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19 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
20 **IN AND FOR THE COUNTY OF MARICOPA**

21 WARREN PETERSEN, in his official
22 capacity as the President of the Arizona State
23 Senate; and BEN TOMA, in his official
24 capacity as the Speaker of the Arizona House
25 of Representatives,

26 Plaintiffs,

27 v.

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

Defendant.

No. _____

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 Pursuant to A.R.S. § 12-1801 and Arizona Rule of Civil Procedure 65, Plaintiffs
2 respectfully move for entry of a preliminary injunction prohibiting the implementation or
3 enforcement of the 2023 Elections Procedures Manual (“EPM”) to the extent it purports to:

- 4
5 1. Allow county recorders to merely move to inactive status—rather than cancel
6 the registrations of—voters who affirmatively stated on juror questionnaires
7 that they do not reside in the relevant county and have not responded within
8 35 days to a notice from the county recorder;
- 9 2. Prohibit county recorders from relying on information provided by third
10 parties in determining whether there is reason to believe a registered voter is
11 not a United States citizen;
- 12 3. Delay implementation of statutorily required maintenance of the active early
13 voting list until January 2027;
- 14 4. Excuse mistakes or errors in the statutorily required registrations of paid or
15 out-of-state ballot measure petition circulators;
- 16 5. Compel county boards of supervisors to reflexively vote to adopt only the
17 returns provided by the election official when conducting a canvass; and
- 18 6. Authorize the Secretary of State to certify a statewide canvass that consists of
19 returns of fewer than fifteen counties.

20 MEMORANDUM OF POINTS AND AUTHORITIES

21 INTRODUCTION

22 Plaintiffs’ entitlement to injunctive relief derives from the confluence of two
23 complementary legal truisms. First, the lawmaking power is lodged entirely, exclusively
24 and irrevocably in the legislative branch, subject only to the electorate’s exercise of the
25 initiative or referendum process. *See* ARIZ. CONST. art. IV; *Wallace v. Smith in and for*
26 *Cnty. of Maricopa*, 255 Ariz. 377, ¶ 9 (2023) (“The Arizona Constitution vests the
27 ‘legislative authority of the state’ in the legislature, and thus “[t]he legislature
28 has plenary power to deal with any topic unless otherwise restrained by the Constitution.”
(cleaned up)). Second, executive branch edicts that administer or interpret a statute—such
as the EPM—must hew closely to the confines of a specific legislative authorization and

1 cannot conflict with or undermine an applicable statute. *See Leach v. Hobbs*, 250 Ariz. 572,
2 576 ¶ 21 (2021) (“[A]n EPM regulation that exceeds the scope of its statutory authorization
3 or contravenes an election statute’s purpose does not have the force of law.”); *McKenna v.*
4 *Soto*, 250 Ariz. 469, 473 ¶ 20 (2021) (EPM provisions that “fall outside the mandates”
5 specifically prescribed by statute are not binding).

6 For the reasons set forth below, each of the challenged EPM provisions transgresses
7 these foundational limitations on the executive power by purporting to imbue with the force
8 of criminal law regulatory commands that are inconsistent with—and, in some instances,
9 diametrically contradict—superseding legislative directives. Implementation of the
10 challenged EPM provisions would defy controlling law, exact an irreparable injury on the
11 Legislature as an institution (which Plaintiffs are authorized to prevent against and defend),
12 and derogate the constitutional separation of powers, which nowhere is “more explicitly
13 and firmly expressed than in Arizona.” *Mecham v. Gordon*, 156 Ariz. 297, 300 (1988).

14 ARGUMENT

15 In considering a motion for preliminary relief, this Court evaluates (1) the likelihood
16 that the movant will succeed at trial on the merits, (2) the possibility of irreparable injury to
17 the movant not remediable by damages if the requested relief is not granted, (3) whether the
18 balance of hardships favors the movant, and (4) whether public policy favors an injunction.
19 *See Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410–411, ¶ 10 (2006);
20 *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Traditionally, the factors are considered on
21 a sliding scale, and a movant is entitled to injunctive relief if it establishes “either
22 (1) probable success on the merits and the possibility of irreparable injury; or (2) the
23 presence of serious questions and ‘the balance of hardships tip sharply’ in his favor.” *Shoen*,
24 167 Ariz. at 63 (emphasis added).

25 But when, as here, a government official “has acted unlawfully and exceeded his
26 constitutional and statutory authority, [plaintiffs] need not satisfy the standard for injunctive
27 relief.” *Ariz. Pub. Integrity All. (“AZPIA”) v. Fontes*, 250 Ariz. 58, 64, ¶ 26 (2020). In any
28 event, all four considerations impel preliminary relief.

1 I. Plaintiffs Are Highly Likely to Succeed in Establishing That Each of the
2 Challenged EPM Provisions Is Contrary to Law

3 It is well-established that any EPM provision that exceeds a legislative grant of
4 authority or that contravenes a substantive statutory provision is null and void. The
5 Legislature has directed the Secretary of State to adopt on a biennial basis, with the assent
6 of the Governor and Attorney General, an elections procedures manual that, in relevant part:

7 prescribe[s] rules to achieve and maintain the maximum degree of
8 correctness, impartiality, uniformity and efficiency on the procedures for
9 early voting and voting, and of producing, distributing, collecting, counting,
10 tabulating and storing ballots.

11 A.R.S. § 16-452(A). This general conferral of rulemaking power is supplemented by
12 various additional discrete authorizations to regulate in the EPM certain narrow and specific
13 facets of the electoral process. *See* Compl. n. 1 (listing delegations). Violations of valid
14 EPM provisions are punishable as class 2 misdemeanors. *See* A.R.S. § 16-452(C).

15 Cognizant of the constitutional imperative that the EPM can merely implement—
16 and not augment, abridge or modify—legislative enactments, courts have rigorously
17 enforced two critical strictures cabining the EPM. First, the EPM cannot regulate topics
18 that lie outside the scope of an explicit legislative authorization. *See McKenna*, 250 Ariz.
19 at 473, ¶ 20 (EPM provisions concerning topics that “fall outside the mandates of § 16-452”
20 or other authorization are not binding). Second, “an EPM regulation that exceeds the scope
21 of its statutory authorization or contravenes an election statute’s purpose does not have the
22 force of law.” *Leach*, 250 Ariz. at 576, ¶ 21.

23 Exercising its “responsibility . . . to declare existing law,” *Yes on Prop. 200 v.*
24 *Napolitano*, 215 Ariz. 458, 465, ¶ 14 (App. 2007), the judicial branch has on four occasions
25 in as many years invalidated an EPM provision as either *ultra vires* or inconsistent with a
26 controlling statute. *See McKenna*, 250 Ariz. at 473, ¶ 20 (no statutory authority to regulate
27 the legal sufficiency of candidate nomination petitions); *Leach*, 250 Ariz. at 576, ¶ 20
28 (EPM’s creation of “de-registration” process for petition circulators could not negate the

1 circulators’ statutory obligations); *Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (EPM
2 provision that excused petition circulators from uploading new affidavit when amending
3 registration was contrary to law and invalid); *Ariz. All. for Retired Ams. v. Crosby*, 537 P.3d
4 818, 823, ¶ 18 (Ariz. App. 2023) (finding that EPM provision concerning hand count audit
5 of ballots “directly conflicts with” the statute “and is therefore void”). A court evaluating
6 a challenged EPM provision owes no deference to the Secretary’s preferred interpretation
7 of the applicable statutes. *See Leibsohn*, 254 Ariz. at 7 ¶ 22 (“[I]t is this Court’s role, not
8 the Secretary’s, to interpret [a statute’s] meaning.”); A.R.S. § 12-910(F).

9 At least six provisions of the 2023 EPM either regulate in realms the EPM has no
10 statutory authority to be or are inconsistent with a governing legislative pronouncement.

11 **A. The EPM Purports to Nullify Express Statutory Requirements**
12 **Governing the Cancellation of Non-Residents’ Voter Registrations**

13 Current and accurate voter rolls are the fulcrum of free and secure elections. The
14 Arizona Constitution limits the franchise to adult citizens who are residents of this State.
15 *See* ARIZ. CONST. art. VII, § 2. And it requires the Legislature to enact “registration and
16 other laws to secure the purity of elections and guard against abuses of the elective
17 franchise.” *See id.* art. VII, § 12. The Legislature accordingly has constructed multifaceted
18 mechanisms to identify, initiate contact with, and cancel the registrations of individuals who
19 are not eligible to vote. *See* A.R.S. §§ 16-165, 16-166(A)-(E).

20 One crucial component of this structure relies on voters’ own self-reports of non-
21 residency in juror questionnaires. Specifically, if a periodic report provided by the jury
22 commissioner or juror manager indicates that an individual who is a registered voter
23 represented on a juror questionnaire that she is not, in fact, a resident of the county, the
24 county recorder must send a notice by forwardable mail to the voter requesting that she
25 confirm her residency status. If she does not respond within 35 days, “the county recorder
26 *shall cancel* the person’s registration.” A.R.S. § 16-165(A)(9)(b) (emphasis added).

27 Defying this statutory command, the EPM instead provides that if the voter does not
28 respond to the county recorder’s residency confirmation request by the specified deadline,

1 her registration is *not* canceled, but rather simply moved to “inactive” status. *See* Compl.
2 Ex. 1 at 41. Critically, an “inactive” voter retains all the attributes and rights of a qualified
3 elector. *See* A.R.S. § 16-583. An inactive voter’s registration will be canceled only if he
4 does not vote in any election over the course of two cycles (*i.e.*, four calendar years) and
5 does not otherwise update his voter registration during that period. *See* A.R.S. § 16-166(C).

6 This EPM provision “directly conflicts with the express and mandatory,” *Ariz. All.*,
7 537 P.3d at 823, ¶ 18, language of A.R.S. § 16-165(A)(9)(b). No ambiguity clouds the
8 statute; the recorder “shall cancel the registration” if the voter has not confirmed his
9 residency within 35 days of the recorder’s request. The Secretary has by fiat converted this
10 explicit cancelation trigger into effectively a four-year grace period during which a voter
11 who has already affirmatively represented his ineligibility remains on the rolls.

12 Any reliance by the Secretary on the National Voter Registration Act of 1993, 52
13 U.S.C. § 20501, *et seq.* (“NVRA”), to justify the EPM’s rewriting of clear statutory text
14 falls flat. When a registered voter no longer appears to reside in the relevant jurisdiction
15 but has not confirmed her residency status, the NVRA generally contemplates a
16 redesignation of her registration to inactive status. *See* 52 U.S.C. § 20507(d)(1).
17 Importantly, however, the NVRA permits immediate cancelation of the registration if the
18 registrant “confirms in writing that the registrant has changed residence to a place outside
19 the registrar’s jurisdiction in which the registrant is registered.” *Id.* § 20507(d)(1)(A). By
20 definition, responses to juror questionnaires consist entirely and exclusively of an *explicit*
21 affirmation of non-residency that the voter has personally disclosed. *See* A.R.S. § 21-314.
22 A written confirmation by the voter himself that he no longer resides in the relevant county
23 comports with the NVRA’s express allowance of immediate cancelations.

24 More fundamentally, any question concerning the statute’s conformance with the
25 NVRA resides solely in the judicial domain, not the executive. The Secretary cannot misuse
26 the EPM to codify his divinations of how a court might evaluate A.R.S. § 16-165(A)(9)(b).
27 Discerning and synthesizing the relationship between a state statute and an applicable
28 federal law is entrusted to the courts and the courts alone. *See Roberts v. State*, 253 Ariz.

1 259, 266, 269, ¶¶ 20, 35 (2022) (independently construing relevant statutes and explaining
2 that while “the legislature may incorporate federal law” into state law, it did not authorize
3 administrative agency to do so via rulemaking); *see also Leibsohn*, 254 Ariz. at 7 ¶ 22.

4 **B. The EPM Unlawfully Abridges the County Recorders’ Statutory**
5 **Responsibility to Investigate Potentially Invalid Voter Registrations**

6 While databases of State records are indispensable to ensuring accurate and current
7 voter rolls, they are neither infallible nor exhaustive. Recognizing that information relevant
8 to voters’ eligibility can derive from various external sources, the Legislature in 2022
9 mandated that county recorders must conduct inquiries of the Systematic Alien Verification
10 for Entitlements (“SAVE”) program—an informational repository maintained by the
11 United States Citizenship and Immigration Services—if the recorder “has reason to believe”
12 the voter is not a United States citizen. *See* A.R.S. § 16-165(I).

13 The EPM acknowledges this investigatory responsibility but instructs that “third-
14 party allegations of non-citizenship are not enough to initiate this process.” Compl. Ex. 1
15 at 42. This limitation is textually and conceptually irreconcilable with A.R.S. § 16-165(I).
16 The statutory precondition to a SAVE inquiry—*i.e.*, “reason to believe” that a registered
17 voter may not be a U.S. citizen—is not confined to any particular source(s) of information.
18 If the Legislature had wished to allow citizenship inquiries only when the county recorder’s
19 “reason to believe” a registration may be invalid is premised solely on certain informational
20 channels or a level of reliability, it would have said so. Instead, it obligated the county
21 recorders to undertake additional inquiries whenever information—from any source and in
22 any context—is sufficiently credible and reliable to supply “reason to believe” a voter may
23 not be a citizen. Neither the courts nor the executive branch may “read into a statute
24 something that is not within the manifest intent of the legislature as indicated by the statute
25 itself.” *Cicoria v. Cole*, 222 Ariz. 428, 431 ¶ 15 (App. 2009); *see also State v. Arbolida*,
26 206 Ariz. 306, 308 ¶ 8 (App. 2003) (“We will not imply words . . . when the legislature
27 easily could have limited the statute’s scope had it so intended.”).

1 To the extent the Secretary purports to rely on the EPM’s aspiration of “uniformity”
2 or “efficiency” in citizenship investigation procedures, *see* A.R.S. § 16-452(A), that defense
3 flounders for at least three reasons.

4 *First*, the “uniformity” and “efficiency” criteria can merely guide effectuation of the
5 Legislature’s written intent; they are not an independent fount of executive power to abridge
6 or modify clear statutory terms. *See Law Off. of Anne Brady, PLLC v. Dept of Econ. Sec.,*
7 *ESA Tax Unit*, 255 Ariz. 302, ¶ 20 (App. 2023) (invalidating regulation that “impermissibly
8 restricted the intended scope of the” underlying statute).

9 *Second*, even if the EPM could subordinate the substantive commands of a statute to
10 the executive branch’s subjective conceptions of “uniformity” or “efficiency,” the EPM’s
11 categorical prohibition on the consideration of third-party allegations is concomitantly
12 overinclusive and underinclusive. There is no correlation between a complaint’s third-party
13 genesis and its capacity to induce “reason to believe” that a voter is potentially not a citizen.
14 Third-party complaints occupy an expansive continuum. While a purely conjectural “tip”
15 may carry no persuasive weight, records transmitted by a law enforcement agency or
16 complaints corroborated by reliable documentation easily could engender “reason to
17 believe” a voter may not be a U.S. citizen. Conversely, the EPM offers no parameters that
18 might actually foster uniformity or efficiency—*e.g.*, guidance on how to prioritize or
19 process various sources of information when calibrating a “reason to believe” assessment.

20 *Third*, the EPM’s professed aversion to the use of third-party information is
21 discredited by its treatment of the same evidentiary rubric (*i.e.*, “reason to believe”) in other
22 contexts. Arizona law provides that if the Secretary of State has “reasonable cause” to
23 believe a violation of the campaign finance code has occurred in any election under his
24 jurisdiction, he must refer the matter to the Attorney General for further investigation. *See*
25 A.R.S. § 16-938. Notably, the EPM instructs that, in formulating a “reasonable cause”
26 determination, the Secretary or other filing officer may rely not only on the parties’
27 submissions and government records but also “any other information available in the public
28 record.” Compl. Ex. 1 at 264. This allowance implies a sensible recognition that salient

1 information can arise from a multitude of sources and that, as experienced professionals,
2 elections officials can be trusted to use prudent judgment on a case-by-case basis. Similarly,
3 in the criminal context, the “reason-to-believe standard requires a level of reasonable belief
4 similar to that required to support probable cause” which may include information that the
5 police receive from “*reasonably trustworthy information* and circumstances [that] would
6 *lead a person* of reasonable caution to believe an offense *has* been committed.” *State v.*
7 *Smith*, 208 Ariz. 20, 23–24 ¶¶ 10–12 (App. 2004) (emphasis added).

8 In sum, by preemptively foreclosing any reliance on third-party complaints—
9 irrespective of their origin, credibility or substance—the EPM provision conflicts with
10 A.R.S. § 16-165(I)’s plain text and undermines its manifest purpose. *See Leach*, 250 Ariz.
11 at 576, ¶ 21; *Law Off. of Anne Brady*, 255 Ariz. 302, ¶ 20 (“Because the narrow scope of
12 the implementing regulation contravenes the legislative purpose, it cannot stand.”).

13 C. The EPM Impermissibly Delays Implementation of an Operative Statute

14 In unilaterally postponing any implementation of the statutory active early voting list
15 (“AEVL”) maintenance program for more than five years after the enactment date, the EPM
16 collides with controlling law. In 2021, the Legislature reconstructed what had been the
17 “permanent early voting list” into the AEVL. Voters who wish to automatically receive
18 early ballots by mail on an indefinite basis may continue to do so. *See* A.R.S. § 16-544(A),
19 (H). On January 15 of every odd-numbered year, however, the county recorder must send
20 by forwardable mail a notice to every AEVL member who has not cast an early ballot in
21 any election over the course of two consecutive election cycles (*i.e.*, four calendar years).
22 *See id.* § 16-544(K), (L). The notice asks the voter whether she would like to remain on the
23 AEVL. *See id.* § 16-544(L). If the voter does not respond to the notice within 90 days, she
24 will be removed from the AEVL, but may re-enroll at any time. *See* A.R.S. § 16-544(M).
25 The relevant statutory provisions became effective on September 29, 2021. *See* 2021 Ariz.
26 Laws ch. 359 (S.B. 1485); ARIZ. CONST. art. IV, pt. 1, § 1(3).

27 Fidelity to the statutory text obligates the county recorders to issue on January 15,
28 2025 notices to every AEVL enrollee who did not cast an early ballot in any election during

1 the 2022 or 2024 election cycles. *See* A.R.S. § 16-544(H), (K), (L). Defying this legislative
2 directive, the EPM orders county recorders to refrain from issuing any notices until January
3 15, 2027, and instructs them to send notices only to AEVL enrollees who did not vote by
4 early ballot in the 2024 or 2026 election cycles. *See* Compl. Ex. 1 at 61 n.34.

5 The EPM purports to excuse its negation of the county recorders' statutory duty by
6 appealing to the presumption against retroactivity. *See id.* An "election cycle" for AEVL
7 purposes is defined (in relevant part) as "the two-year period beginning on January 1 in the
8 year after a statewide general election." A.R.S. § 16-544(S). Because the 2022 election
9 cycle began on January 1, 2021, the EPM insists that the entire 2022 election cycle must be
10 excluded for AEVL list maintenance purposes. This is wrong for two reasons.

11 1. Reliance on Prior Voting History When Issuing Notices Is Not a
12 "Retroactive" Application of S.B. 1485

13 First, merely sending notices to AEVL members who did not cast any early ballot in
14 the 2022 or 2024 election cycles does not impair any such voter's substantive rights, and
15 hence does not constitute a "retroactive" application of S.B. 1485. The EPM's facile
16 reasoning that any consideration of an AEVL voter's (in)activity in the 2022 election cycle
17 is a "retroactive" application obscures that "laws are not retroactive simply because they
18 relate to past events." *Hall v. A.N.R. Freight Sys., Inc.*, 149 Ariz. 130, 139 (1986). The
19 presumption against retroactivity does not "appl[y] to laws that operate on pre-existing
20 conditions, and such laws are not retrospective by their mere relation to antecedent
21 conditions." *Id.* (citation omitted; emphasis in original); *see also Zuther v. State*, 199 Ariz.
22 104, 109 ¶ 17 (2000) ("A statute is not necessarily retroactive because it 'relate[s] to
23 antecedent facts.'" (citation omitted)). A retroactive effect exists only when a statute's
24 application "disturb[s] vested substantive rights by retroactively changing the law that
25 applies to completed events." *State v. Aguilar*, 218 Ariz. 25, 32, ¶ 25 (App. 2008) (quoting
26 *San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195 (1999)).

27 An AEVL's voter's inactivity during the 2022 election cycle (and 2024 election
28 cycle) does not result in his removal from the AEVL or otherwise impair any substantive

1 right. Rather, it merely obligates the county recorder to send him a notice on January 15,
2 2025. Upon receipt of that notice, the voter then may choose whether and in what manner
3 to respond. If, and only if, the voter opts not to respond to the January 15, 2025 notice will
4 he be removed from the AEVL. In other words, the actions or occurrences that precipitate
5 a voter's removal from the AEVL—*i.e.*, the issuance of a notice and the voter's failure or
6 decision not to respond—all occur after S.B. 1485's effective date, and hence entail no
7 retroactive application of the statute. That the notice's issuance may be predicated in part
8 on facts or events that precede the effective date does not render S.B. 1485 retroactive.¹ *See*
9 *Anderson v. Indus. Comm'n of Ariz.*, 205 Ariz. 411, 413, ¶¶ 7–8 (App. 2003) (application
10 of new benefits suspension statute to existing beneficiary was not retroactive where “the
11 last moment [beneficiary] could have acted to avoid suspension of his benefits occurred
12 after the enactment of the suspension statute”); *Tower Plaza Invs. Ltd. v. DeWitt*, 109 Ariz.
13 248 (1973) (new tax on rent payments applies to leases that pre-dated the statute; statute
14 was not “retroactive merely because it draws upon some antecedent facts for its operation”).

15 2. The EPM Provision Is Incompatible with the Statutory Text

16 Second, even assuming *arguendo* that anti-retroactivity principles are implicated at
17 all, the EPM's interpretation is textually untenable and effectively suspends S.B. 1485's
18 constitutionally mandated effective date of September 29, 2021. The *presumption* against
19 retroactivity is just that—an inference from legislative silence. *See* A.R.S. § 1-244. But
20 this interpretive canon serves only to illuminate the statutory text, not subordinate it. When
21 navigating the application of a statute in relation to the presumption, the lodestar is the
22 Legislature's intent, as embodied in the words it adopted into law. *Krol v. Indus. Comm'n*,
23 255 Ariz. 495, ¶ 16 (App. 2023) (“The legislature need not use magic words. Instead, ‘[a]ny
24 language that shows a legislative purpose to bring about [retroactivity] is sufficient.’ We
25 use the same rules of statutory construction we ordinarily use.” (citations omitted)).

26
27 ¹ Any elections that were held during the 2022 cycle but prior to S.B. 1485's effective date
28 would have been only local elections in select jurisdictions. The EPM's misconceived
“retroactivity” concern is irrelevant to the numerous AEVL enrollees who do not reside in
jurisdictions that held local elections between January 1 and September 29, 2021.

1 S.B. 1485 (1) was operative throughout all statewide elections held during the 2022
2 election cycle, including the August 2022 primary election and the November 2022 general
3 election, and (2) will be operative on January 15, 2025. It follows ineluctably from these
4 premises that the county recorders must issue the required notices on January 15, 2025 and
5 must consider AEVL members' voting history during the 2022 election cycle—or at least
6 that portion of the 2022 election cycle that post-dates September 29, 2021—when doing so.

7 **D. The EPM Improperly Negates Statutorily Required Elements of a Valid**
8 **Circulator Registration**

9 The EPM purports to excuse certain circulators of statewide ballot measure petitions
10 from providing on their registrations complete and accurate contact information, in direct
11 contravention of explicit statutory requirements with which the Legislature has mandated
12 “strict compliance.” *Voice of Surprise v. Hall*, 255 Ariz. 510, 517 ¶ 29 (2023). Arizona
13 law has long required paid or out-of-state circulators of statewide initiative or referendum
14 petitions to file a basic registration with the Secretary of State prior to obtaining any
15 signatures. *See* A.R.S. § 19-118(A), (C). A valid registration must include the circulator’s
16 “full name, residence address, telephone number and email address,” and an affidavit that
17 “all of the information provided is correct to the best of [the circulator’s] knowledge.” *Id.*
18 § 19-118(B). All signatures collected by circulators who fail to timely and properly register
19 are invalid. *See id.* §§ 19-118(A), 19-121.01(A)(1)(h). The Legislature has buttressed the
20 entire ballot measure infrastructure with a plenary mandate that all statutory requirements
21 governing the initiative or referendum process be “strictly construed” and demand “strict
22 compliance.” *Id.* §§ 19-101.01, 19-102.01; *Arrett v. Bower*, 237 Ariz. 74, 81 ¶ 22 (App.
23 2015) (“[S]trict compliance ‘requires nearly perfect compliance with constitutional and
24 statutory referendum requirements.’”); *Voice of Surprise*, 255 Ariz. at 517, ¶ 29.

25 Debilitating these legislative directives, the EPM instead assures circulators that:

26 The requirement to list certain information on the circulator portal does not
27 mean that a circulator’s signatures shall be disqualified if the circulator
28 makes a mistake or inconsistency in listing that information (e.g., a phone
number or email address that is entered incorrectly; a residential address that

1 doesn't match the residential address listed on that circulator's petition
2 sheets; etc.). Compl. Ex. 1 at 119 n.58.

3 The EPM's foray into the judicial sphere is doubly deficient, defying both statutory
4 text and precedent. While the Secretary may establish in the EPM "a procedure for
5 registering circulators, including circulator registration applications," A.R.S. § 19-118(A),
6 this discrete administrative flexibility is not a grant of policymaking authority. *Leibsohn v.*
7 *Hobbs*, 254 Ariz. 1 (2022), illustrates the point effectively. A valid circulator registration
8 must include a signed and notarized certification. *See* A.R.S. § 19-118(B)(5). The then-
9 operative EPM instructed that, when a previously registered circulator simply updates his
10 existing registration, he need only provide an electronic attestation instead of a new
11 notarized document. Countering that a notarized certification is, in fact, required for
12 amended registrations, the Supreme Court commented that it was "not persuaded to reach
13 a different interpretation of [the statute] simply because the Secretary may construe the
14 requirement differently," *Leibsohn*, 254 Ariz. at 7 ¶ 22, and emphasized that "an EPM
15 regulation that contradicts statutory requirements does not have the force of law," *id.* So it
16 is here. The EPM's diktat that circulators are free to provide "mistake[n]" and perhaps even
17 fictive contact information in registrations collides with the Legislature's explicit
18 pronouncements to the contrary. Circulators must not only itemize their true and accurate
19 "residence address, telephone number and email address," A.R.S. § 19-118(B)(1), but must
20 "strictly comply" with this mandate, *id.* §§ 19-101.01, 19-102.01.

21 The courts agree. The Arizona Supreme Court has held expressly that "[c]irculators
22 are required to provide a correct telephone number at the time they submit their registration
23 application," Decision Order, *Mussi v. Hobbs*, No. CV-22-0207-AP/EL, 2022 WL
24 3652456, at *2 (Ariz. Aug. 24, 2022) (en banc)—a conclusion that extends in equal measure
25 to residential and email addresses. Eliding a critical distinction, the EPM's categorical
26 assertion that the address provided on a registration need not "match the residential address
27 listed on that circulator's petition sheets," Compl. Ex. 1 at 119 n.58,² is, at best, deeply

28 ² Circulators must disclose their residential addresses on the affidavits that accompany

1 misleading. The legal sufficiency of an address is always conditioned upon its *accuracy*.
2 If a circulator were to relocate after registering and then use her new address on petition
3 sheet affidavits, the EPM is correct that the address discrepancy does not disqualify the
4 associated petition signatures because the registration address was accurate at the time it
5 was disclosed. By contrast, if the disparate addresses are attributable to the circulator's
6 provision of inaccurate information on the registration, the EPM's announcement that the
7 "mistake" is inconsequential simply is wrong as a matter of law. *See Mussi*, 2022 WL
8 3652456, at *2 (affirming disqualification of signatures collected by circulators who the
9 parties stipulated had "submitted incorrect addresses" on their registrations); 255 Ariz. 395,
10 ¶ 22 (2023) (elaborating that signatures could be disqualified where "differing addresses
11 due to a change in residence could not be confirmed"). To be sure, there are countless
12 factual permutations between these polarities that may present arguable questions (*e.g.*,
13 does an accidental transposition of digits in a telephone number invalidate a registration?).
14 Such hypotheticals, however, must be left for the courts to resolve, if and when they arise.
15 *See Leibsohn*, 254 Ariz. at 77, ¶ 22 (under separation of powers principles, "it is this Court's
16 role, not the Secretary's, to interpret" statutes).

17 **E. The EPM Cannot Dictate How County Boards of Supervisors Canvass**
18 **Election Returns or Instruct the Secretary to Disenfranchise the Voters**
19 **of an Entire County**

20 In purporting to regulate the canvassing of election returns, the EPM unlawfully
21 constricts the county boards of supervisors' canvassing authority while arrogating to the
22 Secretary of State an extraordinary power to certify a statewide canvass that omits entirely
23 the returns of any counties that have not met a statutory deadline—*i.e.*, disenfranchising
24 thousands, if not millions, of voters. Specifically, the EPM provides:

25 The Board of Supervisors has a non-discretionary duty to canvass the returns
26 as provided by the County Recorder or other officer in charge of elections
27 and has no authority to change vote totals, reject the election results, or delay
certifying the results without express statutory authority or a court order.

28 every petition sheet they circulate. *See* A.R.S. § 19-112(D).

1 Compl. Ex. 1 at 248 (the “County Canvass Provision”). A few pages later, the EPM then
2 instructs as follows:

3 All counties must transmit their canvasses to the Secretary of State, and the
4 Secretary of State must conduct the statewide canvass, no later than 30 days
5 after the election. A.R.S. § 16-648(C). If the official canvass of any county
6 has not been received by this deadline, the Secretary of State must proceed
7 with the state canvass without including the votes of the missing county (i.e.,
the Secretary of State is not permitted to use an unofficial vote count in lieu
of the county’s official canvass).

8 *Id.* at 252 (the “State Canvass Provision”).

9 Both directives are *ultra vires* because the EPM dispenses authority to regulate (in
10 relevant part) only “the producing, distributing, collecting, counting, tabulating and storing
11 [of] ballots,” A.R.S. § 16-452(A)—not canvassing. The distinction is not a semantic
12 subtlety. Tabulation and canvassing are conceptually, temporally and legally independent
13 facets of election administration. The latter is addressed in a separately codified set of
14 statutes, *see* Title 16, Chapter 4, Article 11 (“Official Canvass”), and embodies a specific
15 legal process that is denoted entirely by statute. Because the canvass is not within the
16 EPM’s statutorily defined purview, both provisions lack any binding force. And even
17 assuming *arguendo* that the EPM may regulate canvassing processes, both provisions are
18 afflicted with the same flaw: they purport to pronounce categorical, absolute rules that have
19 no basis in statute. Nothing in Arizona law forbids boards of supervisors from
20 independently evaluating the election returns under *any* circumstances. Similarly, Arizona
21 law does not empower the Secretary of State to exclude a dilatory county from the statewide
22 canvass. Whether a board of supervisors or the Secretary of State has—under any given set
23 of facts—misused its canvassing authority is for the courts alone to decide.

24 1. The EPM Cannot Command Boards of Supervisors to Vote to
25 Reflexively Ratify the Election Official’s Tally of Returns

26 The County Canvass Provision conflates the duty to canvass with the content of the
27 canvass. As to the former, the EPM is correct that each county board of supervisors has a
28 legal obligation to complete a canvass of returns in its jurisdiction by the statutorily

1 specified deadline. *See* A.R.S. §§ 16-642, 16-645; *Hunt v. Campbell*, 19 Ariz. 254, 279
2 (1917). It does not follow, however, that the board is constrained to do nothing other than
3 rubber stamp whatever returns are presented by the election official. A.R.S. § 16-643
4 defines the canvass; it consists of “opening the returns, other than the ballots, and
5 determining the vote of the county, by polling places, for each” candidate and measure.

6 To be sure, in all or virtually all instances, the returns as provided by the election
7 official will embody an accurate record of the vote totals. If, however, a genuine question
8 arose as to the completeness of the returns proffered by the election official (for example,
9 the election official had excluded tallies from certain precincts), the final determination as
10 to the disposition of the disputed return resides with the board of supervisors, as the
11 governing body of the jurisdiction. *See* A.R.S. §§ 16-646, 11-251(1), (3); *Campbell v. Hunt*,
12 18 Ariz. 442, 452 (1917) (indicating that the “simple function” of adding up the returns
13 during the canvass presupposes there is no allegation that the returns “are forged or
14 spurious, that they are not the returns, and all the returns, and signed by the proper officers”).
15 If the board of supervisors’ canvass is alleged to be erroneous, it can be challenged in court.
16 *See* A.R.S. § 16-672; *Wenc v. Sierra Vista Unified Sch. Dist. No. 68*, 210 Ariz. 183 (App.
17 2005) (considering challenge to validity of canvass).

18 The troubling notion that the Secretary of State, through the EPM, can peremptorily
19 order independently elected officials that they must vote to reflexively ratify whatever
20 returns the election official places in front of them—under any and all circumstances—finds
21 no statutory sustenance. *See generally Williams v. Parrack*, 83 Ariz. 227, 230–31 (1957)
22 (courts cannot issue injunction requiring legislative body to adopt or not adopt a proposal).

23 2. A Statewide Canvass Must Include Returns From Every County

24 The Secretary complements his abridgement of the board’s statutory authority with
25 a correspondingly unlawful enlargement of his own, insisting that “[i]f the official canvass
26 of any county has not been received by this deadline, the Secretary of State must proceed
27 with the state canvass without including the votes of the missing county.” Compl. Ex. 1 at
28 252. By definition, however, the statewide canvass intrinsically is the aggregation of the

1 *fifteen* counties’ respective canvasses, and state law directs the Secretary to certify “all
2 offices for which the nominees filed nominating petitions and papers with the secretary of
3 state.” A.R.S. § 16-648(A). Theoretically, the Secretary could modify—but not outright
4 reject—a county’s canvass upon concluding that the county’s returns are inaccurate or
5 corrupted in some way, in the same manner that a county board of supervisors may do so
6 in appropriate circumstances. *See Campbell*, 18 Ariz. at 452. But the notion of a 14-county
7 statewide canvass is an unprecedented legal impossibility that condones the
8 disenfranchisement of potentially millions of Arizona voters. It is alarming that the
9 Secretary would summarily adopt such a sweeping rule—which appears to have been
10 hastily inserted by the Governor or Attorney General after the public comment period on
11 the draft EPM had closed—that could nullify the votes of entire counties with the stroke of
12 a pen.

13 Simply put, Arizona law places two mandatory conditions on the Secretary: (1) to
14 canvass within 30 days from the date of the election and (2) include the canvasses from all
15 counties. *See* A.R.S. § 16-648. The EPM must give meaning to both elements of this
16 statute. Of course, a county’s inability or unwillingness to certify a canvass would place
17 the Secretary in the pincers of dueling statutory duties—*i.e.*, either adopt an incomplete and
18 legally defective canvass, or fail to certify the election by the statutory deadline. *See* A.R.S.
19 §§ 16-648(A), 16-550. But resolution of such a dilemma is the clear prerogative of the
20 courts, construing the controlling statutes through the prism of the facts that precipitated the
21 impasse. In purporting to preemptively adjudicate hypothetical disputes by promulgating a
22 novel, universal, and absolute rule of decision, the State Canvass Provision impinges both
23 legislative and judicial functions in violation of the separation of powers.

24 **II. The EPM’s Statutory Violations Irreparably Injure Plaintiffs by Infringing on** 25 **the Legislature’s Lawmaking Powers**

26 Because the challenged EPM provisions stand in clear contravention of controlling
27 statutes, Plaintiffs’ entitlement to injunctive relief is not conditioned upon a separate
28 showing of irreparable injury. *See AZPIA*, 250 Ariz. at 64, ¶ 26 (“Because Plaintiffs have

1 shown that the Recorder has acted unlawfully and exceeded his constitutional and statutory
2 authority, they need not satisfy the standard for injunctive relief.”). This subsummation of
3 the other elements of the traditional injunction standard into the merits inquiry reflects that
4 “irreparable harm to the public is presumed” when a public officer abuses his position. *Id.*

5 Further, an EPM provision that exceeds the scope of a statutory delegation or that
6 conflicts with a statutory provision exacts an institutional injury by infringing the legislative
7 power. “The legislature has the exclusive power to declare what the law shall be,” *State v.*
8 *Prentiss*, 163 Ariz. 81, 85 (1989), and is the repository of all other “power not expressly
9 prohibited or granted to another branch of the government.” *State ex rel. Napolitano v.*
10 *Brown*, 194 Ariz. 340, 342, ¶ 5 (1999) (citation omitted). “In contrast, the executive
11 branch’s duty is to carry out the policies and purposes declared by the Legislature.” *State*
12 *ex rel. Woods v. Block*, 189 Ariz. 269, 275 (1997). It follows from these constitutional
13 axioms that, when the executive branch unlawfully purports to abrogate or nullify a
14 legislative act, “the Legislature, as an institution, has sustained a direct injury to its authority
15 to make and amend laws by a majority vote.” *Forty-Seventh Legislature v. Napolitano*, 213
16 Ariz. 482, 487 ¶ 15 (2006); *see also Biggs v. Cooper ex rel. Cnty. of Maricopa*, 236 Ariz.
17 415, 418 ¶ 9 (2014) (reaffirming that “the legislature as a body suffers a direct institutional
18 injury . . . when an invalid gubernatorial veto improperly overrides a validly enacted law”).

19 **III. Equitable and Public Policy Considerations Support Injunctive Relief**

20 Because the Secretary’s enforcement or implementation of the challenged EPM
21 provisions “does not comply with Arizona law, public policy and the public interest are
22 served by enjoining his unlawful action.” *AZPIA*, 250 Ariz. at 64 ¶ 27.

23 **CONCLUSION**

24 For the foregoing reasons, the Court should preliminarily enjoin the Secretary from
25 implementing or enforcing the provisions of the EPM set forth above.


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