiff Warren Petersen is the President of the Arizona State Senate for the  
18 2023–2024 legislative sessions.

19           6.     Plaintiff Ben Toma is the Speaker of the Arizona House of Representatives  
20 for the 2023–2024 legislative sessions.

21           7.     Defendant Adrian Fontes is the Secretary of State of Arizona and is named in  
22 this action in his official capacity only. The Secretary is a division of the executive  
23 department of the government of the State of Arizona with its primary address in Maricopa  
24 County. Under A.R.S. § 16-452, the Secretary is responsible for promulgating an EPM  
25 every two years, which, upon approval by the Governor and the Attorney General, has the  
26 force of law. In addition, the Secretary is the chief state election officer, *see* A.R.S. § 16-  
27 142(A)(1).

1           8.       The Legislature has institutional interests in defending the proper scope of  
2 authority delegated to other branches of government, including the Secretary. *See Biggs v.*  
3 *Cooper*, 236 Ariz. 415, 418 ¶ 11 (2014) (citing with approval U.S. Supreme Court reasoning  
4 that found the Legislature had an interest in “maintaining the effectiveness” of a vote); *see*  
5 *also* A.R.S. § 12-1832; *Ariz. Pub. Integrity Alliance v. Fontes*, 250 Ariz. 58, 62 ¶¶ 10–11  
6 (2020); *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 803–04  
7 (2015); *Priorities USA v. Nessel*, 978 F.3d 976, 980–81 (6th Cir. 2020) (“Denying the  
8 legislature standing to defend its own law would allow the state executive to nullify a state  
9 statute without any ultimate judicial determination.”).

10           9.       By acting in excess of his statutory authority or acting in conflict with  
11 statutory provisions, the Secretary’s promulgation of the EPM causes the Legislature  
12 institutional injury because it impedes the implementation of a validly enacted law and  
13 purports to exercise power that the Constitution entrusts exclusively to the legislative  
14 branch. *See Biggs*, 236 Ariz. 415, ¶ 9 (reasoning institutional legislative injury is present if  
15 an executive action, a veto, “improperly overrides a validly enacted law”). Courts have  
16 described institutional injuries to the Legislature to include “disruption of the legislative  
17 process,” “a usurpation of [legislative] authority,” “nullification of votes” or an intrusion  
18 into the Legislature’s constitutionally assigned role. *See Tenn. Gen. Assembly v. United*  
19 *States Dep’t of State*, 931 F.3d 499, 508, 514 (6th Cir. 2019); *Ariz. State Legislature*, 576  
20 U.S. at 803–04; *see also Coleman v. Miller*, 307 U.S. 433, 438 (1939); *U.S. House of*  
21 *Representatives v. Burwell*, 130 F. Supp. 3d 53, 67 (D.C. Cir. 2015); *Cochise Cnty. v.*  
22 *Kirschner*, 171 Ariz. 258, 261–62 (App. 1992); (“Any excursion by an administrative body  
23 beyond the legislative guidelines is treated as an usurpation of constitutional powers vested  
24 only in the major branch of government.”).

25           10.      As leaders of the Arizona Legislature, the Speaker and President have  
26 authority to take legal action to prevent institutional injuries to the Legislature. State of  
27 Arizona, *Senate Rules*, 56th Legislature 2023-2024, Rule 2(N), <https://bit.ly/3WXFLDv>  
28 (authorizing the President “to bring or assert in any forum on behalf of the Senate any claim

1 or right arising out of any injury to the Senate’s powers or duties under the constitution or  
2 laws of this state”); State of Arizona, *Rules of the Ariz. House of Representatives*, 56th  
3 Legislature 2023-2024, Rule 4(K), <https://bit.ly/3HuL9bz> (authorizing the Speaker to do  
4 the same on behalf of the Arizona House of Representatives); Ariz. Const. art. IV, pt. 2, § 8  
5 (authorizing each house of the Legislature to “determine its own rules of procedure”).

6 11. There is a controversy between the parties concerning the lawfulness of  
7 certain provisions of the Secretary’s 2023 EPM and a judgment of the Court will resolve  
8 that controversy. The Secretary’s 2023 EPM poses an existing and ongoing threat to the  
9 application of existing conflicting statutes. Thus, Plaintiffs have a real and present need to  
10 know whether the offending provisions of the 2023 EPM are facially valid.

11 12. Plaintiffs lack an equally plain, speedy and adequate remedy at law to compel  
12 the Secretary to act consistent with controlling statutory law. In the alternative, special  
13 action relief thus is necessary to ensure that the EPM aligns with the statutes that created it.  
14 *See* Ariz. R. Spec. Action P. 3(b).

### 15 JURISDICTION AND VENUE

16 13. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the  
17 Arizona Constitution, A.R.S. §§ 12-123, 12-1801, 12-1831, and Arizona Rule of Special  
18 Action Procedure 3(a)-(b).

19 14. Venue lies in Maricopa County pursuant to A.R.S. § 12-401(16) and Arizona  
20 Rule of Special Action Procedure 4(b) because Defendant resides and holds office in  
21 Maricopa County.

22 15. This Court has personal jurisdiction over Defendant.

### 23 GENERAL ALLEGATIONS

24 16. The Arizona Legislature is constitutionally vested with the authority to enact  
25 “laws to secure the purity of elections and guard against abuses of the elective franchise.”  
26 Ariz. Const. art. 7, § 12.

27 17. To that end, the Legislature has enacted laws in Title 16 and 19 related to  
28 elections, electors, and initiative, referendum, and recall measures.

1 18. Relevant here is the Legislature’s specific delegation to the Secretary to  
2 “prescribe rules to achieve and maintain the maximum degree of correctness, impartiality,  
3 uniformity and efficiency on the procedures for early voting and voting, and of producing,  
4 distributing, collecting, counting, tabulating and storing ballots” and to “adopt rules  
5 regarding fax transmittal of unvoted ballots, ballot requests, voted ballots and other election  
6 materials to and from absent uniformed and overseas citizens and shall adopt rules regarding  
7 internet receipt of request for federal postcard applications . . . .” A.R.S. § 16-452(A).<sup>1</sup>

8 19. These statutory delegations are specific and exhaustive, meaning that if a  
9 provision of the EPM is not authorized by one of these delegations, then it cannot carry the  
10 force of law. *Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021).

11 20. These rules are required to “be prescribed in an official instructions and  
12 procedures manual” known as the EPM, and must “be issued not later than December 31 of  
13 each odd-numbered year immediately preceding the general election.” A.R.S. § 16-452(B).

14 21. The Secretary must submit a draft EPM to the Governor and Attorney  
15 General, and the Governor and Attorney General must approve it. *Id.*

16 22. “Once adopted, the EPM has the force of law; any violation of an EPM rule  
17 is punishable as a class two misdemeanor.” *Ariz. Pub. Integrity Alliance v. Fontes*, 250 Ariz.  
18 58, 63 ¶ 16 (2020) (citing A.R.S. § 16-452(C)).

19 **The 2023 EPM**

20 23. On or around July 31, 2023, the Secretary published a 268-page draft EPM  
21 for public comment.

22 24. The Secretary solicited public comments on the draft EPM from August 1,  
23 2023, through August 15, 2023.  
24  
25  
26

27 <sup>1</sup> The Secretary has been granted limited authority to include other topics in the EPM. See  
28 also A.R.S. §§ 16-168(I), 16-246(G), 16-315(D), 16-341(H), 16-411(B)(5)(b), 16-449(A)–  
(B), 16-543(A)–(C), 16-544(B), 16-579(A)(2), (E), 16-602(B), 16-926(A), 16-938(B), 19-  
118(A), 19-121(A)(5), 19-205.01(A).

1           25. On August 14, 2023, Plaintiffs submitted a public comment objecting to  
2 various provisions of the EPM on grounds that those provisions were in conflict with  
3 Arizona statutes or otherwise exceeded the Secretary’s authority.<sup>2</sup>

4           26. On September 30, 2023, the Secretary published a 268-page updated draft  
5 EPM and transmitted the same to the Governor and Attorney General for their review and  
6 approval under A.R.S. § 16-452.

7           27. On Saturday, December 30, 2023, (the penultimate day to finalize a draft),  
8 the Secretary published the “final” EPM, now 385 pages, which includes multiple  
9 provisions that were not present in the July or September drafts, with the approval of the  
10 Governor and Attorney General. On January 11, 2024, the Secretary published an updated  
11 “final” EPM, correcting and adding dates in Chapter 15 (hereinafter referred to as the “2023  
12 EPM”).

13           28. A true and accurate copy of the 2023 EPM is attached as **Exhibit 1**.

14           29. Several provisions of the 2023 EPM are problematic, including ones that were  
15 never published for public comment and added last minute, on information and belief by  
16 request of the Governor and/or Attorney General.

17           30. The 2023 EPM includes several references to ongoing litigation. In instances  
18 where rulings align with the Secretary’s policy’s preferences, the EPM incorporates non-  
19 final and non-injunctive rulings from ongoing legal proceedings. *See, e.g.*, Ex. 1 at 3 n.5,  
20 12 n.8–9, 14 n.11, 15 n.13–15, 22 n.19–20, 40 n.25–26, 41 n.27 (rulings in *Mi Familia Vota*  
21 *v. Fontes*, D. Ariz. docket no. CV-22-00509-PHX-SRB). In other instances, the Secretary  
22 merely cites to the existence of litigation, without incorporating the rulings. *See, e.g.*, Ex. 1  
23 at 83 n.42 (not incorporating substantive rulings in *Arizona Free Enterprise Club v. Fontes*,  
24 Yavapai County Super. Ct. docket no. S1300CV2023-00202, stating only that “litigation is  
25 pending on this issue”).

26  
27  
28 <sup>2</sup> [https://www.azsenaterepublicans.com/\\_files/ugd/2f3470\\_68a6d97b7c1645bd985057ffde62836b.pdf](https://www.azsenaterepublicans.com/_files/ugd/2f3470_68a6d97b7c1645bd985057ffde62836b.pdf)

1 31. While it may not be problematic to inform local elections officials that certain  
2 laws may be impacted by on-going proceedings for awareness purposes, the 2023 EPM  
3 inconsistently adopts non-final rulings into its substantive rules and improperly codifies  
4 non-final rulings, as such rulings may later be reversed or modified.

5 32. The inconsistent incorporation of court rulings based on the Secretary's  
6 policy preferences is troubling and will inevitably lead to confusion among elections  
7 officials—which defeats the statutory aim of the EPM “to achieve and maintain the  
8 maximum degree of correctness, impartiality, uniformity and efficiency” in certain election-  
9 related procedures. A.R.S. § 16-452(A). Worse yet, the Secretary's references to ongoing  
10 litigation also effectively strips the appeal rights of litigants in those ongoing cases by  
11 codifying the rulings into the 2023 EPM, which carries the force of law.

12 33. Other provisions conflict with the plain language of statutes or lack any  
13 statutory authorization.

#### 14 **Non-Residency of Juror Questionnaire Rule**

15 34. In Chapter 1 (Voter Registration), Section 9 (Voter Registration List  
16 Maintenance), Subsection C(1) (County Recorders' Duty to Cancel Registrant Information:  
17 Summary Report from the Jury Commissioner or Jury Manager of Voters who Are Not  
18 Residents of the County of State), the 2023 EPM states that upon reviewing the summary  
19 report and identifying a true match:

20 [T]he County Recorder shall send the person notice by forwardable mail and  
21 a postage prepaid, preaddressed return form requesting the person confirm  
22 by signing under penalty of perjury that the person is a resident of the county  
23 and is not knowingly registered to vote in another county or another state.  
The notice shall inform the person that failure to return the form within thirty-  
five days will result in the person's registration *being put into inactive status*  
and may ultimately lead to cancelation of their voter registration.

24 Ex. I at 41 (emphasis added).

25 35. However, A.R.S. § 16-165(A)(9) provides that:

26 [A] county recorder *shall cancel a registration* . . . [w]hen the county  
27 recorder receives written information from the person registered that the  
28 person has a change of address outside the county, including when the county  
recorder . . . [r]eceives a summary report from the jury commissioner or jury  
manager pursuant to section 21-314 indicating that the person has stated that

1 the person is not a resident of the county. *Before the county recorder cancels*  
2 *a registration pursuant to this subdivision*, the county recorder shall send  
3 the person notice by forwardable mail and a postage prepaid preaddressed  
4 return form requesting the person confirm by signing under penalty of  
5 perjury that the person is a resident of the county and is not knowingly  
6 registered to vote in another county or another state. *The notice shall inform*  
7 *the person that failure to return the form within thirty-five days will result*  
8 *in the person's registration being canceled. If the person fails to return the*  
9 *notice within thirty-five days the county recorder shall cancel the person's*  
10 *registration.*

7 (emphasis added).

8 36. Thus, the 2023 EPM's direction in Chapter 1, Section 9, Subsection C(1)  
9 directly conflicts with the plain language of A.R.S. § 16-165(A)(9).

#### 10 **Investigations of Citizenship Status Rule**

11 37. In Chapter 1, Section 9, Subsection C(2)(a) (County Recorders' Duty to  
12 Cancel Registrant Information: Information that a Person Registered Is Not a United States  
13 Citizen – Obtaining Non-Citizenship Information), the 2023 EPM states that although there  
14 are “several ways in which a County Recorder may obtain information pursuant to A.R.S.  
15 § 16-165 that a registrant is not a U.S. Citizen[, . . .] third-party allegations of non-  
16 citizenship are not enough to initiate this process.” Ex. 1 at 42.

17 38. However, A.R.S. § 16-165(I) states that the county recorder should initiate  
18 this process when he or she “has reason to believe [the person is] not [a] United States  
19 citizen[.]”

20 39. The plain language of this provision does not exclude third-party allegations  
21 if the allegation provides the county recorder with a reason to believe the applicant is not a  
22 U.S. citizen.

23 40. Thus, the 2023 EPM's direction in Chapter 1, Section 9, Subsection C(2)(a)  
24 directly conflicts with the plain language of A.R.S. § 16-165(I).

#### 25 **AEVL Effective Date Rule**

26 41. In Chapter 2 (Early Voting), Section 1 (Ballot-by-Mail), Subsection B(7)  
27 (Requests to be Placed on the Active Early Voting List: Removal from the AEVL), the 2023  
28 EPM discusses Senate Bill (“S.B.”) 1485's new statutory requirement (A.R.S. § 16-



1 544(H)(4)) that requires the county recorder to send Active Early Voting List (“AEVL”)   
2 removal notices after the voter fails to vote in any election in two consecutive election   
3 cycles. Ex. 1 at 61–62.

4 42. The 2023 EPM directs that “[b]ecause the 2022 election cycle began before   
5 S.B. 1485 (2022)[<sup>3</sup>] took effect and S.B. 1485 does not apply retroactively, the first two full   
6 election cycles after S.B. 1485’s effective date are the 2024 and 2026 election cycles.   
7 Therefore, the first AEVL removal notices must be sent out by January 15, 2027 to AEVL   
8 voters who vote by early ballot in zero eligible elections in the 2024 and 2026 election   
9 cycles.” Ex. 1 at 61 n.34.

10 43. However, because A.R.S. § 16-544(H)(4) became effective during the 2022   
11 election cycle, the registrant’s subsequent voting (or non-voting) in the 2022 and 2024   
12 election cycles must be given full effect and the AEVL removal notices must be sent out in   
13 2025.

14 44. Thus, the 2023 EPM’s direction in Chapter 2, Section 1, Subsection B(7)   
15 directly conflicts with the plain language of A.R.S. § 16-544.

#### 16 **Validity of Circulator Registrations Rule**

17 45. In Chapter 6 (Regulation of Petition Circulators), Section 2 (Circulator   
18 Registration Procedures), Subsection C (Circulator Registration Procedures), the 2023 EPM   
19 states that “[t]he requirement to list certain information on the circulator portal does not   
20 mean that a circulator’s signatures shall be disqualified if the circulator makes a mistake or   
21 inconsistency in listing that information (e.g., a phone number or email address that is   
22 entered incorrectly; a residential address that doesn’t match the residential address listed on   
23 that circulator’s petition sheets; etc.)” Ex. 1 at 119 n.58.

24   
25   
26   
27 <sup>3</sup> Although the 2023 EPM indicates that S.B. 1485 was passed in 2022, it was actually   
28 passed by the Fifty-Fifth Legislature, First Regular Session in 2021 and signed by Governor   
Ducey on May 11, 2021. 2021 Ariz. Legis. Serv. Ch. 359 (2021). S.B. 1485 became   
effective on September 29, 2021. <https://www.azleg.gov/general-effective-dates/>.

1 46. However, A.R.S. § 19-118(B) requires that the circulator must submit his or  
2 her “full name, residence address, telephone number and email address” and an affidavit  
3 that “all of the information provided is correct to the best of [his or her] knowledge.”

4 47. Because “statutory requirements for statewide initiative measures must be  
5 strictly construed and persons using the initiative process must strictly comply with those  
6 [] statutory requirements,” A.R.S. § 19-102.01(A), the 2023 EPM’s direction in Chapter 6,  
7 Section 2, Subsection C directly conflicts with the plain language of A.R.S. § 19-118(B).

#### 8 **Duty to Canvass Rules**

9 48. In Chapter 13 (Certifying Election Results), Section 2 (Canvassing the  
10 Election), Subsection A(2) (County Board of Supervisors Canvassing Duties: Scope of  
11 Duty to Canvass), the 2023 EPM states that “[t]he Board of Supervisors has a non-  
12 discretionary duty to canvass the returns as provided by the County Recorder or other  
13 officer in charge of elections and has no authority to change vote totals, reject the election  
14 results, or delay certifying results without express statutory authority or court order.” Ex. 1  
15 at 248.

16 49. While A.R.S. §§ 16-642, 16-643, and 16-646 require the Board to conduct a  
17 canvass by a certain deadline, it also empowers the Board to “determin[e] the vote of the  
18 county.”

19 50. The Board’s statutory duty to canvass the vote does not necessarily require  
20 the Board to accept the returns in the form provided by the election official or vote in a  
21 certain way regarding accuracy of returns.

22 51. Thus, the 2023 EPM’s direction in Chapter 13, Section 2, Subsection A(2)  
23 directly conflicts with the plain language of A.R.S. §§ 16-642, 16-643, and 16-646.

24 52. Similarly, in Chapter 13, Section 2, Subsection B(2) (Secretary of State’s  
25 Canvassing Duties: Scope of Duty to Canvass), the 2023 EPM states that “Secretary of State  
26 has a non-discretionary duty to canvass the returns” but “[i]f the official canvass of any  
27 county has not been received by [the] deadline, the Secretary of State must proceed with  
28 the state canvass without including the votes of the missing county.” Ex. 1 at 252.



1 *the person that failure to return the form within thirty-five days will result*  
2 *in the person's registration being canceled. If the person fails to return the*  
3 *notice within thirty-five days the county recorder shall cancel the person's*  
4 *registration.*

(emphasis added).

5 58. This provision of the 2023 EPM conflicts with A.R.S. § 16-165(A)(9) because  
6 under the same circumstances, the 2023 EPM allows the county recorder to place a voter  
7 on the inactive list while the statute *requires* that the county recorder cancel the registration.

8 59. If an “EPM provision . . . directly conflicts with the express and mandatory  
9 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore  
10 void.” *Ariz. All. for Retired Ams., Inc. v. Crosby*, 537 P.3d 818, 823–24 (Ariz. App. 2023);  
11 *see also Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (“[A]n EPM regulation that  
12 contradicts statutory requirements does not have the force of law.”); Ariz. R. Special Action  
13 Proc. 3(b).

14 60. Accordingly, Plaintiffs request that this Court declare Non-Residency of Juror  
15 Questionnaire Rule void, and award special action and injunctive relief to enjoin the  
16 implementation of the same.

## 17 **COUNT II**

### 18 **Investigations of Citizenship Status Rule Conflicts with Statute** 19 **(Special Action, Declaratory, and Injunctive Relief)**

20 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-165; Ariz. R. Civ. P. 65)**

21 61. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
22 forth herein.

23 62. Chapter 1, Section 9, Subsection C(2)(a) of the 2023 EPM states that although  
24 there are “several ways in which a County Recorder may obtain information pursuant to  
25 A.R.S. § 16-165 that a registrant is not a U.S. Citizen[, . . .] third-party allegations of non-  
26 citizenship are not enough to initiate this process.” Ex. 1 at 42.

27 63. However, A.R.S. § 16-165(I) states that the county recorder should initiate  
28 this process when he or she “has reason to believe [the person is] not [a] United States  
citizen[.]”



1           71. Chapter 2, Section 1, Subsection B(7) of the 2023 EPM directs that “[b]ecause  
2 the 2022 election cycle began before S.B. 1485 (2022) took effect and S.B. 1485 does not  
3 apply retroactively, the first two full election cycles after S.B. 1485’s effective date are the  
4 2024 and 2026 election cycles. Therefore, the first AEVL removal notices must be sent out  
5 by January 15, 2027 to AEVL voters who vote by early ballot in zero eligible elections in  
6 the 2024 and 2026 election cycles.” Ex. I at 61 n. 34.

7           72. A.R.S. 16-544(H)(4) requires the recorder to send an early ballot by mail to a  
8 voter who has registered for the AEVL, unless the voter “fails to vote an early ballot in all  
9 elections for two consecutive elections cycles.”

10          73. The term “‘election’ means any regular primary or regular general election  
11 for which there was a federal race on the ballot or for which a city or town candidate primary  
12 or first election or city or town candidate second, general or runoff election was on the  
13 ballot” and does not apply to special taxing district elections under A.R.S. § 16-191 or  
14 special district mail ballot elections under title 16, chapter 4, article 8.1. A.R.S. § 16-  
15 544(H)(4).

16          74. A.R.S. § 16-544(H)(4) became effective in September of 2021, mid-way  
17 through the 2022 election cycle.

18          75. However, upon the law’s effective date, several qualifying elections remained  
19 outstanding, most notably, the 2022 primary and general elections.<sup>4</sup>

20          76. Accordingly, voters still had an opportunity to vote in any one of the several  
21 elections in 2022 and 2024 after the law’s effective date to avoid receiving an AEVL  
22 removal notice in 2025.

23          77. “In Arizona, it is conclusively settled that laws are not retroactive simply  
24 because they relate to past events.” *Anderson v. Indus. Comm’n of Ariz.*, 306 Ariz. 411, 413  
25 ¶ 9 (App. 2003).

26  
27  
28 <sup>4</sup> <https://www.azcleelections.gov/arizona-elections/past-election-list>

1 78. Rather, “any right conferred by statute may be taken away by statute before  
2 it has become vested.” *Id.* ¶¶ 9-12 (reasoning that so long as individual had notice to change  
3 conduct before losing rights, a law can change the consequences of a future event on a  
4 vested right).

5 79. Moreover, the voter is not removed from the AEVL list until he or she fails  
6 to respond to the notice triggered by the voter’s absence in two election cycles.

7 80. Thus, predicating the issuance of an AEVL renewal notice on a registrant’s  
8 subsequent voting (or non-voting) in the 2022 and 2024 election cycles does not constitute  
9 a “retroactive” application of the statute and the AEVL removal notices must be sent out no  
10 later than January 15, 2025.

11 81. As a result, the 2023 EPM’s direction in Chapter 2, Section 1, Subsection  
12 B(7) directly conflicts with the plain language of A.R.S. § 16-544.

13 82. If an “EPM provision . . . directly conflicts with the express and mandatory  
14 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore  
15 void.” *Ariz. All. for Retired Ams., Inc.*, 537 P.3d at 823–24 ¶ 18; *see also Leibsohn*, 254  
16 *Ariz.* at 7 ¶ 22 (“[A]n EPM regulation that contradicts statutory requirements does not have  
17 the force of law.”); *Ariz. R. Special Action Proc.* 3(b).

18 83. Accordingly, Plaintiffs request that this Court declare the AEVL Effective  
19 Date Rule void, and award special action and injunctive relief to enjoin the implementation  
20 of the same.

#### 21 **COUNT IV**

#### 22 **Validity of Circulator Registrations Rule Conflicts with Statute (Special Action, Declaratory, and Injunctive Relief)**

23 **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 19-102.01, 19-118; Ariz. R. Civ. P.  
24 65)**

25 84. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
26 forth herein.

27 85. Chapter 6, Section 2, Subsection C of the 2023 EPM states that “[t]he  
28 requirement to list certain information on the circulator portal does not mean that a

1 circulator’s signatures shall be disqualified if the circulator makes a mistake or  
2 inconsistency in listing that information (e.g., a phone number or email address that is  
3 entered incorrectly; a residential address that doesn’t match the residential address listed on  
4 that circulator’s petition sheets; etc.)” Ex. 1 at 119 n.58.

5 86. However, A.R.S. § 19-118(B) requires that the circulator must submit his or  
6 her “full name, residence address, telephone number and email address” and an affidavit  
7 that “all of the information provided *is correct* to the best of my knowledge.” (emphasis  
8 added).

9 87. “[S]tatutory requirements for statewide initiative measures must be strictly  
10 construed and persons using the initiative process must strictly comply with those []  
11 statutory requirement.” A.R.S. § 19-102.01(A).

12 88. The 2023 EPM’s direction in Chapter 6, Section 2, Subsection C that the  
13 Secretary may overlook mistakes in a circulator’s registration, directly conflicts with the  
14 plain language of A.R.S. §§ 19-102.01(A) and 19-118(B).

15 89. If an “EPM provision . . . directly conflicts with the express and mandatory  
16 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore  
17 void.” *Ariz. All. for Retired Ams., Inc.*, 537 P.3d at 823–24 ¶ 18; *see also Leibsohn*, 254  
18 *Ariz.* at 7 ¶ 22 (“[A]n EPM regulation that contradicts statutory requirements does not have  
19 the force of law.”); *Ariz. R. Special Action Proc.* 3(b).

20 90. Accordingly, Plaintiffs request that this Court declare the Validity of  
21 Circulator Registrations Rule void, and award special action and injunctive relief to enjoin  
22 the implementation of the same.



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**COUNT V**  
**Duty to Canvass Rules Are Ultra Vires and Conflict with Statute**  
**(Special Action, Declaratory, and Injunctive Relief)**  
**(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-642, 16-643, 16-646; Ariz. R. Civ.**  
**P. 65)**

91. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

92. Chapter 13, Section 2, Subsection A(2) of the 2023 EPM states that “the Board of Supervisors has a non-discretionary duty to canvass the returns as provided by the County Recorder or other officer in charge of elections and has no authority to change vote totals, reject the election results, or delay certifying results without express statutory authority or court order.” Ex. 1 at 248.

93. Moreover, Chapter 13, Section 2, Subsection B(2) of the 2023 EPM states that “Secretary of State has a non-discretionary duty to canvass the returns” but “[i]f the official canvass of any county has not been received by [the] deadline, the Secretary of State must proceed with the state canvass without including the votes of the missing county.” Ex. 1 at 252.

94. The canvassing, or the scope of a legislative or executive official’s duty to canvass, an election is not a topic that the Secretary is statutorily authorized to include in the EPM. *See* A.R.S. § 16-452.

95. “[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does not have the force of law.” *Leach*, 250 Ariz. at 576 ¶ 20.

96. Thus, these provisions of the EPM are outside the statutory delegation and cannot carry the force of law.

97. To hold otherwise would empower the Secretary to prescribe entirely new criminal requirements, equivalent to lawmaking. *See* A.R.S. § 16-452(C) (establishing that violations of the EPM constitutes a class 2 misdemeanor); *see also Prentiss*, 163 Ariz. at 85

1 (“The legislature has the exclusive power to declare what the law shall be . . . . [and]  
2 determines what is a crime . . . .”).

3 98. Making matters worse, these provisions conflict with the plain language of  
4 Arizona law.

5 99. Arizona law requires the Board to conduct a canvass by a certain deadline.  
6 A.R.S. §§ 16-642, 16-646.

7 100. Related to the county board’s duty to canvass, while canvass is not defined,  
8 the statute does indicate that the duty to canvass empowers the Board to “determin[e] the  
9 vote of the county.” A.R.S. § 16-643.

10 101. By empowering the Board to “determin[e] the vote,” the statute contemplates  
11 that there may be circumstances in which the Board is not necessarily required to accept the  
12 returns in the form provided by the elections director or vote in a certain way regarding  
13 accuracy of returns.

14 102. To be sure, a Board cannot *abuse* its discretion and reject otherwise valid and  
15 accurate results, but its duty to canvass does not require it to blindly accept the returns if  
16 legitimate concerns are present.

17 103. Thus, the 2023 EPM’s direction in Chapter 13, Section 2, Subsection A(2)  
18 directly conflicts with the plain language of A.R.S. §§ 16-642, 16-643, 16-646.

19 104. Related to the Secretary’s duty to canvass, A.R.S. § 16-648(C) states that “[i]f  
20 the official canvass of any county has not been received on the fourth Monday following  
21 the general election, the canvass shall be postponed from day to day, *not to exceed thirty*  
22 *days from the date of the election, until canvasses from all counties are received.*”  
23 (emphasis added)

24 105. Because the statute requires both a timely and complete canvass, the 2023  
25 EPM’s unilateral instruction in Chapter 13, Section 2, Subsection B(2) that the Secretary  
26 can or should proceed without an entire county’s votes (and disenfranchise potentially  
27 millions of voters) directly conflicts with the plain language of A.R.S. § 16-648(C).

28

1            106. If an “EPM provision . . . directly conflicts with the express and mandatory  
2 provisions of” a statute, “it exceeds the scope of its statutory authorization and is therefore  
3 void.” *Ariz. All. for Retired Ams., Inc.*, 537 P.3d at 823–24 ¶ 18; *see also Leibsohn*, 254  
4 *Ariz.* at 7 ¶ 22 (“[A]n EPM regulation that contradicts statutory requirements does not have  
5 the force of law.”); *Ariz. R. Special Action Proc.* 3(b).

6            107. Accordingly, Plaintiffs request that this Court declare the Duty to Canvass  
7 Rules void, and award special action and injunctive relief to enjoin the implementation of  
8 the same.

9     **COUNT VI**  
10          **The Secretary Lacks Authority to Interpret and Codify Preliminary Court Rulings**  
11     **in Pending Cases**  
12     **(Special Action, Declaratory Relief)**  
13     **(Ariz. R. Special Action P. 3; A.R.S. §§ 12-1831, 16-452)**

14            108. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
15 forth herein.

16            109. The EPM includes several references to ongoing litigation and interpretations  
17 of statutes at issue within those litigations. *See, e.g.*, Ex. 1 at 3 n.5, 6, 12 n.8–9, 14 n.11, 15  
18 n.13–15, 22 n.19–20, 40 n.25–26, 41 n.27, 74 n.40, 83 n.42, 118 n.56, and 119 n.57.

19            110. Notably, the 2023 EPM’s references to ongoing litigation pick and choose  
20 which judicial rulings to adopt substantively. For example, the EPM incorporates certain  
21 non-final and non-injunctive rulings from ongoing legal proceedings, *see, e.g.*, Ex. 1 at 3  
22 n.5, 12 n.8–9, 14 n.11, 15 n.13–15, 22 n.19–20, 40 n.25–26, 41 n.27 (rulings in *Mi Familia*  
23 *Vota v. Fontes*, D. Ariz. docket no. CV-22-00509-PHX-SRB), while rejecting others, *see,*  
24 *e.g.*, Ex. 1 at 83 n.42 (not incorporating substantive rulings in *Arizona Free Enterprise Club*  
25 *v. Fontes*, Yavapai County Super. Ct. docket no. S1300CV2023-00202, stating only that  
26 “litigation is pending on this issue”).

27            111. Interpreting court rulings or the statutes at issue within them is not within the  
28 Secretary’s statutory scope of authority. *Leach*, 250 Ariz. at 576 ¶ 20.

1           112. As our supreme court has explained, “it is this Court’s role, not the  
2 Secretary’s, to interpret [the] meaning” of election statutes. *Leibsohn*, 254 Ariz. at 7 ¶ 22.

3           113. Cherry-picking rulings that align with the Secretary’s policy preferences  
4 makes this action in excess of the Secretary’s authority worse.

5           114. Again, anything included in the EPM carries the force of law. *Ariz. Pub.*  
6 *Integrity All.*, 250 Ariz. at 63 ¶ 16; A.R.S. § 16-452(C).

7           115. Although it may be appropriate for the EPM to note the pendency of legal  
8 proceedings in order to increase awareness (and, where applicable, to ensure compliance  
9 with preliminary injunctions and final injunctions that are not stayed pending appeal), the  
10 EPM itself cannot invalidate or amend statutory requirements. Nor can the EPM interfere  
11 with or abrogate the appellate rights of other litigants in ongoing legal proceedings.

12           116. Accordingly, to the extent the 2023 EPM purports to override statutory  
13 requirements based on non-final rulings in ongoing legal proceedings (which would  
14 arguably have the effect of denying other litigants in ongoing proceedings the right to appeal  
15 such rulings), the Court should declare that the 2023 EPM’s adoption of such rulings to be  
16 non-binding unless and until the underlying legal rulings themselves become binding.

17                                   **DEMAND FOR RELIEF**

18           WHEREFORE, the Plaintiffs demand relief in the following forms:

19           A. A declaration under A.R.S. §§ 12-1831, 12-1832 and special action relief  
20 pursuant to Arizona Rule of Special Action Procedure 3(b) or other applicable law  
21 providing that the 2023 EPM’s Non-Residency of Juror Questionnaire Rule, Investigations  
22 of Citizenship Status Rule, AEVL Effective Date Rule, Validity of Circulator Registrations  
23 Rule, and Duty to Canvass Rules, *See* Ex. 1 at Chapter 1, Section 9, Subsections C(1) and  
24 C(2)(a), Chapter 2, Section 1, Subsection B(7), Chapter 6, Section 2, Subsection C, Chapter  
25 13, Section 2, Subsections A(2) and B(2): (i) exceed the Secretary’s specific statutory  
26 authorization and lawful authority because these provisions conflict with specific statutes;  
27 (ii) do not carry the force of law; and (iii) are void.

28

1           B.     A declaration under A.R.S. §§ 12-1831, 12-1832 and special action relief  
2 pursuant to Arizona Rule of Special Action Procedure 3(b) or other applicable law  
3 providing that, to the extent the 2023 EPM purports to override statutory requirements based  
4 on non-final rulings in ongoing legal proceedings, that the 2023 EPM's adoption of such  
5 rulings: (i) exceed the Secretary's lawful authority; (ii) do not carry the force of law; and  
6 (iii) are non-binding unless and until the underlying legal rulings themselves become  
7 binding.

8           C.     A preliminary and permanent injunction pursuant to Ariz. R. Civ. P. 65 or  
9 other applicable law prohibiting the Secretary from enforcing or implementing the 2023  
10 EPM's Non-Residency of Juror Questionnaire Rule, Investigations of Citizenship Status  
11 Rule, AEVL Effective Date Rule, Validity of Circulator Registrations Rule, and Duty to  
12 Canvass Rules, *See* Ex. 1 at Chapter 1, Section 9, Subsections C(1) and C(2)(a), Chapter 2,  
13 Section 1, Subsection B(7), Chapter 6, Section 2, Subsection C, Chapter 13, Section 2,  
14 Subsections A(2) and B(2).

15           D.     An award of reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-  
16 341, 12-348.01, 12-1840, 12-2030, the private attorney general doctrine, and other  
17 applicable law.


18           E.     Such other relief as the Court deems necessary, equitable, proper, and just.

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DATED this \_\_\_ day of January, 2024.

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VERIFICATION

I, Warren Petersen, certify that I have read the foregoing Verified Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 31st day of January 2024.



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Warren Petersen

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