ARIZONA COURT OF APPEALS
DIVISION TWO

ARIZONA FREE ENTERPRISE CLUB, *et al.,* Plaintiffs/Appellants, v. ADRIAN FONTES, in his official capacity as the Secretary of State, Defendant/Appellee, And ARIZONA ALLIANCE FOR RETIRED AMERICANS, *et al.*, Intervenors/Appellees.	No. 2 CA-CV 2024-0221 Yavapai County Superior Court No. S1300-CV2023-00202

ARIZONA SECRETARY OF STATE'S ANSWERING BRIEF

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INTRODUCTION

This case is about the universe of voter signatures that can be used to validate a voter's signature on an early ballot, which Arizona voters return to election officials by the millions every election cycle. After an amendment to A.R.S. § 16-550(A), election officials were directed to compare early ballot affidavit signatures to the signature on file in the elector's "registration record." 2019 Ariz. Laws, Ch. 39, § 2 (54th Leg., 1st Reg. Sess.) ("2019 Amendment"). Prior to this amendment, election officials were only able to compare incoming early ballot affidavit signatures with the signature on the elector's "registration form." *Id.* In addition to expanding the universe of records that county officials could use to verify a voter's signature on his or her early ballot, the statute now requires county officials to attempt to "cure" inconsistent signatures by reaching out to voters to determine whether the signature was the voter's. The 2019 Amendment was enacted to maximize—not reduce—the number of votes that can be counted.

In 2019 and again in 2023, the Secretary promulgated a provision of the Arizona Elections Procedures Manual ("EPM") that furthers that legislative priority. In March of 2023—before the 2023 EPM was issued and the 2020 Signature Verification Guide was codified into law—Plaintiffs filed this action, arguing that the term "registration record" is limited to a voter's initial registration form, or, at most, documents used to "update" a voter's registration information. (OB at 10). Plaintiffs challenged the EPM's

provision, which became effective after the 2019 Amendment, that requires election officials to compare early ballot signatures with verified voter signatures in the registration database. At the motion to dismiss stage, the superior court determined that that changing the operative statutory language from "registration form" to "registration record" demonstrated legislative intent for only a very modest expansion of the signature exemplars that could be used to verify an early ballot. But the Plaintiffs' argument relied on the dictionary definitions of the words "registration" and "record," independently, without considering the context of the 2019 Amendment, how the words "registration" and "register" are used in Title 16, and later amendments to the signature verification statutes.

The superior court correctly changed its rationale *sua sponte* when the legislature passed H.B. 2785, 2024 Ariz. Laws ch. 1 §§ 6, 7 (56th Leg., 2nd Reg. Sess.) ("2024 Amendment"). The 2024 Amendment left the statutory language upon which the Secretary based the EPM untouched, and went a step further by codifying the Secretary of State's 2020 Signature Verification Guide ("Signature Verification Guide"). The superior court correctly took this nearly unanimous statutory enactment for what it is: the legislature's crystal-clear intent that election officials may use all verified signatures in the statewide voter registration database to verify the signatures on the early ballot affidavit. This Court should affirm.

As an initial matter, the change in the language of A.R.S. § 16-550(A) in 2019 from "registration form" to "registration record" is significant. Plaintiffs' argument (which the superior court initially adopted) hinges on rote application of an inapposite definition of on the word that was not amended instead of the term that the legislature changed. Plaintiffs' reliance on the dictionary definition of "registration" was a gross oversimplification of the statutory language, and completely ignores the fact that voter information has historically been maintained in a precinct *register*, and Title 16 refers to voters variously as registrants, electors, and voters. As such, the meaning of "registration record" cannot be determined by simply amalgamating one of the definitions of "registration" and the non-statutory definition of "record" from the dictionary. The term "registration record" should be read in the context of the language of the statutes, the changes in the statutes over time, and election administration.

The subsequent amendments in A.R.S. § 16-550(A) and the addition of A.R.S. § 16-550.01 foreclose any doubt that the EPM's interpretation of "registration record" is correct, as the superior court ultimately found. Indeed, the legislature adopted the Secretary's interpretation and codified the process from the Signature Verification Guide. That defeats Plaintiffs' claims here and the superior court was correct to take the legislature's action into account.

In addition to being wrong on the merits, Plaintiffs lack standing. To the extent Plaintiffs could provide any evidence of concrete, particularized harm before the 2024

Amendment (they cannot), the fact that the legislature has now codified the Secretary's process forecloses the argument that Plaintiffs may suffer any harm. As a result, this Court should also affirm the superior court's decision because Plaintiffs lacked standing to bring this suit in the first place.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

I. Arizona's Early Voting Process and Procedures.

Arizona has allowed absentee voting for at least some of its citizens since World War I, just after it attained statehood in 1912. 1918 Ariz. Sess. Laws, ch. 11 (3rd Leg., 1st Spec. Sess.) (allowing armed forces members serving out of state to vote by mail). After the end of the war, Arizona continued to expand the ability of people to cast their ballots absentee, allowing any voter who would not be in their county of residence on election day or any voter unable to get to their assigned polling place due to disability, to vote absentee. 1921 Ariz. Sess. Laws, ch. 117 (5th Leg., 1st Reg. Sess.); 1925 Ariz. Sess. Laws, ch. 75, § 11 (7th Leg., 1st Reg. Sess.). With this expansion in absentee voting, and to ensure the "purity of the franchise," the law directed county election boards to compare "the signature of the voter on the [absentee ballot] application with the signature on the voter's affidavit of registration in the precinct register" to determine whether the signatures "correspond." 1925 Ariz. Sess. Laws, ch. 75, § 11 (7th Leg., 1st Reg. Sess.).

In 1991, the legislature further extended the right to vote by mail to any eligible voter, and Arizona became a "no excuse" early voting state. 1991 Ariz. Sess. Laws, ch. 51, § 1 (40th Leg., 1st Reg. Sess.) (codified at A.R.S. § 16-541). In Arizona, the expansion of the right to vote early continues to this day. For example, since 2007, Arizona voters have been able to join a list to receive an early ballot by mail for every election in which they are entitled to vote. 2007 Ariz. Sess. Laws, ch. 183, § 5 (48th Leg., 1st Reg. Sess.) (codified at A.R.S. § 16-544). Many Arizonans began to use these options, but every election some number of ballots were rejected because an election official determined that the signature on the early ballot affidavit and the signature on the registration form did not correspond.

To prevent valid ballots from being discarded, in 2019, the legislature enacted a statutory opportunity for voters to cure a questionable signature, and an obligation for election officials to reach out to voters to determine whether the signature on the early ballot affidavit corresponds with the signature in the voter's registration record for five days after election day. A.R.S. § 16-550(A). In short, the legislature amended A.R.S. § 16-550(A) to do two things: 1) by replacing "registration form" with "registration record," expand the universe of signatures that election officials could use to determine whether the signature on the early ballot affidavit did or did not correspond to the signatures in the registration record; and 2) provide the opportunity to "cure" and verify that the ballot was cast by the elector in question, in the event the signatures in the

record did not correspond to the signature on the early ballot affidavit. After the 2019 Amendment, the Secretary published the Signature Verification Guide to assist election officials in their duty, including changes in the process required by the new law, and ensure consistency in signature review procedures and practices across the state.

In February of this year, the legislature further amended A.R.S. § 16-550 by a vote of fifty-six in favor, two against in the Arizona House of Representatives and twenty-four in favor, two against in the Arizona Senate. Ariz. Senate Fact Sheet S.B. 1733 (56th Leg., 2d Reg. Sess.) at 8. H.B. 2785 passed as an emergency measure, with near unanimous support, so it was effective upon the Governor's signature on February 9, 2024. 2024 Ariz. Laws ch. 1, § 23 (56th Leg., 2nd Reg. Sess.). The 2024 Amendment left the language in A.R.S. § 16-550(A), directing election officials to compare an early ballot affidavit with the voter's signature in the "registration record," untouched. *Id.* § 6. However, the 2024 Amendment adopted into law the Signature Verification Guide in the newly-enacted A.R.S. § 16-550.01. *Id.* § 7. Additionally, A.R.S. § 16-550.01 requires county election officials to compare a signature to the voter's signature in that voter's registration record in the statewide voter registration database. A.R.S. § 16-550.01(B)-(D), (G)(4).

In addition to the evolution of state law, federal law governing the control and documentation of voting procedures has expanded. In 1993, Congress passed the National Voter Registration Act ("NVRA"), which required states to maintain

information on registration, and to enact programs to remove voters who were deceased, adjudicated felons, or had moved. *See* 52 U.S.C. § 20501, *et seq.* And in 2002, Congress passed the Help America Vote Act ("HAVA"), which required each state to create a single, uniform voter registration database and provided federal funding to make the creation of such a database possible. 52 U.S.C. § 21081, *et seq.*

To comply with federal law, the legislature directed the Secretary to serve as the chief State election official. 52 U.S.C. § 21083; A.R.S. § 16-168(J). A large part of that responsibility includes the non-discretionary duty to "implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State." 52 U.S.C. § 21083(a)(1)(A). The Arizona legislature identified the Secretary as the State's chief election officer, and directed him to "develop and administer a statewide database of voter registration information that contains the name and registration information of every registered voter in the state." A.R.S. § 16-168(J). The legislature expressly authorized the Secretary to regulate the database via the EPM. *Id.* at (I)-(J). However, the legislature set a floor for what must be included in the statewide voter registration database, including information that comes from the registration form itself, like name, address, and party preference, and information

controlled by county election officials like date of registration, voting history, and "all data relating to early voters, including ballot requests and ballot returns." *Id.* at (C).

II. Procedural History of This Matter.

Plaintiffs filed their Complaint in this case on March 7, 2023. (ROA 1). On April 17, 2023, they filed a First Amended Complaint. (ROA 16). Plaintiffs alleged that the 2019 EPM's direction to election officials regarding signature verification conflicted with the term "registration record" used in A.R.S. § 16-550(A), such that the provision in the 2019 EPM was invalid. (ROA 16 at ¶¶ 37-44). The 2019 EPM provision directed election officials to compare "registration records" that "[i]n addition to the voter registration form, [includes] additional known signatures from other official election documents in the voter's registration record, such as signature rosters or early ballot/PEVL request forms," to decide "whether the signature on the early ballot affidavit was made by the same person who is registered to vote." 2019 EPM, at 68. Plaintiffs alleged that this provision did not comply with the statutory instruction in A.R.S. § 16-550(A), claiming that the 2019 EPM allowed for signature review using documents not within the "registration record." (ROA 16 ¶ 29). Plaintiffs also alleged that having a larger sample of signatures for comparison "increases, in a non-linear fashion, the risk of erroneous signature verifications," which they claim "continuous[ly] dilut[es] the pool of signature specimens [and] increases the possibility of a false positive." (*Id.* ¶ 34).

Defendant Secretary of State Fontes and the Intervenors (collectively, "Defendants") filed Motions to Dismiss the First Amended Complaint. (ROA 19, 24, 25). The superior court denied the Motions to Dismiss on September 1, 2023. (ROA 43 at 4-5). The parties filed Cross Motions for Summary Judgment. (ROA 49). While the Cross-Motions for Summary Judgment were being briefed, the 2023 EPM was issued after consultation with county election officials and consideration of public comments. A.R.S. § 16-452; *see also* Sec'y of State, Elections Proc. Manual—Public Comments. This includes comments from the Arizona Speaker of the House Warren Petersen and Senate President Ben Toma. *Id.* at 301. The Secretary alerted the superior court of the 2023 EPM through a Notice of Supplemental Authority on January 8, 2024. (ROA 57). The 2023 EPM contains substantively the same provision that Plaintiffs challenged in the FAC. (ROA 58). Shortly afterward, the legislature adopted the 2024 Amendment, which maintained the language the Secretary had interpreted in the 2019 and 2023 EPMs as allowing election officials to consult all verified signatures in the database and codified the Signature Verification Guide.

The superior court granted summary judgment in favor of Defendants on April 25, 2024, concluding that "the Legislature intended to adopt the 2023 EPM's use of prior voting envelopes in the definition of registration record when it reenacted A.R.S. § 16-550 and adopted A.R.S. § 16-550.01. Using this definition also harmonizes other portions of the Arizona elections statutes." (ROA 69 at 4). As part of its reasoning,

the superior court explained that the 2024 Amendment demonstrates the legislature's intent to use the Secretary's definition of "registration record." "The [2024 statutory] amendments rely heavily on the text of the 2023 EPM. In some places the statutes outright adopt language directly from the 2023 EPM. The new statutes also use the phrase 'registration record' multiple times." (ROA 69, at 3). The superior court further explained that "courts can infer that the legislature approves of another body's definition of a statute when there is some reason to believe that the legislature has considered and declined to reject that interpretation." (*Id.*) (cleaned up). Based on this reasoning, the trial court found "[t]here can be little doubt the Legislature was aware of this definition [for registration record] because they included much of the language from the EPM into this new legislation, including the phrase registration record." (*Id.*).

STATEMENT OF THE ISSUES

1. Whether the trial court erred when it determined that the term "registration record" included documents containing verified signatures from the voter related to the registrant's voting history rather than an exceedingly narrow definition that is inconsistent with the state's longstanding election procedures?

2. Whether the subsequent passage of the 2024 Amendment, H.B. 2785, which adopted and codified the Signature Verification Guide that directs election officials to review many different verified signatures included in the "voter's registration

record," provided additional support for the superior court to rule in the Secretary's favor?

3. Whether Plaintiffs have standing to assert claims that their vote was potentially "diluted" by the signature verification process which hypothetically could result in some unidentified early votes from a person other than the registered voter being tabulated, without any factual basis that this occurred?

STANDARD OF REVIEW

This Court reviews statutory interpretation conducted by the superior court *de novo*. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 178, ¶ 5 (App. 2008) ("We review de novo questions of statutory interpretation…"). As a question of law, whether a plaintiff has standing is also reviewed *de novo*. *In re Estate of Stewart*, 230 Ariz. 480, 483-84, ¶ 11 (App. 2012). While issues of fact are to be viewed in a light most favorable to the party against which summary judgment was entered, there were no disputed material facts in this case. (OB at 4).

LEGAL ARGUMENT

I. The Superior Court Correctly Determined that the Statutory Term "Registration Record" Includes All Verified Voter Signatures.

The superior court's decision should be affirmed for any (or all) of the following reasons. *First*, the plain reading of the 2019 Amendment to A.R.S. § 16-550(A) from "registration form" to "registration record" significantly expanded the universe of verified voter information that could be used to verify the signature on an early ballot

affidavit. *Second*, reviewing the term "registration record" *in pari materia* with the rest of Title 16 and the purpose of the statute supports the inclusion of all validated signatures maintained in the voter registration database or "register." *Third*, the subsequent statutory enactment of the 2024 Amendment codified the Signature Verification Guide, providing what was the final inarguable indicia of the legislature's intention that "registration record" refers to the entire universe of verified signatures in the statewide voter registration database. *Fourth*, Plaintiffs' own arguments, which attempt to thread a needle to provide legal effect to the 2019 Amendment in an artificially cabined manner, are inconsistent with the law and misstates the effect of the 2024 Amendment. *Fifth*, even accepting Plaintiffs' narrow view, the law does not forbid election officials from consulting additional signatures. This Court should affirm the superior court's decision.

A. The 2019 Amendment to A.R.S. § 16-550(A) Demonstrates the Legislature's Intent to Significantly Expand the Universe of Documents Election Officials Can Use to Validate Early Ballots.

When properly applied to the issue in this case, firmly established principles of statutory construction give effect to the legislature's intent, and require that this Court affirm the superior court's order. "A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Nicaise v. Sundaram*, 245 Ariz. 566, 568, ¶ 11 (2019). "When the language of a statute is clear and unambiguous, a court should not look beyond the language, but rather simply apply it without using other means of construction,

assuming that the legislature has said what it means." *Clear Channel Outdoor, Inc.*, 218 Ariz. at 178, ¶ 6 (cleaned up). When the legislature changes the words of a statute, this Court "must assume that the legislature intended different consequences to flow from the use of different language." *P.F.W., Inc. v. Superior Court*, 139 Ariz. 31, 34 (App. 1984).

In 2019, the legislature changed the relevant portion of A.R.S. § 16-550(A) from the previous version as follows:

Sec. 2. Section 16-550, Arizona Revised Statutes, is amended to read:

16-550. Receipt of voter's ballot; cure period

A. ~~Upon~~ ON receipt of the envelope containing the early ballot and the ~~completed~~ BALLOT affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on ~~his~~ THE ELECTOR'S registration ~~form~~ RECORD.

2019 Ariz. Laws, Ch. 39, § 2 (54th Leg., 1st Reg. Sess.). Changing the pertinent statutory language in A.R.S. § 16-550(A) from "registration form" to "registration record" indicates a significant expansion of records that the legislature intended to be used in the early ballot signature verification process. The legislature removed the word "form" and replaced it with the word "record," but Plaintiffs' argument, that a "registration record is a document used to qualify an individual to vote in Arizona elections," (OB at 8), would render this change meaningless. If Plaintiffs' interpretation is correct, then no statutory change would have been necessary, because Arizona law cabined signature exemplars to the "registration form" before the 2019 Amendment. Plaintiffs' interpretation is unreasonable, because "[t]here is a strong presumption that legislatures

do not create statutes containing provisions which are redundant, void, inert and trivial." *State v. Kozlowski*, 143 Ariz. 137, 138 (App. 1984).

Because the statutory amendment indicates the legislature intended changes to follow from that amendment, the removal of the term "form," in favor of the term "record," is significant. A "registration form" in Arizona law is a form that requests twenty-four specific pieces of information from the registrant. A.R.S. § 16-152(A)(1)-(24). If "registration record" is defined, as Plaintiffs wish, to be "a document used to qualify an individual to vote in Arizona elections," (OB at 8), then no change to the statute was necessary. (*See also id.* at 11) ("Confining the verification of early ballot affidavit signatures to actual 'registration records'—*i.e.*, documents used to register to vote—also makes eminent practical sense.") If, as Plaintiffs have also argued (despite the contradiction) that "registration record" includes "not merely the voter's initial registration form," but "mechanisms for updating a voter's registration," (OB at 10), this would have codified a process that election officials cannot administer with the current database. (ROA 53 at 2, ¶ 9) (explaining that there is no way to pull only the categories of documents Plaintiffs believe constitute "registration records" to use for signature verification from the state voter database).

It would defy the canons of statutory construction to decide that the legislature intended its 2019 Amendment to be futile or to require a radical shift in how election officials maintain or access voter registration records to carry out their vital duty to

conduct signature verification. (*Id.*) (explaining that the statewide databases does not have an "efficient method . . . to segregate signatures from a voter's registration forms and other documents maintained in the database."). This Court may rely on "commonly used definitions of statutory terms only when the legislature has not ascribed a particular meaning to such terms." *Riepe v. Riepe*, 208 Ariz. 90, 93, ¶ 9 (App. 2004). "Record" is a defined term under Arizona law, and broadly includes all the information received and maintained by government officials in the performance of their official duties. A.R.S. § 41-151(2). The most solemn official duty of election officials is to verify that valid votes—and only valid votes—are tabulated. Therefore, the signatures used in the verification process are "records" under Arizona law, because they are part of the information "received by any governmental agency . . . in connection with the transaction of public business" which provides "evidence of the . . . functions . . . decisions, procedures, operations or other activities of the government." *Id.* Because "record" is an expansive term, "registration record" likewise encompasses a wide range of documents containing verified voter signatures.

Moreover, Plaintiffs' only allegation of harm—that improperly-verified signatures may become part of the record and lead to their votes being negated by hypothetical improperly verified votes—indicates the importance of keeping these signatures as part of a voter's record. *If* fraud exists, then the signatures on the early ballot affidavit would be important evidence to prove it. The signatures on the early

ballot affidavit that are verified against the signatures in the voter's registration record are therefore vital pieces of the information "received by any governmental agency" that provides "evidence of the . . . operations or other activities of the government." *Id.* Maintaining these signatures provides evidence that county election officials are properly carrying out their duties, and also ensures that the early voting system is sufficiently safeguarded. The act of adding and maintaining these documents with verified signatures in the voter's record is consistent with the plain language of the 2019 Amendment.

B. The Rest of Title 16 Provides Further Textual Support for the Reading of "Registration Record" that Includes Verified Signatures from Voters.

Plaintiffs urge this Court to reverse the superior court's final decision, and instead adopt a cramped reading of "registration record," which is not only unsupported by the text, but also conflicts with the way the phrase is used in other sections of Title 16 and other provisions of Arizona law. When construing a specific statutory provision, the Court "look[s] to the statute as a whole and we may also consider statutes that are *in pari materia*—of the same subject or general purpose—for guidance and to give effect to all of the provisions involved." *In re Drummond*, 543 P.3d 1022, 1025, ¶ 5 (Ariz. 2024). "A court also should interpret two sections of the same statute consistently, especially when they use identical language. *Wyatt v. Wehmueller*, 167 Ariz. 281, 284 (1991).

When A.R.S. § 16-550(A) is read *in pari materia* with other provisions of Title 16, the term "registration record" includes all validated signatures on official election documents that are maintained in the voter registration database. The clearest example of other statutes using the same terminology is A.R.S. § 16-168, which protects certain "registration records" from public disclosure. A.R.S. § 16-168(F). The legislature requires election officials to maintain eleven categories of "registration information" and make them available to the public upon request. Among these eleven categories of information are "any other information regarding registered voters that the county recorder or city or town clerk maintains electronically and that is public information," and "all data relating to early voters, including ballot requests and ballot returns." A.R.S. § 16-168(C)(10)-(11). In A.R.S. § 16-168(F), the legislature uses the same "registration record" language as A.R.S. § 16-550(A). And A.R.S. § 16-168 uses the term registration record to explain what information should not be disclosed to the public from the records and information maintained in the voter registration database pursuant to A.R.S. § 16-168(C).

Plaintiffs' attempt to construe "registration record" in A.R.S. §16-550(A) as a subset of the universe of records in A.R.S. § 16-168 contradicts the requirement to consistently construe the same terms in different statutory sections. *See Pima Cty. by City of Tucson v. Maya Const. Co.*, 158 Ariz. 151, 155 (1988) ("[I]f it is reasonably practical, a statute should be explained in conjunction with other statutes to the end that they may

be harmonious and consistent; and, if statutes relate to the same subject and are thus *in pari materia*, they should be construed together with other related statutes as though they constituted one law.") (citation omitted). The legislature prescribed the minimum records that must be maintained in the voter registration database, and which parts of each voter's registration information must be protected from public disclosure, as part of the voter's "registration record." Using a definition of the term "registration record" in A.R.S. § 16-550 that is different, and significantly more limited, than the definition of that same language in A.R.S. § 16-168 contradicts the Supreme Court's requirement to "construe the same words with only one meaning if possible." *Ariz. ex rel. Brnovich v. Maricopa Cty. Comm. Coll. Dist. Bd.*, 243 Ariz. 539, 542 (2018) (interpreting an undefined term by comparing its use in two sections in Title 8).

Other statutes also use the term "registration record," and the context there indicates that "registration record" is much broader than documents that may be used to register to vote or to update a voter's registration information. For example, the statute providing certain protections through the Address Confidentiality Program administered by the Secretary also refers to the voter's "registration record." A.R.S. § 41-166(D). The registration record includes not only the voter's address, but also other information, like the voter's precinct. A.R.S. § 16-168(C); A.R.S. § 16-163(A). The precinct is not provided on the voter's registration form or on any of the other documents that Plaintiffs have claimed are the few documents which are part of the

registration record. After all, many voters generally do not know in which precinct they live, and precinct lines are subject to change. A similar program in Title 16 protects from public disclosure voter's "registration record" if the person is in law enforcement, an election official, or in other sensitive positions. A.R.S. § 16-153(A)(1). These additional examples should be read consistently, and therefore the term "registration record" is more expansive than just forms that effectuate or update a voter's registration.

Plaintiffs further argue that the proper way to construe the term "registration record" in A.R.S. § 16-550(A) is to read "registration" to modify "record." If this is the correct construction, Plaintiffs argue "registration record" must mean either "documents used to register to vote," *i.e.* a voter registration "form" or "documents that can, by law, effectuate or amend a voter's 'registration.'" (OB at 11, 13). The linchpin of Plaintiffs' dictionary definition of "registration record," relies on one definition of the word "registration." This construction is flawed because the term "registration" has more than one definition, one of which is particularly pertinent in the context of voter registration and voter records.

The Merriam-Webster dictionary defines "registration" as: "1) the act of registering; 2) an entry in a register." Plaintiffs want this Court to adopt the first definition, but in the context of voter registration, the second definition is more applicable. When "more than one reasonable interpretation exists, we will examine

secondary interpretation methods, including the statute's subject matter, historical background, effects and consequences, as well as its spirit and purpose to aid with interpretation." *In re Drummond*, 543 P.3d at 1025, ¶ 5. Prior to HAVA, voter information was maintained by counties in the county register and broken down, first by location, then alphabetically into precinct registers. A.R.S. § 16-163(A) ("The county recorder, on receipt of a registration in proper form, shall assign the registration record to its proper precinct and alphabetical arrangement in the general county register."). A "register" is defined by the Merriam-Webster dictionary as: "1) a written record containing regular entries of items or details; 2) a book or system of public records." Therefore, interpreting "registration record" to mean a "register" of documents confirmed to be about each voter in a database is appropriate. Pursuant to A.R.S. § 16-168(C)(11), this register includes, *inter alia*, "all data relating to early voters, including ballot requests and ballot returns," which includes the signed early ballot affidavits. Indeed, the legislature refers to Arizona citizens over the age of eighteen who are eligible to vote as "registrants," "electors," and "voters," interchangeably. *Compare* A.R.S. § 16-121(A) ("A person continues to be a qualified elector . . .") *with* A.R.S. § 16-444(A)(5) ("'E-pollbook' means an electronic system in which a voter is checked in . . ."). Accordingly, the applicable definition of "registration" in the election administration context is "an entry in a register," *i.e.* documents related to the voter in the "precinct register" as defined in A.R.S. § 16-168(C).

In this context, the Secretary's construction of the term "registration record" is eminently reasonable, and gives effect to each word in the statute. The process of verifying signatures on absentee ballots in Arizona began in 1925 with the direction to election officials to compare "the signature of the voter on the application [for an absentee ballot] with the signature on the voter's affidavit of registration in the precinct register" to determine whether the signatures "correspond." 1925 Ariz. Sess. Laws, ch. 75, § 11 (7th Leg., 1st Reg. Sess.). The legislature's consistent direction over the last century has required election officials to compare signatures to the records within the "register." The evolution in the statute from the term "form" to "record" is the critical language. The word "registration" in A.R.S. § 16-550(A) refers to the registers in which voter records were historically maintained. Accordingly, the phrase "registration record" includes all the records in the register, which the legislature has directed shall include, among other things, "all data relating to early voters, including ballot requests and ballot returns." A.R.S. § 16-168(C)(11).

The other changes the legislature made to A.R.S. § 16-550(A) in the 2019 Amendment indicate a desire to maximize the early ballots that can be counted, not a desire to throw out more early ballots. Notably, the 2019 Amendment included—for the first time—the specific duty for county election officials to allow voters to cure early ballot affidavits for up to five days after the election. A.R.S. § 16-550(A). The effect of the cure period is to allow voters to rehabilitate and have votes tabulated that would

not have been counted before this amendment. That is consistent with the basic concept that signature matching should not be limited to the signature on the voter registration form. Other amendments passed in 2019 further demonstrate the legislature's intent that the Secretary has the authority to determine what is included in the statewide voter registration database. 2019 Ariz. Sess. Laws, ch. 267, § 1 (54th Leg., 1st Reg. Sess.) (adding A.R.S. § 16-168.01 requiring counties to pay for the secretary to "develop and administer the statewide database of voter registration information").

The terms of A.R.S. § 16-550(A) must be read consistently with the purpose of the law, the 2019 Amendment, the context of voter registration, and the meaning of the same words in other parts of Arizona law. The official record of voter information has historically been stored in registers, and the official record is now the statewide voter registration database, which must include the information the legislature requires to be maintained in the precinct register. A.R.S. § 16-168(C). Moreover, "registration record" is used in other statutes in a context that requires a broader interpretation than the voter registration form and the occasional provisional ballot. Finally, the remainder of the 2019 Amendment indicates the legislature's intent to expand the universe of comparator signatures to maximize the number of early ballots that are validated, not reduce the number of valid early ballots that are counted.

C. Subsequent Statutory Amendments Further Support Including Verified Exemplars from the Records Collected by Election Officials.

Plaintiffs also attempt to obfuscate, rather than give effect to, the legislature's further amendment of A.R.S. § 16-550(A) and the creation of A.R.S. § 16-550.01 in 2024. Plaintiffs argue that the 2024 Amendment does not support the signature verification process used by county election officials because the legislature was relying on the superior court's order on the motion to dismiss. (OB 14) (claiming that "the Legislature impliedly endorsed what the Superior Court itself had previously found was the EPM's defiance of the statutory text."). This is incorrect.

In 2020, after the 2019 Amendment, the Secretary promulgated the Signature Verification Guide, to ensure consistency in signature verification processes across the state. The Signature Verification Guide's goal is help election officials determine "whether the ballot affidavit signature and the voter's signature in the voter registration database were authored by the same person. (ROA 65 at 1). Since no person signs the same way twice, the Signature Verification Guide provides a two-step process to verify the signature on the early ballot affidavit comes from the voter. First, the Signature Verification Guide recommends determining whether "the broad characteristics of the signature on the ballot affidavit are clearly consistent with the broad characteristics of the voter's signature in the voter registration database." (*Id.* at 2). If the broad characterizations are not sufficiently matched to allow a reviewer to verify the signature, the reviewer should look at the local characteristics, such as internal spacing and the

presence of pen lifts. (*Id.*) "Looking at more than one voter registration database signature, if available, may help with your analysis because people develop certain signature habits over time." (*Id.* at 3). The Signature Verification Guide also includes examples of the broad and local characteristics reviewers should use, along with examples of genuine signatures and questioned signatures. (*Id.* at 4-9).

The 2024 Amendment codified the categories of information that reviewers must use when conducting signature verification, and expressly codified the Signature Verification Guide in A.R.S. § 16-550.01. Like the Signature Verification Guide, Arizona law requires election officials to "examine all the broad characteristics of the signature [to determine if they] . . . are clearly consistent with the broad characteristics in the voter's registration record." *Id.* at (B). The statute further requires election officials to "examine the local characteristics of the signature [to determine if they] . . . are clearly consistent with the local characteristics of the voter's signature in the voter's registration record." *Id.* at (C). The 2024 Amendment also states that the "legislature intends that the illustrations of broad and local characteristics in the 2020 secretary of state's signature verification guide be used as reference," and that the "legislature intends by this section to codify procedures based on the 2020 secretary of state signature verification guide . . . ." *Id.* at (F), (H).

The adoption of A.R.S. § 16-550.01 removed any ambiguity that the legislature intended to compare incoming early ballot affidavit signatures with all verified

signatures in the registration database. The statute codified the process of first comparing the broad characteristics of the early ballot affidavit signature with signatures in the registration record before moving on to local characteristics to determine if it was signed by the registered voter. A.R.S. § 16-550.01. The legislature went a step further than merely adopting the general process from the Signature Verification Guide, by requiring election officials to use the Signature Verification Guide "as [a] reference" when conducting signature verification. *Id.* at (F). And there can be no argument that the legislature intended to adopt the Signature Verification Guide because the statute says the "legislature intend by this section to codify procedures based on the 2020 secretary of state signature verification guide." *Id.* at (H). The Signature Verification Guide instructs election officials to compare signatures on an early ballot with the voter's signature "in the voter registration database." *See generally* Signature Verification Guide. In sum, by codifying the Signature Verification Guide, the legislature equates the statewide voter registration database with the registration record. Furthermore, because A.R.S. § 16-168(C)(11) requires the registration database to maintain all early ballot returns, adopting the Signature Verification Guide through the 2024 Amendment clarifies the understanding that the "registration record" is synonymous with "voter registration information" in the statewide database.

Plaintiffs' argument to the contrary is unavailing. There is no indication that the legislature considered the language in the superior court's preliminary decision on the

motion to dismiss, and this Court "do[es] not presume legislative intent when a statute is amended in ways unrelated to the judicial construction at issue when a statute is amended in ways unrelated to the judicial construction at issue absent some affirmative indication the legislature considered and approved our construction." *Twin City Fire Ins. Co. v. Leija*, 244 Ariz. 493, 502, ¶¶ 49-50 (2018). There is no indication that the legislature knew of, much less relied on, the superior court's decision at the motion to dismiss stage, but the legislature undeniably considered and approved of the Secretary's interpretation regarding which exemplars should be used during signature verification, because the legislature codified the Signature Verification Guide.

This is the opposite of construing legislative silence; it is construing the law based on the precept that the legislature "says what it means" and that if the legislature intended for an alternate interpretation, "it would have said so." *Doherty v. Leon*, 249 Ariz. 515, 519–20, ¶ 12 (App. 2020). In this case, the superior court did not "presume . . . that the legislature is aware of all the regulations adopted by the numerous state regulatory agencies and tacitly approves them." (OB at 14). The legislature demonstrably had active knowledge of the way signature verification was being conducted and purposefully codified that process, adding an entire new statutory provision to Arizona law. A.R.S. § 16-550.01.

The legislature and the Signature Verification Guide consistently equate "registration record" with "the voter registration database," which supports including

validated signatures from voter documents like early ballot affidavits. The statute requires the reviewer to compare the characteristics "of the voter's signature in the voter's registration record" before determining that the ballot is valid and may be counted. A.R.S. § 16-550.01(B)-(D). "The legislature intends by this section to codify procedures based on the 2020 secretary of state signature verification guide . . . " *Id.* at (H). And the Signature Verification Guide repeatedly directs signature reviewers to compare the "characteristics of the voter's signature in the voter registration database." If those characteristics are consistent the reviewer is instructed to "accept the signature." *See generally* Signature Verification Guide. The 2024 Amendment is fatal to Plaintiffs' claims, and this Court should affirm.

D. Plaintiffs' Artificially Cabined Reading of "Registration Record" Incorrectly Ignores the Plain Text, the Body of Title 16, and the Subsequent Codification of the Signature Verification Guide.

In this appeal Plaintiffs must fight against not only the statutory text of A.R.S. § 16-550, but also the readily-discernable purpose of the 2019 Amendment, and the subsequent creation of A.R.S. § 16-550.01 that expressly adopted and codified the Signature Verification Guide, which repeatedly directs reviewers to compare signatures on early ballot affidavits to exemplars in the "voter registration database." (ROA 65 at 1). But Plaintiffs' argument proves too much. The legislature did not instruct reviewers to limit the comparison to the elector's signature on the registration form, "documents used to register to vote," or "mechanisms for updating a voter's registration." (OB at 10-11). Instead, the legislature codified the Signature Verification Guide that expressly

directs elections officials to compare the early ballot affidavit signature with known signatures in the statewide "voter registration database." (ROA 65 at 1 ("'Signature verification' is the process of comparing the signature on a voter's affidavit envelope or ballot affidavit with the voter's signature in the voter registration database.")). The legislative directive, which equates registration record with Arizona's statewide voter registration database, is fatal to Plaintiffs' claims. (ROA 65 at 1-6, 8, 10-11, 13-15). This Court should affirm.

1. Plaintiffs Do Not Address the 2019 Amendments in the Context of Arizona Law.

Plaintiffs' argument focuses exclusively on a single word in an entire statutory framework, which has consistently progressed towards ensuring more early ballots are cast and counted. That includes the 2019 Amendment, which expanded the universe of signature exemplars county officials could use to verify early ballot affidavits by changing "form" to "record," and required county officials to provide a five-day opportunity to "cure" signatures that do not correspond with the exemplars in the registration record. A.R.S. § 16-550(A). Plaintiffs, however, do not grapple with that change. Instead, Plaintiffs focus on the word that the 2019 Amendment did not change, "registration."

The myopic focus on the unchanged statutory language, however, ignores one of the key requirements of interpreting an amended statute, which is that change in the statutory language is presumed to change the statute's effect. *Kozlowski*, 143 Ariz. at

138 ("[I]t is presumed when a legislature alters the language of a statute that it intended to create a change in the existing law."). Focusing on the unchanged word avoids giving effect to the meaning of the new term and the effects that flow from the 2019 Amendments, in direct contravention of principles of statutory construction.

Plaintiffs' interpretation is also self-defeating. Plaintiffs identify three types of documents other than a voter registration form that they believe county election officials can now use to validate signatures on early ballot affidavits. These documents are: 1) responses to 90-day notices; 2) early ballot requests; and 3) provisional ballots. (OB at 10). While these documents *may* update a voter's information, they cannot be used to register to vote, and the first two may only be used by people who are already registered to vote. (ROA 53 at ¶¶ 21-23). Because Plaintiffs argue that "registration record" is limited to documents that enable a person to register to vote, the fact that none of these additional documents can be used to register to vote, and two are not used by anyone not already registered, Plaintiffs' effort to restrict which documents can be used as signature comparators is self-defeating. The 90-day notices do not include sufficient information to register to vote, are not sent to people who are not already registered to vote, and specifically instruct voters not to return them if the voter has no information to update. (ROA 53 at ¶¶ 23-27). Likewise, early ballot request forms and provisional ballots do not require sufficient information to allow a person to use it to

register to vote. (ROA 53 at ¶¶ 21-22, 29). Thus, none of these additional documents fits Plaintiffs' definition of the term "registration record."

Further, practically speaking, there is no way for election officials to retrieve and use only those forms to validate early ballot affidavits. (ROA 53 at ¶ 9). It is unreasonable to believe that the legislature would amend a law pertaining to signature verification to provide for the use of forms that the counties have no ability to pull and use for the process of signature verification. Particularly when the legislature has long-required election officials to maintain "any other information regarding registered voters" and "[a]ll data relating to early voters, including ballot requests and ballot returns. A.R.S. § 16-168(C)(10)-(11).

2. The 2024 Amendments Are an Affirmative Adoption of the Signature Verification Process in the EPM.

Plaintiffs also argue that the superior court's analysis of the 2024 Amendment was improper. Plaintiffs' first argument against the superior court's summary judgment order is that the court misstated the law by "construing legislative silence as implicit approbation." (OB at 14). Plaintiffs are wrong.

Plaintiffs go so far as to claim that "*nothing* in H.B. 2785's text or the underlying legislative record evinces any awareness of—let alone support for—the EPM's" construction of the term registration record. (OB at 15) (emphasis added). This claim is incorrect. The 2019 EPM's signature verification instruction states:

> Upon receipt of the return envelope with an early ballot and completed affidavit, a County Recorder or other officer in charge of elections shall

> compare the signature on the affidavit with the voter's signature in the voter's registration record. In addition to the voter registration form, the County Recorder should also consult additional known signatures from other official election documents in the voter's registration record, such as signature rosters or early ballot/PEVL [Permanent Early Voter List] request forms, in determining whether the signature on the early ballot affidavit was made by the same person who is registered to vote.

2019 EPM at 68. This language does not restrict election officials to signatures from one or two (or even a select handful) of records. The legislature did not change or redefine the language in A.R.S. § 16-550(A). Instead, the legislature enacted A.R.S. § 16-550.01 which "evinces . . . support for" the EPM's direction to election officials to compare the voter's signature to "additional known signatures from other official election documents in the voter's registration record," because it codified the Signature Verification Guide's repeated direction to use all signatures in the voter registration database for comparison.

Plaintiffs try to limit the effect and purpose of the 2024 Amendment. But this Court does not "read into a statute something which is not within the manifest intent of the legislature as indicated by the statute itself."' *State Farm Mut. Auto. Ins. Co. v. White*, 231 Ariz. 337, 341, ¶ 14 (App. 2013). In this case, the legislature has expressly codified the Signature Verification Guide, which allows election officials to use every verified signature in the register as comparators for early ballot affidavits. This Court, which presumes the legislature says what it means, must rely on that statutory language. This Court should affirm the superior court's decision.

E. Even Under the Plaintiffs' Constrained Interpretation of "Registration Record," the Secretary's Guidance Did Not Violate A.R.S. § 16-550(A).

The crux of Plaintiffs' argument is that the EPM's guidance that "the County Recorder should also consult additional known signatures from other official election documents in the voter's registration record, such as signature rosters, prior early ballot affidavits, and early ballot/AEVL request forms, in determining whether the signature on the early ballot affidavit was made by the same person who is registered to vote" violates A.R.S. § 16-550(A) because signature rosters and prior early ballot affidavits are not "registration records." (OB at 1, 10). But even under Plaintiffs' artificially constrained interpretation of what constitutes a voter's "registration record," this guidance does not "directly conflict[] with the express and mandatory procedures" of A.R.S. § 16-550(A). *Ariz. All. for Retired Ams., Inc. v. Crosby*, 256 Ariz. 297, 302-03, ¶ 18 (App. 2023).

A.R.S. § 16-550(A) instructs election officials to "compare the signature on the envelope with the signature of the elector on the elector's registration record as prescribed by section 16-550.01" and to take certain actions depending on whether the signature is "inconsistent with the elector's signature on the elector's registration record" or "the signatures correspond[.]" A.R.S. § 16-550.01 directs the reviewing official to "examine all the broad characteristics of the signature"; if they are "clearly consistent," the signature may be accepted. A.R.S. § 16-550.01(B). Otherwise, if the

evaluator "finds discrepancies," they must "examine the local characteristics" to determine whether they are consistent. A.R.S. § 16-550.01(C).

Although the ultimate determination must be whether the signature on the envelope is consistent with the signature in the registration record, neither A.R.S. § 16-550 nor A.R.S. § 16-550.01 prohibits a reviewing official from examining additional known signatures to assist in this determination. For example, "local characteristics" include "[c]urves, loops, and cross points." A.R.S. § 16-550.01(G)(3)(c). A reviewer attempting to determine whether the cross points of an envelope signature are consistent with the cross points in the record signature reasonably could consult other known signatures to determine what range of variation is "consistent" with the record signature. If the voter always crosses a "t" at exactly the same angle, then a minor deviation in that angle on the envelope signature may be reason to determine that it is not consistent with the record signature. But if additional known signatures show that the voter slightly varies that angle, then the reviewer could reasonably conclude that the envelope signature is consistent with the record signature notwithstanding the same minor deviation.

The Secretary has broad discretion under A.R.S. § 16-452(A) to "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of . . . counting . . . ballots." The challenged EPM guidance does exactly that, consistent with A.R.S. § 16-

550: it directs election officials to compare the signature on the envelope with the voter registration record and to consult "additional known signatures" to determine whether the person who signed the envelope is "the same person who is registered to vote." 2019 EPM at 68; 2023 EPM at 83. The EPM does not direct election officials to ignore the registration record or state that an election official can approve a ballot with a signature that is inconsistent with the signature on the registration record; it simply reminds election officials that additional known exemplars are useful in making the required determination. Because the EPM does not "directly conflict[]" with A.R.S. § 16-550, even under Plaintiffs' own interpretation, Plaintiffs' claims fail.

II. This Court Should Also Affirm Because Plaintiffs Do Not Have Standing to Challenge the EPM Rules Regarding Signature Verification.

Arizona courts have, "as a matter of sound judicial policy, required persons seeking redress in the courts first to establish standing." *Bennett v. Napolitano*, 206 Ariz. 520, 524, ¶ 16 (2003). While the Arizona Constitution does not have a case or controversy requirement like its federal counterpart, Arizona courts require plaintiffs to establish standing, because the Arizona Constitution includes an express, rather than implied, separation of powers. *Id.* at 524-25, ¶¶ 16, 19. And the courts of this state appropriately rely on both Arizona and federal jurisprudence on questions of standing. *Id.* at ¶¶ 17-20. Under those authorities, Plaintiffs did not establish the necessary "palpable" or "personal" injury caused by the Secretary's interpretation of "registration record" in the EPM. *Id.* at 524, ¶ 16. Indeed, in their Opening Brief, Plaintiffs do not

even attempt to explain how they are at all affected by the Secretary's interpretation, much less harmed.

In the superior court, Intervenor-Defendants moved to dismiss based on standing, but the superior court did not address the standing arguments either when ruling on the motions to dismiss or when granting summary judgment. (*See* ROA 24, at 9-11; ROA 25, at 6-7; *see generally* ROA 43, ROA 69). This Court, however, can affirm the trial court "if it is correct for any reason apparent in the record." *Forszt v. Rodriguez*, 212 Ariz. 263, 265, ¶ 9 (App. 2006). And the record in this case reveals that Plaintiffs' allegations of injury—whether to the individual voter Plaintiff or the organizational Plaintiffs—were insufficient as a matter of law to establish standing and are thus an additional, independent reason to affirm the trial court.

A. Vote Dilution Does Not Constitute an Injury Supporting Standing.

This case includes a single registered-voter Plaintiff who claims standing in his own right. The purported harm is an allegation that the broader reading of registration record "increases, in a non-linear fashion, the risk of erroneous signature verifications." (ROA 16 ¶ 30). Plaintiffs also alleged in the superior court that using exemplars other than voter registration forms "erodes the utility of signature matching as an identity verification mechanism," and "degrades the integrity of the signature verification protocol specified by the legislature." (*Id.* ¶¶ 30, 32, 34). While Plaintiffs conspicuously avoided the term "vote dilution," the core of the allegation is that the Secretary's reading

of A.R.S. § 16-550(A) would result in a "continuous dilution of the pool of signature specimens [that] increases the probability of a false positive—*i.e.*, an erroneous determination that an early ballot affidavit signature is valid . . . even though it is dissimilar to the signature in the voter's actual registration." (ROA 16 ¶ 34).

Assuming *arguendo* that Plaintiffs' allegations are true, they are generalized claims of harm "shared alike by all or a large class of citizens," which are "generally . . . not sufficient to confer standing." *Arcadia Osborn Neighborhood v. Clear Channel Outdoor, LLC*, 256 Ariz. 88, 93, ¶ 11 (App. 2023) (quoting *Sears v. Hull*, 192 Ariz. 65, 69, ¶ 16 (1998)). Such "generalized grievances . . . are more appropriately directed to the legislative and executive branches of the state government" than to this Court. *Sears*, 192 Ariz. at 69, ¶ 16 n.6 (quotation omitted). This is true under both Arizona and federal law. *See, e.g.*, *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) ("[A] citizen does not have standing to challenge a government regulation simply because the plaintiff believes that the government is acting illegally. A citizen may not sue based only on an asserted right to have the Government act in accordance with law.") (cleaned up); *Hollingsworth v. Perry*, 570 U.S. 693, 700, 704 (2013) (courts should "not engage in policymaking properly left to elected representatives" and "[t]he presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself" for standing (internal quotations omitted)); *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (holding generic claim that "the law . . . has not been followed" in conducting elections

is "precisely the kind of undifferentiated, generalized grievance about the conduct of government" that cannot confer standing).

Plaintiffs' allegations below revealed that their theory of harm—that "legitimate" votes will be diluted by erroneously verified "illegitimate" votes—is mere speculation. (*See* ROA 16 ¶¶ 31, 34 (claiming that "there is always a chance" that a reviewer mistakenly approves a signature that does not come from the registrant and that using more signature comparators is a "continuous dilution of the pool of signature specimens [that] increases the probability of a false positive" when comparing some *future* signature to the expanded registration record)).[1] Such speculation about possible future harm is insufficient to create a cognizable injury. *See, e.g.*, *Bennett v. Brownlow*, 211 Ariz. 193, 196, ¶ 16 (2005) ("[T]he standing doctrine . . . ensures that courts refrain from issuing advisory opinions, that cases be ripe for decision."); *see also Winkle v. City of Tucson*, 190 Ariz. 413, 415 (1997) ("The ripeness doctrine prevents a court from rendering a premature judgment or opinion on a situation that may never occur."); *Velasco v. Mallory*, 5 Ariz. App. 406, 410-11 (1967) ("We will not render advisory

[1] Plaintiffs' argument on this point defies logic and directly contravenes the evidence in the trial record. The accuracy of signature verification is *improved* by having more, clearer, and more recent signatures to use as comparators. (*See* ROA 63 ¶¶ 20-21; ROA 65 at 3, 10-12); *see also* Fifield, Jen, and Bassert, Hannah, "Signed, Sealed, Rejected," Votebeat (Oct. 16, 2024) (finding that recent registrants with fewer signature comparators in their registration record and those whose only signature was captured on an electronic pad were overrepresented among those early ballots that were not signature verified).

opinions anticipative of troubles which do not exist; may never exist; and the precise form of which, should they ever arise, we cannot predict."). And Plaintiffs never provided anything more than the allegations of their First Amended Complaint to show the requisite injury.

Even if there were some basis to believe that the Secretary's interpretation of "registration record" would increase the risk of ineligible votes being approved for tabulation—and there is not—that is not a cognizable injury. "The crux of a vote dilution claim is inequality of voting power—not diminishment of voting power *per se*." *Election Integrity Project Ca. v. Weber*, 113 F.4th 1072, 1087 (9th Cir. 2024). "Vote dilution in the legal sense occurs only when disproportionate weight is given to some votes over others within the same electoral unit." *Id.* (citing *Short v. Brown*, 893 F.3d 671, 678 (9th Cir. 2018) (concluding that vote dilution theory failed because "[a]ssuming that some invalid [vote by mail] ballots have been mistakenly counted . . . any diminishment in voting power that resulted was distributed across all votes equally . . . because any ballot—whether valid or invalid—will always dilute the electoral power of all other votes in the electoral unit equally"); *see also Republican Nat'l Comm. v. Aguilar*, No. CV-24-00518-CDS-MDC, 2024 WL 4529358, at *3-4 (D. Nev. Oct 18, 2024) (concluding that vote dilution claim arising from allegedly ineligible voters on registration rolls was both too generalized and too speculative to establish standing); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711 (D. Ariz. 2020) (vote dilution "is a very specific claim that involves

votes being weighed differently and cannot be used generally to allege voter fraud"); *see also* *Wood v. Raffensperger*, No. 1:20-cv-5155-TCB, 2020 WL 7706833, at *3 (N.D. Ga. Dec. 28, 2020) ("Courts have consistently found that a plaintiff lacks standing where he claims that his vote will be diluted by unlawful or invalid ballots.") (collecting cases).

The individual voter Plaintiff cannot identify any concrete harm that befalls him specifically as a result of Arizona's early ballot signature verification procedures, and thus he lacks standing to assert this claim.

B. The Organizational Plaintiffs Lack an Independent Basis for Standing.

In addition to the voter-Plaintiff's lack of particularized injury to support standing, the remaining Plaintiffs—the Republican Party of Arizona and two organizations that profess an interest in election integrity, including a Virginia-based nonprofit social welfare organization—also failed to establish an injury sufficient to confer standing. Plaintiffs did not allege any facts establishing that their organizational or membership interests have been impaired or that they will suffer any competitive injury. They merely claimed to have a broad interest in fair elections and election integrity. (*See* ROA 16 ¶¶ 8-10) (asserting missions to "advance a pro-growth, limited government agenda in Arizona that includes enhancing and safeguarding election security," "protect the rule of law in the qualifications for, process and administration of, and tabulation of voting in the United States," and "protect[] the procedural integrity of Arizona elections"). This cannot establish a justiciable controversy under Arizona

law. *See* *Land Dept. v. O'Toole*, 154 Ariz. 43, 47 (App. 1987) ("For a justiciable controversy to exist, a complaint must assert a legal relationship, status or right in which the party has a definite interest and an assertion of the denial of it by the other party.").

Plaintiffs tried to manufacture an injury simply out of their disagreement with the EPM. But if Plaintiffs could claim an injury solely because they disagreed with an agency's interpretation of a law, then standing doctrine would be a dead letter; any party in the state could create standing simply by calling a given act illegal and thus offensive to their purported interest in protecting the integrity of the law. *See* *Hippocratic Med.*, 602 U.S. at 381, 394 (holding plaintiffs may not "sue merely because their legal objection is accompanied by a strong moral, ideological, or policy objection to a government action" and "may not establish standing simply based on the 'intensity of the litigant's interest' or because of strong opposition to the government's conduct" (cleaned up)); *cf.* *Sears*, 192 Ariz. at 72, ¶ 29 (declining to waive standing requirements when plaintiffs' claim boiled down to a disagreement with the governor's interpretation of the law).

For similar reasons, Plaintiffs failed to demonstrate standing to obtain declaratory relief. *See* *Dail v. City of Phoenix*, 128 Ariz. 199, 201 (App. 1980) (refusing to interpret Declaratory Judgment Act "to create standing where standing did not otherwise exist"). A plaintiff seeking a declaratory judgment must show that its "rights, status or other legal relations are affected by" the challenged law. *Ariz. Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 224, ¶ 16 (2022) (quoting A.R.S. § 12-1832). And the plaintiff

must show "that there [is] an actual controversy ripe for adjudication," *Bd. of Supervisors v. Woodall*, 120 Ariz. 379, 380 (1978). Plaintiffs did neither in this case. Indeed, they failed to establish that any of their rights are affected by the challenged EPM provision. *See O'Toole*, 154 Ariz. at 47 ("For a justiciable controversy to exist, a complaint must assert a legal relationship, status or right in which the party has a definite interest and an assertion of the denial of it by the other party."). As such, they lacked standing for declaratory relief, which "will be granted only when there is a justiciable issue to be decided." *Klein v. Ronstadt*, 149 Ariz. 123, 124 (App. 1986); *see also, e.g., Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 310 (1972) ("To vest the court with jurisdiction to render a judgment in a declaratory judgment action, the complaint must set forth sufficient facts to establish that there is a justiciable controversy."); *O'Toole*, 154 Ariz. at 47 ("[D]eclaratory relief should be based on an existing state of facts, not those which may or may not arise in the future.").

C. The Relaxed "Beneficial Interest" Formulation of Standing for Mandamus Actions Does Not Apply in this Case.

Finally, Plaintiffs did not satisfy the requirements to show a "beneficial interest" in lieu of the traditional standing requirement of a distinct and palpable injury because that standard applies only to mandamus actions, which this case is not. *See Sears*, 192 Ariz. at 68, ¶ 11 ("We need not decide whether the [plaintiffs] are 'beneficially interested' within the meaning of section 12-2021 because this action is not appropriate for mandamus. . . . [T]he requested relief in a mandamus action must be the

performance of an act and such act must be non-discretionary."). Plaintiffs did not seek the performance of a nondiscretionary duty, but rather an order enjoining enforcement of an EPM provision that they allege is inconsistent with A.R.S. § 16-550. *See Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 465, ¶ 12 (App. 2007) ("[A] mandamus action cannot be used to compel a government employee to perform a function in a particular way if the official is granted any discretion about how to perform it."); *accord* Ariz. R. P. Spec. Act. 1(a) ("[N]othing in these rules shall be construed as enlarging the scope of the relief traditionally granted under the writs of certiorari, mandamus, and prohibition."); Ariz. R. P. Spec. Act. 3, State Bar Comm. Note (mandamus applies "only where [a person] has *no discretion* in connection with the requirement of performance," such as for performing a "ministerial act, having *no discretion* in the manner of its performance[.]" (Emphases added)).

The most glaring example of Plaintiffs' inability to establish that they are entitled to maintain this action is Plaintiff Restoring Integrity and Trust in Elections ("RITE"). RITE is a Virginia nonprofit social welfare organization. It is not an Arizona-based organization, nor is it entitled to vote in Arizona. Plaintiffs have not even attempted to explain how an out-of-state organization is harmed by Arizona's early voting procedures. That Plaintiff has no beneficial interest in the conduct of Arizona elections, let alone the requisite injury to establish standing. *See Ariz. Public Integrity All. v. Fontes*, 250 Ariz. at 62, ¶ 12 (2020) (finding that plaintiffs "as Arizona citizens and voters" had

a beneficial interest in a county recorder's compliance with his nondiscretionary duty under the EPM).

In short, if the Secretary has *any* discretion over implementing and effectuating the signature verification process, then Plaintiffs' claim did not properly sound in mandamus. That was plainly the case here. Under A.R.S. § 16-452(A), "the secretary of state shall prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting." Far from describing a "ministerial act," this statute confers broad discretion on the Secretary to prescribe rules about procedures for early voting. The Secretary has exercised his discretion to include rules in the EPM that describe the signature verification process. Plaintiffs' policy disagreement with the Secretary's interpretation of Arizona law when providing election officials and voters with guidance about which signatures to consult did not form the basis of a proper mandamus proceeding, and therefore the relaxed "beneficial interest" standard could not have saved their lack of standing. *See Sears*, 192 Ariz. at 68-69, ¶¶ 11-14 (concluding that a disagreement with the governor's interpretation of a state statute does not make one a beneficially interested party entitled to mandamus relief).

III. Plaintiffs Are Not Entitled to Fees.

Plaintiffs claim they are entitled to fees under the private attorney general doctrine, alleging that they pursued this action to ensure the integrity of Arizona

elections. (OB 23-24). Assuming that was their intention, it is irrelevant. Plaintiffs' requested relief would have required county elections officials to radically alter their signature verification process, in contravention of the EPM, the Signature Verification Guide, and the process that election officials are able to use. Moreover, after it became indisputable that the legislature intended for all records to be used for signature verification, Plaintiffs still pursued this claim.

The Secretary and county election officials have conducted rigorous and appropriate signature verification since absentee voting began in Arizona a century ago. They have continued this practice to this day. Plaintiffs' allegations that county election officials were improperly validating signatures on early ballot affidavits was wrong when first raised, and was more egregiously incorrect when they filed this appeal after the 2024 Amendment. Plaintiffs' fee request should be denied.

CONCLUSION

This Court should affirm the superior court's decision in the Secretary's favor.

RESPECTFULLY SUBMITTED this 4th day of November, 2024.

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Secretary of State Adrian Fontes

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Arizona Secretary of State's Answering Brief uses type of at least 14 points, is double-spaced, and averages no more than 280 words per page. Pursuant to Ariz. R. Civ. App. P. 14(a)(1), and according to the word count of the word processing system used to prepare this Brief, it contains 10,926 words.

RESPECTFULLY SUBMITTED this 4th day of November, 2024.

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on November 4, 2024, Plaintiff-Appellant/Cross-Appellee Arizona Secretary of State Adrian Fontes filed the foregoing Answering Brief with the Court of Appeals, Division Two, and pursuant to ARCAP 4(f), copies of the same were e-served via AZTurboCourt, and emailed, to the following:

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