

ARIZONA SUPREME COURT

MARK BRNOVICH, in his official capacity as Arizona Attorney General,)	No. T-22-0002-CV
Plaintiff/Appellant,)	Court of Appeals, Division One
)	No. 1-CA-22-0389
v.)	
KATIE HOBBS, in her official capacity as Arizona Secretary of State.)	Yavapai County Superior
Defendant/Appellee.)	Court No. P1300CV202200269
)	
v.)	
DOUGLAS A. DUCEY, in his official capacity as Governor of Arizona,)	
Real Party in Interest.)	

**RESPONSE IN OPPOSITION TO ARIZONA ATTORNEY
GENERAL MARK BRNOVICH’S PETITION TO TRANSFER**

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** Application for Pro Hac Vice
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Introduction

On October 1, 2021, Secretary of State Katie Hobbs (“Secretary”) fulfilled her statutory duty by submitting a draft 2021 Election Procedures Manual (“EPM”) to the Governor and Attorney General (“AG”). *See* A.R.S. § 16-452(B).

The Secretary was not the only elected official responsible for ushering through the new EPM: the AG and Governor had to approve it by December 31, 2021. *Id.* But instead of diligently working toward that deadline, the AG said nothing for more than two months. Mere weeks before the deadline, the AG proposed slashing nearly a third of the draft 2021 EPM, proclaiming that he “will not approve the manual . . . unless [his] changes are made.” The AG then refused the Secretary’s attempt to compromise and collaborate. December 31 came and went, and the draft 2021 EPM died on the vine.

Four months later, the AG filed this special action against the Secretary. The AG asked the trial court to compel the Secretary to “promulgate the 2021 EPM consistent with the redlined draft the AG provided to the Secretary on December 9, 2021.” In other words, the AG asks the courts to require that the Secretary accede to his every demand.

The trial court denied the AG’s remarkable request for special action relief because the Secretary did everything required of her by A.R.S. § 16-452. The Court also observed that the AG acted “far too late” to do anything without “disrupting elections that have already begun,” and held that the 2019 EPM “remains” in effect.

The AG appealed, and now claims that “extraordinary circumstances” justify transfer to this Court. According to the AG, there’s “insufficient time for the ordinary appellate process.” Never mind that any time crunch is a problem of the AG’s own making caused by his inexplicable delay in suing. And never mind that the AG is hardly serious about obtaining expedited appellate review, evidenced best by his failure to file an opening brief in the near two weeks that have passed since the trial court ruled. Nor are elections officials left without guidance as the AG baselessly [at 1] declares; the undisputed evidence is that elections are now proceeding under the last-approved EPM—the 2019 EPM—just as counties have done in past election cycles when an updated EPM had not been approved.

The Court should deny the Petition.

Background

The Secretary's response to the AG's Application for Order to Show Cause [**Exhibit 1**], Motion for Summary Judgment [**Exhibit 2**], and Separate Statement of Facts in Support of Motion for Summary Judgment [**Exhibit 3**] tell the long history underlying this dispute. In sum:

- The Secretary submitted the draft 2021 EPM to the AG and Governor on October 1, 2021.
- The AG did not respond to the Secretary's repeated requests for feedback on the draft 2021 EPM until December 9, when he demanded wholesale deletions of a third of the draft 2021 EPM.
- The Secretary responded on December 17, accepting many deletions as a compromise, explaining why certain edits were improper, and asking the AG to meet over other edits.
- On December 22, the AG informed the Secretary that "because of [her] unprecedented decision to file a bar complaint against [him]"

for his unethical conduct in other matters, he will not “discuss[] this matter further with [her].”¹

- The next day, the Secretary informed all county recorders and election directors about the AG’s decision, thanked them for their work, and explained that the 2019 EPM “remains relevant.” In January 2022, the Secretary gave the counties an annotated version of the 2019 EPM that highlighted relevant changes in the law to give them as much guidance as possible.
- The AG said nothing about the EPM until March 2022, after the Arizona Republican Party filed an original special action in the Arizona Supreme Court against the State and the Secretary, challenging early voting and certain EPM provisions. Though neither the State nor AG sought affirmative relief, the AG insisted in a March 11 filing that this Court “must resolve” whether the Secretary should “provide a valid draft EPM.”
- This Court declined jurisdiction of that matter on April 5, yet the AG waited until April 21 to file this litigation.

¹ The Secretary filed the referenced “bar complaint” in October 2020, more than a year before the AG used it as an excuse for his refusal to negotiate.

- Several counties recently administered local elections, and all counties are now administering the August 2022 primary and preparing for the November 2022 general election, using the approved 2019 EPM. [Exhibit 3 ¶¶ 33-34]
- A bipartisan group of election officials agrees that making any material change to elections procedures now would be disastrous.

The trial court denied the AG’s request for special action relief because it was an improper request that the Secretary exercise her discretion in the AG’s preferred manner. It also observed that the AG sued “far too late” to do anything about the draft 2021 EPM without “disrupting elections that have already begun.”

Argument

There are no “extraordinary circumstances” warranting transfer.

First, the AG says [at 5] that “[t]ime is of the essence” and that it’s “too late for the ordinary appellate process to play out.” But the AG can only blame himself for any alleged time pressure, and this Court should not reward the AG’s inexplicable delay in seeking relief with the extraordinary remedy of transfer. Beyond that, the mere act of transfer will not expedite appellate review of the judgment below because the AG

hasn't yet filed an opening brief. This Court should demand more of a party seeking transfer based on an alleged "emergency."²

Second, the AG argues [at 5] that this Court should accept transfer because this case is a "dispute among top statewide officials" and presents legal questions of first impression. But this isn't a legitimate "dispute among top statewide officials"; instead, it's an unprecedented power grab by the AG. Neither the Secretary nor the Governor saw fit to involve the judiciary in political questions like those this case presents, and this Court shouldn't indulge the AG's invitation to join the fray early. Even if this is such a "dispute," the AG never explains why this Court, and not the court of appeals, should first review those questions. The court of appeals can adjudicate novel legal disputes between government officials and does so all the time. This appeal is no different.

Third, the AG posits [at 6] that this Court should accept transfer because "[t]he trial court erred." But every appellant thinks the trial court "erred," which is presumably why Rule 19(a), Ariz. R. Civ. App. P.,

² See, e.g., *Fann v. State*, No. T-21-0003-CV (Mar. 4, 2021) (granting transfer where appellant already filed an opening brief).

does not list the alleged “wrongness” of a decision below among the grounds for transfer.

Even if alleged “error” could justify transfer, the judgment below was correct. The AG’s request that the Secretary provide him a draft EPM that says exactly what he wants is a classic inappropriate request that an official “exercise . . . discretion in a particular manner.” *Blankenbaker v. Marks*, 231 Ariz. 575, 577 ¶ 7 (App. 2013). And the AG’s requested relief is even more inappropriate when considering that he refused to avow to the trial court that he would approve an EPM that complied with the trial court’s determinations (nor could the AG say whether the Governor would approve). [**Exhibit 4** (June 10, 2022 Hearing Transcript Excerpts)] One exchange [*id.* at 126:13-19] proves the point:

THE COURT: But the Court has already said this is legally compliant. The renewed draft, draft 2, that's legally compliant. Boom. Now what?

MR. CATLETT: Now we approve or we don't approve that draft.

THE COURT: So what problems have we solved here?

In addition, the AG’s claims are barred by laches [**Exhibit 2** at 9-12], the *Purcell* doctrine [*id.* at 6-9], the political question doctrine [*id.* at

12-14], and the plain language of A.R.S. § 16-452 [*id.* at 14-15].³ In short, the AG must overcome many hurdles to persuade an appellate court to overturn the trial court’s sound judgment.

Conclusion

For these reasons, the Court should deny the Petition.

RESPECTFULLY SUBMITTED this 29th day of June, 2022.

COPPERSMITH BROCKELMAN PLC

By: /s/ D. Andrew Gaona
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³ The Secretary’s Motion for Summary Judgment raised these issues, and the trial court “denied” that motion. The Secretary reserves the right to file a conditional cross-appeal, and is still within her time to do so under Rule 9(b), Ariz. R. Civ. App. P.

EXHIBIT 1

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12
13 **ARIZONA SUPERIOR COURT**
14 **YAVAPAI COUNTY**

15 MARK BRNOVICH, in his official capacity as)
16 Arizona Attorney General, et al.,)

17 Plaintiffs,)

18 v.)

19 KATIE HOBBS, in her capacity as the)
Secretary of State of Arizona,)

20 Defendant.)

No. P1300CV202200269

**DEFENDANT ARIZONA SECRETARY
OF STATE KATIE HOBBS' RESPONSE
TO PLAINTIFFS' APPLICATION FOR
ORDER TO SHOW CAUSE**

-AND-

**OPPOSITION TO PLAINTIFFS'
REQUEST FOR SPECIAL ACTION
RELIEF**

(Assigned to Hon. John Napper)

(Hearing set for April 29, 2022 at 1:30 pm)

1 **Introduction¹**

2 Arizona Attorney General Mark Brnovich (“AG”) and a political party jointly bring this
3 unprecedented action against the State’s Chief Elections Officer, Arizona Secretary of State
4 Katie Hobbs (“Secretary”), to force her to adopt their preferred policy changes in the Election
5 Procedures Manual (“EPM”) in the middle of an election year.

6 The AG does so after he approved in 2019 many procedures he now objects to, yet
7 inexplicably refused to approve a substantially similar EPM in 2021. After rejecting the 2021
8 EPM unless the Secretary accepted every demand he made, the AG did nothing for months.
9 Now, as his own U.S. Senate primary election nears and his base has criticized him for not taking
10 more aggressive action against elections administrators, he teamed up with his own political
11 party to sue the Secretary on the taxpayers’ dime and tout it for his official campaign. The AG’s
12 shameless use of his official office for his own political gain is nothing new, but shouldn’t go
13 unnoticed. And he certainly shouldn’t be allowed to use the judiciary to carry out his political
14 agenda. In the end, his obvious political motives help explain the absurdity of Plaintiffs’ claims.

15 Plaintiffs invoke Rule 3(a), R. P. S. A. (*i.e.*, a mandamus action), and ask the Court to
16 compel the Secretary to submit another draft EPM to the AG that excludes or includes specific
17 policies that Plaintiffs prefer.

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20 ¹ The Court set this matter for a hearing on Plaintiffs’ Application for Order to Show Cause
21 (“Application”), but its order required the Secretary to “file a response to Plaintiffs’ Verified
22 Complaint for Special Action.” Presumably, the Court intended to order the Secretary to respond
23 to the Application, and that is what the Secretary does below. Rule 3(d) of the Rules of Procedure
24 for Special Action provides that in a special action, “[t]here shall be a complaint, which may be
25 verified or accompanied by affidavits or other written proof, and an answer by the defendant or
26 the real party in interest, or such other responsive pleadings as may be appropriate.” The Court
did not order the Secretary to file an “answer.” And this response is not the Secretary’s answer,
which she is entitled to file in the normal course. As explained in this response, there are “triable
issues of fact” raised in this action, such that this matter must “be tried subject to special orders
concerning discovery,” Ariz. R. P. S. A. 3(f), if the Court does not dismiss this matter entirely.

1 As an initial matter, their claims run afoul of the plain language of A.R.S. § 16-452, which
2 requires the Secretary to prescribe rules and the AG and the Governor to approve those rules. If
3 Plaintiffs get their way, it will wreak havoc on the balance of powers. After all, compelling the
4 Secretary—or any constitutionally created state officer of the executive department—to blindly
5 abide by the AG’s commands would usher in a totalitarian regime in place of ordered democracy.
6 Plaintiffs’ claims fail for this reason alone.

7 But the Court should not even reach the merits of Plaintiffs’ claims because they are
8 barred by the laches and *Purcell* doctrines. Plaintiffs sat on their hands and brought their claims
9 mid-election-year. Their requested relief would disrupt election procedures, create
10 administrative burdens for election officials, and cause voter confusion. Plaintiffs’ eleventh-hour
11 claim and self-imposed “emergency” are reason enough to deny relief. Contrary to Plaintiffs’
12 repeated misrepresentations that this is an “expedited election case” requiring immediate
13 adjudication, it is exactly the kind of case that cannot be brought and decided during an election.

14 If Plaintiffs’ claims are not barred by the laches and *Purcell* doctrines, then the Court
15 should still deny the requested relief because the Complaint presents a non-justiciable political
16 question. Whether the Secretary should include certain policies in the EPM is a non-justiciable
17 political question this Court shouldn’t try to answer. Plaintiffs ask the Court to referee a political
18 dispute between two officials in the executive branch and force one official’s policy decisions
19 on the other. That is not this Court’s role, and opening the courtroom doors to these kinds of
20 disputes would put courts in the middle of every policy disagreement between elected officials.

21 And last, even if the Court reaches Plaintiffs’ claims, special action relief is unavailable
22 to Plaintiffs. First, Plaintiffs aren’t asking the Court to compel the Secretary to perform a non-
23 discretionary duty; they instead ask the Court to force her to exercise her discretion in a manner
24 they prefer. But that is exactly the type of conduct Arizona courts routinely hold cannot be
25 compelled through a mandamus action. *See, e.g., Blankenbaker v. Marks*, 231 Ariz. 575, 577 ¶
26 7 (App. 2013) (while in some cases “mandamus may be used to compel a public officer to

1 perform a discretionary act,” it can’t be used to compel the officer “to exercise that discretion in
2 any particular manner”). Second, nothing in A.R.S. § 16-452 gives the AG authority to dictate
3 the contents of the EPM and, beyond that, nothing in Arizona law requires the Secretary to adopt
4 Plaintiffs’ specifically-requested EPM provisions regarding ballot drop-boxes and signature
5 verification procedures. In fact, Arizona law does not prohibit ballot drop-boxes (as the AG
6 conceded when he approved the ballot drop-box procedures in the 2019 EPM).

7 The Court should refuse to participate in the AG’s political gamesmanship, dismiss the
8 Complaint for any and all of these reasons, and award the Secretary her fees and costs.

9 **Factual Background**

10 **I. The Secretary’s Authority to Promulgate Rules in the EPM.**

11 Under A.R.S. § 16-452(A), “[a]fter consultation with each county board of supervisors or
12 other officer in charge of elections, the secretary of state shall prescribe rules to achieve and
13 maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the
14 procedures for early voting and voting, and of producing, distributing, collecting, counting,
15 tabulating and storing ballots.” A.R.S. § 16-452(B) makes clear that, “the manual shall be
16 approved by the governor and the attorney general.” And to ensure that all three executives do
17 their part, the statute requires that the Secretary “submit the manual to the governor and the
18 attorney general not later than October 1 of the year before each general election,” and that the
19 manual be issued “not later than December 31 of each odd-numbered year immediately
20 preceding the general election.” A.R.S. § 16-452(B).

21 **II. The Secretary Adopts—and the AG and Governor Approve—the 2019 EPM.**

22 Between 2014 and 2019, election officials used the 2014 EPM because the Secretary’s
23 predecessor didn’t issue a new version. After Secretary Hobbs took office in 2019, she worked
24 hard to prepare an updated EPM before election administrators headed into an important election
25
26

1 year. [Exhibit A (Lorick Decl. ¶¶ 6-10)]² Consistent with the statutory requirement, Secretary
2 Hobbs' office consulted County Recorders and elections directors for many months to prepare a
3 comprehensive updated draft. [*Id.*]

4 The Secretary timely submitted a draft EPM to the AG and Governor, and she began a
5 collaborative process with the AG to discuss his proposed revisions. [*Id.* ¶¶ 11-12] Much of the
6 AG's feedback reflected his lack of understanding of election administration or misreading of
7 relevant statutes and how they operate in practice. [*Id.* ¶ 13] The Secretary shared the AG's
8 comments with county officials and received feedback from the counties on those comments.
9 After multiple meetings over several weeks, including a meeting attended by county officials,
10 the Secretary's and AG's offices finalized draft. [*Id.* ¶¶ 13-15] Both the Secretary and the AG
11 compromised on certain provisions to reach a final agreement. [*Id.*]

12 **III. The Secretary Submits the 2021 EPM.**

13 The Secretary again worked with county election officials for months to draft an updated
14 EPM in 2021. Her office met with County Recorders, county elections directors, and their staff
15 extensively to update and improve the EPM chapter by chapter, and received, reviewed, and
16 incorporated public feedback into the draft. After that long and collaborative process with fellow
17 elections officials and a period for public comment, the Secretary submitted the draft EPM to
18 the AG and Governor on October 1, 2021. [Compl. Ex. 1-A] On November 15, 2021, the
19 Secretary reached out to ask when she could expect initial feedback on the draft and asked to set
20 up a time to discuss. [Lorick Decl. ¶ 20, Ex. 9]

21 Over two weeks later, she finally received an email from the AG's outside counsel stating
22 that he was hired to review the EPM. [Lorick Decl. ¶ 21] On December 9 (more than two months
23 after the Secretary submitted the EPM for review, and mere weeks before the statutory deadline
24 for issuance of the EPM), the AG's outside counsel sent the Secretary a revised draft and
25

26 ² Exhibit A is filed as a separate filing concurrently with this Response.

1 declared that the AG “will not approve the manual . . . unless [his] changes are made.” [Compl.
2 Ex. 1-B; Lorick Decl. ¶¶ 22-23] The revised draft slashed nearly a third of the Secretary’s draft
3 EPM. The AG deleted large swaths, most of which the AG and Governor approved in 2019, and
4 most of which have been part of the EPM for much longer than that. [Lorick Decl. Ex. 16]

5 **IV. The AG’s Claimed Objections to Various EPM Provisions.**

6 The AG made countless arbitrary revisions to the EPM. For example:

7 The AG deleted an entire chapter on voter registration, even though the Secretary is
8 authorized to adopt EPM procedures governing “voting,” A.R.S. § 16-452, and she is the “chief
9 state election officer who is responsible for coordination of state responsibilities under the
10 national voter registration act of 1993[.]” A.R.S. § 16-142. It is hard to imagine a more basic
11 component of “voting” than voter registration. Deleting this chapter also would have removed a
12 provision mandated by a consent decree ordered by the United States District Court for the
13 District of Arizona and invited further litigation. *League of United Latin American Citizens of*
14 *Arizona (LULAC) v. Reagan*, 2:17-cv-04102-DGC, Doc. 37 (D. Ariz. June 18, 2018). [Lorick
15 Decl. ¶ 24, Ex. 13]³

16 The AG also deleted an entire chapter on the certification of voting equipment, even
17 though the Secretary is authorized to adopt those standards and procedures. Beyond the
18 authorization in § 16-452(A) for procedures to ensure “the maximum degree of correctness,
19 impartiality, uniformity and efficiency” for voting, counting, and tabulating ballots, § 16-449(B)
20 also specifically states that the EPM “shall include procedures for . . . the electronic scanning of
21 ballots and any other matters necessary to ensure the maximum degree of correctness, impartially
22 and uniformity in the administration of an electronic ballot tabulation system.”

23 The Secretary responded in good faith on December 17, accepting many edits as a
24 compromise (even though she disagreed with them as a matter of policy and did not believe the

25 ³ This is just one example of an issue that may require the development of a factual record,
26 and where other parties may actually be indispensable to the resolution of the issue.

1 edits were required as a matter of law), explaining why certain edits are improper, and asking
2 the AG to meet regarding other edits that warranted further discussion. [Compl. Ex. 1-C] For
3 example, the Secretary agreed to remove all provisions relating to candidate nominations. The
4 Secretary explained that she included these provisions as nonbinding guidance as a useful
5 resource for filing officers and candidates, but was willing to remove them as a compromise with
6 the AG. [*Id.*] The Secretary also agreed to remove provisions covering campaign finance
7 enforcement, even though the AG approved the same provisions in the 2019 EPM and didn't
8 even try to justify why he believed they should now be removed. The Secretary explained that
9 she believed the section would provide useful guidance consistent with statutes, but again agreed
10 to the revisions as a compromise. [*Id.*]

11 The Secretary expected the AG to follow past practice, including in 2019 when the
12 Secretary and AG collaborated over several meetings to agree on a final EPM. She was wrong.

13 **V. The AG Refuses to Approve the EPM.**

14 On December 22, the AG unilaterally cut off any discussion about the draft for reasons
15 completely unrelated to the substance of the draft. He informed the Secretary that, “because of
16 [her] unprecedented decision to file a bar complaint against [him]” for his unethical conduct in
17 other matters, he will not “discuss[] this matter further with [her].” [Compl. Ex. 1-D] The next
18 day, the Secretary informed all county recorders about the AG’s decision, thanked them for their
19 hard work, and explained that the 2019 EPM “remains relevant” even if not up-to-date in some
20 parts. [Lorick Decl. Ex. 18]

21 Notably, the AG let the December 31, 2021 statutory deadline for approval and issuance
22 of an updated EPM pass and then did nothing for four months. Then, after the 2022 election year
23 began, the AG filed this action to compel the Secretary to adopt all his revisions to the EPM.⁴

24
25 ⁴ The AG first made these arguments when the Arizona Republican Party (“ARP”) sued
26 the Secretary in an original special action in the supreme court last month, challenging certain
EPM provisions and Arizona’s longstanding mail-in voting system. The AG declined to defend
Arizona’s early voting laws, and urged the court to rule on the EPM claims. The supreme court

1 The AG’s position here is puzzling given his opposite approach with Republican
2 Secretary of State Michele Reagan. The AG never questioned Secretary Reagan’s failure to
3 submit an EPM for his approval at any time during her four-year tenure as Secretary of State. In
4 fact, when an attorney wrote to the AG complaining that Secretary Reagan was violating the
5 requirement under A.R.S. § 16-452(B) that she “shall” issue an EPM “not later than thirty days
6 prior to each election,” AG Brnovich responded that “the statute is subject to multiple
7 interpretations.”⁵ [Exhibit B (June 14, 2014 Ltr. to T. Ryan)] He then explained that Secretary
8 Reagan’s interpretation—that the law “does not impose a duty to issue a new [EPM] in any given
9 year”—is “plausible.” [Id.]

10 The Secretary heard nothing further from the AG on this issue until April 11, 2021, more
11 than three months after the December 31 statutory deadline. [Compl. Ex. 1-J] In the meantime,
12 several local jurisdictions have held elections under the 2019 EPM. And as detailed further
13 below, counties are in the middle of preparing for the August 2, 2022 primary election using the
14 2019 EPM. Upending the process now in the middle of an election year would wreak havoc on
15 our election systems. [See generally Exhibits C-E (Declarations of S. Richer, G. Cázares-Kelly,
16 and P. Hansen)]

17 Argument

18 Plaintiffs seek an order that the 2019 EPM (the most recent approved EPM) is no longer
19 valid, and special action relief (really a mandatory injunction) compelling the Secretary to submit
20 a new “legally compliant” 2022 EPM to the AG and Governor (even though she already did
21 that). They specifically ask the Court to order the Secretary to submit an EPM that (1) includes

22 _____
23 declined special action jurisdiction, holding that ARP “[had] not persuaded the Court that” its
24 EPM claims “can be decided without a factual record.” Order Declining Jurisdiction (Ariz. Apr.
25 5, 2022), <https://www.azcourts.gov/Portals/201/01.pdf> (last visited Apr. 27, 2022).

26 ⁵ The AG’s shifting interpretations of the statutory requirements, as well as his decision
not to demand submission of an EPM from Secretary Reagan during her first two years in
office, are examples of fact issues that require further discovery and development.

1 rules on signature verification, (2) prohibits counties from “outsourcing any part of the ballot
2 verification process,” and (3) requires counties to “properly staff” ballot drop-boxes.

3 Plaintiffs’ claims fail for at least five reasons. First, Plaintiffs’ demand for issuance of a
4 new EPM with their desired policy preferences close to five months past the statutory deadline
5 for a new EPM violates both the text and intent of A.R.S. § 16-452. Second, even if the AG has
6 the authority under the statute to demand a new EPM with specific provisions (he doesn’t),
7 Plaintiffs’ claims seeking to disrupt election procedures mid-election-year are too late. Third,
8 whether the Secretary should include the AG’s preferred policies in the EPM, when no law
9 expressly directs her to do so, is a non-justiciable political question. Fourth, special action relief
10 is unavailable to compel the Secretary to exercise her discretion in a manner Plaintiffs prefer.
11 And fifth, the Secretary has no legal duty to enact the specific changes to the EPM demanded by
12 the AG because they are contrary to law or committed to the Secretary’s discretion.

13 **I. Plaintiffs’ Demand for Issuance of the AG’s Preferred EPM in the Middle of the**
14 **Election Year Violates A.R.S. § 16-452.**

15 As an initial matter, neither the plain language nor intent of A.R.S. § 16-452 supports
16 Plaintiffs’ claims and requests for relief. The law tasks the Secretary with drafting the EPM after
17 consultation with county officials and directs that the Secretary “shall submit the manual” to the
18 AG and Governor by October 1 of each odd numbered year. A.R.S. § 16-452(A)-(B). The
19 Secretary indisputably complied with this requirement. [Lorick Decl. ¶¶ 16-30] That statute also
20 directs that “the manual shall be approved” by the AG and Governor, after which the Secretary
21 “shall . . . issue [the EPM] not later than December 31 of each odd numbered year.” The AG and
22 Governor did not fulfill their duty to approve the EPM by the statutory deadline. [*Id.* ¶¶ 30-31]

23 Nothing in § 16-452 permits the AG to unilaterally dictate the contents of the EPM or
24 force the Secretary to issue an EPM with his desired policy positions (nearly five months past
25 the statutory deadline, no less). To the contrary, the statute directs the Secretary to issue the
26 EPM, after she consults county election officials, and after she submits it to the AG and

1 Governor. If the AG were correct and he gets to decide—in his sole discretion—what goes in
2 the EPM, the statute would say so. Indeed, the AG has only those powers expressly authorized
3 by statute. *See State ex rel. Woods v. Block*, 189 Ariz. 269, 272 (1997); *Ariz. State Land and*
4 *Dep’t v. McFate*, 87 Ariz. 139, 142 (1960). The Legislature did not designate the AG as the
5 State’s Chief Elections Officer, but rather (and more sensibly) the Secretary.

6 A.R.S. § 16-452 tasks the Secretary—not the AG—with drafting and issuing the EPM for
7 good reason. The Secretary, not the AG, is the State’s Chief Election Official, who oversees
8 election administration for the State. The Secretary, not the AG, works closely with county
9 officials day-to-day to administer elections and thus has relevant expertise on election
10 procedures. And the Secretary, not the AG, is the state official tasked with consulting with
11 counties regarding the EPM. If anything, the statute requires that the AG and Governor “shall”
12 approve the rules the Secretary drafts. While the Secretary does not argue that the AG and
13 Governor have a non-discretionary duty to approve whatever draft EPM she submits, Plaintiffs’
14 own arguments would give rise to such a claim. Whether Plaintiffs realize it or not, the arguments
15 they advance could be used to compel the AG’s approval of whatever EPM the Secretary
16 submits. But, unlike Plaintiffs, the Secretary respects the letter of the law. The statute gives
17 neither the AG nor the Governor the authority to dictate the rules the Secretary must include,
18 just like the Secretary cannot compel their approval. Interpreting the statute as Plaintiffs urge
19 would do violence to both the language and intent of the statute. And it would disrupt the balance
20 of powers among the State’s executive officers and, in fact, allow the AG to usurp the role and
21 powers of the Governor and the Secretary.

22 Plaintiffs repeatedly claim that *McKenna v. Soto*, 250 Ariz. 469, 473 ¶ 20 (2021), and
23 *Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021) somehow limited the Secretary’s authority to
24 include provisions in the EPM. But neither case supports that claim. In *McKenna*, the supreme
25 court held that EPM provisions governing candidate nomination Complaints were not binding,
26 because § 16-452 allows the Secretary to adopt binding rules governing only “early voting and

1 voting, and . . . producing, distributing, collecting, counting, tabulating and storing ballots.” §
2 16-452(A). But the court expressly recognized that the “EPM also contains guidance on matters
3 outside these specific topics, including candidate nomination Complaint procedures, and the
4 regulation of Complaint circulators[.]” 250 Ariz. at 473 ¶ 20 (citation omitted) (emphasis added).
5 *Leach* is no different. It stated the unremarkable proposition that an EPM rule “does not have
6 the force of law” if it exceeds the scope of § 16-452 or conflicts with a statute. 250 Ariz. at 576
7 ¶ 21. In short, neither *McKenna* nor *Leach* changed the Secretary’s statutory authority for
8 purposes of the EPM.

9 Consistent with longstanding practice, A.R.S. § 16-452 assumes that the Secretary, AG,
10 and Governor will work in good faith to reach agreement on an updated EPM. This is what
11 happened in 2019. [Lorick Decl. ¶¶ 11-15]⁶ Unfortunately, the AG, for apparent political
12 purposes and in sharp contrast to what he did in 2019, refused to even come to the table to discuss
13 the significant and drastic changes he demanded. [*Id.* ¶¶ 25, 28] In the face of such a stalemate,
14 nothing in § 16-452 or any other statute permits the AG to force the Secretary to issue an EPM
15 with his desired policy positions dressed up as requirements for “a legally-compliant EPM.”

16 Instead, Plaintiffs ask this Court to rewrite and add words to A.R.S. § 16-452 to give the
17 AG authority over the EPM that the legislature never granted, including, remarkably, the
18 authority to override, at his leisure, the specific statutory deadline for issuance of a new EPM.
19 That, of course, is not “is not the function of the courts.” *Lewis v. Debord*, 238 Ariz. 28, 31 ¶ 11
20 (2015); *see also In re McLauchlan*, 252 Ariz. 324 __ ¶ 15 (2022) (courts “cannot rewrite a statute
21 based on the surmise that the legislature meant to draft it a different way”). Even if the AG had
22 authority to unilaterally dictate the contents of the EPM and force the Secretary to issue an EPM

23 _____
24 ⁶ In fact, a lawyer at the AG’s office who is now suing the Secretary went out of her way
25 to praise the Secretary’s Office for how they “handled the EPM review process” in 2019, and
26 expressed that she is “looking forward” to working with them again next time. [**Exhibit F** (Dec.
24, 2019 Email from J. Wright to B. Dul)] Of course, that was before the 2020 election and
before it became politically advantageous to undermine the work of elections administrators.

1 with his preferred policies (he does not), A.R.S. § 16-452 expressly requires that any new manual
2 be issued by December 31 of the year before the general election year. That requirement
3 forecloses the relief Plaintiffs seek. The Legislature imposed this deadline precisely to avoid the
4 chaos that would ensue if Plaintiffs prevailed in this lawsuit and forced a new EPM to be issued
5 in the middle of the election year. As discussed further in Section II below, requiring election
6 officials to shift procedures and resources now, in the middle of the election year, would cause
7 significant disruption and challenges to the administration of the August and November
8 elections. [Cázares-Kelly Decl. ¶¶ 4-6; Hansen Decl. ¶¶ 4-7; Richer Decl. ¶¶ 3-5]

9 **II. Laches and the *Purcell* Doctrines Bar Plaintiffs’ Claims.**

10 Plaintiffs claim [at ¶¶ 28-29] that there is “no other plain and speedy remedy to resolve
11 this dispute” because election officials need “legal clarity as to the operative uniform rules” in
12 the 2022 election cycle. But there is no lack of clarity, and the Plaintiffs (and in particular, the
13 AG) created this supposed emergency by sitting back and waiting until the 2022 election cycle
14 is already underway.

15 Contrary to Plaintiffs’ claims that election officials need “clarity,” the counties and the
16 Secretary are operating under the 2019 EPM, except any provisions that have changed based on
17 new legislation or court rulings. [Lorick Decl. ¶¶ 34-36; Cázares-Kelly Decl. ¶ 4; Hansen Decl.
18 ¶ 4; Richer Decl. ¶ 3] Forcing the Secretary to adopt a different manual this late in the game
19 would create uncertainty and confusion mere months before the August primary elections, for
20 which election administrators are already preparing. Coconino County is “currently in the middle
21 of administering the May 17, 2022, jurisdictional elections based on the 2019 EPM and
22 subsequent legislative changes,” [Hansen Decl. ¶ 6; Cázares-Kelly Decl. ¶ 5], and other County
23 Recorders are “well under way in preparing for the statewide primary election on August 2,
24 2022,” [e.g., Richer Decl. ¶ 4]. Any changes to the existing EPM now would disrupt the orderly
25 administration of elections. [Hansen Decl. ¶ 7; Cázares-Kelly Decl. ¶ 6; Richer Decl. ¶ 5] As
26 Maricopa County noted in its amicus brief in *ARP v. Hobbs* [at 8 n.4], “[t]he 2019 Elections

1 Procedures Manual is the operative manual, because no new manual was issued in 2021.” And
2 the AG’s “jarring[]” claim that the 2019 EPM is invalid “injects unnecessary uncertainty into
3 election administration just months before the August 2022 primary election.” [*Id.*]⁷

4 Beyond that, the AG created this timing problem. The Secretary submitted the draft 2021
5 EPM to the AG by October 1, 2021, but he waited—without offering any justification—until
6 less than three weeks before the December 31 deadline to give “feedback.” He then refused to
7 compromise or even discuss his edits, categorically refusing to approve the EPM unless the
8 Secretary accepted his every demand. The Secretary, in her discretion, declined to do so. If the
9 AG believed, as he now claims, that the Secretary violated her “mandatory duty” to provide “a
10 valid draft EPM to the AG and Governor,” then why did he wait four months to say so? The
11 Court should not overlook that Plaintiffs’ claimed “emergency” is entirely of their own making.

12 First, the *Purcell* doctrine bars Plaintiffs’ claims. Under that doctrine, courts generally
13 should not alter election rules on the eve of an election. *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006).
14 This is for good and practical reasons; “[c]ourt orders affecting elections can themselves result
15 in voter confusion and consequent incentive to remain away from the polls,” a risk that only
16 increases “[a]s an election draws closer.” *Id.* at 4-5. A.R.S. § 16-452 contemplates that risk by
17 ensuring that EPM submission and approval happens before the election year starts. After the
18 AG refused to approve the EPM in December 2021 (and refused to even discuss the matter for
19 irrelevant reasons), he sat on his hands and did nothing. Now, some counties are administering
20 local elections as we speak, and all counties are deep in their preparations for the August 2022
21 primary. [Hansen Decl. ¶ 6; Cázares-Kelly Decl. ¶ 5; Richer Decl. ¶ 4] Early voting in that
22 election is only two months away. Changing the election procedures now would be disastrous.
23 [Hansen Decl. ¶ 7; Cázares-Kelly Decl. ¶ 6; Richer Decl. ¶ 5] It would also burden election
24 administrators and cause voter confusion, which is the precise harm *Purcell* aims to prevent.

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26

⁷ The Complaint [¶ 124 n.2] references *ARP v. Hobbs* and links to the docket and filings.

1 Second, laches bars Plaintiffs’ requests for relief. The laches doctrine “seeks to prevent
2 dilatory conduct and will bar a claim if a party’s unreasonable delay prejudices the opposing
3 party or the administration of justice.” *Lubin v. Thomas*, 213 Ariz. 496, 497 ¶ 10 (2006).

4 Plaintiffs’ delay is unreasonable. When deciding whether delay is unreasonable, courts
5 consider “the justification for the delay, the extent of the plaintiff’s advance knowledge of the
6 basis for the challenge, and whether the plaintiff exercised diligence[.]” *Ariz. Libertarian Party*
7 *v. Reagan*, 189 F. Supp. 3d 920, 923 (D. Ariz. 2016) (citation omitted). The AG approved the
8 ballot-drop box security measures in 2019, and Plaintiffs have known about that claims for more
9 than two years. The AG also refused to approve the 2021 EPM in December 2021, yet
10 inexplicably waited until now to seek mandamus relief against the Secretary. Plaintiffs’ mid-
11 election-year request for an order invalidating the EPM and re-starting the submission and
12 review process is inexcusable.

13 Plaintiffs’ untimeliness also prejudices the Secretary, Arizona’s dedicated election
14 officials, and above all else, Arizona voters. Counties have already successfully administered—
15 or are now in the middle of administering—local elections under the 2019 EPM. [Hansen Decl.
16 ¶ 6; Cázares-Kelly Decl. ¶ 5; Richer Decl. ¶ 4] These are the rules voters and election officials
17 have come to rely on. Implementing new EPM procedures in the middle of an election year
18 would be a herculean task. [Lorick Decl. ¶ 32-37; Richer Decl. ¶¶ 3-5; Hansen Decl. ¶¶ 4-7]
19 Indeed, the Pima County Recorder’s Office likely does not “have sufficient personnel to
20 undertake such an endeavor.” [Cázares-Kelly Decl. ¶ 6] Plaintiffs’ long and unjustified delay
21 and request for emergency relief also prejudices the Court by placing it “in a position of having
22 to steamroll through” important legal issues, “leaving little time for reflection and wise decision
23 making.” *Sotomayor v. Burns*, 199 Ariz. 81, 83 ¶ 9 (2000).

24 While courts have held that the laches doctrine does not apply against the State or its
25 agencies in some cases, “Arizona courts have moved away from” that rule and “toward balancing
26 the injustice that might result from the application of the rule against the effect that non-

1 application would have on the state’s effective exercise of its sovereignty and any resulting
2 damage to the public interest.” *State v. Garcia*, 187 Ariz. 527, 529–30 (App. 1996) (equitable
3 defenses may be available “when the government conduct complained of was in the form of
4 inaction or silence”); *see also State ex rel. Darwin v. Arnett*, 235 Ariz. 239, 245 ¶ (App. 2014)
5 (same when state entities “made misrepresentations (or actions inconsistent with the entity’s
6 later position) on which the opposing party relied”). Here, the AG sat on his claim and let the
7 State’s election officials administer 2022 elections under the existing rules. Changing those rules
8 now would upend our election system and harm the public interest.

9 In sum, the Court should reject Plaintiffs’ last-minute request to change the EPM.

10 **III. Whether the Secretary Should Include Particular Policies in the EPM is a Non-**
11 **Justiciable Political Question.**

12 Next, whether the Secretary should adopt specific EPM provisions under her broad
13 authority to adopt rules “to achieve and maintain the maximum degree of correctness,
14 impartiality, uniformity and efficiency” in elections is a non-justiciable political question that
15 this Court should not attempt to answer in the absence of any express legislative directive to
16 include the specific procedures at issue. And, as described further in Section V below, when the
17 Legislature intends to require the Secretary to adopt a rule in the EPM governing a specific
18 election procedure, it says so.

19 A controversy involves a non-justiciable political question that a Court cannot resolve
20 when “there is a textually demonstrable constitutional commitment of the issue to a coordinate
21 political department; or a lack of judicially discoverable and manageable standards for resolving
22 it.” *Kromko v. Arizona Bd. of Regents*, 216 Ariz. 190, 192 ¶ 11 (2007) (cleaned up). The political
23 question doctrine stems from “the basic principle of separation of powers,” and recognizes that
24 some decisions are not appropriate for judicial resolution. *Id.* ¶ 12; *see also Mecham v. Gordon*,
25 156 Ariz. 297, 300 (1988) (“Nowhere in the United States is this system of structured liberty
26 more explicitly and firmly expressed than in Arizona.”).

1 The Secretary, like the AG, is a constitutional officer in the executive branch. Ariz. Const.
2 art. V § 1. Yet the AG asks the Court to micro-manage the Secretary’s rulemaking process and
3 force her to adopt specific procedures that reflect the AG’s political views. The inherent political
4 nature of the AG’s request is evidenced best by him (1) teaming up with a political party to bring
5 this case, and (2) touting this suit on his official campaign Twitter account. *See* Twitter,
6 @brnoforaz, Apr. 22, 2022 8:43 a.m. [https://twitter.com/brnoforaz/status/151752959](https://twitter.com/brnoforaz/status/1517529592612876289?s=21&t=67BAvbjWak_Kzly-UB4yGw)
7 [2612876289?s=21&t=67BAvbjWak_Kzly-UB4yGw](https://twitter.com/brnoforaz/status/1517529592612876289?s=21&t=67BAvbjWak_Kzly-UB4yGw) (last visited Apr. 25, 2022).

8 The AG invokes the phrase “maximum degree of correctness, impartiality, uniformity
9 and efficiency on [election] procedures” to ask the Court to compel the Secretary to include or
10 exclude specific provisions in the EPM, including rules governing “ballot signature verification”
11 and “rules for county officials to properly staff ballot drop boxes.” He asks for these provisions
12 because, in his view, they are good policy. [*E.g.*, Compl. ¶ 85 (arguing that signature verification
13 is an “important election integrity measure”)] There are simply no “judicially discoverable and
14 manageable standards” to determine whether particular procedures in the EPM achieve and
15 maintain “maximum degree of correctness, impartiality, uniformity and efficiency.” And courts
16 “are ill-equipped to inquire into and second-guess the complexities of decision-making and
17 priority-setting” involved in election administration. *See Fogliano v. Brain ex rel. Cty. of*
18 *Maricopa*, 229 Ariz. 12, 20 ¶ 25 (App. 2011); *Kromko*, 216 Ariz. at 194 ¶ 20 (“a court cannot
19 assess whether the cost of tuition is as nearly free as possible in the absence of an initial policy
20 determination of a kind clearly reserved to the Legislature and the Board.”).

21 At bottom, the Secretary is the State’s Chief Elections Officer with expertise in election
22 administration. In consultation with the counties (who, unlike the AG, likewise have expertise
23 in election administration), she developed a draft EPM. The AG may disagree with certain
24 provisions, but it’s not this Court’s role to get involved in discretionary policy decisions about
25 which specific procedures are feasible and appropriate for election administrators to follow,
26 where, as here, no statute directs the Secretary to include the procedures the AG is demanding.

1 *Sensing v. Harris*, 217 Ariz. 261, 265 ¶ 13 (App. 2007) (a government official’s discretion in
2 making certain decisions makes those decisions inappropriate for judicial review); *Daniels v.*
3 *Ariz. Dep’t of Health Servs.*, 2018 WL 5269789, at *5 ¶ 26 (Ariz. Ct. App. Oct. 23, 2018) (the
4 “judiciary is ill equipped” to review “discretionary policy decisions” of a state agency).

5 **IV. Special Action Relief is Unavailable to Plaintiffs.**

6 Plaintiffs’ Complaint also suffers a final, fatal procedural flaw. Plaintiffs are not entitled
7 to the special action relief they seek because under Rule 3, R. P. Spec. Act., the only questions
8 over which courts have special action jurisdiction are:

9 (a) Whether the defendant has failed to exercise discretion which he has a duty to
10 exercise; or to perform a duty required by law as to which he has no discretion; or

11 (b) Whether the defendant has proceeded or is threatening to proceed without or
12 in excess of jurisdiction or legal authority; or

13 (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

14 Plaintiffs [at ¶ 36] invoke Rule 3(a), which “sets forth the traditional functions of the writ of
15 mandamus” by allowing a Complainer to “compel a state officer to perform a duty required by
16 law.” *Ariz. for Second Chances, Rehab. & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404 ¶ 16 (2020).

17 But mandamus “is an extraordinary remedy” that “does not lie if the public officer is not
18 specifically required by law to perform the act.” *Sears v. Hull*, 192 Ariz. 65, 68 ¶ 11 (1998)
19 (quotations omitted). Thus, “if the action of a public officer is discretionary[,] that discretion
20 may not be controlled by mandamus.” *Id.* “In some circumstances, mandamus may be used to
21 compel a public officer to perform a discretionary act, but not to exercise that discretion in any
22 particular manner.” *Blankenbaker*, 231 Ariz. at 577 ¶ 7 (emphasis added). Yet that’s exactly
23 what Plaintiffs do here.

24 Plaintiffs repeatedly claim that the Secretary has a “non-discretionary duty” to “submit a
25 legally compliant EPM to the AG and Governor for approval.” But this is not a case in which
26 the Secretary has outright refused to draft an EPM. As required under A.R.S. § 16-452(A), she
“consult[ed] with each county board of supervisors or other officer in charge of elections,”

1 “prescribe[d] rules” in a new EPM, and “before its issuance” sent it to the AG and Governor for
2 approval. [Lorick Decl. ¶¶ 16-19] She then responded in good faith to the AG’s (unreasonable)
3 demands and tried to start a dialogue, but the AG ignored his duty to review and approve the
4 draft. [*Id.* ¶¶ 20-29] Because the AG withheld his approval, the Secretary couldn’t (and thus
5 didn’t) issue a final EPM. The facts establish that the Secretary performed her duties under
6 A.R.S. § 16-452. As detailed above in Section I, nothing in that statute says the AG gets the final
7 say on whether a procedure should or shouldn’t be included in the EPM.

8 The AG asks the Court to force the Secretary to include or remove specific policies in the
9 EPM. But whether to include particular provisions in the EPM is a discretionary decision the
10 Secretary makes with input from the counties. These decisions involve many policy
11 considerations (*i.e.*, whether including the provision would be administratively feasible; whether
12 it would increase costs or deplete resources; whether it would cause confusion or burden voters;
13 and so on). [Lorick Decl. ¶¶ 35-37] This is precisely the type of discretionary act that Arizona
14 courts have repeatedly held “may not be controlled by mandamus.” *Sensing*, 217 Ariz. at 263 ¶
15 6; *Blankenbaker*, 231 Ariz. at 577 ¶ 7 (mandamus not available to compel an official “to exercise
16 [her] discretion in any particular manner”). Plaintiffs’ mere disagreement with the Secretary’s
17 interpretation of election laws doesn’t warrant mandamus relief. If courts “were to adopt [that]
18 argument, virtually any citizen could challenge any action of any public officer under the
19 mandamus statute by claiming that the officer has failed to uphold or fulfill state or federal law,
20 as interpreted by the dissatisfied plaintiff.” *Sears*, 192 Ariz. at 69 ¶ 12.

21 What’s more, Plaintiffs aren’t entitled to relief because they fail to name an indispensable
22 party: the Governor. Without the Governor as a party, the AG can’t get complete relief. Even if
23 the Secretary were to submit another EPM to the AG and Governor, she can’t issue it unless both
24 the AG and Governor approve it. Plaintiffs’ failure to name a necessary defendant only highlights
25 the absurdity of this action. Issuing the EPM involves three State executive officials. If the AG
26 were correct and A.R.S. § 16-452 creates non-discretionary duties, what happens if the Secretary,

1 AG, and Governor each have a different view about whether a provision should be in the EPM?
2 Could all three officials seek mandamus relief against the other two? Whose preference prevails?
3 Allowing one of the three officials to force the others' hands would disrupt the checks and
4 balances in § 16-452. It's simply not the judiciary's role to meddle in policy disagreements
5 within the executive branch. And it's precisely why, for example, the Secretary didn't seek
6 mandamus relief against the AG when he ended all discussions related to the EPM in December.

7 At bottom, Plaintiffs cannot use a mandamus action to force the Secretary to adopt their
8 preferred EPM provisions.

9 **V. Plaintiffs' Demanded Changes to the EPM Lack Merit And, At A Minimum,**
10 **Raise Fact Issues.**

11 Even if Plaintiffs' claims didn't violate the plain language of § 16-452 (they do), they
12 were timely (they're not), their claims were justiciable (they're not), and special action relief
13 were available (it's not), Plaintiffs' demand that the Secretary submit a "legally complaint" EPM
14 fails because the specific changes the AG demands are either contrary to law or not required by
15 law, but instead committed to the Secretary's discretion.

16 First, the 2019 EPM is still in place. The Secretary complied with her duties under § 16-
17 452, and she didn't issue a final 2021 EPM because the AG refused to approve it. Second, the
18 2019 EPM's drop-box procedures (which the AG already approved) comply with Arizona law.
19 Third, no statutes require the Secretary to adopt signature verification procedures in the EPM.

20 **A. The 2019 EPM is still in effect.**

21 Plaintiffs argue that "[t]he 2019 EPM is no longer valid" and election officials are thus
22 conducting the 2022 election without a "uniform set of rules." Not true. This argument finds no
23 support in the law or longstanding practice, and it undermines the very purpose of the EPM.

24 Plaintiffs claim [¶ 29] there is "no clarity" on "the operative uniform rules counties must"
25 follow in this election. But there is no lack of clarity. The Secretary and county officials are
26 operating under the 2019 EPM—the most recent approved and issued manual. [Lorick Decl. ¶

1 31, 33-34; Cázares-Kelly Decl. ¶ 4; Hansen Decl. ¶ 4; Richer Decl. ¶ 3] Nothing in § 16-452
2 states that an existing EPM is rescinded or is otherwise invalid if a new EPM is not issued. And
3 the purpose of the EPM suggests just the opposite. The EPM is meant to “achieve and maintain
4 the maximum degree of correctness, impartiality, uniformity and efficiency” in various election
5 topics. A.R.S. § 16-452(A). If a new EPM doesn’t issue in any given year for whatever reason
6 (including, for example, the AG refusing to cooperate with the approval process), the statute’s
7 purpose is best served by continuing to follow the most recent approved manual. This approach
8 supports continuity between EPMs and promotes uniform standards and practices among all
9 counties.

10 In past years, no one ever claimed that an older EPM became invalid if a new EPM was
11 not approved. To the contrary, election officials and courts have always relied on the then-
12 existing EPM when a new EPM hasn’t been adopted. *See, e.g., Gonzalez v. Arizona*, 677 F.3d
13 383, 397 (9th Cir. 2012) (en banc) (relying on 2007 EPM, which was in effect when the parties
14 submitted the appeal in 2011 and had “the force and effect of law”); *Democratic Nat’l Comm. v.*
15 *Arizona Sec’y of State’s Off.*, 2017 WL 840693, at *3-4 (D. Ariz. Mar. 3, 2017) (allowing
16 plaintiffs to challenge and seek to enjoin then-existing 2014 EPM provisions, which had “the
17 force of law”). [See also Hansen Decl. ¶¶ 5] Plaintiffs’ self-serving view that no election
18 procedures are binding is baseless.

19 Plaintiffs also argue [¶¶ 57-49] that the Legislature amended A.R.S. § 16-452 in 2019 to
20 “require[e] the Secretary of State to promulgate the EPM by December 31 of every odd-
21 numbered year.” But that amendment didn’t change the existing requirement that the Secretary
22 promulgate an EPM and issue it after approval from the AG and Governor. Below is the entire
23 amendment:

24 ~~Such~~ The rules shall be prescribed in an official instructions and procedures
25 manual to be issued not later than ~~thirty days prior to each~~ December 31 of each
26 odd-numbered year immediately preceding the general election. ~~Prior to~~ Before its
issuance, the manual shall be approved by the governor and the attorney general.
The secretary of state shall submit the manual to the governor and the attorney

1 general not fewer later than ~~ninety days~~ October 1 of the year before each general
2 election.

3 HB 2238, 54th Leg., 1st Reg. Sess. (Ariz. 2019). The statute already required the Secretary to
4 submit the draft EPM before every election to “be approved by the governor and the attorney
5 general.” The amendment merely changes dates; it requires the Secretary to submit the draft
6 EPM in each even-numbered year before a general election, rather than 30 days before “each
7 election.” Nothing suggests that the existing EPM is invalidated if a new EPM isn’t adopted.

8 **B. The EPM’s drop-box security measures—which the AG approved—comply**
9 **with Arizona law.**

10 Plaintiffs ask the Court to submit another EPM that “require[es] ballot drop boxes to be
11 properly staffed and provid[es] guidance on how county officials can satisfy that requirement.”
12 But Arizona law does not require that ballot drop-boxes must be “staffed” at all times.

13 Plaintiffs rely on A.R.S. § 16-1005(E), which states in full: “A person or entity that
14 knowingly solicits the collection of voted or unvoted ballots by misrepresenting itself as an
15 election official or as an official ballot repository or is found to be serving as a ballot drop off
16 site, other than those established and staffed by election officials, is guilty of a class 5 felony.”
17 This statute prohibits unauthorized people from misrepresenting themselves as an official ballot
18 drop off site. It doesn’t prohibit actual election officials from setting up official ballot drop-
19 boxes. Nor does it, as Plaintiffs claim [¶ 108], require that election staff “monitor” drop-boxes
20 at all times. Even unmonitored drop-boxes are staffed by election officials, who, pursuant to the
21 2019 EPM must ensure, among other things, that ballots are regularly retrieved from the drop
22 boxes pursuant to established procedures and that the drop boxes are sealed so that voted ballots
23 cannot be dropped off after 7:00 p.m. on Election Day. EPM Ch. 2 § I(I).

24 Equally baseless is Plaintiffs’ suggestion [¶ 109] that the “purity of elections” and
25 “secrecy in voting” clauses of the Arizona Constitution somehow require constant monitoring
26 of ballot drop-boxes. The purity of elections clause allows the Legislature to “enact[] registration
 and other laws to secure the purity of elections and guard against abuses of the elective

1 franchise.” Ariz. Const. art. VII § 12. But the Legislature hasn’t passed any laws prohibiting
2 ballot drop-boxes.

3 Nor do ballot drop-boxes compromise “secrecy in voting” under Article VII, Section 1.
4 Arizona’s early voting laws include detailed procedures that ensure “secrecy in voting.” Early
5 ballots are “identical” to other ballots except that the word “early” is printed on them. A.R.S. §
6 16-545(A). County recorders send these ballots to early voters along with a self-addressed return
7 envelope with a ballot affidavit.⁸ Ballot return envelopes must be “of a type that does not reveal
8 the voter’s selections or political party affiliation and that is tamper evident when properly
9 sealed.” A.R.S. § 16-545(B)(2). The voter then follows these procedures:

10 The early voter shall make and sign the affidavit and shall then mark his ballot in
11 such a manner that his vote cannot be seen. The early voter shall fold the ballot, if
12 a paper ballot, so as to conceal the vote and deposit the voted ballot in the envelope
13 provided for that purpose, which shall be securely sealed and, together with the
affidavit, delivered or mailed to the county recorder or other officer in charge of
elections. . . .

14 A.R.S. § 16-548(A) (emphasis added).

15 After verifying the signature on the ballot affidavit and confirming that the ballot will be
16 counted, officials “open the envelope containing the ballot in such a manner that the affidavit
17 thereon is not destroyed, take out the ballot without unfolding it or permitting it to be opened or
18 examined and show by the records of the election that the elector has voted.” A.R.S. § 16-552(F)
19 (emphasis added). The voted early ballot and the empty affidavit envelope are then placed in
20 separate stacks for further processing and tabulation. EPM Ch. 2 § VI(B)(3) [APP166-67].

21 Beyond that, Arizona law criminalizes fraud or other abuses related to early ballots,
22 including “knowingly mark[ing] a voted or unvoted ballot or ballot envelope with the intent to
23 fix an election”; “offer[ing] or provid[ing] any consideration to acquire a voted or unvoted early
24 ballot”; “receiv[ing] or agree[ing] to receive any consideration in exchange for a voted or
25

26 ⁸ Early voters also receive instructions that include the following statement: “WARNING
-- It is a felony to offer or receive any compensation for a ballot.” A.R.S. § 16-547(D).

1 unvoted ballot”; possessing someone’s “voted or unvoted ballot with intent to sell”; “knowingly
2 solicit[ing] the collection of voted or unvoted ballots by misrepresenting [one’s self] as an
3 election official [or] serv[ing] as a ballot drop off site, other than those established and staffed
4 by election officials”; and “knowingly collect[ing] voted or unvoted ballots” and not turning
5 those ballots in. A.R.S. §§ 16-1005(A)-(F). And the legislature went a step further in 2016,
6 criminalizing even non-fraudulent third-party ballot collection. A.R.S. § 16-1005(H). Given all
7 these protections, ballot drop-boxes do not compromise ballot secrecy.

8 Plaintiffs also make the false claim that the Secretary “introduced” drop-boxes in the 2019
9 EPM. Nothing in Arizona law prohibits counties from using drop-boxes, and counties had been
10 using drop-boxes for many years before the current EPM was adopted. *See, e.g.,* Yavapai Cnty.,
11 *2018 Voter Guide*, [https://storageccec.blob.core.usgovcloudapi.net/public/docs/273-2018-](https://storageccec.blob.core.usgovcloudapi.net/public/docs/273-2018-Yavapai-Voter-Guide.pdf)
12 [Yavapai-Voter-Guide.pdf](https://storageccec.blob.core.usgovcloudapi.net/public/docs/273-2018-Yavapai-Voter-Guide.pdf) (“Every time a ballot is dropped in a drop box [Yavapai] County saves
13 \$.543 in tax dollars. In 2017, the County saved a total of \$7,981.02 due to drop box usage.”);
14 Yavapai Cnty., Mar. 11, 2008 Election, *Voting Information*, [https://yavapaiaz.gov/](https://yavapaiaz.gov/electionsvr/2008-elections)
15 [electionsvr/2008-elections](https://yavapaiaz.gov/electionsvr/2008-elections) (listing Yavapai County drop-box locations for March 2008 election);
16 Yuma Cnty., *2018 Voter Guide*, [https://www.yumacountyaz.gov/home/show](https://www.yumacountyaz.gov/home/show_publisheddocument?id=37868)
17 [publisheddocument?id=37868](https://www.yumacountyaz.gov/home/show_publisheddocument?id=37868) (instructing Yuma voters in 2018 elections to “drop their Early
18 Ballots at one of the drop-box locations below”).⁹ By prescribing drop-box procedures in the
19 EPM, the Secretary merely adopted uniform security and chain-of-custody requirements for
20 counties that use drop-boxes. Both the Governor and the AG approved these procedures.

21 In the end, when statutes are silent on how to perform a particular election procedure
22 relating to voting and early voting, the Secretary gets to fill that gap, and she properly did so
23

24 _____
25 ⁹ The Court may take judicial notice of these public records on county recorder websites,
26 the accuracy of which “cannot reasonably be questioned.” Ariz. R. Evid. 201(b)(2); *Pedersen v. Bennett*, 230 Ariz. 556, 559 ¶ 15 (2012) (taking judicial notice of public records from the Secretary’s website).

1 here. *See, e.g., Nat'l Cable & Telecomms. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327, 339
2 (2002) (“[A]s a general rule, agencies have authority to fill gaps where the statutes are silent.”).

3 **C. The Secretary has no legal duty to include signature verification guidelines**
4 **in the EPM.**

5 Plaintiffs next ask the Court to compel the Secretary to adopt signature verification rules
6 in the EPM. Under A.R.S. § 16-550(A), county recorders who receive voters’ mail-in ballots
7 “shall compare the signatures [on the ballot affidavit] with the signature of the elector on the
8 elector’s registration record.” According to Plaintiffs [¶ 103], the Secretary must adopt
9 procedures in the EPM dictating how county recorders conduct this signature comparison.
10 Plaintiffs are wrong.

11 They point to A.R.S. § 16-452(A), which authorizes the Secretary to “prescribe rules to
12 achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency
13 on the procedures for early voting and voting, and of producing, distributing, collecting,
14 counting, tabulating and storing ballots.” That statute delegates to the Secretary the authority to
15 adopt rules she deems appropriate to achieve and maintain the stated goals. It doesn’t impose a
16 duty to adopt a specific procedure all counties must follow to perform every task related to early
17 voting or processing ballots. *See Duncan v. State*, 157 Ariz. 56, 62 (App. 1988) (statutes required
18 agency to adopt rules governing minimum qualification and training standards for peace officers,
19 but nothing in the statutes compelled the agency to adopt specific “safety regulations concerning
20 firearms used at training facilities for law enforcement officers”).

21 When the Legislature intends to require the Secretary to adopt a rule in the EPM
22 governing a specific election procedure, it says so. *E.g.*, A.R.S. § 16-543(C) (“The secretary of
23 state shall provide in the instructions and procedures manual issued pursuant to § 16-452 for
24 emergency procedures regarding the early balloting process for” military and overseas voters);
25 A.R.S. § 19-118(A) (“The secretary of state shall establish in the [EPM] issued pursuant to § 16-
26 452 a procedure for registering circulators.”); A.R.S. § 16-602(B) (hand count audits must be

1 conducted “in accordance with hand count procedures established by the secretary of state in the
2 [EPM] adopted pursuant to § 16-452”). “This consistent pattern” shows that if the Legislature
3 intended to require the Secretary to adopt signature verification procedures, “it would have
4 expressly done so.” *Est. of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 327 ¶ 15 (2011).

5 Plaintiffs point to no statute requiring the Secretary to include procedures governing the
6 precise manner in which counties must verify signatures on ballot affidavits. Their claim fails
7 for this straightforward reason.

8 Finally, Plaintiffs’ own preferences and abstract claims of potential “non- or mal-
9 feasant” don’t inform the Secretary’s legal duties. Plaintiffs spill much [¶¶ 80-101] ink arguing
10 that, in their view, certain signature verification procedures are good policy. They make various
11 unsupported (and sometimes even false or misleading) allegations against Maricopa County,
12 including suggesting [¶ 99] that the County uses AI to verify signatures, even though the County
13 has debunked that misstatement multiple times and explained that a human verifies every ballot
14 affidavit signature. [*E.g.*, Howard Fischer, *Brnovich, Maricopa disagree over use of AI in ballot*
15 *verification*, Tucson.com (Apr. 16, 2022) (Maricopa County spokesperson explaining that
16 signatures are “100% verified by humans”); Maricopa Cnty., Bulletin: Just The Facts (May 27,
17 2021), <https://content.govdelivery.com/accounts/AZMARIC/bulletins/2e19cb7> (“100% of mail-
18 in ballot signatures are reviewed by trained staff.”)] These ruminations are the stuff of campaign
19 political releases (or a podcast hosted by an extremist, where the AG first made this baseless
20 claim¹⁰), not a filing in this Court seeking extraordinary and inappropriate relief against another
21 constitutional officer for transparent political gain.

22
23
24 ¹⁰ See Howard Fischer, *Arizona Attorney General: Maricopa Co. admits to using AI to verify*
25 *early ballot signatures*, KAWC News (Apr. 15, 2022), available at
26 [https://www.kawc.org/news/2022-04-15/arizona-attorney-general-maricopa-co-admits-to-](https://www.kawc.org/news/2022-04-15/arizona-attorney-general-maricopa-co-admits-to-using-ai-to-verify-early-ballot-signatures)
[using-ai-to-verify-early-ballot-signatures](https://www.kawc.org/news/2022-04-15/arizona-attorney-general-maricopa-co-admits-to-using-ai-to-verify-early-ballot-signatures) (describing AG Brnovich making this inaccurate claim
on Steve Bannon’s podcast).

1 Plaintiffs also cite a 2020 election challenge, *Ward v. Jackson, et al.*, CV-20-0343-AP/EL
2 (Ariz. Dec. 8, 2020) (decision order). In *Ward*, two forensic experts who reviewed a sampling
3 of ballot affidavits were unable to “conclusively” confirm—based on scientific standards in their
4 fields—that several signatures were a match.¹¹ This says nothing about whether Maricopa
5 County’s signature verification process complies with Arizona election law. And in all events,
6 as the supreme court found, “neither expert could identify any sign of forgery or simulation and
7 neither could provide any basis to reject the signatures.” *Ward*, at 5 (emphasis added).¹²

8 All told, Plaintiffs’ entire discussion about the quality of Maricopa County’s signature
9 verification process is beside the point. Their personal opinions about best practices for signature
10 verification are not the law.¹³

11 **Conclusion**

12 The Secretary complied with her statutory duty to submit a draft EPM to the AG and
13 Governor by October 1, 2022. She tried to work with the AG in good faith to revise the draft,
14 but he refused to participate. He can’t ask the Court to force her to adopt his preferred election
15 policies. Plaintiffs’ attacks on the State’s Chief Election Officer are unfounded, and the Court
16 should reject their claims. The Court should also award the Secretary her attorneys’ fees and
17 costs under A.R.S. §§ 12-341 and 12-348.01.

18
19 ¹¹ As the trial court noted in *Ward*, “[t]he process forensic document examiners use to testify
20 in court for purposes of criminal guilt or civil liability is much different from the review Arizona
21 election law requires. A document examiner might take hours on a single signature to be able to
22 provide a professional opinion to the required degree of certainty.” *Ward v. Jackson, et al.*, CV
23 2020-015285 (Maricopa Cnty. Super. Ct. Dec. 4, 2020).

24 ¹² Plaintiffs also incorrectly claim that one expert was a “Maricopa County Recorder’s
25 Office forensic examiner.” That is not true. The forensic experts were third parties retained by
26 the private plaintiff (Arizona Republican Party Chair) and defendants (President Biden Electors).

¹³ If Plaintiffs are asking the Court to compel the Secretary to re-submit the draft 2021 EPM
with all the revisions in the AG’s proposed redline from December 2021, as well as the new
policy demands he’s made since then, granting that request would require extensive fact-finding
and an advisory ruling on line-by-line issues raised in the AG’s redline to the draft EPM.

1 RESPECTFULLY SUBMITTED this 27th day of April, 2022.

2 **COPPERSMITH BROCKELMAN PLC**

3 By: /s/ Roopali H. Desai

4 Roopali H. Desai
5 D. Andrew Gaona
6 Kristen Yost

6 **STATES UNITED DEMOCRACY CENTER**

7 Sambo (Bo) Dul
8 Christine Bass*

9 *Application for Pro Hac Vice Forthcoming

10
11 ORIGINAL e-filed and served via electronic
12 means this 27th day of April, 2022, upon:

13 Joseph A. Kanefield (ACL@azag.gov)
14 Brunn W. Roysden III (Beau.Roysden@azag.gov)
15 Michael S. Catlett (Michael.Catlett@azag.gov)
16 Jennifer J. Wright (Jennifer.Wright@azag.gov)
17 Office of the Attorney General
18 2005 North Central Avenue
19 Phoenix, Arizona 85004
20 *Attorneys for Plaintiff Mark Brnovich Arizona
21 Attorney General*

22 Brian M. Bergin (bbergin@bfsolaw.com)
23 Bergin, Franks, Smalley & Oberholtzer
24 4343 East Camelback Road, Suite 210
25 Phoenix, Arizona 85018
26 *Attorneys for Plaintiffs Demitra Manjoros and
Yavapai Republican Committee*

27 /s/ Verna Colwell

Exhibit A

Exhibit A

EXHIBIT A – DECLARATION OF
KORI LORICK
IS FILED SEPARATELY

Exhibit B

Exhibit B



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

June 14, 2014

Thomas Ryan
Law Office of Thomas M. Ryan
565 W. Chandler Blvd., Ste. 210
Chandler, AZ 85225

Re: Secretary of State Complaint letter

Dear Mr. Ryan,

We received your letter dated June 9, 2016 wherein you challenge the Arizona Secretary of State's decision not to issue a 2016 version of the State of Arizona Elections Procedures Manual ("Manual").

A.R.S. § 16-452 provides for the adoption and approval of the Manual. The statute is subject to multiple interpretations. One could argue that the statute requires a new Manual for every single election of whatever kind, an interpretation that this year alone would have required four new Manuals. On the other hand, past Secretaries of State have interpreted the law to require a new Manual every election cycle. As you indicated, Secretary of State Reagan's office adopted another interpretation, i.e., that the statute precludes the distribution of new Manuals in close proximity to elections, but does not impose a duty to issue a new Manual in any given year. On that basis the Secretary of State made a policy decision to retain the 2014 Manual for this year.

We do not address here which of these possible interpretations is the better or best. We note only that the Secretary's interpretation of the statute is at least plausible. Because A.R.S. § 16-1010 requires "knowing" or "willful" nonfeasance, there could be no basis for criminal charges.

Accordingly, the Attorney General's Office declines to pursue investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Bailey".

Michael Bailey
Chief Deputy

Exhibit C

Exhibit C

I, Stephen Richer, declare as follows:

1. I currently serve as the Maricopa County Recorder. I was elected to the position in November 2020 and assumed office on January 4, 2021. In this role, I have significant election-related responsibilities, including overseeing voter registration, candidate services, and all vote-by-mail in Maricopa County—Arizona’s largest county.

2. In 2021, my office, as well as election officials and elected Recorders from Arizona’s other 14 counties, reviewed and provided feedback to the Arizona Secretary of State’s Office on the Elections Procedures Manual (EPM) and the updates the Secretary of State sought to implement in those drafts.

3. When the Secretary of State, Attorney General, and Governor did not agree on an updated 2021 EPM in December 2021, my office proceeded to plan for the 2022 election year in accordance with the 2019 EPM and any legislative changes enacted since the 2019 EPM was approved.

4. This year, Maricopa County has already successfully administered a jurisdictional election in March 2022, and we are in the middle of administering a May 2022 jurisdictional election based on the 2019 EPM and subsequent legislative changes. We are also well under way in preparing for the statewide primary election on August 2, 2022.

5. Any material changes to the EPM at this point in the election year would be very disruptive to the administration of the August and November elections. The election year is almost

half-way over and we are in the middle of conducting the 2022 elections. Shifting procedures and resources at this time would be very challenging.

6. Pursuant to Rule 80(c), Ariz. R. Civ. P., I declare under penalty of perjury that the foregoing is true and correct.

Executed this ^{27th} day of April, 2022.

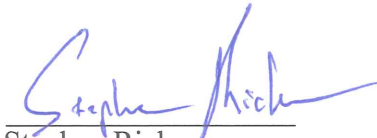
By: 
Stephen Richer

Exhibit D

Exhibit D

Public Service Center Building
240 N. Stone Ave., First floor
Tucson, AZ 85701

Document Recording: (520) 724-4350
Voter Registration: (520) 724-4330



Mailing Address:
PO Box 3145
Tucson, AZ 85702-3145
Social media: @PimaRecorder
Website: recorder.pima.gov

Gabriella Cázares-Kelly, Recorder

I, Gabriella Cázares-Kelly, declare as follows:

1. I currently serve as the Pima County Recorder. I was elected to the position in November 2020. In this role, I have significant election-related responsibilities, including overseeing voter registration and early voting in Pima County—Arizona's second largest county. We currently have approximately 625,000 registered voters in Pima County.

2. In 2021, Pima and other counties reviewed and provided feedback to the Arizona Secretary of State's Office on the Elections Procedures Manual (EPM) and the updates the Secretary of State sought to implement in that draft.

3. It is my understanding that in 2019, Pima and other counties also provided feedback to the Secretary of State's Office on her draft 2019 EPM as well as the proposed edits to that draft from the Attorney General's Office, and that feedback from the counties was factored into the final approved version of the 2019 EPM.

4. When the Attorney General and Governor failed to approve an updated 2021 EPM in December 2021, Pima County, with the guidance from the Secretary of State's Office, proceeded to plan for the 2022 election year in compliance with the 2019 EPM. Any legislative changes enacted since the 2019 EPM was approved were reviewed by our County Attorney.

5. Pima County is currently in the middle of administering the May 2022 jurisdictional elections based on the 2019 EPM and subsequent legislative changes. Our preparations typically begin in January for a major election cycle. We are well under way in preparing for the statewide primary election on August 2, 2022.

6. I believe that any material changes to the EPM at this point in the election year would be very disruptive to the administration of the August and November elections. The election year is almost half-way over. Trainings for staff and other election workers for 2022 are well under way and we have been working on those

materials for months. We are also juggling many other election year duties, including candidate challenges, multiple election lawsuits, assisting the City of Tucson with their May election, and preparing for the August election. Shifting procedures and resources at this time would be very challenging. I do not believe we have sufficient personnel to undertake such an endeavor.

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 27 day of April, 2022 in Pima County.

By: Gabriella C. Kelly
Gabriella Cázares-Kelly

Exhibit E

Exhibit E

I, Patty Hansen, declare as follows:

1. I am the County Recorder for Coconino County. I have served in this role for 19 years, and I have been in election administration since 1987. In my current role, I have significant election-related responsibilities, including overseeing voter registration and early voting in Coconino County.

2. In 2021, Coconino and other counties reviewed and provided feedback to the Arizona Secretary of State's Office on the Elections Procedures Manual (EPM) and the updates the Secretary of State sought to implement in that draft.

3. In 2019, Coconino and other counties also provided feedback to the Secretary of State's Office on her draft 2019 EPM as well as the proposed edits to that draft from the Attorney General's Office. It was critical that feedback from the counties was factored into the final approved version of the 2019 EPM.

4. When the Attorney General and Governor failed to approve an updated 2021 EPM in December 2021, Coconino County, based on the advice of counsel as well as guidance from the Secretary of State's Office, proceeded to plan for the 2022 election year in compliance with the 2019 EPM and any legislative changes enacted since the 2019 EPM was approved.

5. This approach is consistent with Coconino County's approach in prior years when no updated EPM was approved in advance of the election year. For example, no updated EPM was approved before the 2016 or 2018 election years and, therefore, Coconino County conducted elections in those years in compliance with the 2014 EPM and any subsequent legislative changes enacted after the 2014 EPM was issued.

6. Coconino County is currently in the middle of administering the May 17, 2022, jurisdictional elections based on the 2019 EPM and subsequent legislative changes. We are also well under way in preparing for the statewide primary election on August 2, 2022.

7. I believe that any material changes to the EPM at this point in the election year would be very disruptive to the administration of the August and November elections. The election year is almost half-way over and we are in the middle of candidate challenges, multiple election lawsuits, administering the May election, and preparing for the August election. Shifting procedures and resources at this time would be very challenging.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 26th day of April, 2022 in Coconino
County.

By: /s/ Patty Hansen
Patty Hansen

Exhibit F

Exhibit F

From: [Roysden, Beau](#)
To: [Daniels, Evan](#); [Bo Dul](#)
Cc: afoster@az.gov; druiz@az.gov; [Wright, Jennifer](#); [Kanefield, Joe](#); [Allie Bones](#); [William Gaona](#)
Subject: RE: Attorney General Approval of 2019 Elections Procedures Manual
Date: Thursday, December 19, 2019 8:22:00 PM
Attachments: [image001.png](#)

Bo,

I just wanted to echo what Evan said. Thank you and the rest of SOS (especially Allie and Will) for your professionalism in working through this process.

Sincerely,

Beau

From: Daniels, Evan
Sent: Thursday, December 19, 2019 4:41 PM
To: Bo Dul
Cc: afoster@az.gov; druiz@az.gov; Roysden, Beau; Wright, Jennifer; Kanefield, Joe; Allie Bones; William Gaona
Subject: RE: Attorney General Approval of 2019 Elections Procedures Manual
Likewise, Bo. Thank you, and same to you and the team at SOS!
Evan Daniels
Unit Chief Counsel, Government Accountability Unit
Fintech Sandbox Counsel
Office of the Arizona Attorney General
Desk: (602) 542-7751
Fax: (602) 542-4377
evan.daniels@azag.gov

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From: Bo Dul [bdul@azsos.gov]
Sent: Thursday, December 19, 2019 4:39 PM
To: Daniels, Evan
Cc: afoster@az.gov; druiz@az.gov; Roysden, Beau; Wright, Jennifer; Kanefield, Joe; Allie Bones; William Gaona
Subject: RE: Attorney General Approval of 2019 Elections Procedures Manual

Evan,

Thank you very much for the great news. It's been a pleasure working with you throughout this process. Happy holidays to you and the rest of the team at the AG's office.

Best,

Bo



Sambo (Bo) Dul
State Elections Director
Arizona Secretary of State

Email: bdul@azsos.gov
Office: 602-542-8683

1700 W. Washington St., 7 Fl. | Phoenix, AZ | 85007

This message and any messages in response to the sender of this message may be subject to a public records request.

From: Daniels, Evan <Evan.Daniels@azag.gov>

Sent: Thursday, December 19, 2019 4:30 PM

To: Bo Dul <bdul@azsos.gov>

Cc: afoster@az.gov; druiz@az.gov; Roysden, Beau <Beau.Roysden@azag.gov>; Wright, Jennifer <Jennifer.Wright@azag.gov>; Kanefield, Joe <Joe.Kanefield@azag.gov>; Allie Bones <ABones@azsos.gov>; William Gaona <WGaona@azsos.gov>

Subject: Attorney General Approval of 2019 Elections Procedures Manual

Bo,

Please see the attached letter from Attorney General Brnovich to Secretary Hobbs approving the Elections Procedures Manual as submitted on December 18, 2019.

Evan Daniels

Unit Chief Counsel, Government Accountability Unit

Fintech Sandbox Counsel

Office of the Arizona Attorney General

Desk: (602) 542-7751

Fax: (602) 542-4377

evan.daniels@azag.gov

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From: [Wright, Jennifer](#)
To: [Bo Dul](#)
Subject: RE: Merry Christmas!
Date: Thursday, December 26, 2019 9:02:56 AM

No worries, I understood what you meant. 😊

Let's plan to get lunch or a drink in early January before the 2020 election cycle goes into high gear.

Happy New Year!

Jen

From: Bo Dul [mailto:bdul@azsos.gov]
Sent: Tuesday, December 24, 2019 10:36 AM
To: Wright, Jennifer
Subject: Re: Merry Christmas!

I mean, we believe successful elections are about partnership, not partisanship! :)

Get [Outlook for iOS](#)

From: Bo Dul <bdul@azsos.gov>
Sent: Tuesday, December 24, 2019 10:31:15 AM
To: Wright, Jennifer <Jennifer.Wright@azag.gov>
Subject: Re: Merry Christmas!

Hi Jennifer -

Thank you for your kind words. The appreciation is mutual - thank you, Evan, and Beau for your thoughtfulness and professionalism throughout the process. I'd love to get lunch or a drink together early in the new year and toast to seeing the EPM to the finish line!

And thank you for flagging the report - we did see it and shared it with the counties in our weekly bulletin last week. If you come across other useful information that you think we should be aware of and/or consider sharing with the counties, please continue to pass it along.

And as the AGO gets going in terms of defining your priorities for the election integrity unit for 2020, we'd love to be kept in the loop and would be happy to participate in brainstorming and identifying ways our offices can work together to continue to strengthen elections in Arizona. As Secretary Hobbs recently said to the counties, we believe that successful elections are about partnership, not partnership — and that applies equally to how we approach our relationship with the counties as well as other state agencies.

If we don't otherwise connect before then, happy holidays and new year to you and your family!

Bo

Get [Outlook for iOS](#)

From: Wright, Jennifer <Jennifer.Wright@azag.gov>
Sent: Tuesday, December 24, 2019 9:13:27 AM
To: Bo Dul <bdul@azsos.gov>
Subject: Merry Christmas!

Good Day Bo!

First, I wanted to express my appreciation for the how you handled the EPM review process. I was very impressed with every step of the process, and I enjoyed working with you. Thank you. I look forward to working with you again.

Second, while I have no doubt you are already familiar with this recently released report from the Brennan Center for Justice, I wanted to share it with you just in case, as I found it extremely informative.

<https://www.brennancenter.org/our-work/policy-solutions/preparing-cyberattacks-and-technical-failures-guide-election-officials>

Hoping you are enjoying this week with your family.

Merry Christmas & Happy New Year!

Jennifer Wright

Assistant Attorney General



Office of the Arizona Attorney General
Appeals & Constitutional Litigation Division
Elections Integrity Unit
2005 N. Central Ave., Phoenix, AZ 85004
Desk: 602.542.8255 | Fax: 602.542.4377
Jennifer.Wright@azag.gov

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EXHIBIT 2

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D. Andrew Gaona (028414)
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10 bo@statesuniteddemocracy.org
christinebass@statesuniteddemocracy.org
11 * *Application for Pro Hac Vice Forthcoming*

12 *Attorneys for Defendant Arizona Secretary of State Katie Hobbs*

13
14 **ARIZONA SUPERIOR COURT**
15 **YAVAPAI COUNTY**

16 MARK BRNOVICH, in his official capacity as
Arizona Attorney General, et al.,

17 Plaintiffs,

18 v.

19 KATIE HOBBS, in her capacity as the
Secretary of State of Arizona,

20 Defendant.
21
22
23
24
25
26

No. P1300CV202200269

**DEFENDANT ARIZONA SECRETARY
OF STATE KATIE HOBBS' MOTION
FOR SUMMARY JUDGMENT**

(Assigned to Hon. John Napper)

(Expedited Consideration Requested)

1 **Introduction**

2 Arizona Attorney General Mark Brnovich (“AG”) and a political party brought this
3 unprecedented action against the State’s Chief Elections Officer, Arizona Secretary of State
4 Katie Hobbs (“Secretary”), to force her to adopt their preferred policy changes in the Election
5 Procedures Manual (“EPM”) in the middle of an election year. The Secretary quickly responded
6 to Plaintiffs’ application for order to show cause and objected to their request for special action
7 relief. She raised various defenses in her response, including that Plaintiffs’ mid-election-year
8 claims are untimely and would disrupt the election, that Plaintiffs’ claims involve nonjusticiable
9 political questions, that special action jurisdiction is improper, and that Plaintiffs’ claims fail
10 under the plain language of A.R.S. § 16-452.

11 At the return hearing on April 29, the Court preliminarily “denied” these defenses but
12 expressly reserved the ability to decide them after more briefing, and made clear that the
13 Secretary “ought to be able to raise [these defenses] later.” [SOF ¶ 3] The Court asked the AG
14 to file a supplemental brief explaining his objections to the draft 2021 EPM. The Court did so
15 because “no one can decipher” the basis for the AG’s objections, and the Court is “at a loss to
16 figure out why it is the [AG] is specifically objecting to” provisions in the draft. [*Id.* ¶¶ 4-6].¹
17 The AG has now filed a supplemental brief finally attempting to explain his objections. But that
18 brief only bolsters the Secretary’s threshold defenses that defeat Plaintiffs’ claims. The Court
19 should expedite briefing and consideration of this motion and enter summary judgment in the
20 Secretary’s favor on her defenses before she spends countless more hours consulting all counties
21 and preparing a substantive response to the AG’s supplemental brief.

22 **First**, Plaintiffs’ claims are barred by the laches and *Purcell* doctrines. The Secretary

23 _____
24 ¹ For example, the Court noted that it needed to review the AG’s specific objections before ruling
25 on the laches and *Purcell* defenses: “[F]or instance, one of them is the detrimental reliance of
26 the recorders. So then when I get your brief and your brief says, Judge, if you do what the
attorney general is asking you to do, chaos -- dogs and cats will be living together and there will
be mass hysteria. Right? So you would be able to reurge that at a later time.” [*Id.* ¶ 7]

1 submitted the 2021 EPM draft to the AG on October 1, 2021. The AG waited over two months
2 to provide any feedback, and the Secretary promptly responded to his proposed changes on
3 December 17, 2021. Yet here we are five months later, in the middle of an election year, with
4 the AG asking the Court to order the Secretary to accept his changes to the EPM. Plaintiffs’
5 requested relief would disrupt election procedures, create administrative burdens—some
6 insurmountable—for election officials, and cause voter confusion. Plaintiffs’ irresponsible
7 eleventh-hour claims and self-imposed “emergency” are reason enough to deny relief.

8 **Second**, Plaintiffs’ claims are non-justiciable. Whether the Secretary should include
9 certain policies in the EPM is a non-justiciable political question. Plaintiffs ask the Court to
10 weigh in on a political dispute between two officials in the executive branch and force one
11 official’s policy decisions on the other. That is not this Court’s role, and opening the courtroom
12 doors to these kinds of disputes would put courts in the middle of every policy disagreement
13 between elected officials.

14 **Third**, Plaintiffs’ claims are improper under the plain language of A.R.S. § 16-452, which
15 requires the Secretary to prescribe rules and the AG and the Governor to approve those rules.
16 Nothing in the statute gives the AG the final say on which specific provisions should or shouldn’t
17 go in the final EPM. If the Legislature intended to give one of the three executive officials final
18 tie-breaking authority, it would have said so.

19 **Fourth**, this Court lacks special action jurisdiction because Plaintiffs aren’t asking the
20 Court to compel the Secretary to perform a non-discretionary duty; they instead ask the Court to
21 force her to exercise her discretion in a manner they prefer. But that is exactly the type of conduct
22 Arizona courts routinely hold cannot be compelled through a mandamus action. *E.g.*,
23 *Blankenbaker v. Marks*, 231 Ariz. 575, 577 ¶ 7 (App. 2013) (mandamus can’t be used to compel
24 an officer “to exercise [their] discretion in any particular manner”).

25 Now that the Court has the benefit of the AG’s explanations for his demanded changes to
26 the draft 2021 EPM (five months too late), the Court should enter judgment against Plaintiffs.

1 **Factual Background**

2 **I. The Secretary’s Authority to Promulgate Rules in the EPM.**

3 Under A.R.S. § 16-452(A), “[a]fter consultation with each county . . . , the secretary of
4 state shall prescribe rules to achieve and maintain the maximum degree of correctness,
5 impartiality, uniformity and efficiency on the procedures for early voting and voting, and of
6 producing, distributing, collecting, counting, tabulating and storing ballots.” A.R.S. § 16-452(B)
7 makes clear that “the manual shall be approved by the governor and the attorney general.” And
8 to ensure that all three executives do their part, the statute requires that the Secretary “submit the
9 manual to the governor and the attorney general not later than October 1 of the year before each
10 general election,” and that the manual be issued “not later than December 31 of each odd-
11 numbered year immediately preceding the general election.” A.R.S. § 16-452(B).

12 **II. The Secretary Adopts—and the AG and Governor Approve—the 2019 EPM.**

13 Between 2014 and 2019, election officials used the 2014 EPM because the Secretary’s
14 predecessor didn’t submit and the AG and Governor didn’t approve a new version. After
15 Secretary Hobbs took office in 2019, she worked hard to prepare an updated EPM before election
16 administrators headed into an important election year. [SOF ¶¶ 10, 13] Consistent with the
17 statutory requirement, Secretary Hobbs’ office consulted county elections officials for many
18 months to prepare a comprehensive updated draft. [*Id.* ¶ 14]

19 The Secretary timely submitted a draft EPM to the AG and Governor, and she began a
20 collaborative process with the AG to discuss his proposed revisions. [*Id.* ¶ 15] Much of the AG’s
21 feedback reflected his lack of understanding of election administration or misreading of relevant
22 statutes and how they operate in practice. [*Id.* ¶ 16] The Secretary shared the AG’s comments
23 with county officials and received feedback from the counties on those comments. After multiple
24 meetings over several weeks, including a meeting attended by county officials, the Secretary’s
25 and AG’s offices finalized a draft. [*Id.* ¶¶ 17-19] Both the Secretary and the AG compromised
26 on certain provisions to reach a final agreement along with the Governor. [*Id.* ¶ 19]

1 **III. The Secretary Submits the 2021 EPM and Tries to Collaborate with the AG.**

2 The Secretary again worked with county election officials for months to draft an updated
3 EPM in 2021. [*Id.* ¶ 20] Her office met with County Recorders, county elections directors, and
4 their staff extensively to update and improve the EPM chapter-by-chapter, and received,
5 reviewed, and incorporated public feedback into the draft. [*Id.* ¶ 21] After that long and
6 collaborative process with fellow elections officials and the public, the Secretary submitted the
7 draft EPM to the AG and Governor on October 1, 2021. [*Id.* ¶ 22] On November 15, 2021, the
8 Secretary reached out to ask when to expect feedback and to set up a time to discuss. [*Id.* ¶ 23]

9 Over two weeks later, she finally received an email from the AG’s outside counsel stating
10 that he was hired to review the EPM. [*Id.* ¶ 24] On December 9 (more than two months after the
11 Secretary submitted the EPM for review), the AG’s outside counsel sent the Secretary a revised
12 draft (with no redlines) and declared that the AG “will not approve the manual . . . unless [his]
13 changes are made.” [*Id.* ¶ 25] The AG sent a redlined draft the next day (after the Secretary asked
14 for one). [*Id.* ¶¶ 26-27] The redlined draft slashed nearly a third of the Secretary’s draft EPM
15 and made various arbitrary revisions. The AG deleted large swaths, most of which he approved
16 in 2019, and most of which have been part of the EPM for even longer. [*Id.* ¶¶ 27-28]

17 The Secretary responded in good faith on December 17, accepting many edits as a
18 compromise (even though she disagreed with them), explaining why certain edits are improper,
19 and asking the AG to meet over other edits that warranted further discussion. [*Id.* ¶¶ 29-30] The
20 Secretary expected the AG to follow past practice and collaborate with her to agree on a final
21 EPM. But her faith that the AG would participate in good faith was misplaced.

22 **IV. The AG Refuses to Approve the EPM.**

23 On December 22, the AG unilaterally cut off any discussion about the draft for reasons
24 completely unrelated to the substance of the draft. He informed the Secretary that, “because of
25 [her] unprecedented decision to file a bar complaint against [him]” for his unethical conduct in
26 other matters, he will not “discuss[] this matter further with [her].” [*Id.* ¶ 31] The next day, the

1 Secretary informed all county recorders and election directors about the AG’s decision, thanked
2 them for their work, and explained that the 2019 EPM “remains relevant.” [*Id.* ¶ 32]

3 The AG let the December 31, 2021 statutory deadline pass, then did nothing for four
4 months. Now, and only after the 2022 election year started, the AG has sued the Secretary.²

5 **V. Arizona’s Counties Administer Elections Using the 2019 EPM.**

6 In the meantime, several local jurisdictions have held elections in compliance with the
7 2019 EPM and any legislative or court-ordered changes since the 2019 EPM was issued. [*Id.*
8 ¶ 33] Some counties held elections just two days ago under the 2019 EPM, and all counties are
9 in the middle of preparing for the August 2, 2022 primary election using the 2019 EPM. [*Id.*
10 ¶ 34] The AG’s assertion that no valid EPM exists is both incorrect and contrary to the counties’
11 practices for decades. The last approved EPM from 2019 has not been invalidated nor did it
12 automatically expire when the draft 2021 EPM was not approved. Indeed, counties rely on and
13 use the 2019 EPM, in conjunction with the advice of their county attorneys, to administer
14 elections and they will use the 2019 EPM until a new EPM is adopted, no matter when that
15 occurs. [*Id.* ¶¶ 33-34] As detailed below, upending the process now in the middle of an election
16 year would wreak havoc on our election systems.

17 **Argument**

18 Plaintiffs seek special action relief compelling the Secretary to submit a new “legally
19 compliant” 2022 EPM to the AG and Governor (even though she already did that). In their
20 supplemental brief, they now ask the Court to compel the Secretary to “promulgate the 2021
21 EPM consistent with the redlined draft the AG provided to the Secretary on December 9, 2021.”

22 Plaintiffs’ claims fail for at least four reasons. First, Plaintiffs’ request to disrupt election
23 procedures mid-election-year are too late and would cause prejudice. Second, whether the

24 _____
25 ² The AG’s position here is puzzling given his opposite approach with Republican Secretary of
26 State Michele Reagan. The AG never questioned Secretary Reagan’s failure to promulgate an
EPM during her four-year tenure as Secretary of State, even though A.R.S. § 16-452(B) required
that she “shall” issue an EPM “not later than thirty days prior to each election.” [SOF ¶¶ 10-12]

1 Secretary should adopt the AG’s preferred line edits in a draft EPM presents a non-justiciable
2 political question. Third, the AG’s demand for issuance of his preferred EPM five months past
3 the approval deadline violates A.R.S. § 16-452. And last, special action relief is unavailable to
4 compel the Secretary to exercise her discretion in a manner Plaintiffs prefer.

5 **VI. Plaintiffs’ Claims Are Untimely Under the Laches and *Purcell* Doctrines.**

6 Plaintiffs claim [Compl. ¶¶ 28-29] they need immediate relief because election officials
7 need “legal clarity as to the operative uniform rules” in the 2022 election cycle. But there is no
8 lack of clarity; the Secretary and county officials are all on the same page and operating under
9 the 2019 EPM and subsequent legislative or court-ordered updates. [SOF ¶ 33] And Plaintiffs
10 (and in particular, the AG) created this supposed emergency by sitting on their hands and waiting
11 until the 2022 election year is already underway. Now it’s too late to adopt new rules.³

12 **A. *Purcell* bars Plaintiffs’ request to change the EPM.**

13 First, the *Purcell* principle bars Plaintiffs’ claims. Under that doctrine, courts generally
14 will not alter election rules on the eve of an election. *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006).
15 This is for good and practical reasons; “[c]ourt orders affecting elections can themselves result
16 in voter confusion and consequent incentive to remain away from the polls,” a risk that only
17 increases “[a]s an election draws closer.” *Id.* at 4-5. And this “important principle of judicial
18 restraint not only prevents voter confusion but also prevents election administrator confusion—
19 and thereby protects the State’s interest in running an orderly, efficient election.” *Democratic*
20 *Nat’l Comm. v. Wis. State Leg.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). Section
21 16-452 contemplates these risks by ensuring that EPM submission and approval happens before
22 the election year starts. Yet after the AG refused to approve (or even discuss) the EPM in
23 December 2021, he did nothing for four months. And contrary to Plaintiffs’ claims that election
24 officials need “clarity,” the counties and the Secretary are operating under the valid 2019 EPM,

25 ³ Plaintiffs’ responses to the Secretary’s motion to modify the briefing and argument schedule
26 on the AG’s supplemental brief only prove this point.

1 except provisions that have changed based on new legislation or court rulings. [SOF ¶ 33]

2 Forcing the Secretary to adopt a different manual this late in the election cycle would
3 create uncertainty and confusion mere months before the August primary elections, for which
4 election administrators are already preparing. For example⁴, the AG’s demanded changes [at 16]
5 to the wording on ballot envelopes would be impossible to implement in 2022 elections and
6 could cause ballots to be inadvertently returned to the counties. [*Id.* ¶¶ 35-44]⁵ The counties
7 likewise cannot implement the AG’s demanded procedure [at 20-21] of allowing challenges to
8 early ballots after the envelope has been opened. [*Id.* ¶¶ 45-47] All counties perform signature
9 verification before the envelope is opened to preserve voters’ constitutional right to a secret
10 ballot. [*Id.* ¶ 46] Even if it were possible to accept challenges after the envelope is opened,
11 counties cannot adopt that procedure for the 2022 elections. [*Id.* ¶ 47] As the Pima County
12 Recorder makes clear, “early ballot processing is a major operation, the planning for which is
13 already solidified,” including training, budgeting, and hiring temporary workers. [*Id.* ¶ 48]
14 Counties also cannot adopt the AG’s demanded requirement that “staff” must “monitor” all
15 ballot drop-boxes in the 2022 elections. [*Id.* ¶¶ 49-54] The counties have been using drop-boxes
16 for decades, and they serve as an important tool for voters (including rural voters and voters who
17 cannot vote during working hours) to exercise their right to vote. [*Id.* ¶¶ 50-51] As the Yavapai
18 County Recorder explained, counties already “adhere[] to strict security protocols in securing
19 the drop boxes,” [*id.* ¶ 52; *see also id.* ¶ 53] and they do not have the staff or resources to

20 _____
21 ⁴ These are only examples to show that the AG’s claims are barred by *Purcell*. Many other
22 changes the AG demands are substantively and legally wrong and unworkable, but those will be
addressed—if necessary—in the Secretary’s response to the AG’s supplemental brief.

23 ⁵ Yavapai County already pre-printed its early ballot envelopes [*id.* ¶ 40]; Coconino County has
24 already had 200,000 ballot envelopes printed [*id.* ¶ 41]; Pima County has ordered over 1 million
25 envelopes from its vendor, who is “operating on an extremely tight paper supply given the
national paper shortage” [*id.* ¶ 42]; and Maricopa County has ordered 4.2 million ballot
26 envelopes for the 2022 August and November elections and directed its vendor to begin printing
over a month ago, and it would cost upwards of \$420,000 to reprint (if it were even possible to
redesign, vet, procure, and receive re-printed envelopes in time for the primary) [*id.* ¶ 43].

1 “monitor” the drop boxes around the clock. [*Id.* ¶ 54] In short, compelling the adoption and
2 implementation of a new EPM with the AG’s proposed changes would disrupt the orderly
3 administration of elections.

4 Though most of the AG’s proposed changes simply remove procedures from the EPM,
5 these deletions would inject significant uncertainty into election administration. [*Id.* ¶¶ 55-58]
6 For many provisions the AG claims shouldn’t be included in the EPM, it is unclear whether he
7 believes that (1) these procedures should simply be left up to each county, or (2) following these
8 procedures would somehow be unlawful. County election officials rely on a comprehensive EPM
9 to provide “clarity and confidence that their procedures [are] accurate and comply with the law.”
10 [*Id.* ¶ 56] Removing nearly a third of the EPM right before the primary election would create
11 inconsistencies among Arizona’s fifteen counties, something A.R.S. § 16-452 aims to avoid.
12 Among other things, the AG’s proposed changes would force counties to “reassess and seek
13 legal advice on every step of the voter registration process,” but they don’t “have the staffing or
14 time to undertake that additional work or make significant judgments to the voter registration
15 process at this point in the election year.” [*Id.* ¶ 57] Worse yet, it would leave county officials
16 scrambling to decide whether to keep following the procedures as planned, or if doing so could
17 make them a target of an AG who won’t hesitate to pursue criminal and civil enforcement against
18 election officials simply for doing their jobs or to publish an unprecedented “interim report” on
19 his investigation, making inflammatory and unsubstantiated accusations of wrongdoing. *See,*
20 *e.g.,* Howard Fischer, *Arizona secretary of state threatened with prosecution over online*
21 *petitions site*, Tucson.com (Jan. 19, 2022), <https://tinyurl.com/2p84r4x3>.

22 There’s no dispute that several counties have recently administered local elections, and
23 all counties are deep in preparations for the August 2022 primary using the 2019 EPM. [SOF
24 ¶¶ 33-34] Early voting in that election is only weeks away. Changing the election procedures
25 now would be disastrous. [*E.g., id.* ¶ 58 (Cochise County Recorder explaining that “making these
26 changes at this late a date . . . is dangerous and irresponsible”)] It would also burden election

1 administrators and cause voter confusion—the precise harm *Purcell* aims to prevent. In fact, the
2 AG himself has argued over the last several months that suits seeking to change an election
3 procedure for the 2022 election are barred under *Purcell*. [*E.g.*, SOF ¶ 59 (arguing that a lawsuit
4 filed in August 2021 could not be “adjudicated in time for the 2022 primary and general
5 elections, including in sufficient time in advance of voting to avoid issues under [the] *Purcell*
6 doctrine”); ¶ 60 (arguing in February 2022 that the Secretary’s temporary partial maintenance of
7 online signature gathering platform was “barred under the *Purcell* doctrine” because it changed
8 an “election system close to the election”). Yet he now asks this Court—even closer to the 2022
9 election—to change hundreds of election procedures. He can’t have it both ways.

10 **B. Laches bars Plaintiffs’ delayed request to update the EPM.**

11 Second, laches bars Plaintiffs’ claims. That doctrine “seeks to prevent dilatory conduct
12 and bars a claim if” (1) a party’s delay is unreasonable, and (2) the delay prejudices an opposing
13 party “or the administration of justice.” *Lubin v. Thomas*, 213 Ariz. 496, 497 ¶ 10 (2006).

14 When deciding whether delay is unreasonable, courts consider “the justification for the
15 delay, the extent of the plaintiff’s advance knowledge of the basis for the challenge, and whether
16 the plaintiff exercised diligence[.]” *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 923
17 (D. Ariz. 2016) (citation omitted). Every factor points to unreasonable delay here. On August 13,
18 2021, the Secretary released the draft 2021 EPM for public comment. Plaintiffs Yavapai County
19 Republican Committee and Ms. Manjoros didn’t provide comments. [SOF ¶¶ 61-64] After the
20 public comment period, the Secretary submitted the draft EPM to the AG by October 1, 2021.
21 He waited—with no explanation—until less than three weeks before the December 31 deadline
22 to give “feedback.” He then refused to compromise or even discuss his edits, categorically
23 refusing to approve the EPM unless the Secretary accepted his every demand. [*Id.* ¶¶ 25, 31] The
24 Secretary, in her discretion, declined to do so. If the AG believed, as he now claims, that the
25 Secretary violated a duty to provide “a valid draft EPM to the AG and Governor,” then why did
26 he wait over four months to say so? He can’t answer that question.

1 Even more, the AG signed off on most of the provisions he now objects to when he
2 approved the EPM in 2019. [*Id.* ¶ 28] Plaintiffs have known about those provisions for more
3 than two years, but they’ve exercised no diligence in challenging the use of these procedures in
4 the 2022 election. All told, Plaintiffs’ mid-election-year request for an order forcing the
5 Secretary to issue their preferred EPM is inexcusable.

6 Plaintiffs’ untimeliness also prejudices the Secretary, Arizona’s dedicated election
7 officials, and above all else, Arizona voters. Counties have already successfully administered
8 local elections this year under the 2019 EPM. [*Id.* ¶ 34] These are the rules voters and election
9 officials have come to rely on. Adopting the AG’s proposed changes now would be impossible,
10 and even if possible, changing these election procedures in the middle of an election year would
11 expose county election officials and voters to needless uncertainty and confusion. In addition to
12 the examples above, the AG demands [at 13-16, 23] sweeping changes to procedures for the
13 Active Early Voting List (“AEVL”), changes to the Board of Supervisors’ role in preparing
14 ballots, and changes to the procedures for handling re-tests during the logic and accuracy testing
15 period. These demanded changes cannot possibly be implemented for any 2022 elections. The
16 AG claims, for example, that Boards of Supervisors cannot “delegate” their duty to print and
17 prepare ballots to the county’s officer in charge of elections. Setting aside the absurdity of this
18 argument,⁶ the preparation of ballots for this election year is well-underway; it’s too late to
19 require the Boards of Supervisors to start that process over. [SOF ¶¶ 40-44; 66-69] The AG also
20 demands a procedure for giving 48-hour notice of logic and accuracy re-tests, even though no
21 statute requires it. But the Secretary and the counties have already developed a complex plan for
22 logic and accuracy testing next month, and it is impossible to predict whether and when any re-
23 tests may need to happen during the 7-day statutory window. [*Id.* ¶¶ 70-75] The AG also requests
24 new EPM provisions that would require the Secretary and counties to identify and send notices

25
26 ⁶ Does the AG seriously expect the members of the Board of Supervisors of each county to personally prepare and print millions of ballots?

1 to AEVL voters eligible to receive removal notices under new legislation enacted in 2021
2 starting with the 2020 elections. This is yet another procedure that would be impossible to
3 implement right now. [*Id.* ¶¶ 76-77] Nor can counties make the AG’s demanded changes to the
4 90-day AEVL notices. Pima County, for example, has already sent notices to around 450,000
5 registrants and has already received about 16,000 back. [*Id.* ¶¶ 78-80] Even if it were feasible to
6 reprint and resend notices, doing so would cause significant voter confusion. [*Id.*] In addition,
7 Plaintiffs’ unjustified delay prejudices the Court by placing it “in a position of having to
8 steamroll through” important legal issues, “leaving little time for reflection and wise decision
9 making.” *Sotomayor v. Burns*, 199 Ariz. 81, 83 ¶ 9 (2000).

10 While courts have held that the laches doctrine does not apply against the State or its
11 agencies in some cases, “Arizona courts have moved away from” that rule and “toward balancing
12 the injustice that might result from the application of the rule against the effect that non-
13 application would have on the state’s effective exercise of its sovereignty and any resulting
14 damage to the public interest.” *State v. Garcia*, 187 Ariz. 527, 529–30 (App. 1996) (equitable
15 defenses may be available “when the government conduct complained of was in the form of
16 inaction or silence”); *see also State ex rel. Darwin v. Arnett*, 235 Ariz. 239, 245 ¶ (App. 2014)
17 (same when state entities “made misrepresentations (or actions inconsistent with the entity’s
18 later position) on which the opposing party relied”). Here, the AG sat on his claim and let election
19 officials administer 2022 elections under the existing rules. Changing those rules now would
20 upend our election system and harm the public interest. *See, e.g., De La Fuente v. Arizona*, 2017
21 WL 75846, at *3 (D. Ariz. Jan. 9, 2017) (laches barred claim where plaintiff failed to explain
22 delay and his requested relief “caused prejudice in light of the deadline for transmitting absentee
23 ballots . . . and the deadlines related to preparing ballots for early voting”).

24 In sum, the Court should reject Plaintiffs’ last-minute request to change the EPM in the
25 middle of an election year, after election officials have implemented uniform procedures,
26 budgeted for those procedures, adopted training and educational materials around those

1 procedures, and purchased ballots and equipment based on those procedures.

2 **VII. Whether the Secretary Should Include Particular Policies in the EPM is a Non-**
3 **Justiciable Political Question.**

4 Even if Plaintiffs' claims were timely (they're not), whether the Secretary should or
5 shouldn't adopt specific EPM provisions under her broad authority to adopt rules in the EPM is
6 a non-justiciable political question that this Court shouldn't try to answer.

7 A controversy involves a non-justiciable political question when there is a "constitutional
8 commitment of the issue to a coordinate political department; or a lack of judicially discoverable
9 and manageable standards for resolving it." *Kromko v. Arizona Bd. of Regents*, 216 Ariz. 190,
10 192 ¶ 11 (2007) (cleaned up). The political question doctrine stems from "the basic principle of
11 separation of powers," and recognizes that some decisions are not appropriate for judicial
12 resolution. *Id.* ¶ 12. This is because our Constitution prohibits one branch of government from
13 "exercis[ing] the powers properly belonging to either of the others." Ariz. Const. art. III.

14 The Secretary, like the AG, is a constitutional officer in the executive branch. Ariz. Const.
15 art. V § 1. Yet the AG asks the Court to micro-manage the Secretary's rulemaking process and
16 force her to adopt specific procedures that reflect the AG's political views. The AG invokes [at
17 12, 17, 19, 22] the phrase "maximum degree of correctness, impartiality, uniformity and
18 efficiency on [election] procedures" to ask the Court to compel the Secretary to add, edit, or
19 delete specific provisions in the EPM, including rules governing signature verification, ballot
20 drop-boxes, early ballot mailing dates, overvote instructions, election-related deadlines, and
21 voting in jails. But there are simply no "judicially discoverable and manageable standards" to
22 determine whether particular procedures in the EPM achieve and maintain the "maximum degree
23 of correctness, impartiality, uniformity and efficiency." *See Kromko*, 216 Ariz. at 194 ¶ 20 (no
24 judicially manageable standards to "assess whether the cost of tuition is as nearly free as
25 possible"). And courts "are ill-equipped to inquire into and second-guess the complexities of
26 decision-making and priority-setting" involved in election administration. *See Fogliano v. Brain*,

1 229 Ariz. 12, 20 ¶ 25 (App. 2011).

2 Though he claims his edits involve “legal” questions, the AG’s proposed changes to the
3 draft EPM are no more than an attempt to substitute his policy preferences for the Secretary’s.
4 For example (among others): the AG asks the Court to require the Secretary to adopt signature
5 verification procedures because it is an “important election integrity measure.” [Compl. ¶ 85]
6 He complains [Supp. Br. at 13] that the draft EPM allows voters to use a form “substantially
7 similar” to the AEVL form the Secretary offers, even though no statutes require a particular
8 form. He argues [at 20] that provisions prohibiting obstruction and harassment at ballot drop-off
9 locations is “vague.” He complains [at 20] that the draft EPM requires that challenges to early
10 ballots be made before the ballot envelope is opened because he mistakenly believes, as someone
11 who doesn’t administer elections, that this could happen “before the ballot ‘is placed in the ballot
12 box.’” He takes issue [at 23] with provisions governing voting in jails because they leave too
13 much discretion to county officials and thus “inject[] dis-uniformity into the election processes.”
14 He argues [at 24] that guidance on choosing voting locations “represents an anti-law enforcement
15 sentiment.” He suggests [at 24] that counties shouldn’t have to select poll workers “in an
16 equitable manner” or try to recruit a “diverse pool of poll workers that reflect the community.”
17 The list goes on. All these proposed edits to the EPM reflect policy disagreements between
18 elected officials that this Court shouldn’t referee.

19 What the AG claims is a “legally compliant” manual is also a constantly moving target.
20 For example, even though the AG never raised the issue in December 2021 (or when he approved
21 the 2019 EPM), he first raised concerns about the use of “AI” in signature verification on an
22 appearance on Steve Bannon’s podcast [SOF ¶ 81], and now claims here that the EPM must
23 prohibit any “AI” in the signature verification process, even though no statute says so. That the
24 AG’s objections shift with the political winds proves his edits have nothing to do with the law.

25 At bottom, the Secretary is the State’s Chief Elections Officer with expertise in election
26 administration. In consultation with the counties (who, unlike the AG, also have expertise in

1 election administration), she developed a draft EPM. The AG may disagree with certain
2 provisions, but it's not this Court's role to get involved in discretionary policy decisions about
3 which procedures are feasible and appropriate for election administrators to follow, or which
4 procedures best achieve the "maximum degree of correctness, impartiality, uniformity and
5 efficiency" in election administration. *See Sensing v. Harris*, 217 Ariz. 261, 265 ¶ 13 (App.
6 2007) (a government official's discretion in making certain decisions makes those decisions
7 inappropriate for judicial review); *Daniels v. Ariz. Dep't of Health Servs.*, 2018 WL 5269789, at
8 *5 ¶ 26 (Ariz. Ct. App. Oct. 23, 2018) ("judiciary is ill equipped" to review "discretionary policy
9 decisions" of a state agency). The political question doctrine thus bars Plaintiffs' requested relief.

10 **VIII. Plaintiffs' Demand for Issuance of the AG's Preferred EPM in the Middle of the**
11 **Election Year Violates A.R.S. § 16-452.**

12 Next, Plaintiffs' claims fail under the plain language of A.R.S. § 16-452. That statute
13 tasks the Secretary with drafting an EPM after consulting county officials and directs her to
14 submit the manual to the AG and Governor by October 1 of each odd numbered year. A.R.S.
15 § 16-452(A)-(B). The Secretary complied with this requirement. The statute also directs that
16 EPM "shall be approved" by the AG and Governor, after which the Secretary "shall . . . issue
17 [the EPM] not later than December 31." The AG and Governor failed to approve the EPM.

18 Nothing in § 16-452 permits the AG to unilaterally dictate the contents of the EPM or
19 force the Secretary to issue an EPM with his desired provisions (five months past the statutory
20 deadline, no less). If the AG were correct and he gets to decide—in his sole discretion—what
21 goes in the EPM, the statute would say so. Indeed, the AG's only powers are those expressly
22 authorized in statute. *See State ex rel. Brnovich v. Arizona Bd. of Regents*, 250 Ariz. 127, 133 ¶
23 21 (2020); *State ex rel. Woods v. Block*, 189 Ariz. 269, 272 (1997); *see also Yes on Prop 200 v.*
24 *Napolitano*, 215 Ariz. 458, 467 ¶ 25 (App. 2007) ("Absent clear statutory authority, the Attorney
25 General has no power to compel action on the part of state agencies.").

26 Section 16-452 tasks the Secretary—not the AG—with drafting and issuing the EPM for

1 good reason. The Secretary, not the AG, is the State’s Chief Elections Officer, who oversees
2 election administration for the State. The Secretary, not the AG, works closely with county
3 officials day-to-day to administer elections and thus has relevant expertise on election
4 procedures. And the Secretary, not the AG, is the state official tasked with consulting the
5 counties about the EPM. If anything, the statute requires that the AG and Governor “shall”
6 approve the rules the Secretary drafts. Whether Plaintiffs realize it or not, the arguments they
7 advance could be used to compel the AG’s approval of whatever EPM the Secretary submits.
8 But unlike Plaintiffs, the Secretary respects the letter and purpose of the law. The statute doesn’t
9 authorize the AG or Governor to dictate the rules the Secretary must adopt, just as it doesn’t
10 authorize the Secretary to compel their approval. Interpreting the statute as Plaintiffs urge would
11 flout its terms and disrupt the balance of powers between State officials.

12 Plaintiffs ask this Court to rewrite A.R.S. § 16-452 to give the AG absolute control over
13 the EPM’s terms, including, remarkably, the authority to override, at his leisure, the specific
14 statutory deadline for issuing a new EPM. That, of course, “is not the function of the courts.”
15 *Lewis v. Debord*, 238 Ariz. 28, 31 ¶ 11 (2015); *see also In re McLauchlan*, 252 Ariz. 324 ___
16 ¶ 15 (2022) (courts “cannot rewrite a statute based on the surmise that the legislature meant to
17 draft it a different way”). Even if the AG could unilaterally dictate the contents of the EPM and
18 force the Secretary to adopt his preferred policies (he cannot), A.R.S. § 16-452 requires that any
19 new manual be issued by December 31. That requirement forecloses the relief Plaintiffs seek.

20 **IX. Special Action Relief is Unavailable to Plaintiffs.**

21 Last, Plaintiffs’ Complaint suffers a final jurisdictional flaw. Plaintiffs are not entitled to
22 the special action relief they seek because under Rule 3, R. P. Spec. Act., the only questions over
23 which courts have special action jurisdiction are:

- 24 (a) Whether the defendant has failed to exercise discretion which he has a duty to
- 25 exercise; or to perform a duty required by law as to which he has no discretion; or
- 26 (b) Whether the defendant has proceeded or is threatening to proceed without or
- in excess of jurisdiction or legal authority; or
- (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

1 Plaintiffs [at ¶ 36] invoke Rule 3(a), which “sets forth the traditional functions of the writ
2 of mandamus” by allowing a plaintiff to “compel a state officer to perform a duty required by
3 law.” *Ariz. for Second Chances, Rehab. & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404 ¶ 16 (2020).
4 But mandamus “does not lie if the public officer is not specifically required by law to perform
5 the act.” *Sears v. Hull*, 192 Ariz. 65, 68 ¶ 11 (1998) (quotations omitted). Thus, “if the action of
6 a public officer is discretionary[,] that discretion may not be controlled by mandamus.” *Id.* “In
7 some circumstances, mandamus may be used to compel a public officer to perform
8 a discretionary act, but not to exercise that discretion in any particular manner.” *Blankenbaker*,
9 231 Ariz. at 577 ¶ 7 (emphasis added). Yet that’s exactly what Plaintiffs do here.

10 Plaintiffs claim that the Secretary has a “non-discretionary duty” to “submit a legally
11 compliant EPM to the AG and Governor for approval.” But it’s not as if the Secretary has
12 outright refused to submit a draft EPM. Under A.R.S. § 16-452(A), she “consult[ed] with each
13 county board of supervisors or other officer in charge of elections,” “prescribe[d] rules” in a new
14 EPM, and “before its issuance” sent it to the AG and Governor for approval. [SOF ¶ 22] She
15 then responded in good faith to the AG’s (unreasonable) demands and tried to start a dialogue,
16 but the AG ignored his duty to review and approve the draft. [*Id.* ¶¶ 25-31] Because the AG
17 withheld his approval, the Secretary couldn’t (and thus didn’t) issue a final EPM. The Secretary
18 performed her duties under A.R.S. § 16-452, and the AG lacks the authority to force her to adopt
19 his proposed revisions. *Yes on Prop 200*, 215 Ariz. at 467 ¶¶ 24-25 (AG cannot use mandamus
20 “to compel other state agencies or departments to make rules or regulations”).

21 *Yes on Prop 200* is instructive. There, the plaintiffs asked the court to compel the
22 Governor to “withdraw” certain provisions in an executive order. *Id.* at 468 ¶ 27. The court
23 refused to compel the Governor “to edit or revise the text of her executive orders” because, while
24 courts “may in appropriate circumstances review the Governor’s executive orders for
25 compliance with the law,” mandamus relief was inappropriate because “it is not the court’s
26 constitutional role to craft executive orders for the Governor.” *Id.* So too here. Plaintiffs ask the

1 Court to force the Secretary to include, revise, or remove specific policies in the EPM. But
2 whether to include particular provisions in the EPM is a discretionary decision the Secretary
3 makes with input from the counties. These decisions involve many policy considerations (*e.g.*,
4 whether it would be administratively feasible; would increase costs or deplete resources; would
5 cause confusion or burden voters; and so on). [SOF ¶ 82] And the provisions the AG objects to
6 reflect the collective judgment of the Secretary and county election officials about election
7 policies and best practices. [*Id.* ¶ 83] These are exactly the kinds of discretionary acts that “may
8 not be controlled by mandamus.” *Sensing*, 217 Ariz. at 263 ¶ 6.

9 Plaintiffs also try to force their claims into Rule 3(c), arguing the Secretary “abused her
10 discretion” by including certain provisions in the draft 2021 EPM. Plaintiffs rely on the principle
11 that a tribunal “abuses its discretion when it commits a legal error in the process of exercising
12 its discretion.” *Yes on Prop 200*, 215 Ariz. at 465 ¶ 12. But while that rule applies to a court or
13 adjudicative body with the “responsibility to declare existing law,” applying the same principle
14 to discretionary decisions of executive officials “would be an inappropriate usurpation by the
15 courts of responsibility assigned to the [official] and . . . a violation of the separation of powers.”
16 *Id.* ¶¶ 13-16. Indeed, Plaintiffs’ mere disagreement with the Secretary’s interpretation of election
17 laws doesn’t warrant mandamus relief. If courts “were to adopt [that] argument, virtually any
18 citizen could challenge any action of any public officer under the mandamus statute by claiming
19 that the officer has failed to uphold or fulfill state or federal law, as interpreted by the dissatisfied
20 plaintiff.” *Sears*, 192 Ariz. at 69 ¶ 12.

21 In the end, Plaintiffs cannot use a mandamus action to force the Secretary to adopt their
22 preferred provisions in a draft EPM.

23 **Conclusion**

24 For all these reasons, the Court should enter judgment dismissing Plaintiffs’ claims and
25 award the Secretary her attorneys’ fees and costs under A.R.S. §§ 12-341 and 12-348.01.

1 RESPECTFULLY SUBMITTED this 19th day of May, 2022.

2 **COPPERSMITH BROCKELMAN PLC**

3 By: /s/ Roopali H. Desai

4 Roopali H. Desai
5 D. Andrew Gaona
6 Kristen Yost

6 **STATES UNITED DEMOCRACY CENTER**

7 Sambo (Bo) Dul
8 Christine Bass*

9 **Application for Pro Hac Vice Forthcoming*

10
11 ORIGINAL e-filed and served via electronic
12 means this 19th day of May, 2022, upon:

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13
14 **ARIZONA SUPERIOR COURT**
15 **YAVAPAI COUNTY**

16 MARK BRNOVICH, in his official capacity as)
Arizona Attorney General, et al.,)

17 Plaintiffs,)

18 v.)

19 KATIE HOBBS, in her capacity as the)
Secretary of State of Arizona,)

20 Defendant.)
21)
22)
23)
24)
25)
26)

No. P1300CV202200269

**DEFENDANT ARIZONA SECRETARY
OF STATE KATIE HOBBS'
STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

(Assigned to Hon. John Napper)

1 Pursuant to Arizona Rule of Civil Procedure 56(c)(3)(A), Defendant Arizona Secretary
2 of State Katie Hobbs (“Secretary”) hereby provides this Statement of Facts (“SOF”) in support
3 of her Motion for Summary Judgment.

4 **STATEMENT OF FACTS**

5 1. On April 27, 2022, the Secretary responded to Plaintiffs’ application for order to
6 show cause and objected to their request for special action relief. [See Apr. 27, 2022 Resp.]

7 2. In that response, the Secretary raised various defenses, including that Plaintiffs’
8 mid-election-year claims are untimely and would disrupt the election, that Plaintiffs’ claims
9 involve non-justiciable political questions, that special action jurisdiction is improper, and that
10 Plaintiffs’ claims fail under the plain language of A.R.S. § 16-452. [*Id.*]

11 3. At the return hearing on April 29, 2022, the Court preliminarily “denied” these
12 defenses but expressly reserved the ability to decide them after more briefing, and stated that the
13 Secretary “ought to be able to raise [these defenses] later.” [Apr. 29, 2022 Hrg. Tr. at 82-88]

14 4. The Court asked Attorney General Mark Brnovich (“AG”) to file a supplemental
15 brief explaining his objections to provisions in the draft 2021 EPM. [Apr. 29, 2022 Hrg. Tr. at
16 82]

17 5. The Court did so because the AG’s “response to the secretary was not clear enough
18 for the secretary to act on. So we’re going to need to get clarity on that.” [Apr. 29, 2022 Hrg. Tr.
19 at 28-30]

20 6. The Court also explained that “no one can decipher” the basis for the AG’s
21 objections, and the Court is “at a loss to figure out why it is the [AG] is specifically objecting
22 to” provisions in the draft EPM. [*Id.* at 28-30]

23 7. The Court also explained: “So the problem I have is if I deny the defenses now,
24 you ought to be able to relitigate them once I’ve had the opportunity -- for instance, one of them
25 is the detrimental reliance of the recorders. So then when I get your brief and your brief says,
26 Judge, if you do what the attorney general is asking you to do, chaos -- dogs and cats will be

1 living together and there will be mass hysteria. Right? So you would be able to reurge that at a
2 later time.” [Apr. 29, 2022 Hrg. Tr. at 84]

3 8. Under A.R.S. § 16-452(A), “[a]fter consultation with each county board of
4 supervisors or other officer in charge of elections, the secretary of state shall prescribe rules to
5 achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency
6 on the procedures for early voting and voting, and of producing, distributing, collecting,
7 counting, tabulating and storing ballots.”

8 9. Under A.R.S. § 16-452(B), “[t]he rules shall be prescribed in an official
9 instructions and procedures manual to be issued not later than December 31 of each odd-
10 numbered year immediately preceding the general election. Before its issuance, the manual shall
11 be approved by the governor and the attorney general. The secretary of state shall submit the
12 manual to the governor and the attorney general not later than October 1 of the year before each
13 general election.”

14 10. Between 2014 and 2019, election officials used the 2014 EPM because the
15 Secretary’s predecessor didn’t issue a new version. [Declaration of State Elections Director Kori
16 Lorick (“Lorick Decl.”) ¶¶ 6-7]¹

17 11. When an attorney wrote to the AG complaining that former Republican Secretary
18 of State Michele Reagan was violating the requirement under A.R.S. § 16-452(B) that she “shall”
19 issue an EPM “not later than thirty days prior to each election,” AG Brnovich responded that
20 “the statute is subject to multiple interpretations.” [June 14, 2014 Ltr. from AG’s Office to T.
21 Ryan (Exhibit B to the Secretary’s Apr. 27, 2022 Response to Application for Order to Show
22 Cause)]

23
24
25 ¹ Ms. Lorick’s declaration and exhibits were filed on April 27, 2022 and a copy was provided to
26 the Court. The Secretary does not re-attach the declaration and exhibits here, but if the Court
prefers, the Secretary will supplement this filing with those attachments.

1 12. The AG also explained that Secretary Reagan’s interpretation—that the law “does
2 not impose a duty to issue a new [EPM] in any given year”—is “plausible.” [*Id.*]

3 13. After Secretary Hobbs took office in 2019, she worked to prepare an updated EPM
4 before election administrators headed into an important election year. [*Id.* ¶¶ 6-10]

5 14. Consistent with the statutory requirement, Secretary Hobbs’ office consulted
6 County Recorders and elections directors for many months to prepare a comprehensive updated
7 draft. [*Id.*]

8 15. The Secretary timely submitted a draft EPM to the AG and Governor, and she
9 began a collaborative process with the AG to discuss his proposed revisions. [*Id.* ¶¶ 11-12]

10 16. Much of the AG’s feedback reflected his lack of understanding of election
11 administration or misreading of relevant statutes and how they operate in practice. [*Id.* ¶ 13]

12 17. The Secretary shared the AG’s comments with county officials and received
13 feedback from the counties on those comments. [*Id.*]

14 18. After multiple meetings over several weeks, including a meeting attended by
15 county officials, the Secretary’s and AG’s offices finalized draft. [*Id.* ¶¶ 13-15]

16 19. Both the Secretary and the AG compromised on certain provisions to reach a final
17 agreement on an updated EPM that was also signed off on by the Governor. [*Id.*]

18 20. The Secretary again worked with county election officials for months to draft an
19 updated EPM in 2021. [*Id.* ¶¶ 16-17]

20 21. Her office met with County Recorders, county elections directors, and their staff
21 extensively to update and improve the EPM chapter by chapter, and received, reviewed, and
22 incorporated public feedback into the draft. [*Id.*]

23 22. After that long and collaborative process with fellow elections officials and a
24 period for public comment, the Secretary submitted the draft EPM to the AG and Governor on
25 October 1, 2021. [*Id.* ¶¶ 18-19]

26

1 23. On November 15, 2021, the Secretary reached out to ask when she could expect
2 initial feedback on the draft and asked to set up a time to discuss. [*Id.* ¶ 20]

3 24. Over two weeks later, she received an email from the AG’s outside counsel stating
4 that he was hired to review the EPM. [*Id.* ¶ 21]

5 25. On December 9, the AG’s outside counsel sent the Secretary a revised draft and
6 stated that the AG “will not approve the manual . . . unless [his] changes are made.” [Compl. Ex.
7 1-B; Lorick Decl. ¶¶ 22-23]

8 26. The revised draft did not include redlines, so the Secretary asked for a redlined
9 draft on December 10, 2021. [*Id.*]

10 27. The AG sent a redlined draft on December 10, 2021 that slashed nearly a third of
11 the Secretary’s draft EPM and made various revisions. [*Id.* Ex. 16]

12 28. The AG deleted large portions of the EPM, most of which the AG and Governor
13 approved in 2019, and most of which have been part of the EPM for longer than that. [*Id.*]

14 29. The Secretary responded on December 17, 2021. [*Id.* ¶ 27]

15 30. In her response, the Secretary offered to accept many edits as a compromise (even
16 though she disagreed with them), explained why she believed certain edits are improper, and
17 asked the AG to meet regarding other edits that she believed warranted further discussion. [*Id.*
18 Ex. 16; Compl. Ex. 1-C]

19 31. On December 22, the AG unilaterally cut off any discussion about the draft EPM.
20 He informed the Secretary that, “because of [her] unprecedented decision to file a bar complaint
21 against [him]” for his unethical conduct in other matters, he will not “discuss[] this matter further
22 with [her].” [Compl. Ex. 1-D; Lorick Decl. ¶ 28]

23 32. The next day, the Secretary informed all county recorders about the AG’s decision,
24 thanked them for their hard work, and explained that the 2019 EPM “remains relevant” even if
25 not up-to-date in some parts. [Lorick Decl. Ex. 18]

26

1 33. In the meantime, several local jurisdictions have held elections under the 2019
2 EPM and any legislative or court-ordered changes since the 2019 EPM was issued. [Declaration
3 of Yavapai County Recorder Leslie Hoffman (“Hoffman Decl.”) ¶¶ 4-6, attached hereto as
4 **Exhibit A**; Declaration of Cochise County Recorder Lisa Marra (“Marra Decl.”) ¶¶ 5-7, attached
5 hereto as **Exhibit B**; Declaration of Navajo County Recorder Michael Sample (“Sample Decl.”)
6 ¶¶ 4-5, attached hereto as **Exhibit C**]²

7 34. Some counties just held elections in March 2022 and on May 17, 2022, and all
8 counties are in the middle of preparing for the August 2, 2022 primary election using the 2019
9 EPM. [Supplemental Declaration of Pima County Recorder Gabriella Cázares-Kelly (“Suppl.
10 Cázares-Kelly Decl.”) ¶¶ 2, 5, attached hereto as **Exhibit D**; Supplemental Declaration of
11 Coconino County Recorder Patty Hansen (“Suppl. Hansen Decl.”) ¶ 2, attached hereto as
12 **Exhibit E**; Supplemental Declaration of Maricopa County Recorder Stephen Richer, Maricopa
13 County Director of Mail-In Voting and Elections Services Rey Valenzuela, and Maricopa
14 County Director of In-Person Voting and Tabulation Scott Jarrett (“Suppl. Maricopa Decl.”) ¶
15 4, attached hereto as **Exhibit F**; Lorick Decl. ¶¶ 31-33; Hoffman Decl. ¶ 6; Marra Decl. ¶ 7]

16 35. The AG’s supplemental brief proposes a change to the language used on ballot
17 affidavit envelopes. [AG Suppl. Br. at 16]

18 36. Under A.R.S. § 16-547(C), election officials must ensure “that the early ballot is
19 sent in an envelope that states substantially the following: If the addressee does not reside at this
20 address, mark the unopened envelope ‘return to sender’ and deposit it in the United States mail.”

21 37. To develop the language for ballot affidavit envelopes for the 2022 August and
22 November elections, county election officials consulted election mail specialists at the United
23 States Postal Service (USPS). [Suppl. Cázares-Kelly Decl ¶ 8; Suppl. Hansen Decl. ¶ 9; Hoffman
24

25 ² See also Declarations of Pima, Coconino, and Maricopa County Recorders Gabriella Cázares-
26 Kelly, Patty Hansen, and Stephen Richer filed as Exhibits to the Secretary’s April 27, 2022
response. (Exhibits C-F to the Secretary’s Response to Application for Order to Show Cause).

1 Decl. ¶ 8; Suppl. Maricopa Decl. ¶ 6; Declaration of Maricopa County Assistant Director for
2 Early Voting Celia Nabor (“Nabor Decl.”) ¶¶ 4-11, attached hereto as **Exhibit G**]

3 38. USPS advised that including the specific phrase “return to sender” on the exterior
4 ballot envelope could cause postal sorting machines to automatically return the ballot to the
5 county rather than delivering them to the voter or could otherwise delay delivery of the ballot.

6 [*Id.*]

7 39. Counties thus included the following language on ballot envelopes:

8 If the addressee does not reside at this address, mark the box and return it to the
9 U.S. Postal Service.

10 [*E.g.*, Suppl. Hansen Decl. ¶ 10; Nabor Decl. ¶ 11]

11 40. Yavapai County already pre-printed its early ballot envelopes using the above
12 language. [Hoffman Decl. ¶ 8]

13 41. Coconino County has already had 200,000 ballot envelopes printed using the
14 above language. [Suppl. Hansen Decl. ¶ 12]

15 42. Pima County has ordered over 1 million envelopes from its vendor using the above
16 language, who is “operating on an extremely tight paper supply given the national paper
17 shortage.” [Suppl. Cázares-Kelly Decl. ¶¶ 9-10]

18 43. Maricopa County has ordered 4.2 million ballot envelopes for the 2022 August
19 and November elections using the above language, and directed its vendor to begin printing over
20 a month ago. [Suppl. Maricopa Decl. ¶¶ 7-9]

21 44. It would cost Maricopa County upwards of \$420,000 to reprint ballot envelopes
22 (if it were even possible to redesign, vet, procure, and receive re-printed envelopes in time for
23 the primary election). [Suppl. Maricopa Decl. ¶¶ 7-9]

24 45. The AG’s supplemental brief also proposes a change allowing challenges to early
25 ballots after the ballot envelope has been opened. [AG Suppl. Br. at 20-21]

26

1 46. All counties perform signature verification before the envelope is opened to
2 preserve voters’ constitutional right to a secret ballot. [Suppl. Cázares-Kelly Decl. ¶¶ 12-13;
3 Suppl. Hansen Decl. ¶ 20; Hoffman Decl. ¶ 11; Marra Decl. ¶ 12; Suppl. Maricopa Decl. ¶¶ 13-
4 14]

5 47. Even if it were possible to accept challenges after the envelope is opened, counties
6 cannot adopt that procedure for the 2022 elections. [*E.g.*, Suppl. Cázares-Kelly Decl. ¶ 14; Suppl.
7 Hansen Decl. ¶ 20; Hoffman Decl. ¶ 11; Marra Decl. ¶ 12; Suppl. Maricopa Decl. ¶ 14]

8 48. The Pima County Recorder explained that “early ballot processing is a major
9 operation, the planning for which is already solidified,” including training, budgeting, and hiring
10 temporary workers. [Suppl. Cázares-Kelly Decl. ¶ 14]

11 49. The AG also proposes a new procedure requiring that ballot drop-boxes are
12 “monitored” at all times. [Compl. ¶ 108]

13 50. The counties have been using drop-boxes for decades. [*E.g.*, Suppl. Hansen Decl.
14 ¶ 13; Hoffman Decl. ¶ 10]

15 51. Drop-boxes serve as an important tool for voters (including rural voters and voters
16 who cannot vote during working hours) to exercise their right to vote. [Suppl. Hansen Decl. ¶
17 19]

18 52. The Yavapai County Recorder explained that counties already “adhere[] to strict
19 security protocols in securing the drop boxes.” [Hoffman Decl. ¶ 10]

20 53. Coconino County also “takes the security and integrity of [its] drop boxes very
21 seriously,” including securing them at locations (such as fire stations) where there are staff on
22 site 24 hours a day and where there are security cameras. [Suppl. Hansen Decl. ¶ 17]

23 54. Counties do not have the staff or resources to “monitor” the drop boxes around the
24 clock as the AG now demands. [Suppl. Hansen Decl. ¶ 18; Hoffman Decl. ¶ 10]

25 55. The AG proposes deleting large portions of the EPM. [*See generally* Suppl. Br.]
26

1 56. The county election officials rely on a comprehensive EPM to provide “clarity and
2 confidence that their procedures [are] accurate and comply with the law.” [Marra Decl. ¶ 14; *see*
3 *also* Suppl. Maricopa Decl. ¶ 18]

4 57. The AG’s proposed change of removing the voter registration chapter in the EPM
5 would require counties to “reassess and seek legal advice on every step of the voter registration
6 process,” but they do not “have the staffing or time to undertake that additional work or make
7 significant adjustments to the voter registration process at this point in the election year.” [Suppl.
8 Maricopa Decl. ¶ 18]

9 58. The Cochise County Recorder explained that making the AG’s proposed “changes
10 at this late a date—less than 3 months before the Primary election, and just one month before
11 ballots start to be mailed for that election—is dangerous and irresponsible.” [Marra Decl. ¶ 9]

12 59. In *Mi Familia Vota v. Hobbs*, No. 2:21-cv-01423-DWL (D. Ariz.), a case filed in
13 August 2021, the AG filed a reply in support of a motion to stay in which he argued that the case
14 could not be “adjudicated in time for the 2022 primary and general elections, including in
15 sufficient time in advance of voting to avoid issues under [the] *Purcell* doctrine.” [AG Reply to
16 Plaintiffs’ Opposition to Motion to Stay, attached hereto as **Exhibit H**]

17 60. In *Hobbs v. Brnovich*, CV2022-001546 (Maricopa Cnty. Super. Ct.), the AG filed
18 a brief on February 17, 2022 in which he argued that the Secretary’s temporary partial
19 maintenance of an online signature gathering platform was “barred under the *Purcell* doctrine”
20 because it changed an “election system close to the election.” [AG Response Opposing
21 Plaintiff’s Motion for Preliminary Injunction, attached hereto as **Exhibit I**]

22 61. The Secretary published the draft 2021 EPM for public comment on August 13,
23 2021 and held two public meetings. [Supplemental Declaration of State Elections Director Kori
24 Lorick (“Suppl. Lorick Decl.”) ¶ 14, attached hereto as **Exhibit J**; Lorick Decl. ¶ 18]

25 62. The Secretary received over 6,000 public comments during the month that the
26 public comment period was open. [*Id.*]

1 63. The Yavapai County Republican Committee and its officers, including Plaintiff
2 Manjoros, failed to participate in the public comment process or submit any of the concerns that
3 they now raise. [Suppl. Lorick Decl. ¶ 14]

4 64. Yavapai County Republican Committee and its officers had an opportunity to raise
5 issues over nine months ago, but instead they delayed until the middle of an election year. [*Id.*]

6 65. The AG also proposes changes to procedures for the Active Early Voting List
7 (“AEVL”), changes to the Board of Supervisors’ role in preparing ballots, and changes to the
8 procedures for requiring notice of re-tests during the logic and accuracy testing period. [AG
9 Suppl. Br. at 13-16, 23]

10 66. The AG claims, for example, that Boards of Supervisors cannot “delegate” their
11 duty to print and prepare ballots to the county’s officer in charge of elections. [AG Suppl. Br. at
12 16]

13 67. County Boards of Supervisors often delegate various tasks to county election
14 officials to ensure effective and efficient election administration, including ensuring that hand-
15 offs between divisions are seamless, efficient, and secure. [Marra Decl. ¶ 10; Suppl. Maricopa
16 Decl. ¶¶ 15-16]

17 68. For example, the Maricopa County Recorder executed an Elections Operations
18 Agreement with the Maricopa County Board of Supervisors, the purpose of which was to outline
19 the responsibilities for administering elections in Maricopa County and to create and provide
20 shared oversight over the Elections Department. [*Id.*]

21 69. In short, the agreement formally creates the Maricopa County Elections
22 Department, and, through the agreement, both the Recorder and the Supervisors are delegating
23 certain of their day-to-day responsibilities and authority to the Elections Department to
24 administer elections in Maricopa County in compliance with applicable laws. [*Id.*]

25 70. As for logic and accuracy testing, the Secretary and the counties have already
26 developed a complex plan for logic and accuracy testing next month. [Suppl. Lorick Decl. ¶ 11]

1 71. It is impossible to predict whether and when any re-tests may need to happen
2 during the 7-day statutory window. [*See id.* ¶ 12; Marra Decl. ¶ 11]

3 72. While it is rare that an issue arises in testing, the Secretary’s office has encountered
4 situations requiring a county to fix an issue and retest prior to receiving certification, which
5 means the Secretary’s office may need to return to that county at a later date within the statutorily
6 prescribed testing window. [Suppl. Lorick Decl. ¶ 12]

7 73. Logic and accuracy testing requires the Secretary’s office to coordinate scheduling
8 with the counties to complete all testing, and potential re-testing, in the statutory timeframe. [*Id.*
9 ¶ 10; Marra Decl. ¶ 11]

10 74. The Secretary’s office also must charter a government plane and coordinate flight
11 paths to be as efficient as possible with timing, since there is not enough time otherwise to travel
12 to all 15 counties given the short timeframe. [*Id.*]

13 75. There are circumstances where it would be impossible to give notice of a logic and
14 accuracy re-test 48 hours in advance of the re-test. [Marra Decl. ¶ 11]

15 76. The AG also proposes new EPM provisions that would require the Secretary and
16 counties to identify and send notices to AEVL voters eligible to receive removal notices under
17 new legislation enacted in 2021 starting with data from the 2020 elections. [AG Suppl. Br. at 14]

18 77. It is not possible for the Secretary and counties to implement this proposed change.
19 [Suppl. Lorick Decl. ¶¶ 4-8; Suppl. Hansen Decl. ¶¶ 4-7]

20 78. Counties also cannot implement the AG’s proposed changes to the 90-day AEVL
21 notices. [*See* Suppl. Cázares-Kelly Decl. ¶ 17]

22 79. Pima County, for example, has already sent notices to approximately 450,000
23 registrants and has already received approximately 16,000 back. [*Id.* ¶ 16]

24 80. Even if it were feasible to reprint and resend notices, doing so would cause
25 significant voter confusion. [*Id.* ¶ 17]

26

1 81. Even though the AG never raised the issue in December 2021 (or when he
2 approved the EPM in 2019), he raised concerns about the use of “AI” in signature verification
3 for the first time on an appearance on Steve Bannon’s podcast. S. Bannon Podcast, April 7, 2022,
4 at 1:22, 3:07, and 4:12, [https://warroom.org/2022/04/07/brnovich-interim-report-raises-
5 questions-about-2020-election-conduct/](https://warroom.org/2022/04/07/brnovich-interim-report-raises-questions-about-2020-election-conduct/).

6 82. Whether to include particular provisions in the EPM involve many policy
7 considerations (e.g., whether it would be administratively feasible; would increase costs or
8 deplete resources; would cause confusion or burden voters; etc.). [Lorick Decl. ¶ 36]

9 83. The AG also objects to various guidance in the draft 2021 that was “arrived at after
10 extensive consultation and discussion with county officials and are a product of dialogue,
11 compromise, and balancing of the collective judgment of the Secretary of State as well as County
12 Recorders and Election Directors and their staff about election policies and procedures.” [Marra
13 Decl. ¶ 13]

14 RESPECTFULLY SUBMITTED this 19th day of May, 2022.

15 **COPPERSMITH BROCKELMAN PLC**

16 By: /s/ Roopali H. Desai

17 Roopali H. Desai
18 D. Andrew Gaona
19 Kristen Yost

20 **STATES UNITED DEMOCRACY CENTER**

21 Sambo (Bo) Dul
22 Christine Bass*

23 **Application for Pro Hac Vice Forthcoming*

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Exhibit A

Exhibit A

I, Leslie Hoffman, declare as follows:

1. I currently serve as the Yavapai County Recorder. I was first appointed to this position in January 2012 by the Yavapai Board of Supervisors (BOS) and then elected to the position in November 2012. I have been re-elected every four years since. In this role, I have significant election-related responsibilities, including overseeing voter registration and early voting in Yavapai County.

2. In both 2019 and 2021, my Office and other county recorders and their staffs reviewed and provided feedback to the Arizona Secretary of State's Office on the Elections Procedures Manual (EPM) and the updates the Secretary sought to implement in those drafts.

3. In 2019, my Office and other county recorders and their staffs also provided feedback on the proposed edits to the 2019 EPM draft from the Attorney General's Office. Feedback from the county recorders and their staffs was factored into the final approved version of the 2019 EPM.

4. When the Attorney General and Governor failed to approve an updated 2021 EPM in December 2021, my Office proceeded to plan for the 2022 election year under the latest approved EMP, which was the 2019 EPM, while also accounting for any specific legislative changes since the 2019 EPM was approved.

5. This approach is consistent with Yavapai County's approach in prior years when no updated EPM was approved in advance of the election year. For example, no updated EPM was approved before the 2016 or 2018 election years and, therefore, Yavapai County conducted elections in those years in compliance with the 2014 EPM and any subsequent legislative changes enacted after the 2014 EPM was issued.

6. So far, Yavapai County has successfully administered jurisdictional elections in March 2022 based on the 2019 EPM and subsequent legislative changes. We are also well under

way in terms of preparing for the statewide primary election on August 2, 2022. The military and overseas ballots must be sent to eligible voters no later than June 18, 2022, and early voting begins on July 6, 2022.

7. We believe that any material changes to the EPM at this point in the election year would be very disruptive to the administration of the August and November elections. We are already almost half-way through the election year so counties are finalizing plans, logistics, and budgets for the 2022 elections cycle.

8. **Early Ballot Envelope.** In preparation for the 2022 elections, Yavapai County pre-printed the early ballot envelopes to ensure the early ballots would be ready to mail to voters who request an early ballot. The pre-printing of the envelopes was essential due to the paper shortage. With just over a month before the deadline to mail the early ballots, printing new ballot envelopes is a large unbudgeted expense which is unmanageable, unreasonable and may be impossible due to the nationwide paper shortage. Even if the printing vendor could print new envelopes, including the language “return to sender” could have the unintended consequence of thousands of early ballots being sent right back to the County per U.S. Postal Service procedures, rather than going to the voter. To effectuate the intent of the statute, the county recorders, officers in charge of elections, and secretary of state agreed upon language that, as the law permits, is substantially similar to the language spelled out in statute and would ensure that USPS returns early ballots to the County Recorder in situations where the recipient indicates that the voter had moved.

9. **Signature Verification.** Yavapai County developed a signature verification guide many years ago, which has subsequently been used to create the statewide guide for signature verification and posted on the Secretary of State’s website. The County Recorder’s Office has thoroughly trained the relevant staff on signature verification. The County Recorder’s Office

performs signature verification for elections in even and odd numbered years, not only for early ballots, but also for every recall election, initiative and referendum elections, and nomination petition challenges, and for the Jurisdictions within the County. The verification process involves a certain amount of discretion that should not be dictated through the EPM and under the threat of criminal penalties.

10. **Drop Boxes.** Yavapai County has been using drop boxes for many years. The drop boxes have been popular with voters who would prefer to deliver their voted ballots to the County's drop box rather than through the U.S. Postal Service. In elections held over the past decade, the County has never had a situation that could even remotely implicate the County for a violation of A.R.S. § 16-1005(E). The County Recorder adheres to strict security protocols in securing the drop boxes to the cement or asphalt, locking the drop boxes, ensuring authorized County staff retrieve ballots from the drop boxes regularly, and ensuring authorized County staff close ballot drop boxes at 7:00 p.m. on Election Day so that ballots cannot be deposited after the statutory deadline. Furthermore, even if the County had additional budget capacity to monitor the drop boxes around the clock, the County Recorder is not a law enforcement officer and is not charged with the responsibility of enforcing a criminal statute. The lack of budget resources to monitor drop boxes 24/7 would mean that many, if not all, drop boxes currently in use in Yavapai County would have to be removed if a 24/7 monitoring requirement was implemented as an addition to the EPM. Mail boxes are not a viable alternative to drop boxes because some mail deposited in Yavapai County mail boxes is taken to Phoenix for sorting and then returned to Yavapai County for delivery. This process may take a few days. As such, ballots mailed just prior to the day of the election may not arrive in time to be counted whereas all of the ballots in ballot drop boxes are collected at the end of the election. Finally, it is nonsensical to force removal of secured ballot drop boxes due to lack

of monitoring and cause ballots to be mailed from unmonitored U.S. Post Office mail boxes, community association mail boxes and home mail boxes.

11. **Early Ballot Challenges.** Yavapai County cannot process an early ballot challenge that is received after the affidavit envelope is opened. When my office receives a voted early ballot, the ballot remains sealed in the affidavit envelope during the signature verification process and the affidavit envelope is not opened until signature verification is complete and it is time to separate the ballot from envelope for the ballot to be prepared to be transmitted to tabulation. The affidavit envelope is what contains identifying information for the voter that voted the ballot at issue. To protect the constitutional right to a secret ballot, once the signature on the affidavit envelope has been verified and the ballot is separated from the affidavit envelope, there is no way to tie the separated ballot to a particular voter. For that reason, challenges to early ballots must be submitted before the affidavit envelope is opened in order to be timely and processed.

12. Significant changes to the EPM like those being proposed should include input from county election officials from across the state and should not be unilaterally executed by the Attorney General and the Secretary of State. The election process has already started and county election officials are strapped for time to fully vet the proposed changes. Such a last minute change of course is bound to result in unintended and unanticipated results.

13. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 17th day of May 2022 in Yavapai County.

By: 

Leslie Hoffman

Exhibit B

Exhibit B

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DECLARATION OF LISA MARRA

I, LISA MARRA, DECLARE:

1. I am the Elections Director for Cochise County. I have been employed by the County since 2012, and have served as the Elections Director since 2017. In my role as Elections Director, I am responsible for preparing, administering, and conducting federal, state, and local elections in Cochise County in compliance with applicable laws and regulations. I report to the County Administrator, who reports directly to the Cochise County Board of Supervisors. I am over the age of 18, and if called as a witness, I could and would testify competently to the facts stated herein, all of which is my personal knowledge.

2. In both 2019 and 2021, my office as well as other county elections and Records' offices, reviewed and provided feedback to the Arizona Secretary of State's office on the Elections Procedures Manual (EPM) and the updates the Secretary sought to implement in those drafts.

3. Arizona counties spent nearly a year working on the 2019 EPM, and we also provided feedback on the Attorney General's proposed edits to the 2019 EPM draft after it was submitted for his review. I was involved in a meeting coordinated by the Secretary of State's office with staff from the Attorney General and Governor's offices, along with representatives from Pinal County and Maricopa County, in which we answered many questions from the Attorney General's staff about election administration and our longstanding processes. At the time, there was dialogue between these agencies, the Secretary of State, and the counties. It was very productive for all of us. The fruit of this collaboration was an updated EPM ahead of the 2020 election year that was signed by executive officials of both parties—with many of the very same provisions the Attorney General now argues are unlawful.

4. In 2021, Arizona counties again spent nearly a year working with the Secretary of State's office to update the EPM. Unfortunately, unlike in 2019, there was

1 no real collaboration or dialogue from the Attorney or Governor. I reached out to both the
2 Attorney General and Governor, and did not receive even the courtesy of any reply from
3 the Attorney General's office. The Governor's staff did reach out and has remained in
4 contact.

5 5. When the Attorney General and Governor failed to approve an updated 2021
6 EPM, my staff and I proceeded to plan for the 2022 election year under the latest approved
7 EPM—the 2019 EPM—as well as the new laws and court decisions that had taken effect
8 since the 2019 EPM was approved.

9 6. This approach is consistent with Cochise County's approach in prior years
10 when no updated EPM was approved in advance of the election year. For example, the
11 state had no new EPM for 5 years from 2014 to 2019. There was no outcry from the
12 Attorney General or Governor's Offices when then-Secretary of State Michele Reagan
13 failed to issue any updated EPM during her whole term in office. By the time Secretary
14 Reagan left office, the 2014 EPM was grossly outdated, but everyone—including state
15 officials and state and county election administrators—understood that its provisions were
16 still in effect unless they had been subsequently modified by statute or court ruling.
17 Continuing to use the 2019 EPM does not harm the counties or the state's voters because,
18 as we did from 2014 to 2019, we are able to account for the limited changes that have
19 become necessary based on new law and court decisions.

20 7. So far, Cochise County has successfully administered jurisdictional
21 elections in March 2022 and May 2022 based on the 2019 EPM and subsequent legislative
22 changes. We are also far along in preparing for the statewide primary election on August
23 2, 2022, for which military and overseas ballots must be mailed starting June 18, 2022 and
24 early voting begins on July 6, 2022.

25 8. I believe that any material changes to the EPM at this late stage in the
election year would be very disruptive to the administration of the August and November
elections, to say nothing of the elections that have already occurred this year. There's a

1 good reason the law places clear deadlines for adoption of a new manual: because election
2 preparations begin in earnest over six months prior to the election date. Changing election
3 rules this close to an election creates significant problems for officials administering the
4 election and could also confuse and burden voters. I believe irreparable harm will come
5 from forcing new election rules this late in the process.

6 9. I believe that making these changes at this late a date—less than 3 months
7 before the Primary election, and just one month before ballots start to be mailed for that
8 election—is dangerous and irresponsible. The negative impact will be especially
9 significant for all the counties. Forcing upon the county election officials the Attorney
10 General’s preferred version of a manual at this late date is more harmful than continuing
11 to have the 2019 EPM in effect. We’ve already conducted two elections this year based
12 on procedures in the 2019 EPM, many of which the Attorney General would have replaced
13 or removed with his redlined manual. It would be very disruptive, if even possible, to
14 change course at this point. The following paragraphs describe just some examples of the
15 problematic changes demanded by the Attorney General.

16 10. **Delegation of Statutory Duties.** The Attorney General’s position that the
17 Board of Supervisors (BOS) does not have authority to delegate responsibilities in
18 fulfilling its statutory duties is concerning and makes no sense. It is also directly contrary
19 to longstanding practice across the state. Obviously, the BOS understands their statutory
20 duties and authority, and they understand that delegation does not relieve them of ultimate
21 responsibility for their duties. However, it would be impossible for the BOS to fulfill their
22 duties without delegation. County Boards of Supervisors have been delegating to
23 Recorders and Election Directors for decades. Doing so does not absolve the BOS of their
24 ultimate responsibility, it is simply the means that BOS has chosen in order to fulfill their
25 duty. It is also confusing and unclear to me why the Attorney General is singling out and
objecting to delegation only as to the preparation of ballots and printing and mailing
sample ballots to households, when delegation and authorizing a “designee” is referenced

1 elsewhere throughout the EPM to no objection. Those two distinct tasks are part of a larger
2 process of programming and coding an election and cannot be broken out on its own.

3 **11. Logic and Accuracy Test Timing.** The Attorney General's removal of
4 provisions in the EPM spelling out alternative notice procedures if it is not possible to
5 provide 48-hours' notice of a re-test or rescheduled L&A test fails to account for the
6 unanticipated challenges we often must confront in election administration. For example,
7 inclement weather could prevent the Secretary of State's team from being able to fly into
8 or otherwise get into a county. Other types of emergencies, including a natural disaster,
9 fire, cyber-attack, or grid or service failure could also require rescheduling or re-testing.
10 It has happened more than once in the past that last-minute rescheduling was necessary.
11 Removing the alternative notice procedures means we have no guidance or uniform
12 direction on what to do when such issues arise and each county is left to decide for itself
13 how to handle the unforeseen circumstance. It also jeopardizes our ability to complete
14 L&A testing within the statutory timeframe and to begin early voting on time.

15 **12. Early Ballot Challenges.** The Attorney General's objection to the provision
16 in the EPM stating that early ballot challenges must be submitted prior to the opening of
17 the affidavit envelope, and his explanation for that objection, makes little sense and
18 appears to stem from a lack of understanding or appreciation of how voting works in
19 Arizona. In Cochise County, we utilize a secrecy or privacy envelope that shields the
20 voter's signature from public view during mailing. When a voted ballot is returned, the
21 County Recorder removes the outer secrecy envelope to obtain the affidavit envelope. The
22 affidavit envelope must be signed by the voter and contains the voted ballot sealed inside.
23 With the affidavit envelope still sealed, the County Recorder's staff compare the signature
24 on the affidavit envelope to the voter's signature on file in the registration record. If the
25 signature matches, the envelope is passed on to the early board, which is responsible for
opening the envelope and taking the ballot out of the envelope for tabulation by my office.
There is no way that a challenger can challenge an early ballot after it has been signature

1 verified and then separated from the affidavit envelope because once the ballot is removed
2 from the envelope, there is no way to know whose ballot it is. I am not aware of any county
3 that opens the affidavit envelope early in early ballot processing or before signature
4 verification is completed. To preserve the secrecy of the ballot, the affidavit envelope
5 containing the ballot is kept sealed until signature verification is complete and the ballot
6 is removed from the affidavit envelope in preparation for tabulation.

7 **13. Objections to Discretionary Guidance.** The Attorney General appears to
8 take issue with provisions in the EPM providing guidance on a wide range of topics, from
9 the use of police stations and court houses as voting locations, ensuring equitable
10 recruitment of poll workers to reflect the community served, and preventing voter
11 intimidation at polling places. These provisions in the EPM were arrived at after extensive
12 consultation and discussion with county officials and are a product of dialogue,
13 compromise, and balancing of the collective judgment of the Secretary of State as well as
14 County Recorders and Election Directors and their staff about election policies and
15 procedures. Some provisions the Attorney General objects to, such as those relating to
16 police stations and court houses as voting locations, simply provide discretionary
17 guidance and recommended best practices and does not impose any strict requirement on
18 counties—they are “shoulds,” not “shalls.” These provisions provide useful guidance in
19 one place and it’s unclear to me what benefit is gained from taking them out.

20 **14. Deletions of Entire Sections and Chapters.** A comprehensive EPM is an
21 important resource for county election officials. Counties use the EPM as a reference
22 manual—a one-stop location to find important information—as do voters, members of the
23 public, and the parties. All of the EPM chapters tie together. Removing entire chapters or
24 large portions of chapters would make election officials’ jobs more difficult by
25 introducing uncertainty, ambiguity, confusion, and risk to processes that were previously
long-established. These provisions give counties clarity and confidence that their
procedures were accurate and comply with the law. The provisions are also essential for

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ensuring consistency across Arizona’s 15 counties—without them, each county is left to make their own determinations about whether to continue existing processes or what, if any, changes to make. Removing huge parts of the EPM would require counties to reassess or seek legal advice on every step of the processes at issue, ranging from voter registration to assisting voters with disabilities to implementing newly enacted election laws. We do not have the staffing or time to undertake that additional work or to make significant adjustments to election processes at this point in the election year.

15. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DECLARED, SUBSCRIBED AND SWORN under penalty of perjury this 18th day of May, 2022, by Lisa Marra.


Lisa Marra

Exhibit C

Exhibit C



MICHAEL SAMPLE
Navajo County Recorder

I, Michael Sample, declare as follows:

That I am the current Navajo County Recorder and was elected to the position in November of 2020. The election responsibilities for my position include overseeing voter registration and early voting within Navajo County.

In 2021 Navajo County along with other counties in Arizona worked with the Secretary of State's Office to review and provide feedback regarding the Elections Procedures Manual (EPM) and the updates that were sought to be implemented in that draft.

In 2019 Arizona counties, including Navajo County provided feedback to the Secretary of State's Office regarding their 2019 EMP draft as well as the proposed edits to that draft from the Attorney General's Office, and that feedback from the counties was accepted and factored into the final approved 2019 EPM.

When the Attorney General and Governor Failed to approve an updated 2021 EPM, Navajo County, with the guidance from the Secretary of State's Office, proceeded to plan for the 2022 election year in compliance with the 2019 EPM and any legislative changes that affected the 2019 EPM.

Navajo County is well underway in preparing for the statewide primary election on August 2, 2022. We believe that any material changes to the EPM at this point in the election year would be very disruptive to the administration of elections this year. Our Elections Department has been training staff and other election workers for the upcoming elections for months as well as many other election duties. Shifting procedures and resources at this time during the preparation for the upcoming elections would be very disruptive and detrimental to our election process.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 16th of May, 2022

By: 

Michael Sample, Navajo County Recorder

Exhibit D

Exhibit D

1 I, GABRIELLA CÁZARES-KELLY, declare as follows:

2 1. I currently serve as Pima County Recorder. I was elected to this position in
3 November 2020. In this role, I have significant election-related responsibilities, including
4 overseeing voter registration and early voting in Pima County. There are approximately 625,000
5 registered voters in Pima County.

6 2. I have reviewed both the 2021 draft EPM and the AG's proposed changes to the
7 draft. Many of the AG's changes are infeasible or would impose a significant burden to
8 implement in the middle of an election year. Arizona's 2022 Primary Election is August 2 and
9 our General Election is November 8. My office is also in the process of supporting a
10 jurisdictional election that will occur on May 17.

11 3. My office is charged with maintaining Pima County's voter registration process,
12 which allows eligible Pima County residents to register to vote and subsequently participate in
13 elections. Voter registration is complex given the many state and federal laws that apply. Pima
14 County also operates our own voter registration database, separate from the database used by
15 Maricopa County and the other 13 counties. Our data is in constant contact with the state
16 database, updating it constantly.

17 4. My office has reviewed the voter registration content contained in Chapter 1 of the
18 draft EPM and the edits proposed by the Attorney General's Office. See AGO-016 to AGO-064.
19 This content is essential for conducting voter registration consistently across Arizona's 15
20 counties. Because voter registration extends across county boundaries, for example when a voter
21 moves, we need procedures that are uniform and clear that all counties must follow.

22 5. Removing the voter registration procedures from the EPM in the middle of the
23 election year—just over two months before the Primary Election—will insert uncertainty and
24 ambiguity into a process that was previously well-established. My team has been implementing
25 the 2019 EPM's voter registration chapter as well as any legislative updates that went into effect
26 after 2019. We are in the middle of supporting a jurisdictional election (May 17) and preparing

1 for the Primary Election (August 2) and are operating on a precise timeline where every minute
2 counts.

3 6. The EPM provided confidence that our procedures were accurate, complied with
4 the law, and consistent and compatible with other counties’ procedures. Removing or changing
5 the voter registration procedures in the EPM would require us to reassess and seek legal advice
6 on every step of the voter registration process. We don’t have the resources or time for that at
7 this point in the election year.

8 7. My duties also include managing early voting in Pima County. The AG’s edits to
9 early voting procedures cannot be made this election year.¹

10 8. First the AG proposes that counties may not use language on their ballot envelopes
11 to indicate the envelope should be returned to the county if the recipient no longer resides at that
12 address. See AG- 074/Supplemental Brief at 16. In 2021, Pima County consulted with other
13 counties and reviewed USPS policies to learn that including the phrase “Return to Sender” would
14 cause ballot sorting machines to automatically return ballots to the county, which would result
15 in ballots not being delivered to any voter. The procedures outlined in the 2021 draft EPM both
16 comply with the statute and avoid disenfranchising every voter who requests a ballot-by-mail.

17 9. Implementing changes to our ballot mailing envelopes for both the Primary and
18 General Elections at this date would be impossible. We began working with our vendor in
19 January 2022 to finalize our ballot mailing envelope order for both the Primary and General
20 Elections and authorized our vendor to begin printing at the end of March 2022. We have already
21 ordered almost one million ballot mailing envelopes for this election year.

22 10. Early ballots will be mailed to military and overseas voters on June 18, 2022, and
23 to other eligible voters on July 6, 2022. We do not have the funding in our budget to re-order
24

25 ¹ In addition to timing, many of the proposed edits would be impossible to administer. We are in
26 the process of analyzing all of the edits and can provide further information as needed.

1 envelopes or print stickers to revise the language. Even if we did, our vendor has informed us
2 that they are operating on an extremely tight paper supply given the national paper shortage. We
3 do not have the time or the resources to ask our vendor to reprint a million envelopes.

4 11. Second, the AG’s proposed change to the challenge procedures for early ballots
5 cannot be implemented. See AGO-089/Supplemental Brief at 20-21. The proposed procedure
6 implies that challenges should be allowed to early ballots after the envelope is opened and the
7 ballot is removed, which would be impossible.

8 12. Early ballots may be returned at any point during the early voting period. They do
9 not get placed in the “ballot box” on Election Day. We conduct outreach leading up to the
10 election so that voters and political parties are aware of Arizona’s early voting options and
11 timelines.

12 13. Arizona law allows early ballot tabulation to begin as soon as ballots are returned
13 and verified by the County Recorder’s Office, which may be as early as July 6, 2022 for the
14 August 2 Primary Election. See A.R.S. 16-550(B). Early ballots are returned to our office in
15 several ways, including by mail and by dropping off the ballot in person. Voters can also vote
16 early at an early voting site. In Pima County, prior to opening the ballot affidavit envelope, we
17 verify that the signature on the affidavit matches the voter’s signature in their voter registration
18 file. If we confirm that the signature matches, that sealed envelope goes to the Elections
19 Department where a bipartisan team opens the affidavit envelope and separates the ballot from
20 the envelope. Once the ballot is separated from the envelope, it is impossible to link that ballot
21 to the individual who cast it, as required by constitutional ballot secrecy requirements. See Ariz.
22 Const. art. 7 § 1. Challenges must be raised before the ballot is removed from the envelope; if
23 they aren’t, there would be no way to identify the ballot cast by the challenged individual.

24 14. We cannot change our early ballot verification process for the Primary Election.
25 Even if it were possible to implement the AG’s proposal of allowing challenges to early ballots
26 after the envelope is opened, early ballot processing is a major operation, the planning for which

1 is already solidified. We've developed procedures and training, budgeted to bring on about 100
2 temporary team members for the month leading up to the election, and are in the process of
3 hiring these team members who will begin in early July.

4 15. Third, the AG's proposal to adopt brand new signature verification procedures
5 cannot be implemented prior to the Primary Election. We have already contracted with a trainer²
6 to conduct signature verification classes on May 26 and 27 to train all our team members, both
7 permanent and temporary. Our team members will be trained the week of July 5, 2022 on all
8 election specific tasks. Training materials have already been prepared. We do not have staffing
9 or financial resources to create new procedures and training materials, schedule additional
10 training, and train all team members prior to the Primary Election.

11 16. The AG also proposes changes to the 90-day notice sent to AEVL voters. See
12 AGO-073 (removing the AEVL check box); AGO-074 (changing processing procedures). We
13 mailed our 90-day notice forms—including provisions the AG proposes to remove—on April
14 20, 2022. This mailing went to approximately 450,000 registrants and we have received
15 approximately 16,000 back already. If a registrant returns the form with sufficient information
16 and marks the box to be removed from the AEVL, we are processing and removing that voter
17 from the AEVL. If a 90-day notice is returned to us as undeliverable, we are following the voter
18 registration process outlined under the National Voter Registration Act for returned mail and
19 treating this as a "first notice." 52 U.S.C. § 20507(a)(4)(B). We subsequently send the voter a
20 second piece of official election mail, and if that is returned or the voter fails to contact us in the
21 prescribed time, we move that voter to inactive status.³

22
23 ² Our trainer is certified by the American Board of Forensic Document Examiners and has almost
24 20 years of experience.

25 ³ Inactive status means that a voter is still registered, but they must update or confirm their voter
26 registration information prior to casting a ballot and they will not be eligible to automatically
receive a ballot by mail. A voter can be moved from "inactive" to "canceled" if the voter fails to

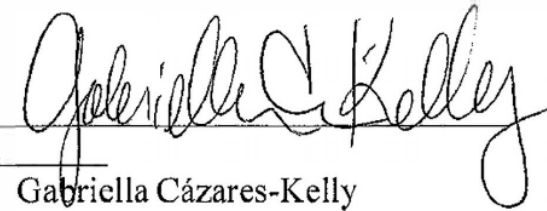
1 17. It is too late to implement these proposed changes to the 90-day notice because the
2 notice was already sent to voters, and many voters have already returned the notice. Changing
3 the content of the notice and reissuing it would cause significant voter confusion.

4 18. These are just some of the examples of the AG’s proposed changes that are either
5 impossible to implement for this election year or would cause significant disruptions to election
6 administration.

7 19. If we are going to be required to make changes to our processes, we need sufficient
8 time to review how the changes will impact existing procedures. Implementing last minute
9 changes would lead to the potential for mistakes and voter confusion. We cannot make the AG’s
10 proposed adjustments that would upend the entire process less than one month before the
11 Primary Election begins with early voting.

12 I declare under penalty of perjury that the foregoing is true and correct to the best of my
13 knowledge, information, and belief.

14
15 Executed this 16th day of May 2022.

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17 _____
18 Gabriella Cázares-Kelly

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25 _____
26 respond to the prior notice and fails to vote in any election in two federal/statewide general
election cycles or update their registration record during that time following the “Final Notice.”

Exhibit E

Exhibit E

I, Patty Hansen, declare as follows:

1. I am the County Recorder for Coconino County. I have served in this role for 9 years, and I have been in election administration since 1987. In my current role, I have significant election-related responsibilities, including overseeing voter registration and early voting in Coconino County.
2. As I stated in my April 26, 2022 declaration in this matter, I believe that any material changes to the Elections Procedures Manual (EPM) at this point in the election year would be very disruptive to the administration of the August and November elections. It is a serious concern for my office to have to consider or implement changes to election procedures this far into an election year. In the Coconino County Recorder's Office, the 2022 Elections have already been underway for months as they require so much planning and developing of materials and forms. We have a countywide election on May 17 and are well under way in preparing for the August and November elections.
3. I have reviewed the draft 2021 EPM and the Attorney General's proposed changes to the draft. Many of the AG's changes would impose significant burdens to implement at this late stage. I am providing this declaration to describe in more detail some of the problematic proposed changes and explain why it would be difficult or impossible to implement the proposed changes at this late stage.

Implementation of Senate Bill 1485

4. My office will be responsible for the changes required by 2021 legislation known as Senate Bill 1485. That legislation requires identifying voters who have failed to vote an early ballot in both the primary and general elections for two consecutive election cycles.
5. Because this requirement is new, the current statewide voter registration system, known as AVID, is not currently capable of implementing Senate Bill 1485. The vendor who makes enhancements for AVID has advised that the programming changes to the system required by this legislation are complex and will take substantial time to design, program, test, and implement. I would have serious concerns about pushing through complex programming changes while we are currently administering elections in a general election year.
6. Thus, if the changes made by Senate Bill 1485 require the Coconino County Recorder's Office to look back to the 2020 and 2022 election cycles and to send out AEVL removal notices in January 2023 to those who did not vote an early ballot in those years, County staff will have to identify the impacted voters manually. This would involve, among other things, identifying voters who did not vote an early ballot in the 2020 and 2022 election cycles and then manually inspecting every voter registration form to determine when each voter originally signed up for the Active Early Voting List.
7. My office does not have the time or staff to undertake this task by January 2023. We are a small office and the staff are currently already fully occupied administering the May 17 countywide election and preparing for the Primary and General elections. Even after the General election in November, we have post-election responsibilities that will occupy the staff's time. For example, voter registration forms that come in during the "books closed" period (after October 11 and through November 8, 2022) cannot be processed until after the November election. In addition, we will likely have between 3,000 to 4,000 address and/or

name changes to process from voters who had to vote a provisional ballot. These are just a couple of the post-election activities we need to complete after a large election. Because of the huge amount of work our office must complete between now and the end of the year, staff members cannot take any vacation or other time off from now through the completion of the post-election activities.

Implementation of Senate Bill 1530

8. Because my office is responsible for early voting, we are responsible for complying with the new requirements of Senate Bill 1530 and ensuring that early ballot envelopes contain necessary and appropriate language. The new law requires that early ballot envelopes include substantially the following language: *If the addressee does not reside at this address, mark the unopened envelope "return to sender" and deposit it in the United States mail.*
9. It is my understanding that the U.S. Postal Service has advised that including the phrase "return to sender" on the early ballot envelope (as the Attorney General asserts is required) could result in ballots being returned to our office rather than delivered to the appropriate early voter or otherwise being delayed.
10. Therefore, consistent with our understanding of the law, we designed our early ballot envelopes to include the slightly modified language laid out in the annotated version of the 2019 EPM, which the Secretary of State's office developed in consultation with county officials:
 - *If the addressee does not reside at this address, mark the box and return it to the U.S. Postal Service.*
11. It is my understanding that this modified language has been reviewed and approved by the U.S. Postal Service staff. It is my understanding that the purpose of Senate Bill 1530 is to provide a way for the recipient of the mailed ballot to notify the County Recorders if the early voter to whom the ballot is addressed has moved and no longer resides at the address. The modified language that we have printed on our early ballot envelopes accomplishes this purpose and meets the statutory requirement without causing unintended mail delivery problems. It makes no sense to require the County Recorders to use language that will not achieve the purpose of the statute but would instead prevent early ballots from being delivered to voters.
12. Over 200,000 early ballot envelopes have already been printed with the modified language for the May, August, and November elections. Coconino County's contracted vendor has advised that they cannot reprint new envelopes due to a current severe shortage of paper across the United States.

Use of Secure Ballot Drop Boxes

13. As part of its early voting duties, the Coconino County Recorder's Office has also historically established secure ballot drop boxes for voters to use. Ballot drop boxes have been used by the Coconino County Recorder's Office for at least twenty-five years.

14. Prior to the COVID-19 pandemic, Coconino County managed three such boxes, two in Flagstaff and one in Sedona. Given the circumstances of the pandemic, Coconino County expanded its use of these ballot drop boxes in 2020 to sixteen.
15. Coconino County voters have chosen to cast their vote by early ballot in ever-increasing numbers. In the 2004 General Election, 34.32% of Coconino County voters voted by early ballot. In the 2020 General Election, 83.04% of Coconino County voters voted by early ballot.
16. Several years ago, the U.S. Postal Service closed its Flagstaff processing center. Thus, mail in Flagstaff now must go through Phoenix and then back to Flagstaff for delivery. Thus, Coconino County ballots returned by mail take longer to arrive at our office and voters using the mail to return ballots risk late delivery and having their ballots rejected for that reason. Our ballot drop boxes allow voters to return ballots directly to my office, without the delay that can result from mail delivery.
17. My office takes the security and integrity of our ballot drop boxes very seriously. For example, we had the ballot drop boxes installed at facilities, such as fire stations, where there are staff on site 24 hours a day or where there are video surveillance cameras on site. We also provided our threat liaison law enforcement offices a list of ballot drop box locations so there were regular law enforcement patrols checking the ballot boxes to ensure they were not being tampered with or damaged. My office also follows additional ballot drop box security procedures spelled out in the 2019 EPM, including having two individuals of opposing political party affiliation retrieve the ballots either daily or every other day and documenting the chain of custody of the ballots within each box.
18. My office monitors the ballot drop boxes on a regular basis. Requiring ballot drop boxes to be constantly physically attended would eliminate the purpose and value of these boxes. My office does not have staff to be present at these boxes at all times, as most of the drop boxes are currently available for voters to drop off their ballot twenty-four hours a day, seven days a week. Thus, such a requirement would be impossible to implement and would drastically reduce, if not eliminate, drop boxes in Coconino County.
19. Drop boxes are extremely important in Coconino County, where many residents live in rural areas without nearby mailbox access. To only provide drop boxes during business hours at County locations would make them inaccessible to many County residents.

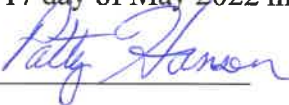
Early Ballot Challenges

20. Coconino County cannot process an early ballot challenge that is received after the affidavit envelope is opened. When my office receives a voted early ballot, the ballot remains sealed in the affidavit envelope during the signature verification process and the affidavit envelope is not opened until signature verification is complete and it is time to separate the ballot from the envelope for the ballot to be prepared to be transmitted to tabulation.
21. The affidavit envelope is what contains identifying information for the voter that voted the ballot at issue. To protect the constitutional right to a secret ballot, once the signature on the affidavit envelope has been verified and the ballot is separated from the affidavit envelope, there is no way to tie the separated ballot to a particular voter. For that reason, challenges to

early ballots must be submitted before the affidavit envelope is opened to be able to be processed.

22. The AG states (on page 20 of his Supplemental Brief) that “some counties use envelope opening machines at some early stage of ballot processing.” Coconino County does not use envelope opening machines at any stage of ballot processing, and I am not aware of any counties that, whether by machine or by hand, open the affidavit envelope before signature verification is complete and the ballot is ready to be separated from the envelope for tabulation. Doing so would compromise the constitutional right to a secret ballot.
23. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 17 day of May 2022 in Coconino County.

By: /s/ 

Patty Hansen

Exhibit F

Exhibit F

We, the undersigned, declare as follows:

1. Stephen Richer currently serves as the Maricopa County Recorder. Recorder Richer was elected to the position in November 2020 and assumed office on January 4, 2021. In this role, Recorder Richer has significant election-related responsibilities, including overseeing voter registration, candidate services, and all vote-by-mail in Maricopa County—Arizona’s largest county, constituting approximately 61% of Arizona’s voting population. Recorder Richer previously practiced law at the firms Steptoe & Johnson LLP and Lewis & Roca LLP. Recorder Richer received his master’s degree and law degree from The University of Chicago.

2. Rey Valenzuela is the Maricopa County Director of Mail-In Voting and Elections Services. In this role, Director Valenzuela is responsible for the day-to-day administration of all candidate services and vote-by-mail services including Uniformed and Overseas Absentee Voting (UOCAVA), special election boards, signature verification, early ballot processing, and provisional ballot processing. Director Valenzuela has over 30 years of experience in election administration; he is a Certified Elections Registration Administrator under The National Association of Election Officials, and he served for over 15 years as one of only two representatives from Arizona as a Standards Board Member of the United States Election Assistance Commission in addition to previously serving as the Vice Chairman, then the Chairman, of the Executive Board of the Standards Board.

3. Scott Jarrett was appointed to the position of Director of In-Person Voting and Tabulation by the Maricopa County Board of Supervisors in July of 2019. In his role, Director Jarrett oversees all in-person early, emergency, and Election Day voting operations. He also oversees tabulation operations, and the recruitment and training of all temporary workers that support the Elections Department. Director Jarrett has extensive operational audit experience across county government with expertise in managing projects, mitigating organizational risk, and identifying efficiencies. He serves as a task force member of the Bipartisan Policy Center and as vice-president elect of the Association of Election Officials of Arizona. He is also a Certified

Internal Auditor with the Institute of Internal Auditors and a Certified Fraud Examiner with the Association of Certified Fraud Examiners.

4. As Recorder Richer stated in his April 27, 2022 declaration in this matter, any material changes to the Elections Procedures Manual (EPM) at this point in the election year would be very disruptive to the administration of the August and November elections. The election year is almost half-way over. Maricopa County has already successfully administered a jurisdictional election in March 2022 and just this week completed the administration of an election for the City of Litchfield Park. The Recorder's Office is well under way in preparing for the statewide primary election on August 2, 2022. Shifting procedures and resources at this time would be very challenging and, for some proposed changes, not even practicable.

5. The Recorder's Office has reviewed the draft 2021 EPM and the Attorney General's proposed changes to the draft. Many of the AG's changes would impose significant or, in some cases, insurmountable burdens to implement in the middle of a general election year. We are providing this declaration to describe in more detail some of the problematic proposed changes and why it would be difficult or impossible to implement the proposed changes at this late stage.¹

A. "Return to Sender" Language on Early Ballot Envelopes

6. For example, in 2021, the Legislature enacted a new requirement that county officials ensure "that the early ballot is sent in an envelope that states substantially the following: *If the addressee does not reside at this address, mark the unopened envelope 'return to sender' and deposit it in the United States mail.*" A.R.S. § 16-547(C) (emphasis added). In working to implement this new requirement, staff from the Recorder's office consulted with election mail specialists at the United States Postal Service (USPS). We generally do so before implementing any changes to official election mail design to ensure the proposed change does not cause unintended problems. USPS advised that including the specific phrase "return to sender" on the

¹ These examples are not exhaustive; there are other changes proposed by the AG that raise concerns but are not described in this declaration.

exterior ballot envelope could cause postal sorting machines to automatically return all ballots to the county rather than delivering them to voters or could otherwise delay delivery of the ballot.

7. The AG argues that the alternative language specified in AGO-074 violates A.R.S. § 16-547(C). If the AG's position were to prevail, it would be hugely disruptive to the administration of the August and November 2022 elections, preparations for which have been well underway for many months. Maricopa County has already procured printed early ballot envelopes for the August and November elections that contain the alternative language specified in the 2021 EPM draft. Specifically, on January 20, 2022, Maricopa County placed an order of 4.2 million ballot envelopes for the 2022 August and November elections, and on April 18, 2022, the County directed its vendor to begin print production of the envelopes with the language laid out in the 2021 EPM draft. If we were required to utilize different language on the early ballot envelopes now, we would have to reprint the ballot envelopes, which could cost upwards of \$420,000.

8. There is also currently a nationwide paper shortage. Our printer, Runbeck Elections Services ("Runbeck") has assured us of sufficient paper for our original needs. Runbeck does not, however, have sufficient paper to make any modifications that would necessitate a reprint. On April 19, 2022, in an email with the subject line "Paper shortage?" the President of Runbeck, Jeff Ellington, wrote to Recorder Richer that "We've been working with our paper supply chain since Aug of 2021, when we first started seeing issues. What could have an impact is a major problem such as an error. For example if we've [sic] printed your ballots and a problem is found such as an improper translation from English to [S]panish. That could create a supply chain issue." It is quite possible that the current paper shortage means we will not be able to procure a sufficient supply to re-print early ballot envelopes.

9. Putting aside the additional cost and current paper shortage, it is also unclear if we even have enough time to redesign, vet, procure, and receive the necessary re-printed early ballot envelopes in time for the August election. Federal law requires us to begin mailing ballots to military and overseas voters by June 18—which is just a month from now.

10. Even more problematic than the administrative burden and cost of reprinting early ballot envelopes is the fact that if the AG's position were to prevail and counties were forced to utilize the exact statutory language with the phrase "return to sender," it could effectively result in no voters receiving their early ballot by mail in a timely manner or at all.

11. In Maricopa County, in 2020, approximately 91% of voters voted by early ballot. If voters are unable to receive early ballots by mail for the August and November elections, it would completely upend Maricopa County's plans for administering those elections. The Maricopa County Board of Supervisors approved the county's 2022 Primary and General Election Plan in an open meeting on May 2, 2022, and that plan is based on the assumption that up to 813,870 of the county's voters will choose to—and be able to—vote by mail ballot in the August 2, 2022 primary election and 1,550,210 in the November 8, 2022 general election. As currently approved, the plan would not be able to accommodate a massive increase in in-person voting nor is there sufficient time to develop and operationalize an election plan to accommodate that drastic increase in in-person voting, which, on average, costs more per voter to implement and requires much more staffing and other resources to plan, prepare, and implement. A true and correct copy of the 2022 Elections Plan is available at <https://recorder.maricopa.gov/site/pdf/FINAL%20-%202022%20Elections%20Plan.pdf>.

B. Early Ballot Challenges

12. The AG also argues that the EPM provision (at AGO-089) specifying that "[c]hallenges to early ballots must be submitted prior to the opening of the early ballot affidavit envelope" violates A.R.S. § 16-522. However, we have no way of processing an early ballot challenge once the affidavit envelope is opened and the ballot is separated from the affidavit envelope. At that point, there is no way to tie the separated ballot back to a particular voter.

13. In Maricopa County, when a voted early ballot is received through the mail, the unopened affidavit envelope packets (with the ballot sealed inside) is scanned to acknowledge receipt and for signature verification. Trained staff compare the signature on the affidavit envelope to the signature on file from the voter's registration record. If the signature matches, the ballot

envelope is marked as having a “good signature.” If the signature does not match or the affidavit is missing a signature altogether, it is sent for further review by higher level staff and the voter is notified that they must take action to cure the missing or inconsistent signature by the applicable deadline for their ballot to be counted. All ballot envelopes that have been properly verified are sent to citizen boards who process these unopened packets to prepare them for tabulation. Citizen boards are made up of two members of different political party affiliation. These citizen boards open the verified affidavit envelopes and ensure the secrecy of the voter’s ballot is maintained by separating the ballot from the affidavit envelope.

14. If counties were required to accept and process as timely early ballot challenges submitted after the affidavit envelope is opened, we would have to print some sort of serial number, code, or tracking number on ballots to be able to tie a particular ballot back to a specific voter after the affidavit envelope is opened. Otherwise, attempting to match a ballot to its affidavit envelope (which contains identifying voter information) after the two have been separated raises the possibility of identifying (and rejecting) the wrong ballot. But printing a tracking number on ballots that would enable tying a specific voted ballot to the voter would violate the Arizona Constitution’s guarantee of the right to a secret ballot. For these reasons, requiring the counties to accept and process early ballot challenges after the affidavit envelope is opened is not feasible.

C. Delegation of Statutory Duties

15. The AG argues that the draft 2021 EPM would allow the Board of Supervisors to disregard their statutory duties by delegating them to the County Recorder or other officer in charge of elections. The AG’s suggestion that officials cannot delegate responsibilities is unreasonable, unworkable, and contrary to longstanding practice. For example, the provisions on AGO-173 and AGO-189 that the AG says are unlawful states what should be uncontroversial: that the Board may delegate to the officer in charge of elections or the County Recorder the responsibilities of preparing the official ballot and printing and mailing a sample ballot to each household with a registered voter. Is the AG seriously suggesting that the five members of the Maricopa County Board of Supervisors must now themselves personally perform these duties?

16. In August 2021, Recorder Richer executed an Elections Operations Agreement with the Maricopa County Board of Supervisors, the purpose of which was to outline the responsibilities for administering elections in Maricopa County and to create and provide shared oversight over the Elections Department. In short, the agreement formally creates the Maricopa County Elections Department, and, through the agreement, both the Recorder and the Supervisors are delegating certain of their responsibilities and authority to the Elections Department to administer elections in Maricopa County in compliance with applicable laws. The day-to-day operational work of the Elections Department is handled by Director Jarrett, the Director of In-Person Voting and Tabulation and Director Valenzuela, the Director of Mail-In Voting and Elections Services, along with their staff. Contrary to the AG's assertion that delegation is a disregard of statutory duties, this delegation ensures effective and efficient election administration, including ensuring that hand-offs between divisions are seamless, efficient, and secure.

D. Chapter 1 on Voter Registration

17. In his role as County Recorder, Recorder Richer oversees the voter registration process for the county and his office works hard to ensure that Maricopa County residents can register and vote in elections for which they are eligible. Voter registration, as with all other election administration functions, is complex given the many state and federal laws that apply. Maricopa County operates its own voter registration system, separate from Pima County and separate from the other 13 counties that use the state system directly.

18. The AG wants to delete the majority of the content contained in Chapter 1 of the EPM, which covers voter registration. Removing this content, as well as other long-established provisions, from the EPM in the middle of the election year needlessly injects uncertainty, confusion, and ambiguity into a process that was previously well-established. The EPM's voter registration provisions give us confidence that our procedures were accurate and complied with the law. These provisions are also essential for conducting voter registration consistently across Arizona's 15 counties. Because voter registration processes often require cross-county coordination (for example, when a voter moves between counties), we need procedures that are

uniform and clear and that all counties must follow consistently. Removing or changing the voter registration procedures in the EPM now would require us to reassess and seek legal advice on every step of the voter registration process. We do not have the staffing or time to undertake that additional work or make significant adjudgments to the voter registration process at this point in the election year.

We each declare under penalty of perjury that the foregoing is true and correct.

Executed on May 19, 2022.



Stephen Richer
Maricopa County Recorder



Rey Valenzuela
Maricopa County Elections Director of Mail-In
Voting and Elections Services



Scott Jarrett
Maricopa County Elections Director of In-Person
Voting and Tabulation

Exhibit G

Exhibit G

DECLARATION OF CELIA NABOR

I, Celia Nabor, declare as follows:

1. I am employed by the Maricopa County Recorder and serve as the Assistant Director for Early Voting.

2. The Arizona State Legislature passed Senate Bill 1530 in 2021, and Governor Ducey signed the Bill into law. SB1530 included a requirement that affected early voting. It required that early ballots are mailed to voters in an envelope “that states substantially the following: If the addressee does not reside at this address, mark the unopened envelope ‘return to sender’ and deposit it in the United States mail.”

3. I was responsible to assess how the Maricopa County Recorder’s Office and Elections Department (hereafter, the “Elections Department”) would implement the requirements of SB1530 on the yellow carrier envelope in which early ballots are mailed.

4. On July 13, 2021, I contacted Samantha Lamb, Postmaster AZ/NM Political Mail Coordinator for the United States Postal Service (“USPS”), to discuss SB 1530. I did this because I wanted to be certain that the language that we printed on the yellow carrier envelope met the requirements of the USPS for mail delivery.

5. I was unable to reach Ms. Lamb but left her a voicemail message providing an overview of SB1530 as it related to the yellow carrier envelope for early ballot and requesting a call-back. I also sent an email to Ms. Lamb that same day (July 13, 2021) requesting USPS input on revisions to the yellow carrier envelope.

6. Later that same morning (July 13, 2021), Ms. Lamb contacted me on the phone to discuss my email and the revision. She asked whether this was something that only affected Maricopa County. I explained SB1530 and told Ms. Lamb that this law applied statewide. Ms. Lamb then expressed that she had not heard of SB1530 prior to me telling her about it that day and that we were the first county to notify them of this change and to seek USPS input on the redesign. Ms. Lamb also said that she was concerned about the

impact this law might have on the mail. She stated that she wanted to involve Dan Hooks, a Mail Design Analyst (MDA), because the particulars related to the design of envelopes was their specialty.

7. On July 16, 2021, Mr. Hooks sent me an email informed me that the wording “Return to Sender” should **not** be on the yellow carrier envelope because it could cause potential delays and mis-deliveries.

8. If voters’ early ballots are delayed in reaching them, they may receive their ballots too late to cast them, thereby resulting in the voters’ disenfranchisement.

9. Similar disenfranchisement could be caused by mis-deliveries of the mail.


10. On July 23, 2021, I spoke to Ms. Lamb again. She again reiterated that USPS does not recommend using “return to sender” on our yellow carrier envelope because of the negative impacts, including the possibility that the envelope would be returned to the Recorder without ever having reached the voter.

11. Our solution to this problem was to add a checkbox to the yellow carrier envelope with the following language: “If the addressee does not reside at this address, mark the box and return it to the U.S. Postal Service.”

12. I believe that this language accomplishes the same purpose as SB1530’s requirement, without any of the possible negative consequences of SB1530’s language.

13. A true and correct copy of my email correspondence with Ms. Lamb and Mr. Hook is attached as Exhibit 1 to this Declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 17, 2022.



Celia Nabor

Exhibit 1

Joseph La Rue

From: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>
Sent: Friday, July 23, 2021 9:24 AM
To: Celia Nabor
Subject: FW: [EXTERNAL] RE: Ticket # INC0906046

Celia Nabor | Assistant Director, Early Voting

Maricopa County Elections Department

Address: 510 South 3rd Avenue, Phoenix, Arizona 85003

Email: cnabor@risc.maricopa.gov | **Web:** www.maricopa.vote

From: Hooks, Dan - Windsor, CT <Daniel.Hooks@usps.gov>
Sent: Monday, July 19, 2021 5:49 AM
To: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>; Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>
Cc: MDA <MDA@usps.gov>
Subject: RE: [EXTERNAL] RE: Ticket # INC0906046

Good morning,

An Intelligent Mail Barcode is required on the piece in order to receive Electronic Service. The +4 of the Zip Code should be included in the recipient's delivery address. Everything else looks great. Prior to printing, I suggest submitting an exact size pdf so a complete evaluation can be completed.

If you have any other questions please feel free to respond to this e-mail without changing the subject line. Thanks!
Have a great day!

Thanks again,

Dan Hooks

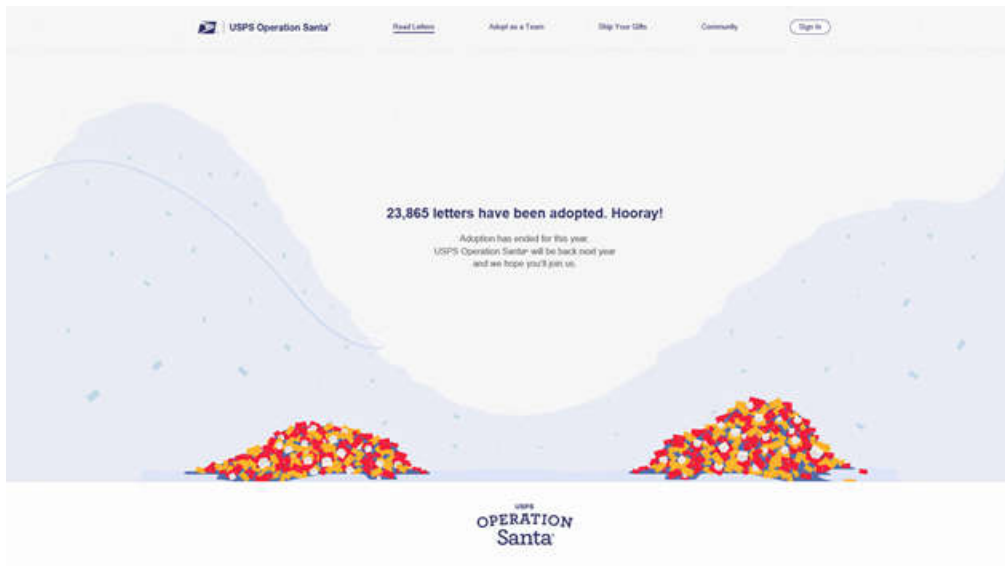
Mailpiece Design Analyst

U.S. Postal Service

New phone number:

877.672.0007 (Option 2, Option 2)

***Please note the previous number (855.593.6093) will eventually be changed to the new number, which is currently active.



From: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>

Sent: Friday, July 16, 2021 7:58 PM

To: Hooks, Dan - Windsor, CT <Daniel.Hooks@usps.gov>; Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>

Cc: MDA <MDA@usps.gov>

Subject: RE: [EXTERNAL] RE: Ticket # INC0906046

CAUTION: This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Dan,
Revisions have been made and the verbiage translated. Do you have any additional recommendations for this version?



STEPHEN RICHER
 MARICOPA COUNTY RECORDER
 ELECTIONS DEPARTMENT
 PO BOX 29027
 PHOENIX, AZ 85038-9027

Electronic Service Requested

OFFICIAL BALLOTING MATERIAL
MATERIAL OFICIAL PARA VOTAR



If this is not your ballot, mark the box and return it to U.S. Postal Service
 Si esta no es su boleta, marque la casilla y devuélvala al Servicio Postal de EE. UU.

6781 WHT 1 MOB 1234567



TOWN OF CAVE CREEK
 SPECIAL ELECTION
 123 E SUNS LANE CAVE CREEK
 PHIL THE BALLOT

PHIL THE BALLOT
 123 E SUNS LANE
 CAVE CREEK, AZ 85331



Celia Nabor | Assistant Director, Early Voting

Maricopa County Elections Department

Address: 510 South 3rd Avenue, Phoenix, Arizona 85003

Email: cnabor@risc.maricopa.gov | Web: www.maricopa.vote

From: Hooks, Dan - Windsor, CT <Daniel.Hooks@usps.gov>

Sent: Friday, July 16, 2021 12:56 PM

To: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>; Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>

Cc: MDA <MDA@usps.gov>

Subject: RE: [EXTERNAL] RE: Ticket # INC0906046

Good afternoon,

The verbiage should be similar to option 4. The clearances to be maintained and imitation markings such as "Return to Sender" should not be on the mailpiece as it could cause potential delays and mis-deliveries.

If you have any other questions please feel free to respond to this e-mail without changing the subject line. Thanks!
 Have a great day!

Thanks again,

Dan Hooks

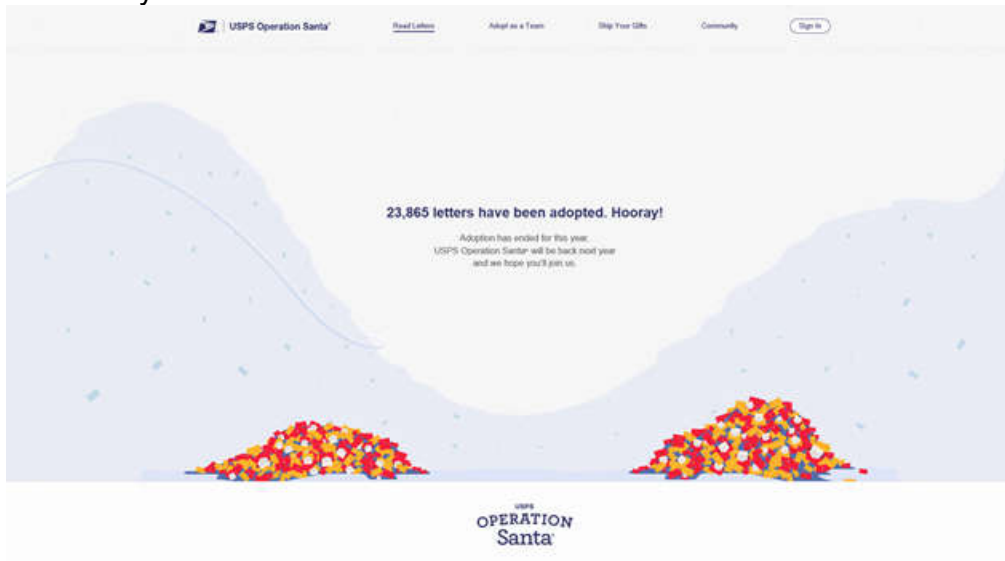
Mailpiece Design Analyst

U.S. Postal Service

New phone number:

877.672.0007 (Option 2, Option 2)

***Please note the previous number (855.593.6093) will eventually be changed to the new number, which is currently active.



From: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>

Sent: Friday, July 16, 2021 3:12 PM

To: Hooks, Dan - Windsor, CT <Daniel.Hooks@usps.gov>; Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>

Cc: MDA <MDA@usps.gov>

Subject: RE: [EXTERNAL] RE: Ticket # INC0906046

CAUTION: This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Hi Dan,

Thank you for the response on the electronic service possibility.

I have a question about the verbiage. In your response you recommend we not use the terminology "return to sender" but option four does have this wording "If this is not your ballot, mark the box and return to US Postal Service (Return to sender)." Is it acceptable to leave the verbiage as is in option four or should we remove "return to sender" from the messaging?



STEPHEN RICHER
MARICOPA COUNTY RECORDER
ELECTIONS DEPARTMENT
PO BOX 29027
PHOENIX, AZ 85038-9027

Electronic Service Requested

OFFICIAL BALLOTING MATERIAL
MATERIAL OFICIAL PARA VOTAR



Celia

Celia Nabor | Assistant Director, Early Voting

Maricopa County Elections Department

Address: 510 South 3rd Avenue, Phoenix, Arizona 85003

Email: cnabor@risc.maricopa.gov | Web: www.maricopa.vote

From: Hooks, Dan - Windsor, CT <Daniel.Hooks@usps.gov>

Sent: Friday, July 16, 2021 12:03 PM

To: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>; Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>

Cc: MDA <MDA@usps.gov>

Subject: RE: [EXTERNAL] RE: Ticket # INC0906046

Good afternoon Celia,

Anything placed on a mailpiece that is not a Postal recognized processing element cannot be read by processing machines. They will pick everything up from the Ancillary on the envelope and the STID within the barcode.

If you have any other questions please feel free to respond to this e-mail without changing the subject line. Thanks!
Have a great day!

Thanks again,

Dan Hooks

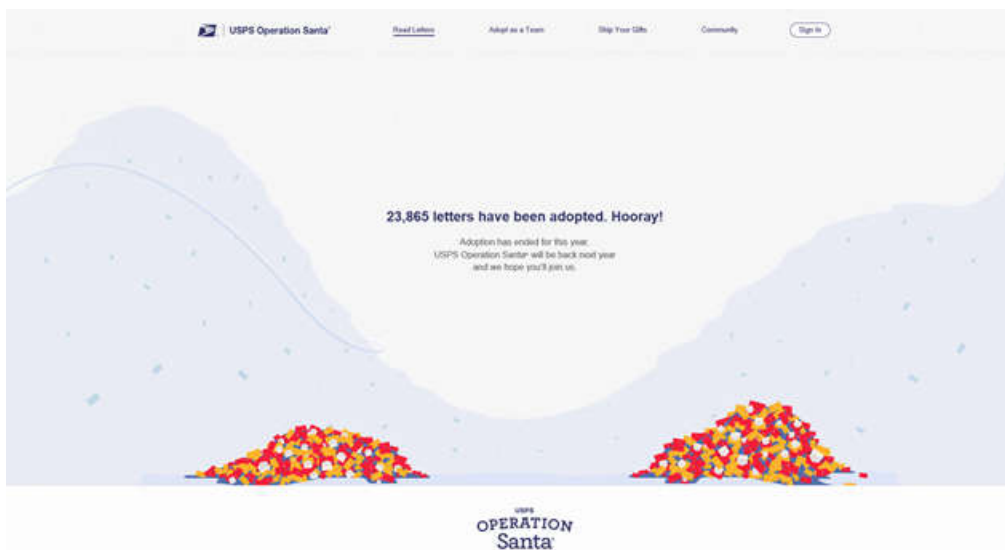
Mailpiece Design Analyst

U.S. Postal Service

New phone number:

877.672.0007 (Option 2, Option 2)

***Please note the previous number (855.593.6093) will eventually be changed to the new number, which is currently active.



From: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>

Sent: Friday, July 16, 2021 2:46 PM

To: Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>

Cc: Hooks, Dan - Windsor, CT <Daniel.Hooks@usps.gov>; MDA <MDA@usps.gov>

Subject: [EXTERNAL] RE: Ticket # INC0906046

CAUTION: This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Team,

Is it possible that if a voter marks the box indicating it is not their ballot packet that it can be handled through electronic service? The more we can minimize the physical packet returning back to us is ideal.

Celia Nabor | Assistant Director, Early Voting

Maricopa County Elections Department

Address: 510 South 3rd Avenue, Phoenix, Arizona 85003

Email: cnabor@risc.maricopa.gov | Web: www.maricopa.vote

From: Celia Nabor - RISCX

Sent: Friday, July 16, 2021 11:03 AM

To: 'Lamb, Samantha E - Florence, AZ' <Samantha.E.Lamb@usps.gov>

Cc: Hooks, Dan - Windsor, CT <Daniel.Hooks@usps.gov>; MDA <MDA@usps.gov>

Subject: RE: Ticket # INC0906046

Samantha,

Thank you for the quick response. Just an FYI, I did not receive your email below at 8:24AM but I'm thankful our timing aligned.

Dan,

Thank you for the thorough guidance and for taking time to share your expertise. I will plan to share the PDF file today or early next week for your review.

Celia

Celia Nabor | Assistant Director, Early Voting

Maricopa County Elections Department

Address: 510 South 3rd Avenue, Phoenix, Arizona 85003

Email: cnabor@risc.maricopa.gov | Web: www.maricopa.vote

From: Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>

Sent: Thursday, July 15, 2021 8:24 AM

To: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>

Cc: Hooks, Dan - Windsor, CT <Daniel.Hooks@usps.gov>; MDA <MDA@usps.gov>

Subject: FW: Ticket # INC0906046

Celia,

Dan is the Mail Design Analyst that will be assisting with the design of yellow envelope for ballots. Below are his recommendations.

If you respond to this email with a pdf file of your final envelope design and include Dan he will be able to approve and/or give recommendations to adjust.

Thank you,



From: MDA@usps.gov <MDA@usps.gov>

Sent: Tuesday, July 13, 2021 11:22 AM

To: Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>

Cc: Duran, Onofre A - Phoenix, AZ <Onofre.A.Duran@usps.gov>; Lewis, Jennifer L - Providence, RI <Jennifer.L.Lewis3@usps.gov>; Jacobsen, Ashley N - Colorado Springs, CO <Ashley.Jacobsen@usps.gov>

Subject: Ticket # INC0906046

Good afternoon Samantha,

Thank you for contacting the Mailpiece Design Support Center today. You have been assigned ticket #: INC0906046

As the verbiage above the address is not Postal terminology, the wording itself is up to you. I personally like something similar to the fourth option as it is direct in its message and appears that it will have enough clearance from the postage.

I would avoid using the specific words "Return to Sender". As Return to Sender is an official postal marking, it could cause potential confusion and delays in your mailing as it would be considered an imitation marking. There will also need to be at least a 1/2" minimum clearance between the verbiage and the postage (DMM Reference below).

The main way to ensure proper return is to have your Ancillary service (The Electronic Service Requested) located and spaced correctly, which appears you have done. I have included descriptions of the endorsements below.

You will also want to ensure the correct Service Type Identifier (STID) is used within the barcode. The STID defines the mailpiece as full-service or basic and is also used to determine the disposition of undeliverable as addressed (UAA) mail.

Per the USPS Domestic Mail Manual –

604 Postage Payment Methods and Refunds

4.3.3 Placement of Postage

Customers must print or apply indicia in the upper-right corner of the envelope or, if postage is printed on an address label, the upper-right corner of that label. When placing indicia on mailpieces, customers must position indicia at least 1/4 inch from the right edge of the mailpiece and 1/4 inch from the top edge of the mailpiece and as follows:

- a. Position indicia within the required boundaries. The boundaries of indicia are defined by the right edge of the envelope, the top edge of the envelope, and the bottom edge and the left edge of any USPS-required indicium element printed by the postage evidencing system.

b. Maintain the required 1/2-inch clear zone to the left of and below all elements of the indicium, within which nothing must be printed or placed, except for images obtained from a USPS-approved licensed vendor of customized PC Postage.

507 Mailer Services

c. Exhibit 1.5.1 Treatment of Undeliverable First-Class Mail, First-Class Package Service — Retail, First-Class Package Service — Commercial and Priority Mail

MAILER

ENDORSEMENT USPS TREATMENT OF UAA PIECES

No Endorsement In all cases: Same treatment as “Forwarding Service Requested.”

“Electronic Service Requested”

In all cases: Mailpiece is directed to a Computerized Forwarding System (CFS) or Postal Automated Redirection System (PARS) site for processing. “Address Service Requested” and “Change Service Requested” handling instructions and options are required to be predefined within the ACS mailer profile data. OneCode ACS mailers are also required to insert this service request through a valid service type code in an Intelligent Mail barcode. The service type code in the Intelligent Mail barcode will take precedence over the instructions in the mailer account profile.

“Address Service Requested”

OPTION 1¹ If no change-of-address order on file:

Piece returned with reason for nondelivery attached (no charge).

If change-of-address order on file:

Months 1 through 12: Piece forwarded (no charge); separate notice of new address provided (address correction fee charged).

Months 13 through 18: Piece returned with new address attached (no charge).

After month 18: Piece returned with reason for nondelivery attached (no charge).

“Address Service Requested”

OPTION 2² If no change-of-address order on file:

Piece returned with reason for nondelivery attached (no charge); separate notice of reason for nondelivery provided (address correction fee charged).

If change-of-address order on file:

Months 1 through 12: Piece forwarded (no charge); separate notice of new address provided (address correction fee charged).

Months 13 through 18: Piece returned with new address attached (no charge); separate notice of new address provided (address correction fee charged).

After month 18: Piece returned with reason for nondelivery attached (no charge); separate notice of reason for nondelivery provided (address correction fee charged).

“Forwarding Service Requested”³

If no change-of-address order on file:

Piece returned with reason for nondelivery attached (no charge).

If change-of-address order on file:

Months 1 through 12: Piece forwarded (no charge).

Months 13 through 18: Piece returned with new address attached (no charge).

After month 18: Piece returned with reason for nondelivery attached (no charge).

“Return Service Requested”

OPTION 1 In all cases (regardless of whether a change-of-address order is on file):

Piece returned with new address or reason for nondelivery attached (in either case, no charge).

“Return Service Requested”

OPTION 2 In all cases (regardless of whether a change-of-address order is on file):

Piece returned with new address or reason for non-delivery attached and separate ACS notice of new address provided. Address correction fee charged. For First-

Class Mail letters or flats, request must be made via the correct Service Type ID (STID) embedded in the Intelligent Mail barcode on the mailpiece.

“Change Service Requested”

OPTION 1² In all cases (regardless of whether a change-of-address order is on file):

Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS.

“Change Service Requested”

OPTION 2² If no change-of-address order on file:

Piece disposed of by USPS; separate notice of reason for nondelivery provided (address correction fee charged).

If change-of-address order on file:

Months 1 through 12: Piece forwarded (no charge); separate notice of new address provided (address correction fee charged).

Months 13 through 18: Piece disposed of by USPS; separate notice of new address provided (address correction fee charged).

After month 18: Piece disposed of by USPS; separate notice of reason for nondelivery provided (address correction fee charged).

“Change Service Requested”

Restrictions The following restrictions apply:

(for Options 1 and 2)

(1) This endorsement is limited to use on valid mailpieces bearing a proper ACS participant code and only for: (a) Priority Mail containing perishable matter (other than live animals) and the marking “Perishable” and; (b) First-Class Mail, First-Class Package Service — Retail, and First-Class Package Service — Commercial (excluding hazardous materials).

(2) USPS Tracking and Signature Confirmation are the only extra services permitted with this endorsement.

“Temp—Return Service Requested”

OPTION 1 If no change-of-address order on file:

Piece returned with reason for nondelivery attached (no charge).

If permanent change-of-address order on file:

Piece returned with new address or reason for nondelivery attached (in either case, no charge).

If temporary change-of-address order on file:

Piece forwarded to temporary address (no charge); no separate notice of temporary address provided.

“Temp—Return Service Requested”

OPTION 2 *Request must be made via the correct STID embedded in the Intelligent Mail barcode on the mailpiece for First-Class Mail letters or flats.*

If no change-of-address order on file:

Piece returned with reason for nondelivery attached (no charge) and separate ACS notice provided. Address correction fee charged.

If permanent change-of-address order on file:

Piece returned with new address or reason for nondelivery attached and separate ACS notice of new address provided. Address correction fee charged.

If temporary change-of-address order on file:

Piece forwarded to temporary address (no charge) with no notice to the mailer.

If you have any other questions please feel free to respond to this e-mail without changing the subject line. Thanks! Have a great day!

Thanks again,

Dan Hooks

Mailpiece Design Analyst

U.S. Postal Service

New phone number:

877.672.0007 (Option 2, Option 2)

***Please note the previous number (855.593.6093) will eventually be changed to the new number, which is currently active.

We value your feedback! Please take a moment to tell us about your recent MDA experience by completing a short survey. Look for the unique link within the MDA automated e-mails! Your responses will be kept confidential and the questions should only take about 5 to 10 minutes to complete. Be sure to include your assigned Ticket / Reference No. (Included in this e-mail). *We look forward to hearing from you*

On 7/13/2021 12:52 PM, Samantha Lamb wrote:

We have a County in Arizona that would like to adjust their ballot envelopes. Is there a specific MDA that works with Political Mail that could assist me and the County with this?

Thank you,



From: Celia Nabor - RISCX <cnabor@risc.maricopa.gov>
Sent: Tuesday, July 13, 2021 9:39 AM
To: Lamb, Samantha E - Florence, AZ <Samantha.E.Lamb@usps.gov>
Subject: [EXTERNAL] SB 1530

CAUTION: This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Hello Samantha,

I left a voice message regarding some additional verbiage we are adding to the Maricopa County Elections yellow carrier envelope. The legislation SB 1530 requires a voter to mark the ballot return to sender if it does not belong to

them "IF THE ADDRESSEE DOES NOT RESIDE AT THIS ADDRESS, MARK THE UNOPENED ENVELOPE "RETURN TO SENDER" AND DEPOSIT IT IN THE UNITED STATES MAIL." I am working to develop some simple language that will be included on the yellow carrier envelope. Since USPS is part of the process I want to make sure that we get your input on verbiage that can be easily understood by voters and postal workers. I attached some ideas I am brainstorming. I would love to hear your thoughts.

Celia

Celia Nabor | Assistant Director, Early Voting
Maricopa County Elections Department
Address: 510 South 3rd Avenue, Phoenix, Arizona 85003
Email: cnabor@risc.maricopa.gov | Web: www.maricopa.vote

Exhibit H

1 **MARK BRNOVICH**
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15 *Attorneys for State of Arizona*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF ARIZONA**

18 Mi Familia Vota, et al.,

19 Plaintiffs,

20 vs.

21 Katie Hobbs, et al.,

22 Defendants.

Case No: 2:21-cv-01423-DWL

**DEFENDANTS’ REPLY TO
PLAINTIFFS’ OPPOSITION TO
MOTION TO STAY (DOC. 58)**

1 **INTRODUCTION**

2 As the State previously explained, its requested 60-day partial stay would conserve
3 the resources of the Court and the parties by delaying consideration of the *Anderson-*
4 *Burdick* signature-curing claim until after the Ninth Circuit will have likely issued its
5 decision in *Arizona Democratic Party v. Hobbs*, Nos. 20-16759, 20-16766 (*Hobbs I*),
6 resolving essentially identical issues. *See* Doc. 58. Plaintiffs’ lengthy opposition provides
7 no sound reason for denying that request.

8 Plaintiffs make essentially three arguments against the requested partial stay. First,
9 they argue that *Hobbs* will not resolve their *Anderson-Burdick* Signature Requirement
10 Claims and that a stay would be inefficient. Second, they allege a stay will prejudice them.
11 Third, they argue that, in the event the case is not stayed, *Arizona Democratic Party v.*
12 *Hobbs* (“*Hobbs I*”), 976 F.3d 1081 (9th Cir. 2020) is not binding on this court. Each of
13 these arguments fails. And Plaintiffs’ willingness to advance such demonstrably weak
14 contentions in opposition to a short stay, where the stakes are small, is inadvertently
15 revealing as to the merits of their underlying claims.

16 This Court should grant the State’s request for a partial stay.

17 **ARGUMENT**

18 **I. *Hobbs I* is likely to be largely determinative of Plaintiffs’ claims**

19 Plaintiffs’ opposition relies heavily on contending that *Hobbs I* will not be
20 determinative here as precedent. That is highly doubtful, and the arguments that Plaintiffs
21 offer in support are specious.

22 But, in any event, that is not the relevant inquiry here. Instead, the relevant question
23 here is how best to adjudicate the claims presented efficiently. The State’s proposed stay
24 promotes efficiency and Plaintiffs’ proposed approach is demonstrably wasteful.

25 **A. Plaintiffs’ *Anderson-Burdick* Signature Claim Is Functionally**
26 **Indistinguishable From That In *Hobbs***

27 Plaintiffs’ principal basis for opposing a stay is their contention (at 4) that *Hobbs I*
28 will “not control the outcome of Plaintiffs’ *Anderson-Burdick* Claims.” That may or may

1 not be true; notably, under the Ninth Circuit’s published stay opinion Plaintiffs’ claim is
2 functionally doomed unless the Ninth Circuit changes course. In any event, it takes little
3 imagination to conceive of a broad final opinion that would render Plaintiffs’ claim entirely
4 untenable. And even if not completely controlling as a formal matter, the likelihood that
5 the *Hobbs I* decision will functionally decide the claim at issue here is manifestly high.

6 Plaintiffs’ attempt to distinguish their *Anderson-Burdick* non-signature curing
7 claim from *Hobbs I* is unavailing for four reasons.

8 *First*, Plaintiffs’ reliance (at 4-5) on “cumulative” burdens lacks merit. Plaintiffs
9 nowhere explain how SB 1005’s Signature Requirement is meaningfully “cumulative”
10 with SB 1485’s EVL Periodic Voting Requirement or how this allegation impacts the
11 relevance of *Hobbs I*. The two challenged regulations are not even related to one another.
12 One requires voters to sign their ballots or cure their failure to do so by close of election
13 day; the other, requires voters to either vote or return a notice after four years of not voting
14 in order to remain on the Early Voting List.

15 Plaintiffs’ Complaint only makes conclusory assertions that these requirements
16 “collectively” burden the right to vote, but they do not explain how that is. Mi Familia
17 Complaint ¶132. This is not like a situation where a State requires registration to a
18 particular party to participate in a primary and then makes voter registration changes
19 unreasonably difficult. *See, e.g., Clingman v. Beaver*, 544 U.S. 581, 608 (2005) (discussing
20 cumulative burden) (O’Connor, J., concurring). Instead, the two requirements have little
21 in common that could make them “cumulative” in any meaningful sense.

22 But even if these regulations worked hand-in-glove for purposes of *Anderson-*
23 *Burdick*, the Ninth Circuit’s evaluation would still be largely decisive on these points with
24 respect to the Signature Requirement. As the State has explained in its stay motion (at 7),
25 the Ninth Circuit has held that the burden presented by the State’s limitation on curing
26 signatures up until when polls closed imposed “at most, a ‘minimal’ burden.” *Hobbs I*, 976
27 F.3d at 1085. Similarly, as the State explained in its motion to dismiss (at 17-18), the
28 Periodic Voting Requirement imposes a burden *less* than that presented in *Short v. Brown*,

1 which itself posed at most an “extremely small one.” 893 F.3d 671, 677 (9th Cir. 2018).

2 Thus, even if Plaintiffs could rely on simple addition for two inapposite burdens,
3 they would at most be adding an “at most . . . minimal” burden to an “extremely small one.”
4 That is distinctly unlikely to sum up to anything other than a minimal burden cumulatively,
5 and certainly is unlikely to become a “severe” burden.

6 *Second*, Plaintiffs’ suggestion (at 4) that this case is fundamentally different
7 because “Plaintiffs’ claims will be based on a record that reflects what actually happened
8 in the 2020 election” adds nothing. Plaintiffs offer neither evidence nor allegations why
9 data from the 2020 election is likely to change anything. They do not, for example, even
10 *allege* that the rate of disqualification went up (or down). Moreover, Intervenor-Plaintiffs
11 would have had powerful incentives to submit any such post-2020 evidence to the Ninth
12 Circuit if it would have helped their claims. They tellingly have not.

13 Indeed, the sole fact that Plaintiffs do note about the 2020 election—*i.e.*, that it was
14 an “an election with historic voter turnout,” Opp. at 4—does Plaintiffs no good. That
15 Arizona had historically *high* rates of turnout in 2020—notwithstanding having the
16 challenged Poll-Close Deadline for non-signature curing in place—certainly does not
17 support Plaintiffs’ allegations that the State has somehow imposes unconstitutionally
18 excessive burdens on voting. Instead, it supports the State’s contention that “Arizona
19 operates one of the most open and generous voting systems in the United States.” MTD at
20 1. That Plaintiffs believe that *high* turnout somehow proves that Arizona has made it
21 uniquely *burdensome* to vote is inadvertently revealing about the logical soundness of
22 Plaintiffs’ claims.

23 *Third*, Plaintiffs’ reliance (at 4) on “what actually motivated the Arizona legislature
24 in 2021 to enact SB 1003,” is irrelevant to the State’s instant stay request. To be sure, that
25 is the central merits inquiry for Plaintiffs’ *intentional discrimination* claim (assuming
26 Plaintiffs have standing, *but see* MTD at 7-9). But the State has *not* moved to stay those
27 claims. And the *Anderson-Burdick* burden framework is focused on *objective* burdens and
28 justifications. The Legislature’s actual motivations are irrelevant, as States can rely on

1 “post hoc rationalizations,” can “come up with [their] justifications at any time,” and have
2 no “limit[s]” on the type of “record [they] can build in order to justify a burden placed on
3 the right to vote.” *Mays v. LaRose*, 951 F.3d 775, 789 (6th Cir. 2020). Plaintiffs’ attempt
4 to distinguish *Hobbs I* on putative subjective intent thus fails.

5 *Fourth*, Plaintiffs’ apparent premise—*i.e.*, that binding precedent resolving a
6 challenge involving the *same* challenged law and *same* asserted legal violations can never
7 resolve subsequent claims—defies common sense. True, there is no issue preclusion, as
8 “[i]t is a violation of due process for a judgment to be binding on a litigant who was not a
9 party or a privy and therefore has never had an opportunity to be heard.” *Parklane Hosiery*
10 *Co. v. Shore*, 439 U.S. 322, 327 n.7 (1979). But binding precedent frequently forecloses
11 future challenges as a practical matter.

12 Under Plaintiffs’ premise, for example, they could assert an *Anderson-Burdick*
13 challenge to Indiana’s voter-ID law, notwithstanding the Supreme Court’s decision in
14 *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008), and claim that *Crawford* does
15 “not resolve Plaintiffs’ *Anderson/Burdick* Claims as a matter of law.” Opp.5. They could
16 further offer identical evidence (and nothing more) as in *Crawford*, since (in their view),
17 they “are entitled to make their case.” Opp.9.

18 But if Plaintiffs were to do so, they likely would be facing potential Rule 11 issues,
19 rather than the completely blank slate that Plaintiffs now envision. The Supreme Court’s
20 resolution of the *Anderson-Burdick* voter-ID challenge is, as a practical matter, likely to
21 be definitive for everyone going forward absent significant new legal or factual
22 developments. Plaintiffs’ arguments ignore reality and practicalities by contending that the
23 Ninth Circuit’s *Hobbs I* decision could not possibly be similarly controlling as a practical
24 matter, even if it does not formally “resolve [Plaintiffs’] Claims as a matter of law.”

25 **B. Even If *Hobbs I* Were Only Persuasive Authority, A Stay Is Still**
26 **Warranted**

27 In any event, even if Plaintiffs were correct *Hobbs I* did not decide their case, a stay
28 is still warranted. What matters here is whether a stay is “efficient” and the extent to which

1 the “independent proceedings which bear upon the case.” *Mediterranean Enters., Inc. v.*
2 *Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (obtaining a stay “does not require
3 that the issues in such [other] proceedings are necessarily controlling”) (citing *Leyva v.*
4 *Certified Grocers of Cal. Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)).

5 For all of the reasons explained previously and above, *Hobbs I* is likely to be highly
6 relevant to the claim at issue here. It is therefore efficient to stay that claim (but not the
7 others) for a short time.

8 Indeed, courts routinely stay decisions pending forthcoming decisions that are
9 likely to be influential on the subsequent case. *See, e.g., Ctr. for Biological Diversity v.*
10 *EPA*, No. CV-20-555, 2021 WL 3410974, at *3 (D. Ariz. July 9, 2021) (granting stay
11 pending parallel proceeding in D.C. Circuit, observing that “this approach [of limiting
12 stay] while expeditious would ultimately have been a waste of this Court's resources”);
13 *Winters v. Loan Depot, LLC*, No. CV-20-01290, 2021 WL 2714747, at *1 (D. Ariz. July
14 1, 2021) (granting stay pending resolution of Ninth Circuit case which could affect court’s
15 jurisdiction); *A.B.C. Sand & Rock Co., Inc. v. Maricopa Cty.*, No. 2:17-CV-1094, 2017
16 WL 2609524, at *2 (D. Ariz. June 16, 2017) (staying case pending result in administrative
17 proceedings); *CoBiz Bank v. IMH Special Asset NT 161 LLC*, No. CV-15-02321, 2016 WL
18 11728608, at *3 (D. Ariz. June 10, 2016) (staying case pending result in related litigation);
19 *Evolutionary Intel., LLC v. Facebook, Inc.*, No. C 13-4202 SI, 2014 WL 261837, at *2
20 (N.D. Cal. Jan. 23, 2014) (staying case even though one defendant was not bound by
21 parallel proceeding because “simplification of the issues could still occur” because the
22 result of the parallel proceeding would be “strong evidence” in the pending case).

23 Plaintiffs’ contrary contention that a stay would be “simply wasteful” lacks merit
24 even in Plaintiffs’ own telling. True, this Court *could* duplicate all of the briefing that has
25 already occurred in *Hobbs I* and then decide the issue itself, subject to potential
26 “supplemental briefing” or “reconsideration ... when there is new relevant case law,” as
27 Plaintiffs suggest (at 5). But even in Plaintiffs’ own description, it is apparent that their
28

1 approach would involve *more* briefs, not less. And Plaintiffs do not contend those more-
2 numerous briefs would be shorter. (They wouldn't.)

3 At bottom, Plaintiffs' suggestion that it is *more* efficient to duplicate past efforts
4 rather than leverage them in a manner permitting less marginal effort the second time
5 around is simply specious.

6 **II. Plaintiffs' Claims of Prejudice Lack Merit**

7 Plaintiffs complain (at 6-7) that a sixty-day stay will prejudice them by forcing the
8 parties to delay a portion of their briefing then possibly pick that briefing up again when
9 *Hobbs* is decided or when the sixty-days has ended. They also observe that sixty days will
10 push this Court incrementally closer to the 2022 election.

11 This first claim of prejudice is not prejudice at all, but efficiency, and fails for the
12 reasons set forth above. And their second claim rings hollow too.

13 Plaintiffs notably have not requested a preliminary injunction, and it is distinctly
14 implausible to expect that this case could be adjudicated to final judgment substantially in
15 advance of the 2022 general election. The median time in this District from filing of a civil
16 suit to trial, for example, is currently 35.7 months.¹ Plaintiffs' expectation that their suit—
17 filed in August 2021 without a preliminary injunction motion—would be fully adjudicated
18 in time for the 2022 primary and general elections, including in sufficient time in advance
19 of voting to avoid issues under *Purcell* doctrine, was always fanciful. And the non-
20 realization of Plaintiffs' unrealistic expectation is not cognizable prejudice.

21 Moreover, Plaintiffs' own conduct further belies their claim of prejudice. Plaintiffs
22 could, for example, have intervened in *Hobbs I* or filed a parallel action back in June 2020
23 when *Hobbs I* was filed if they were concerned about obtaining expeditious adjudication
24 of the claim at issue here. Furthermore, if Plaintiffs' overwhelmingly duplicative
25 *Anderson-Burdick* claim cannot possibly wait for even 60 days, why did Plaintiffs take all
26 14 days allotted to them to file a response to the stay motion?

27
28

¹ See https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630.2021.pdf.

III. *Hobbs I* is Binding On This Court

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2 Finally, Plaintiffs argue (at 8) that *Hobbs I* is not binding on this Court because “[i]t
3 had neither the benefit of full briefing or argument nor the luxury of time to methodically
4 *consider* the record or relevant authority.” These are arguments as to why *Hobbs I* may be
5 discounted by another court which is not formally bound by it, and might also be relevant
6 in the Ninth Circuit itself. But nothing in those contentions could absolve this Court of its
7 duty to follow the Ninth Circuit’s published opinions as binding precedent. That would
8 not have been the case if the Ninth Circuit had not published *Hobbs I*. *See* Ninth Circuit
9 Rule 36-3. But it did, and Intervenor-Plaintiffs did not seek rehearing *en banc*.

10 “A district court bound by circuit authority, for example, has no choice but to follow
11 it, even if convinced that such authority was wrongly decided.” *Hart v. Massanari*, 266
12 F.3d 1155, 1175 (9th Cir. 2001). *See also McGinley v. Houston*, 361 F.3d 1328, 1331 (11th
13 Cir. 2004) (“A circuit court’s decision binds the district courts sitting within its jurisdiction
14 while a decision by the Supreme Court binds all circuit and district courts.”) (citing 18–
15 134 *Moore’s Federal Practice—Civil* § 134.02 (2003)). A district court lacks authority to
16 second guess adequacy of briefing, argument, and consideration of the decisions of the
17 court of appeals of their circuit; if this were the rule, it is difficult to see how the system
18 could function as district courts could discard inconvenient precedent at will. Plaintiffs’
19 suggestion otherwise is contrary to hundreds of years of practice in United States courts.

20 Plaintiffs also argue that the *Anderson-Burdick* inquiry is necessarily fact-specific,
21 so *Hobbs I* is not decisive. That might be theoretically true, but Plaintiffs have not pointed
22 to any meaningful factual differences that might help them distinguish *Hobbs I*. Indeed,
23 the sole new fact they raise with any potential relevance—the historically *high* turnout in
24 2020—actually supports the State. *Supra* at 3. Because Plaintiffs have not offered any
25 colorable basis for distinguishing their *Anderson-Burdick* claim from that at issue in the
26 Ninth Circuit’s published stay decision, the *Hobbs I* stay decision is binding here.

CONCLUSION

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28 This Court should grant the State’s Motion for Partial Stay.

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Respectfully submitted this 22nd day of November, 2021.

MARK BRNOVICH
ATTORNEY GENERAL

By: s/ Drew C. Ensign
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Chief Deputy & Chief of Staff
Brunn (“Beau”) W. Roysden III (No. 28698)
Division Chief
Drew C. Ensign (No. 25463)
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*Attorneys for Mark Brnovich, Arizona Attorney
General*

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2021, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

s/ Drew C. Ensign
Drew C. Ensign
Counsel for Mark Brnovich, Arizona Attorney General

Exhibit I

Exhibit I

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**

(Firm Bar No. 14000)

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11 *Attorneys for Defendants Mark Brnovich,*

12 *Arizona Attorney General and State of Arizona*

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

14 **IN AND FOR THE COUNTY OF MARICOPA**

15
16 KATIE HOBBS, in her official capacity as
17 Secretary of State of Arizona,

18 Plaintiff,

19 and

20 MARK BRNOVICH, in his official capacity
21 as Arizona Attorney General; STATE OF
22 ARIZONA, a body politic,

23 Defendants

Case No: CV2022-001546

24
25 **STATE’S RESPONSE OPPOSING**
PLAINTIFF’S MOTION FOR A
PRELIMINARY INJUNCTION

26 **Oral Argument: February 23, 2022 at**
11:00am

(Assigned to the Hon. Joan Sinclair)

1
2 **INTRODUCTION**

3 After supporting legislation (“S.B. 1107”) *a year ago* that allows 2022 legislative and
4 congressional candidates to obtain signatures from eligible voters based on the 2020 and 2022
5 maps, Secretary of State Katie Hobbs (“Secretary”) recently realized that the statewide voter
6 registration system (“AVID”) cannot simultaneously handle two maps, and this system is
7 necessary for operation of the online signature-gathering system (“E-Qual”). Instead, AVID can
8 only replace the 2020 information with the 2022 information. According to the Secretary, this
9 lack of functionality will create a time crunch for county recorders to upload 2022 data into
10 AVID, and when they do, it will replace the 2020 data.

11 In her Motion for Preliminary Injunction (“PI Motion”), the Secretary seeks to leverage
12 the inability of AVID to handle two maps to ask *this Court* to bless her shutting down the
13 system entirely for the last *three to four weeks* of the signature-gathering period. In other
14 words, whatever necessary maintenance must be performed due to the inability to handle two
15 maps, what the Secretary is asking for here is to be able to accelerate that maintenance up to the
16 signature-gathering period and to be able to shut down the signature gathering period for an
17 extended period of time while this happens.

18 The Court should reject the Secretary’s PI Motion for a number of reasons. To begin,
19 Arizona law bars the issuance of an injunction “[t]o prevent enforcement of a public statute by
20 officers of the law for the public benefit” or “[t]o prevent the exercise of a public or private
21 office in a lawful manner by the person in possession.” A.R.S. § 12-1802(4), (6). But that is
22 exactly what the Secretary would have the Court do here. She also lacks standing to seek a
23 preliminary injunction based on hardships she claims will be imposed on county recorders, who
24 are not party to this action. She does not have standing to assert their claims.

25 The Secretary’s sole legal argument—that the Court cannot interpret Arizona law as
26 preventing her from taking down E-Qual for the last *three to four weeks* of the signing period—

1 fails badly.¹ The Secretary repeatedly admits that she has a statutory duty under A.R.S. § 16-
2 316 and -318 to provide legislative and congressional candidates an online platform to collect
3 signatures for their nominating petitions, which is a vital tool for candidates to access the ballot.
4 For the 2022 election cycle, candidates have until April 4, 2022 to collect the requisite number
5 of signatures to appear on the primary election ballot in August of 2022. But the Secretary plans
6 to take E-Qual “offline” in “early March” and her *2022 Candidate Redistricting Guide –*
7 *Updated January 11, 2022* sets the date as March 5. The Secretary bogs down the PI Motion
8 with technical details, but the reality is she is seeking advance judicial blessing to deprive
9 candidates of a functioning E-Qual system during the final *four weeks* of signature gathering.

10 As to the remaining factors for an injunction, the Secretary cannot establish that she, as
11 Secretary, will suffer irreparable harm if the State and AG are not enjoined from requiring her to
12 do what she is already doing. Nor can the Secretary show any harm from waiting until after
13 April 4 to perform maintenance, which allegedly will affect two elections in two counties, will
14 outweigh the harm to the State and candidates from shutting down the E-Qual system statewide
15 for the final weeks of the signature-gathering period. Finally, the Secretary cannot show that
16 preemptively enjoining the State and AG from enforcing Arizona law will further the public
17 interest in the slightest (to the contrary, it would cause significant public harm). The Secretary
18 is also barred by estoppel and the *Purcell* doctrine from obtaining equitable relief.

19 **FACTUAL BACKGROUND**

20 **I. E-Qual Started As A Pilot Program In 2011 And Became Mandatory In 2014.**

21 Over a decade ago, the Legislature authorized the Secretary of State to administer a pilot
22 program to allow candidates to collect nominating petition signatures online by adding the
23 following provision to A.R.S. § 16-314: “[T]he secretary of state *may* establish a method for
24 registered voters to sign a nomination petition and a citizens clean elections five dollar donation
25 qualification form for a candidate by way of a secure internet portal for petitions for statewide
26

¹ The Secretary should not be permitted to make new arguments or submit new evidence with her reply brief.

1 and legislative offices.” 2010 Ariz. Legis. Serv. Ch. 284 (S.B. 1422) (emphasis added).

2 After a successful pilot program, the Legislature enacted A.R.S. § 16-316 in 2014, which
3 provides as follows:

4 A. Notwithstanding any other statute in this title, the secretary of state *shall* provide a
5 system for qualified electors to sign a nomination petition and to sign and submit a
6 citizens clean elections five dollar contribution qualification form for a candidate by way
of a secure internet portal. . . .

7 B. This section applies only to candidates for statewide and legislative offices.

8 2014 Ariz. Legis. Serv. Ch. 45 (H.B. 2107) (emphasis added).

9 The statute was amended in 2016 to expand E-Qual to apply to “candidates for the office
10 of the United States senator or representative in congress.” *See* A.R.S. § 16-318. As of May
11 2020, E-Qual became fully functional for candidates collecting signatures for federal, statewide,
12 legislative, municipal, county, and precinct committee offices.²

13 **II. Statutory Provisions Outline the Candidate Nominating Process with a Statutory**
14 **Deadline of April 4, 2022 to Submit Nominating Papers and Petitions.**

15 Before a candidate may begin collecting signatures on nominating petitions, a candidate
16 must file a statement of interest. A.R.S. §§ 16-311(H), - 341(I). Once the candidate files a
17 statement of interest with the Secretary of State for federal, statewide, or legislative offices,
18 candidates may begin collecting petition signatures on E-Qual.³ Between 150 days and 120
19 days before an election, “traditional” candidates for the primary ballot must file nominating
20 papers and nominating petitions with the filing officer. A.R.S. §§ 16-311(A), -314(A). In 2022,
21 the earliest a “traditional” candidate may file is March 5, 2022 and the latest is 5:00 p.m. on
22 April 4, 2022.⁴ For “participating” candidates, they may begin filing as early as January 1, 2022.

23 _____
24 ² *See* <https://azsos.gov/about-office/media-center/press-releases/1175>. This court may take
25 judicial notice of records that are publicly available on government websites. *See* Ariz. R. Evid.
26 201; *Pederson v. Bennett*, 230 Ariz. 556, 559, ¶ 15 (2012).

³ *Running for Public Office – A Candidate Guide*, Secretary of State’s Office, February 21,
2020, at 10, available at https://azsos.gov/sites/default/files/2.21.2020_Running_for_Office_%20Handbook.pdf.

⁴ <https://azsos.gov/elections/elections-calendar-upcoming-events>.

1 *Id.*⁵ To appear on the ballot, a candidate must obtain a minimum number of signatures for the
2 office they are seeking, which can range from a few hundred to tens of thousands.⁶ *See* A.R.S. §
3 16-322(A).

4 For “participating” candidates who forgo private contributions and opt instead to use
5 funding from the Citizens Clean Elections Fund, in addition to the petition requirements, the
6 candidate must also obtain a minimum number of qualifying contributions. A.R.S. § 16-950(D).
7 Candidates may also use E-Equal to collect qualifying contributions. A.R.S. § 16-316(A).

8 Once nominating papers and petitions are submitted to the filing officer, the filing officer
9 confirms the candidate completed all of the necessary forms, submitted at least the bare
10 minimum number of signatures, met the statutory deadline for filing, is not seeking more than
11 one office at the same time, and is not currently financially liable for campaign finance
12 violations.⁷

13 Unless nominating papers or petitions are facially inadequate, the filing officer must
14 accept the materials as submitted. *See Sims Printing Co. v. Frohmiller*, 47 Ariz. 561, 568
15 (1936). Any elector, however, may file a court action challenging the nomination of a
16 candidate, specifying the “petition number, line number and basis for the challenge for each
17 signature being challenged.” A.R.S. § 16-351(A). Once a challenge is made, the county
18 recorder or other officer in charge of elections (“Recorder”) is obligated to perform petition
19 signature verifications, but is only required to look at challenged signatures. A.R.S. § 16-
20 351(E); *see also McKenna v. Soto*, 250 Ariz. 469 (2021) (“The Recorder... is not obligated to
21

22 ⁵ A “traditional” candidate is one who is not participating in the Clean Funding program and
23 raise private funds. A “participating” candidate is a candidate who is participating in the Clean
24 Funding program to receive funding from the Citizens Clean Election Fund, and forgo private
25 donations. *See* <https://www.azcleelections.gov/run-for-office> (last accessed February 9,
2022).

26 ⁶ <https://azsos.gov/elections/running-office> (last accessed Feb. 15, 2022).

⁷ *Cf.* Arizona Secretary of State, *2019 Elections Procedures Manual*, Dec. 19, 2019, at 109, 119,
available at [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES
MANUAL_APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf). There is no Election Procedures Manual currently in effect in
Arizona for the 2022 elections.

1 search for defects other than those asserted by the challenger.” (cleaned up)).

2 Because redistricting occurred in the middle of the petition gathering process for
3 candidates running for office in 2022, the Legislature passed a safe-harbor bill allowing
4 candidates to collect signatures in the candidate’s district as used in the 2020 election, in a
5 redistricting plan adopted by the 2021 independent redistricting commission, or in a redistricting
6 plan ordered for use in the 2022 election by a court of competent jurisdiction. 2021 Ariz. Legis.
7 Serv. Ch. 155 (S.B. 1107). Accordingly, in any challenge alleging a specific elector does not
8 reside in the candidate’s district, Recorders will necessarily have to review both the old and new
9 district boundaries to confirm the elector’s eligibility to sign a particular petition, and that is true
10 regardless of whether the Secretary takes E-Qual down to update the boundaries.

11 Challengers have ten business days after nominating paperwork is due to file an action
12 challenging nominating petition signatures, and the court has ten days from the date of filing to
13 hold a hearing and render a decision. A.R.S. § 16-351(A). Based on the statutory deadlines, the
14 challenge and trial court decision period in 2022 will end on or around April 28.

15 **III. The Secretary Failed to Anticipate the Impact of Redistricting on E-Qual, But the**
16 **March and May Local Elections Are No Reason To Shutter E-Qual Before April 4.**

17 **A. The Evidence Strongly Supports That The Secretary Failed To Prepare For**
18 **E-Qual Needing To Accommodate Two Maps Simultaneously.**

19 Redistricting is not new, nor is the issue of legislative and congressional candidates
20 needing to collect signatures in the first cycle following the adoption of new maps. In 2012, the
21 Legislature passed a safe-harbor bill allowing candidates to collect signatures from the old
22 (2010) or new (2012) districts for the 2012 cycle. 2011 Ariz. Leg. Serv. Ch. 332 §30 (H.B.
23 2304). In early 2021, the Legislature again adopted a safe-harbor bill (S.B. 1107), allowing
24 candidates to collect signatures from the old (2020) or new (2022) districts for the 2022 cycle,
25 which the Secretary of State expressly supported. Exh. F attached to Decl. of Jennifer Wright
26 (“Wright Decl.”) (attached hereto as Exh. 1). The Secretary did not raise any technological
impossibility arguments at the Legislature regarding E-Qual accommodating two maps

1 simultaneously. Wright Decl. ¶12.

2 Ten months then elapsed. In Late December, the Secretary published the *2022 Candidate*
3 *Redistricting Guide* (“December Guide”). Secretary of State, *2022 Candidate Redistricting*
4 *Guide*, Dec. 29, 2021 (Wright Decl. Exh. B). Nothing in the December Guide suggested that
5 candidates must select their old LD to participate in E-Qual; in fact, it stated “[i]f a candidate
6 running for Congressional or State Legislative office is redistricted, the candidate should update
7 their district in Candidate Portal to the 2022 district as soon as possible[,]” suggesting the
8 system was in fact designed to accommodate the new LD boundaries. *Id.* at 9. The December
9 Guide also unequivocally stated, “E-Qual will allow voters to sign for candidates **throughout**
10 **the filing process.**” *Id.* at 4 (emphasis added). Nothing in the 18-page December Guide hinted
11 or suggested that E-Qual would need to go offline—let alone for **three to four weeks**—during
12 the final critical weeks of signature gathering. *Id.*

13 Following AIRC’s certification to the Secretary of new legislative and congressional
14 maps in December 2021, *see* Ariz. Const. art. IV, pt. 2, § 1(17), candidates began submitting
15 statements of interest to run in the newly formed districts. *See* Jeremy Duda, Ariz. Mirror,
16 *Secretary of State’s online signature-gathering system breaks after redistricting*, Jan. 5, 2022
17 6:30a.m., (“Mirror Article”, Wright Decl. Exh. A). Representative Jake Hoffman, currently
18 representing LD 12, reportedly filed to run in the newly formed LD 15 on December 28. *Id.*
19 After being contacted by the *Arizona Mirror*, Rep. Hoffman discovered that between December
20 28 and January 5, he only obtained one signature on E-Qual from a voter living 50 miles outside
21 of the new LD 15, but squarely within the old LD 15. *Id.* When questioned about Hoffman’s E-
22 Qual petitions accepting signatures from voters in the old LD, the Secretary’s Office indicated
23 that E-Qual was not designed to accept signatures from voters living in the new district and
24 “would require essentially a brand new system to be created.” *Id.*

25 Just six days after the Mirror Article, which the Secretary characterizes as
26 “misinformation about E-Qual” (PI Motion at 9), the Secretary did an about face and published
the *2022 Candidate Redistricting Guide – Updated January 11, 2022* (“January Guide”),

1 warning for the first time that candidates should “plan on E-Qual no longer being available for
2 Congressional and Legislative candidates beginning on [March 5], and likely through the
3 remainder of the filing period.” Wright Decl., Exh. C at 4. These major changes to the
4 Secretary’s December guide suggests the decision to take E-Qual offline was made only after
5 the E-Qual issues came to light.

6 In a January 11, 2022 email to candidates, the Secretary encouraged them to “select your
7 district based on the 2020 maps” and “[i]f you have already designated your 2022 district, you
8 may use the ‘Change District’ function to update to your 2020 district.” PI Motion Exh. 1 at 1.
9 Thus, rather than allowing candidates to collect signatures in either the 2020 or 2022 districts, E-
10 Qual can be used to collect signatures in a candidate’s 2020 district, which while sub-optimal, at
11 least allows candidates to continue collecting signatures through the signature gathering period.
12 But then on top of this, the Secretary now asks to take E-Qual down completely.

13 **B. Special Elections Do Not Require Taking Down E-Qual Before April 4.**

14 The Secretary’s purported justification for taking down E-Qual during the critical final
15 weeks of candidate signature-gathering—accommodating the March and May consolidated
16 election dates—falls apart under even the slightest scrutiny. The Arizona Legislature enacted
17 A.R.S. §16-204 to require all elections to be held on consolidated election dates in March, May,
18 August, or November. There is a gap between April 4 (when nominating petitions are due for
19 the August primary elections) and April 20 (when early ballots are mailed for the May election).
20 The Secretary never explains why the maintenance cannot be performed during this period, or
21 any other period following April 4—as is her burden as the party seeking the preliminary
22 injunction.

23 **1. March 8, 2022 Jurisdictional Elections Are Underway**

24 The March election period is currently underway, with four jurisdictions holding all--mail
25 ballot elections in four different counties: City of Douglas (Cochise County), City of Tempe
26 (Maricopa County), Timberland Acres Special Road District (Navajo County), and Town of
Dewey-Humboldt (Yavapai County). As these are all jurisdictional elections, counties *may*

1 administer the election through an intergovernmental agreement, but are not required to do so.
2 A.R.S. §16-205(C). All four of these elections are all-mail ballot elections so voting is not
3 precinct-based; rather, the jurisdiction must establish a centralized ballot-replacement center.
4 A.R.S. §16-558.02. For Maricopa County, there is one ballot replacement center for the Tempe
5 election. Ballots of military and overseas voters (known as “UOCAVA” voters) were mailed or
6 delivered electronically on January 22, early voting began/ballots were mailed February 9, and
7 the last day to vote is March 8. *See* A.R.S. §§16-543(A), -542(D), -544(F), -204(F)(1).⁸

8 **2. May 17, 2022 Jurisdictional Elections**

9 Based on a review of all county elections websites, there are two jurisdictions holding
10 elections in two different counties in May 2022. The City of Litchfield Park⁹ is holding a
11 special election administered by Maricopa County.¹⁰ If necessary, Maricopa County will
12 administer an all-mail ballot run-off election for Tempe. Coconino County Community College
13 District is holding a special election under A.R.S. §42-17056 administered by Coconino County
14 through an intergovernmental agreement.¹¹ Ballots for UOCAVA voters will need to be mailed
15 or delivered electronically on April 2, early ballots will be mailed starting April 20, and the last
16 day to vote is May 17.¹² *See* A.R.S. §§16-543(A), -542(A),(C), -544(F), -204(F)(2).¹³

17 According to County Recorder Patty Hansen, “precincts determine the number of ballot
18 styles, candidate names’ rotation, election results reporting, voter registration statistics, and
19 number of precinct committee members.” PI Motion, Exh. B at ¶ 7. In reality, there are no
20

21 ⁸ *See also* <https://www.azcleanelections.gov/voting>.

22 ⁹ Currently, the entire City of Litchfield Park is contained within the voting precinct of Wigwam
23 in Maricopa County and has only one voting location. Compare
https://recorder.maricopa.gov/Maps2/Voting_Precincts/Current/P0730.pdf with
24 <https://www.litchfield-park.org/ImageRepository/Document?documentID=8111>.

25 ¹⁰ *See* <https://recorder.maricopa.gov/elections/electioncalendar.aspx>.

26 ¹¹ *See* <https://www.coconino.az.gov/195/Elections>.

¹² According to reports for the 2020 November General Election, Coconino County mailed only
102 ballots to UOCAVA voters. *See EAVS Datasets Version 1.1 (Released October 8, 2021)*
available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

¹³ *See also* <https://recorder.maricopa.gov/elections/electioncalendar.aspx>.

1 district or precinct related issues on Coconino County’s May 2022 ballot; instead all county
2 voters will consider just one ballot proposition.¹⁴ Similarly, all ballots for the City of Litchfield
3 Park will pose the same issues to all voters¹⁵ and if the City of Tempe requires a run-off
4 election, the candidates run citywide, not by geographic district.¹⁶

5 Although a handful of UOCAVA ballots must be mailed by April 2 (the majority of
6 which will be delivered electronically), the first day to mail ballots to all other electors is April
7 20. And, as identified in §II, nominating petitions are due April 4. Accordingly, there is a gap
8 between April 4 and April 20 when nominating petitions are due and early ballots must be
9 mailed. The Secretary never explains why the maintenance cannot be performed then.

10 **3. August 2, 2022 Statewide Primary Election**

11 After completion of the jurisdictional elections in May, 2022, the next election is the
12 Statewide Primary scheduled for August 2, 2022. *See* A.R.S. § 16-201. Prior to the Statewide
13 Primary, all counties must incorporate the map approved by the 2021 Arizona Independent
14 Redistricting Commission (“AIRC”) as voters will be nominating political party candidates in
15 the legislative or congressional districts adopted by the AIRC – and every aspect of voting –
16 from where to vote to who a voter is eligible to vote for – will depend on the new district
17 boundaries. Ballots for UOCAVA voters will need to be mailed or delivered electronically on
18 June 18, early voting will begin/ballots will be mailed on July 6, and the last day to vote is
19 August 2. *See* A.R.S. §§ 16-543(A), -542(A),(C), -544(F), -201.

20 **IV. The AG Advises the Secretary that Taking Down E-Qual During The Signature- 21 Gathering Period (i.e., Before April 4) Will Violate Arizona Law.**

22 After candidates started trying to collect signatures using E-Qual with the new district
23 numbers, the Attorney General’s Office (“AGO”) began receiving concerns from elected
24

25 ¹⁴ *See* [https://www.coconino.edu/resources/files/pdfs/presidents-office/12082021-dgb-regular-](https://www.coconino.edu/resources/files/pdfs/presidents-office/12082021-dgb-regular-minutes.pdf)
26 [minutes.pdf](https://www.coconino.edu/resources/files/pdfs/presidents-office/12082021-dgb-regular-minutes.pdf) at 3 (last accessed Feb. 11, 2022).

¹⁵ *See* <http://www.litchfield-park.org/ArchiveCenter/ViewFile/Item/4720>.

¹⁶ *See* [https://www.tempe.gov/government/city-clerk-s-office/meet-your-city-council-](https://www.tempe.gov/government/city-clerk-s-office/meet-your-city-council-candidates)
[candidates](https://www.tempe.gov/government/city-clerk-s-office/meet-your-city-council-candidates).

1 officials and candidates that E-Qual was not working as expected. *See* Wright Decl. at ¶ 5. A
2 few days later, elected officials and candidates notified AGO that the Secretary’s Office had
3 notified candidates that E-Qual would be taken offline on or around March 5 through the end of
4 the statutory filing period, April 4. Wright Decl. at ¶ 6. AGO thereafter notified the Secretary
5 that taking E-Qual offline would be “contrary to the law” and that she should “take all steps
6 necessary to continue the E-Qual system *during the remainder of the candidate filing period*[.]”
7 *See* Wright Decl., Exh. D (emphasis added). The Secretary filed this action as a result.

8 **ARGUMENT**

9 **I. The Court Lacks Jurisdiction To Issue The Requested Preliminary Injunction.**

10 The Court lacks jurisdiction to issue a preliminary injunction preventing the State,
11 through the AG, from investigating and enforcing violations of Arizona election law. Under
12 Arizona law, courts may not issue an injunction “[t]o prevent enforcement of a public statute by
13 officers of the law for the public benefit” or “[t]o prevent the exercise of a public or private
14 office in a lawful manner by the person in possession.” A.R.S. § 12-1802(4),(6). The “obvious
15 purpose” of those provisions is “to prevent interference by the judicial branch of the government
16 with the enforcement of laws by the executive branch through the use of the power of
17 injunction.” *Hislop v. Rodgers*, 54 Ariz. 101, 113 (1939).

18 The Secretary does not dispute that the Legislature has provided the AG, in the exercise
19 of his public office, with statutory authority to enforce provisions of Arizona election law
20 contained in Title 16 of the Arizona Revised Statutes. *See* A.R.S. § 16-1021 (“In any election
21 for state office, members of the legislature, justices of the supreme court, judges of the court of
22 appeals or statewide initiative or referendum the attorney general may enforce the provisions of
23 this title through civil and criminal actions.”). The Secretary repeatedly admits, including
24 through her own declarant, that Title 16, specifically §§ 16-316 and -318, “requires the
25 Secretary of State to provide a system for qualified electors to sign nomination petitions for
26 federal, statewide, legislative, county, city/town, and precinct committeeman candidates through
a secure internet portal.” PI Motion Exh. A ¶ 2. The Secretary does not dispute that statutory

1 provisions granting ballot access through electronic signature collection are public statutes for
2 the public benefit. Thus, enjoining the AG as requested would violate § 12-1802.

3 None of the judicially-created exceptions to §§ 12-1802(4) or (6) apply here. As to § 12-
4 1802(4), the Secretary does not argue that §§ 16-316 or -318 are unconstitutional or that the AG
5 is exceeding his power to enforce those statutes under § 16-1021. Thus, the Secretary’s
6 requested injunction is barred under § 12-1802(4). *See Boruch v. State ex rel. Halikowski*, 242
7 Ariz. 611, 617 ¶ 18 (2017) (§ 12-1802(4) is only inapplicable when “the requesting party is
8 seeking to enjoin conduct that goes beyond the officer’s statutory power”). As to § 12-1802(6),
9 the Secretary also has not alleged that the AG has acted arbitrarily or unreasonably. In fact, the
10 AG has not acted at all, other than to send the Secretary a letter informing her that taking down
11 E-Equal for the last four weeks of the candidate signature period would violate state law. The
12 State’s Chief Legal Officer does not act arbitrarily or capriciously when he informs other state
13 officials that threatened future conduct would violate state law and may have legal
14 consequences. To the contrary, such action is entirely appropriate to prevent a violation of the
15 law from occurring. Preemptively enjoining the State, through the AG, from taking any further
16 action—regardless of what hardships the Secretary believes would otherwise result—would
17 violate § 12-1802 and the separation of powers principles inherent therein. *See State ex rel.*
18 *Berger v. Myers*, 108 Ariz. 248, 249 (1972) (“It is not sufficient to clothe the court with
19 jurisdiction to say simply that, unless the court extends its restraining hand, hardships will
20 follow, or irreparable damage will ensue, because the officer delegated to execute such law may
21 act unwisely or injuriously to the party seeking relief.”).

22 **II. The Secretary Fails To Satisfy The Factors For Granting A Preliminary Injunction.**

23 To obtain a preliminary injunction, the Secretary must show: “(1) a strong likelihood of
24 success at trial on the merits, (2) the possibility of irreparable injury not remediable by damages,
25 (3) a balance of hardships in its favor, and (4) public policy favoring the injunction.” *Apache*
26 *Produce Imports, LLC v. Malena Produce, Inc.*, 247 Ariz. 160, 164 (App. 2019). The Secretary
fails to satisfy any of these factors for granting a preliminary injunction.

1 **A. The Secretary Has Not Established A Likelihood Of Success.**

2 **1. The Secretary Lacks Standing To Request Injunctive Relief.**

3 The Secretary has not established standing here. To establish standing, “plaintiff must
4 have suffered from an injury in fact ... [that is] distinct and palpable such that the plaintiff has a
5 personal stake in the outcome of the controversy.” *Aegis of Arizona, L.L.C. v. Town of Marana*,
6 206 Ariz. 557, 562 ¶18 (App. 2003) (cleaned up). As a general rule, a party cannot establish
7 standing by asserting the rights of another. *See Town of Wickenburg v. State*, 115 Ariz. 465, 469
8 (App. 1977).

9 The Secretary does not allege that she will suffer a distinct or palpable injury if
10 required—as she claims to have done for the last three years—to maintain E-Qual through the
11 end of the signature gathering period (April 4) and perform the maintenance after that date.
12 Rather, she claims that certain non-parties—namely, the Coconino and Maricopa County
13 recorders—will be inconvenienced in updating AVID around their other duties unless permitted
14 to do so between early March and early April, regardless of whatever harm might befall those
15 seeking public office.

16 Whatever administrative inconvenience certain non-party county recorders might
17 experience from having to wait past the candidate signature deadline (April 4) does not confer
18 standing on the Secretary to challenge the statutory requirement that she maintain E-Qual. And
19 that administrative inconvenience is largely due to the Secretary maintaining a system that is
20 apparently unable to accommodate more than one set of maps at a time, which is going to be an
21 issue in 2022 regardless of when the system is taken down.

22 Moreover, if certain recorders are claiming that they fear enforcement by the Attorney
23 General, it would be up to them to assert their own rights. And the Secretary cannot claim to
24 have been injured by the AG’s letter simply informing her that she is statutorily required to
25 continue to maintain E-Qual at least through the end of the candidate signature period. *See*
26 *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134 (9th Cir. 1999) (“[N]either the

1 mere existence of a proscriptive statute nor a generalized threat of prosecution” establishes
2 Article 3 standing.).

3 **2. There Is No Legal Impossibility Preventing The Secretary From**
4 **Maintaining E-Qual Until After April 4.**

5 The Secretary admits to having a *mandatory duty* to “provide a system for qualified
6 electors to sign a nomination petition” for legislative and congressional candidates “by way of a
7 secure internet portal.” She argues, however, that the statutes imposing that duty should have a
8 different meaning for the four weeks between early March and early April 2022 because
9 interpreting the statute to require her to maintain E-Qual during the last four weeks of the
10 candidate signing period would result in an impossibility or absurdity. But the only absurdity at
11 issue here is the Secretary’s litigation position and timing. Indeed, the Secretary’s Own
12 December Guide stated, “E-Qual will allow voters to sign for candidates *throughout the filing*
13 *process.*” Wright Decl., Exh. B at 4 (emphasis added).

14 The Secretary provides no support for the proposition that a court’s legal interpretation of
15 statutory text can vary over time based on whether such interpretation will result in hardship to
16 non-parties. And no support exists for the proposition that statutory mandates ebb and flow
17 based on an elected official’s administrative abilities. Regardless, there is nothing impossible or
18 absurd about interpreting Arizona law to require the Secretary to continue to do what she claims
19 to have done since entering office three years ago—maintain E-Qual. In fact, not only is the
20 Secretary’s impossibility argument belied by the fact that she has maintained E-Qual for three
21 years now, it is directly contradictory to the statutory language. After all, the Legislature did not
22 just require the Secretary to maintain a secure internet portal, it required her to do so
23 “[n]otwithstanding any other statute in this title.” A.R.S. § 16-316 (emphasis added). The
24 Legislature was aware of the other statutory responsibilities county recorders have in general
25 election years, and yet it chose to use language making clear that the Secretary’s statutory
26 mandate applies nonetheless.

1 The Secretary misinterprets AGO’s letter to suggest “the Secretary can never temporarily
2 take E-Qual offline.” PI Motion at 10. In reality, AGO only objected to the Secretary taking E-
3 Qual offline “during the remainder of the candidate filing period” as it would “deprive
4 candidates of their statutory right to obtain online nomination signatures.” Wright Decl., Exh. D.

5 While the Court need not get bogged down with the facts underlying the Secretary’s
6 legally flawed argument, it bears noting that those facts do not support the Secretary’s premise.

7 **Signature Verification.** The Secretary claims that county recorders will be unable to
8 update their election systems after the candidate signature deadline because they will then have
9 to review candidate signatures. But updating the E-Qual system will not reduce the county’s
10 workload. Candidates are currently able to obtain signatures from 2020 districts using E-Qual
11 and 2020 and 2022 districts through paper signature. Even if county recorders are able to use E-
12 Qual to verify signatures submitted through E-Qual prior to revising the system to reflect 2022
13 districts (and the Secretary does not say this will be possible), county recorders will still be
14 required to manually verify any challenged paper signatures, which might derive from electors
15 in the old or new districts. As explained, county recorders will only be required to verify those
16 signatures actually challenged, and the Secretary submits no evidence as to the expected volume
17 of such challenges based on residence. But, in any event, county recorders can quickly verify
18 signatures challenged based on the residence of an elector manually by using the interactive
19 maps available on the AIRC website, which takes only a few seconds per address to review. *See*
20 Wright Decl. at ¶ 10. The Secretary’s argument that county recorders will be unable to confirm
21 signatures post-deadline without taking down E-Qual pre-deadline is a red herring.

22 **Jurisdictional Elections.** The Secretary also claims that county recorders will be unable
23 to make changes to AVID after the signature period because they will be administering
24 jurisdictional elections occurring in May. But, as explained, there are only two such elections,
25 one for Litchfield Park in Maricopa County and one for Coconino County Community Colleges
26 occurring in May; both elections are ballot measures common to all voters irrespective of

1 precinct or district boundaries. Even if AVID needed to be updated for these elections, early
2 ballots are not required to be mailed out until April 20. Again, a red herring.

3 **Voter Registration Reports.** Under A.R.S. § 16-168, county recorders must create
4 certain voter registration reports. Although county recorders must provide a count of “registered
5 voters by political party by precinct, legislative district and congressional district” as of April 1,
6 this moment-in-time report simply provides general voter registration statistics; there is nothing
7 in the law requiring the statistics to reflect the 2022 boundaries. A.R.S. § 16-168(G)(1)(b).
8 Further, the report is not due on April 1; county recorders must submit it “as soon as is
9 practicable following [April 1]” to the Secretary. According to the Secretary’s *Draft 2021*
10 *Elections Procedures Manual*, April 1 marks the date to “[b]egin compiling county-provided
11 April 1, 2022 Voter Registration Report.”¹⁷ Accordingly, there is nothing in the law that
12 prevents the reports from being created after April 1, so long as it reflects voters registered on or
13 before April 1, 2022. Ironically, the Secretary would create new work for county recorders as a
14 means to establish that they are just too busy after the candidate signature period.

15 It is far from clear, therefore, that, factually speaking, county recorders cannot update
16 AVID after the candidate signing period has ended, let alone that doing so is *impossible*.

17 **B. The Secretary Will Not Suffer Irreparable Harm.**

18 The Secretary asks the Court to enjoin the State, through the AG, from even
19 contemplating enforcement of a duly-enacted, facially-valid, constitutionally-sound election
20 law. As explained, however, she does not genuinely attempt to establish that being required to
21 maintain E-Qual during the remaining candidate signature period will cause her harm, let alone
22 irreparable harm. Instead, she claims that, unless E-Qual comes down in early March, certain
23 county recorders may not be able to comply with all of their statutory requirements.

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¹⁷ Arizona Secretary of State, *2021 Elections Procedures Manual – October 1, 2021 Submission*
 (“*Draft 2021 EPM*”), October 1, 2021, at A15, available at [https://azsos.gov/sites/default/files/
2021_EPM_October_1_Submission.pdf](https://azsos.gov/sites/default/files/2021_EPM_October_1_Submission.pdf); see also Wright Decl., Exh. E.

1 The Secretary also claims that the AG’s letter informing her that taking E-Qual down
2 would violate Arizona law caused her irreparable harm, but in each case the Secretary relies
3 upon for that argument, the constitutionality of the underlying laws were challenged. In *City of*
4 *Glendale v. Betty*, the court noted that when a “plaintiff ... [is] threatened with being criminally
5 prosecuted ... under an ordinance null and void as in conflict with the Constitution of the state”
6 the court may issue an injunction; but the court ultimately found the ordinance was
7 constitutional and refused to enjoin enforcement. 45 Ariz. 327, 331-32 (1935). In *Cueviello v.*
8 *City of Vallejo*, an injunction was granted after the court determined the ordinance challenged
9 violated the first amendment and criminal sanctions would chill free speech rights. 944 F.3D
10 816, 833 (2019). The Secretary, therefore, cannot be irreparably harmed when advised that her
11 proposed course of action will violate a constitutionally-valid law. Furthermore, the Secretary
12 can avoid any harm by simply complying with the law and maintaining E-Qual through April 4.

13 **C. The Balance of the Equities And Public Interest Strongly Weigh Against**
14 **Taking Down E-Qual Statewide Before April 4.**

15 The Secretary requests the Court to enjoin the State from enforcing an important
16 provision of its election law ensuring ballot access to candidates for public office. It is well-
17 established that “a state suffers irreparable injury whenever an enactment of its people or their
18 representatives is enjoined.” *Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th
19 Cir. 1997). Undoubtedly, the State will suffer irreparable harm if it is unable, through the AG,
20 to enforce a duly-enacted election law. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (an
21 “injunction[] barring the State from conducting this year’s elections pursuant to a statute enacted
22 by the Legislature . . . would seriously and irreparably harm the State”).

23 Not only will the Secretary’s requested injunction harm the State, it will harm prospective
24 candidates attempting to appear on the ballot in the primary and general elections. The
25 requested injunction would be imposed during the worst possible time for candidates, in the last
26 four weeks when they are making the final push to obtain as many signatures as possible.
Moreover, restricting E-Qual in the final three to four weeks of signature collection hurts

1 announced candidates, including the Secretary, the least, and it would likely preclude late
2 entrants. While the Secretary seems to suggest that only legislative and congressional
3 candidates may be impacted, 26 times in the PI Motion the Secretary mentions taking E-Equal
4 “offline” and not once does she say it will be a partial shutdown.

5 The requested injunction will also harm every citizen of Arizona who would prefer the
6 ease of signing candidate petitions online, rather than having to track down circulators or
7 candidates to provide a paper signature. The Secretary is no doubt cognizant of this harm given
8 that she has previously taken the position that, due to COVID, extending E-Equal beyond
9 candidate signatures to initiative signatures would serve the public interest. *See Second Chances*
10 *v. Hobbs*, 249 Ariz. 396, 428 ¶129 (2020) (Bolick, J., dissenting from the grant of jurisdiction).
11 Taking E-Equal down during the signing period could subject the State to legal challenge from
12 candidates or voters.

13 Finally, the Secretary is also barred by estoppel and the *Purcell* doctrine from obtaining
14 equitable relief. The Secretary’s own manual as late as December 29, 2021 said that the E-Equal
15 system would be available through the candidate filing period. Wright Decl., Exh. B at 4 (“E-
16 Equal will allow voters to sign for candidates *throughout the filing process.*”) (emphasis added).
17 Candidates and the public are able to rely on this official, written statement of an official with
18 authority. *See Valencia Energy Co. v. ADOR*, 191 Ariz. 565, 576 ¶35 (1998) (identifying
19 elements of estoppel). Moreover, the Secretary’s attempt to change the State’s election system
20 at this late date is barred under the *Purcell* doctrine, which prohibits courts from entering
21 injunctive relief changing a state’s election system close to the election. *See, e.g., Merrill v.*
22 *Milligan*, No. 21-1086, 2022 WL 354467, at *3 (U.S. Feb. 7, 2022) (Kavanaugh, J., concurring)
23 (“[T]he *Purcell* principle requires that we stay the District Court’s injunction with respect to the
24 2022 elections.”).

25 CONCLUSION

26 The Secretary has failed to demonstrate that she is entitled to injunctive relief. The Court
should, therefore, deny the Secretary’s PI Motion.

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RESPECTFULLY SUBMITTED this 17th day of February, 2022.

MARK BRNOVICH,
ATTORNEY GENERAL

BY: Michael S. Catlett
Joseph A. Kanefield
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Exhibit J

Exhibit J

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19 * Application for Pro Hac Vice Forthcoming

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21 **ARIZONA SUPERIOR COURT**

22 **YAVAPAI COUNTY**

23 MARK BRNOVICH, in his official capacity as) No. P1300CV202200269
24 Arizona Attorney General, et al.,)
25 Plaintiffs,) **SUPPLEMENTAL DECLARATION OF**
26 v.) **KORI LORICK**
KATIE HOBBS, in her capacity as the)
Secretary of State of Arizona,) (Assigned to the Hon. John Napper)
Defendant.)
_____)

27 I, KORI LORICK, declare as follows:

28 1. I am the State Elections Director in Secretary of State Katie Hobbs' Office. In this
29 role, I oversee the day-to-day operation of the Election Services Division in the Department of
30 State. I have served in this role since July 2021. Prior to that and since 2019, I served as the
31 Elections Compliance Manager in the Election Services Division. In my current role as State

1 Elections Director, my responsibilities include overseeing compliance with state and federal
2 election laws and working with Arizona’s counties on consistent procedures for election
3 administration.

4 2. Issuing a new Elections Procedures Manual (EPM) this late in the election cycle
5 would harm election administrators’ ability to conduct the 2022 Primary and General Elections.
6 Arizona law requires that the EPM “be issued not later than December 31 of each odd-numbered
7 year immediately preceding the general election.” A.R.S. § 16-452(B). This deadline ensures
8 that those implementing election procedures have sufficient time to plan and make changes prior
9 to holding a major election.

10 3. Preparations for the August 2, 2022 Primary Election are well underway. Holding
11 a statewide election requires months of advance planning, so requiring major changes in
12 procedures just two months before the election—and just one month before ballots begin to be
13 mailed—would be very disruptive and, in many instances, impossible.

14 4. For example, the Attorney General proposes to retroactively apply S.B. 1485
15 (2021), requiring that early vote history for voters on the Active Early Voter List be tracked
16 beginning for the 2020 elections.¹ *See* AG Supplemental Brief at 14. This is not workable since
17 some of S.B. 1485’s changes are currently impossible to implement and will require extensive
18 development in the statewide voter registration database, AVID. The Secretary of State’s Office
19 manages AVID, which is used by 13 counties and interfaces with the voter registration systems
20 used by Maricopa and Pima counties. Following an election, voters who cast a ballot will have
21 their vote history documented in their voter record maintained in AVID.

22
23 ¹ S.B. 1485 defined “election cycle” to mean the “two-year period beginning on January 1 in the year
24 after a statewide of general election” or the two-year period that tracks a city or town’s election cycle.
25 *See* A.R.S. § 16-544(P). S.B. 1485 passed in June 2021—mid-election cycle—and did not include any
26 provision about applying retroactively to either the 2019-2020 or 2021-2022 election cycles. Legislative
Council’s analysis of the bill at the time it passed also indicates that the bill would not apply retroactively.
See Jeremy Duda, *Lege Council: Early voting list purge bill wouldn’t affect voters until after 2024
election*, *Ariz. Mirror* (May 5, 2021), <https://www.azmirror.com/blog/lege-council-early-voting-list-purge-bill-wouldnt-affect-voters-until-after-2024-election/>.

1 5. S.B. 1485 required that “the county recorder or other officer in charge of elections
2 shall send a notice to each voter who is on the active early voting list and who did not vote an
3 early ballot in all elections for two consecutive election cycles as prescribed by subsection K of
4 this section.” *See* A.R.S. § 16-544(L). This means that election officials must have a method to
5 track how a voter participates in elections and which elections they participate in and monitor
6 this participation over the course of two election cycles.

7 6. Since S.B. 1485’s enactment, our office has been preparing for the changes
8 required to implement the new law. However, given the extensive work that is necessary,
9 development in AVID will require significant time and cannot be done in the middle of a major
10 election year. Development work will include creating a process to identify voters who qualify
11 for a notice letter pursuant to A.R.S. § 16-544(L). We also must build a mechanism into AVID
12 to calculate vote history by election cycle and to track the date when a voter enrolls in AEVL
13 (rather than just the fact of AEVL enrollment, as they system currently does) to identify which
14 voters should receive the notice every two election cycles. Additionally, AVID will need to track
15 and identify voters who received the notice required by subsection L but who fail to respond to
16 the notice in the specified timeframe and remove them from the AEVL.

17 7. This development requires careful and thorough consultation with the counties to
18 ensure that the system will work as intended and that no other procedures and functions of the
19 overall system are negatively impacted. Given the work needed for the election year, counties do
20 not have the time to engage in this discussion nor to perform the necessary testing required to
21 deploy a major system change for the 2022 elections. Nor does the Secretary of State’s Office
22 have the staffing or resources needed to manage this development prior to the 2022 elections.

23 8. Additionally, the development cycle for AVID is generally paused in the months
24 leading up to the Primary and General Elections to protect the integrity of the system during this
25 critical time and prevent the introduction of unintended technical problems. Implementing a
26 major system change, like what would be required for S.B. 1485, carries an innate risk of

1 introducing potential issues that could require repair. While it is unlikely this will occur, county
2 election officials rely on the voter records maintained in AVID to conduct elections, so
3 development is generally paused out of an abundance of caution. Any development that is
4 absolutely necessary is done with extra diligence and requires even more extensive testing prior
5 to deployment.

6 9. The Attorney General also proposes to change long-standing procedures related to
7 logic and accuracy (“L&A”) testing that would be difficult, if not impossible, to accommodate.
8 *See* AG Supplemental Brief at 23. The Secretary of State’s Office is responsible for conducting
9 L&A testing in each county before statewide primary and general elections. See A.R.S. § 16-
10 449. L&A testing requires that our office execute extensive logistics on an extremely tight
11 schedule, given that we only have 7 days per statute to conduct all testing. Counties cannot use
12 voting equipment to begin early voting until it is certified via the L&A process.

13 10. L&A testing requires our office to coordinate scheduling with the counties.
14 Because all testing must be complete in the statutory timeframe, we begin planning for L&A
15 several months prior to conducting the tests. Counties may have blackout dates on which they
16 are not available during the testing window. We also must charter a government plane and
17 coordinate flight paths to be as efficient as possible with timing. A plane is required since there
18 is not enough time otherwise to travel to all 15 counties given the short timeframe.

19 11. L&A testing for the 2022 Primary Election begins on June 29, 2022 and runs
20 through July 5, 2022. The Secretary of State’s Office has already scheduled each county for
21 testing during that time based on the county’s availability and the aircraft flight plan. L&A
22 testing has historically required that our team require some counties to work on weekends to
23 ensure we have time to complete the testing. This year, we will be testing on Saturday and
24 holding Sunday open to conduct any retests that may be needed.

25 12. While it is rare that an issue arises in testing, our office has encountered situations
26 requiring a county to fix an issue and retest prior to receiving certification. When this occurs, we

1 may need to return to that county at a later date within the statutorily prescribed testing window.
2 Retesting and certifying election equipment must occur prior to early voting, otherwise, the
3 county would be forced to delay the start of in-person early voting beyond the statutory date.
4 Given the short timeframe for L&A to be conducted, counties may not have the opportunity to
5 provide a 48-hour notice for retests as the Attorney General demands. Imposing this requirement
6 would jeopardize the Secretary's ability to complete L&A testing within the statutory timeframe
7 and jeopardize counties' ability to begin early voting on time.²

8 13. These are just two examples of how the Attorney General's proposed edits to the
9 EPM are flawed and unworkable given how late in the election year we are. Election
10 administration is complex and requires consistent procedures across the different jurisdictions
11 charged with administering elections to ensure elections remain accurate and secure. Making
12 wholesale changes to elections procedures without providing the time to consider the impacts
13 and to implement them will cause significant burdens for elections administrators, create a risk
14 of confusion for voters and election workers, and undermine the orderly and efficient
15 administration of Arizona's upcoming elections.

16 14. Finally, as noted in my prior declaration, the Secretary of State's Office published
17 the draft 2021 EPM for public comment in August 2021 and held two public meetings. We
18 received over 6,000 public comments during the month that the public comment period was
19 open. However, the Yavapai County Republican Committee and its officers, including Plaintiff
20 Manjoros, failed to participate in the public comment process or submit any of the concerns that
21 they now raise.³ They had an opportunity to raise issues over nine months ago when meaningful

22 ² Nor does the statute contemplate that counties must provide 48-hour notice prior to a retest.
23 The draft 2021 EPM urges counties to provide notice but accounts for situations where 48-hour
24 notice would be impossible.

25 ³ The Arizona Republican Party and the Republican National Committee submitted public
26 comments, both of which discussed only one procedure in the EPM relating to out-of-precinct
voters.

1 discussion and consideration could be had, but instead they delayed until the middle of an
2 election year.

3 I declare under penalty of perjury that the foregoing is true and correct to the best of my
4 knowledge, information, and belief.

5 Executed this 18th day of May, 2022.

6 /s/ Kori Lorick
7 Kori Lorick
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EXHIBIT 4

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

MARK BRNOVICH, in his official)
capacity as Arizona Attorney General;))
YAVAPAI COUNTY REPUBLICAN COMMITTEE,)
an unincorporated association, and)
DEMITRA MANJOROS, First Vice Chair of))
the Yavapai County Republican)
Committee, and registered voter in)
Yavapai County,)

Plaintiffs,)

vs.)

Case No.
P1300CV202200269

KATIE HOBBS, in her official capacity))
as Arizona Secretary of State,)

Defendant,)

DOUGLAS A. DUCEY, in his official)
Capacity as Governor of Arizona,)

Real Party in Interest.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOHN D. NAPPER

HEARING ON MOTION FOR SUMMARY JUDGMENT

HEARING ON EXPANDED STATEMENT OF OBJECTIONS

JUNE 10, 2022

Prescott, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619

1 power between the three executives.

2 And so I'm only making this point to urge this
3 court to consider not issuing an advisory opinion.
4 Because the way that this is properly teed up for this
5 court is for there to be a dec action with respect to
6 the 2019 EPM.

7 That would resolve the question that you ask,
8 which is do we have a problem, then, with people
9 utilizing the last approved and effective EPM but
10 perhaps being subject to criminal prosecution because
11 some of those provisions exceed the statutory authority
12 of the secretary of state now, today, as we sit here
13 right now, because of laws that have been passed.

14 THE COURT: All right. Thank you, Counsel. I
15 appreciate that.

16 Which do you want to take up? I still don't
17 know what the end result of all this is.

18 MR. CATLETT: I understand, Your Honor. I do
19 want to address the summary judgment.

20 THE COURT: Sure. That's kind of the
21 question.

22 MR. CATLETT: Your Honor, we brought a
23 mandamus action seeking an order compelling the
24 secretary to provide the AG and governor with a legally
25 compliant EPM prior to a date certain.

1 THE COURT: What happens if she does that?

2 MR. CATLETT: Then the next step of the
3 legislature statute kicks in where the AG and the
4 governor approve or don't approve.

5 THE COURT: What happens if you don't approve
6 it?

7 MR. CATLETT: All three --

8 THE COURT: What happens if we go through all
9 this and the AG says you're all wet, Judge? I'm not
10 approving it?

11 MR. CATLETT: Well, Your Honor, we're all
12 subject to the jurisdiction of the Court. And if the
13 secretary of state thinks that the AG has abused his
14 approval discretion and hasn't properly --

15 THE COURT: So then what happens? Then the AG
16 says I think this is the greatest manual ever, governor
17 says this is the greatest manual ever, and then they
18 leap on board to sign their approval.

19 Then what happens?

20 MR. CATLETT: You can include a provision in
21 your final order saying upon approval by the governor
22 and AG this is the legally binding or effective or
23 whatever --

24 THE COURT: How do I do that? What authority
25 do I have to do that? Issue a nunc pro tunc order that

1 this is actually effective December 31, 2021?

2 MR. CATLETT: No, Your Honor. It would be
3 moving forward.

4 THE COURT: Where do I have that authority?

5 MR. CATLETT: 16-452, the EPM statute and the
6 special action rules that say that if a state official
7 violates a mandatory duty that someone can come in and
8 get a remedy. And Your Honor has the power to fashion
9 the proper remedy to resolve the statutory violation
10 that occurred.

11 THE COURT: So whatever I rule, the AG is
12 simply going to sign off? And the governor and
13 everybody is just -- it resolves here in front of me?

14 MR. CATLETT: I think that's a distinct
15 possibility. And I think if your ruling says upon
16 approval, I think that Your Honor has the power. I
17 don't think it's a violation of separation of powers or
18 any statute that I'm aware of for Your Honor to say
19 that upon approval by the governor and the AG of the
20 secretary's legally compliant draft that moving forward
21 is the EPM for the 2022 election cycle.

22 THE COURT: What if you agree and the governor
23 doesn't?

24 MR. CATLETT: I mean, if the governor has
25 somehow abused his discretion in exercising his

1 approval power, then either the AG or the secretary of
2 state can come back to the court.

3 THE COURT: Another special action.

4 MR. CATLETT: No. We're already subject to
5 Your Honor's jurisdiction. You have all three state
6 officials in front of you.

7 THE COURT: All right.

8 MR. CATLETT: So it's our position that
9 Your Honor can solve this conundrum through the vehicle
10 of this case.

11 THE COURT: What do you make of the 2019 --
12 you know what. I probably would have more sympathy for
13 that argument if it was filed in November, to be
14 entirely candid. I don't know why it didn't happen.
15 It's none of my business.

16 MR. CATLETT: Your Honor, the argument by the
17 secretary that once you get past December 31, we're all
18 just helpless, first, it's incorrect. And, second,
19 it's just another variation of her latches argument,
20 which we've already pointed out to Your Honor and I
21 think Your Honor accepted fails as a matter of law.

22 I also wanted to discuss some of the
23 particular points that the county recorders make in
24 their declarations.

25 THE COURT: Sure.

1 the draft 2021 EPM to be implemented.

2 THE COURT: Again, no one is confused about
3 that. I'm not confused about that. At one time you
4 did. Now that time has come and gone.

5 MS. DESAI: Yes. And, Your Honor, I think
6 because your comments about this stays in and this
7 comes out, we're talking about striking provisions from
8 a hypothetical, not effective, not approved, not
9 adopted draft.

10 And so I don't know -- when you say we're
11 going to leave it in and take it out, what are we
12 leaving it in and taking it out from?

13 THE COURT: The draft that you provided.

14 MS. DESAI: Are you ordering us to issue a new
15 draft?

16 THE COURT: This is what I'm trying to ferret
17 out. So a modified or renewed draft that complies with
18 the Court's order related to what has to be removed or
19 tinkered with to say "may" instead of "shall," whatever
20 the Court's order is, I order that.

21 What happens next? This is the point -- you
22 guys would have to answer this question. This is your
23 point. When I say "you guys," I mean counsel for the
24 secretary.

25 What happens next?

1 MR. CATLETT: Well, that order redresses the
2 injury that the AG identified in the complaint.

3 THE COURT: Okay.

4 MR. CATLETT: At that point we have the
5 approval process and the AG and the governor approve or
6 they don't approve the draft EPM which -- we're back
7 into the process.

8 THE COURT: You realize -- where does this
9 end? How many times are we going to do this?

10 MR. CATLETT: Well, we're going to do it as
11 many times as it takes for the secretary to provide us
12 with a legally compliant draft EPM.

13 THE COURT: But the Court has already said
14 this is legally compliant. The renewed draft, draft 2,
15 that's legally compliant. Boom. Now what?

16 MR. CATLETT: Now we approve or we don't
17 approve that draft.

18 THE COURT: So what problems have we solved
19 here?

20 MR. CATLETT: Based on what -- you've provided
21 us redressability in the form of we've started the
22 process that is required under --

23 THE COURT: No. But that's not fair. Because
24 the process was started a long time ago. The
25 process -- this is the point -- this is why I had the

1 governor become a party to this. I don't know how this
2 ends. And you've got a clock that's ticking.

3 MS. DESAI: The clock has passed ticking.

4 THE COURT: I understand that's your position.
5 But I don't get it. This is the problem that I have
6 with this is I don't understand how this ends. The
7 attorney general has not walked in and said anything
8 you -- whatever draft that you say is legally compliant
9 I'm approving. The governor hasn't said that.

10 MR. CATLETT: Right. But -- I don't want to
11 speak for the governor. But the attorney general is
12 subject to the Court's jurisdiction. And so --

13 THE COURT: So what?

14 MR. CATLETT: So if the attorney general were
15 to, for example, abuse his discretion in approving the
16 EPM, then you can order him to approve the EPM.

17 That's what I said at the very beginning of my
18 reply comments. If the secretary thought that the AG
19 was abusing his discretion back in December, she could
20 have run to court and sought a remedy.

21 And the remedy wouldn't be an order that the
22 AG approve the draft EPM that's been provided to him
23 because it's legally compliant and he's going outside
24 of his approval discretion in not providing that or
25 operating under 16-452.

1 THE COURT: So every year -- every odd year
2 we're going to have this litigation?

3 MR. CATLETT: No. I'm hopeful that that is
4 not going to happen.

5 THE COURT: What puts the brakes on that?

6 MR. CATLETT: Your Honor, making clear that
7 if -- that the courts have a role in this process and
8 can order the promulgation of a draft -- a compliant
9 draft EPM be provided to the attorney general and the
10 governor and can oversee the remainder of the process.

11 And so going forward if this happens again,
12 government officials know that okay, the courts --
13 there is a remedy here if someone is out of bounds.

14 MS. DESAI: Your Honor, if I may respond?

15 THE COURT: Sure.

16 MS. DESAI: I think that that is exactly what
17 should not happen. If the legislature intended for
18 that to be the process, then it would have articulated
19 that in the statute.

20 Instead, the legislature asked for the three
21 executives to work corroboratively to adopt a new EPM
22 by December 31 of each odd-numbered year. In this case
23 that was entirely on track to happen until the attorney
24 general refused to participate in any communication
25 with the secretary.

1 It is disingenuous, as we sit here today, for
2 the attorney general to argue that after the secretary
3 completed her responsibilities under the statute and
4 the attorney general refused to participate in any
5 meaningful way in communicating -- there were multiple
6 requests to meet. He ignored the secretary.

7 There were multiple requests for explanation
8 as to the provisions. This court had to order
9 additional briefing because that explanation was never
10 provided.

11 We fully intended for the statute to operate
12 the way it is intended to operate. The secretary was
13 trying to -- she wouldn't have spent months and months
14 and months in meetings with the counties if she did not
15 intend for this to be adopted by December 31.

16 The attorney general is asking this court for
17 an advisory opinion on a draft EPM that is, frankly,
18 too late to be adopted. And this court recognizes that
19 there is no mechanism by which you can force any of the
20 three executives to adopt a draft EPM that has not gone
21 through this process. Therein lies the problem.

22 I'm not worried that this is going to continue
23 to happen. Because I would hope and I think that the
24 practice has been, including with this attorney general
25 in 2019, to work in collaboration.

1 This year there was a political expediency
2 that the attorney general saw in refusing to
3 participate and communicate and to come in after the
4 fact and try to derail and upend the administration of
5 elections for his own political purposes.

6 THE COURT: That's the same -- we've been down
7 that road before.

8 My question is what's your position -- you
9 guys -- now you're speaking to an audience that's not
10 me. There is -- the steps on the courthouse. You guys
11 are welcome to go down there and communicate with
12 anyone you want to. I'm the audience here irrespective
13 of all the folks on Teams. You're not speaking to me
14 anymore.

15 My question is what do you make of the
16 governor's position that the 2019 manual is the
17 operative document? I think that's the position of the
18 AG too. I'm sorry. The secretary as well.

19 MS. DESAI: Absolutely.

20 MR. CATLETT: What I was going to say is that
21 the legislature created a process that had mandatory
22 steps in it. There is a remedy under the law called
23 "writ of mandamus." If an elected official or
24 statewide government official that wants to be elected
25 doesn't follow statutory mandate, for example, she