Clerk of the Superior Court
*** Electronically Filed ***
08/06/2024 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760 08/05/2024

HONORABLE JENNIFER RYAN-TOUHILL

CLERK OF THE COURT
A. Meza
Deputy

ARIZONA FREE ENTERPRISE CLUB, et al. DANIEL W TILLEMAN

v.

ADRIAN FONTES, et al. KARA MARIE KARLSON

NATHAN T ARROWSMITH
DAVID ANDREW GAONA
ROY HERRERA
TIMOTHY A LASOTA
ALEXIS E DANNEMAN
JOHN S BULLOCK
JUDGE RYAN-TOUHILL

RULING

Before the Court is Plaintiffs' May 28, 2024, *Motion for Preliminary Injunction,* Defendant Attorney General's (AG) June 17, 2024, *Response to Plaintiffs' Motion for Preliminary Injunction*, and Plaintiffs' July 1, 2024, *Reply In Support of Plaintiffs' Preliminary Injunction Motion*. Also before the Court is AG's May 31, 2024, *Motion to Dismiss* (MTD), Arizona Secretary of State's (Secretary) May 31, 2024, *Motion to Dismiss and Joinder in Arizona Attorney General's Motion to Dismiss* (MTD), Plaintiffs' July 1, 2024, *Consolidated Response to Defendants'* MTD *and Reply in Support of Plaintiffs' Preliminary Injunction Motion*, AG's July 19, 2024, *Reply in Support of* [MTD], and Secretary's July 22, 2024, *Reply in Support of* [MTD].

On July 29, 2024, the Court held oral argument on the motions to dismiss and an evidentiary hearing on the request for a preliminary injunction. The Court now rules.

2023 Elections Procedures Manual

The Legislature, acting within its authority, delegated to the Secretary the authority and responsibility to create rules and procedures for voting. A.R.S. § 16-452. Subsection A provides:

> After consultation with each county board of supervisors or other officer in charge of elections, 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 and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots. The secretary of state shall also adopt rules regarding fax transmission of unvoted ballots, ballot requests, voted ballots and other election materials to and from absent uniformed and overseas citizens[.]

The statute further provides "[a] person who violates any rule adopted pursuant to this section is guilty of a class 2 misdemeanor." A.R.S. § 16-452(C). "Once adopted, the EPM has the force of law[.]" *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63 ¶ 16 (2020).

In 2023, the Secretary of State, Adrian Fontes, led a review and modification of the prior EPM to address, in part, "unprecedented scrutiny in an atmosphere of increased threats and intimidation by those with a vested interest in sowing doubt about our elections." September 30, 2023, letter from Secretary Fontes to Governor Hobbs and Attorney General Mayes. After receiving approved from both the Governor Hobbs and AG Mayes, the Secretary issued the Arizona 2023 Elections Procedure Manual (EPM) in December 2023. P. Ex. 4. Lawsuits followed.[1]

The EPM is written to "ensure election practices are consistent and efficient throughout Arizona." *McKenna v. Soto*, 250 Ariz. 469, 473 ¶ 20 (2021). The Secretary has the authority to prescribe rules to achieve this result. *Id*.; *see* A.R.S. § 16-452(A). "The EPM also contains guidance on matters outside these specific topics, including candidate nomination petition procedures[.] These other topics, however, fall outside the mandates of § 16-452 and do not have any other basis in statute." *Id.* "Accordingly, [these directives do] not have the force of law, and simply act[ ] as guidance." *Id*. Contrast this with statutes themselves: "[E]lection statutes are mandatory, not 'advisory,' or else they would not be law at all. If a statute expressly provides that non-compliance invalidates the vote, then the vote is invalid." *Miller v. Picacho Elementary School Dist. No. 33*, 179 Ariz. 178, 180 (1994).

Amended Complaint

Three Plaintiffs exist: Arizona Free Enterprise Club, Philip Townsend, and America First Policy Institute. Two Defendants exist: Adrian Fontes, Arizona Secretary of State, and Kris Mayes, Arizona Attorney General. In their *First Amended Complaint* (FAC), filed April 15, 2024, Plaintiffs alleged Defendants violated the Arizona Constitution and Arizona statutes.

[1] CV2024-001942, CV2024-050553, and CV2024-002760.

Plaintiff Arizona Free Enterprise Club is an Arizonan non-profit organization that "is regularly involved in election activity in Arizona." FAC, p. 9 ¶ 33. The group includes registered voters. Plaintiff Philip Townsend is a registered voter who lives in Yuma County, Arizona. *Id*. at ¶ 38. Plaintiff America First Policy Institute is a non-profit organization that "works at the state level to get legislation enacted or stopped[.]" *Id*. at ¶ 39. This non-profit also trains poll workers, conducts workshops, and operates throughout the United States. Both Defendants are part of the Executive branch of government.

Plaintiffs first allege that the EPM's newest terms on speech restrictions "contains some of the most onerous restrictions on speech" and "is breathtakingly broad in its application." FAC, p. 2 ¶¶ 1-2. Not only should the Court reject the speech restrictions for overbreadth, the Court should also reject the EPM's speech restrictions for conflicting with, and revising, the applicable criminal code associated with voter intimidation. A.R.S. § 16-1013. Plaintiffs contend the EPM changes the *mens rea* of the conduct, adds "harassment" into the law, and removes any correlation between the violative actions (e.g., threatening) and the act of voting. FAC, pp. 2-3 ¶¶ 5-6. Per Plaintiffs, the Secretary has violated the separation of powers by rewriting the law. Moreover, the EPM's speech restriction is unconstitutional because it violates our Constitution.

Plaintiffs also take issue with the EPM's permission for sending out absentee ballots beyond what A.R.S. § 16-544(B) allows (e.g., in the military or otherwise qualifies pursuant to the absentee voting act), for changing a status from "cancellation" to "inactive," and its modifications of signature verification rules.[2] *See* FAC, generally. The scope of the FAC encompasses violations of the Arizona Constitution and statutes, and does not assert any claim under federal law or the United States Constitution. *Id*.

Finally, Plaintiffs allege the EPM illegally exceeds its authority by addressing voter registration, violates an effective date for a new law regarding active voter lists, facilitates mailing temporary ballots outside of Arizona in violation of law, improperly vests with the secretary the power to extend deadlines in case of emergency, changes procedures for inaccurate signatures, and misstates (changes) circulator registrations. FAC, generally.

Defendants have not filed answers to the FAC but instead seek dismissal of the lawsuit.

Preliminary Injunction

Plaintiffs sought a preliminary injunction on May 28, 2024; Defendants oppose. In that request, Plaintiffs request an interim order finding the speech restrictions unconstitutional and unenforceable and an order enjoining the State from sending out one-time out-of-state ballots. Just

[2] Plaintiffs later withdrew this claim.

like the FAC, Plaintiffs argue they have standing to make these requests, they are likely to prevail, irreparable injury will result, and preventing the State from enforcing or implementing their disputed provisions serves both public policy and public interests.

Defendants filed responses in opposition to Plaintiffs' request, arguing Plaintiffs fail to meet the four-factor test for an injunction, Plaintiffs lack standing, the issue(s) is (are) not ripe, no serious questions exist necessitating the Court's involvement, and, ultimately, Plaintiffs have no likelihood of success on the merits. Defendants also argue that Plaintiffs failed to analyze all elements of a preliminary injunction and this omission is fatal to Plaintiffs' claims.

Motions to Dismiss

Arizona law disfavors 12(b)(6) motions to dismiss. Ariz. R. Civ. P.; *Acker v. CSO Chevira,* 188 Ariz. 252 (Ct. App. Div. 1 1997); *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). The narrow question before this Court is whether Plaintiffs' alleged facts are sufficient to allow Plaintiffs to prevail. *Coleman v. City of Mesa*, 230 Ariz. 352, 363 ¶ 46 (2012)(citation omitted). The Court must "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.,* 218 Ariz. 417, 419 ¶ 7 (2008). After consideration of Plaintiff's allegations and assuming the truth therein, this Court finds that Defendants are and are not entitled to dismissal "as a matter of law, on any interpretation of the facts." *Id*.

Jurisdiction, Legal Theories

Separation of Powers

Our constitution allocates power between three branches of government. Article 3 of the Arizona Constitution states:

> The powers of the government of the State of Arizona shall be divided into three separate departments, the Legislative, the Executive, and the Judicial; and, except as provided in this Constitution, such departs shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.

The Legislature has the power to enact "laws to secure the purity of elections and guard against abuses of the elective franchise." Ariz. Const. art. 7, § 12. "The legislature has the exclusive power to declare what the law should be." *State v. Prentiss*, 163 Ariz. 81, 85 (1989).

The judiciary has judicial power but is prohibited from exercising executive or legislative powers. Ariz. Const. arts. 3, 6, § 1. "[L]ong ago we recognized that courts as an institution are not involved in the wisdom of legislation. [The courts'] sole interest is focused on whether the

legislation runs contrary to constitutional guarantees and whether it is arbitrary and unreasonable." *State v. Prentiss*, 163 Ariz. at 85.

The Legislature, at times, grants powers to the Executive branch to implement the necessary rules for voting. A.R.S. § 16-452(A)(e.g., "the secretary of state shall prescribe rules. . . . on the procedure for early voting and voting [and for] ballots."). The delegation is specific and limited to statutory provisions. *See State v. Ariz. Mines Supply Co.,* 107 Ariz. 199, 205-06 (1971). The Executive branch may enact rules to further legislative intent (e.g., maintain uniformity and efficiency for voting procedures) and those rules may restrict behavior inconsistent with the legislative purpose. However, the Executive branch may not go beyond the authority given to it. EPM regulations that exceed the scope of "statutory authorization or contravene[ ] an election statute's purpose does not have the force of law." *Leach v. Hobbs,* 250 Ariz. 572, 576 ¶ 21 (2021).

The Secretary's authority in promulgating rules is not only limited by the Legislature's specific delegation, it is also limited by our Constitution. If the Secretary acts beyond the scope of his authority, he may be enjoined from performance of those acts.

Special Action, Preliminary Injunction

A party may seek judicial remedy via a special action when a party has no "equally plain, speedy, and adequate remedy by appeal[.]" Ariz. R. P. Spec. Act. 1(a). A court has special action jurisdiction when presented with any of three questions:

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

Ariz. R. P. Spec. Act. 3. Mandamus is premised on equitable principles. A court retains discretion to determine what relief, if any, should be granted.

The superior court has jurisdiction over special actions pursuant to Arizona Constitution Article 6, § 18, A.R.S. §§ 12-123 ("[t]he superior court shall have original and concurrent jurisdiction as conferred by the constitution[.]"), 12-1831 (courts "shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."), and 12-2021 (the superior court may issue a writ of mandamus to compel another "when there is not a plain, adequate and speedy remedy at law. . .").

A court applies the traditional criteria used to decide preliminary injunctions to requests for a stay. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410-11 (2006). The

moving party bears the burden of establishing need for a stay. *Clinton v. Jones*, 520 U.S. 681, 708 (1997). The moving party must show (1) a strong likelihood of success on the merits, (2) possible irreparable injury if relief is not granted, (3) a balance of hardship favors the moving party, and (4) public policy favors granting an injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Alternatively, a party may show either (1) probable success on merits and possible irreparable injury or (2) the presence of serious questions and the balance tips sharply in favor of the moving party. *Smith* at 212 Ariz. 407. "The scale is not absolute, but sliding." *Id*. at 410, ¶ 10. In 2021, the Supreme Court considered the conjunctive pairings of success on merits and possible irreparable harm versus presence of serious questions and balance of hardships. *Fann v. State*, 251 Ariz. 425, 432, ¶ 16 (2021). "Although the two tests contain different wording, the difference in wording does not change the analysis because the standard is [sliding]." *City of Flagstaff v. Arizona Department of Administration*, 255 Ariz. 7 ¶ 16 (App. 2023). "[The courts] analyze those factors on a sliding scale and do not inflexibly count them." *Toma v. Fontes,* 2024 WL 3198827 *3, ---P.3d--- (App. 2024)., *ref. Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 ¶¶ 9-10 (2006).

Harm is irreparable when it is "not remediable by damages." *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1992). An underlying claim for declaratory relief cannot result in money damages—if money may remediate the problem, the harm is not irreparable. A.R.S. § 12-1831 *et seq*. "Ordinarily, *ongoing* constitutional violations cannot be remedied through money damages, rendering the harm caused by such a violation irreparable." *Toma v. Fontes,* 2024 WL 3198827 *14, ---P.3d--- (App. 2024)(emphasis in original, citation omitted).

The Court has discretion whether to grant or deny a request for a stay and a preliminary injunction.

Standing

A plaintiff establishes standing by alleging "a distinct and palpable injury." *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998). "[A] generalized harm shared by all or by a large class of people is generally insufficient." *Mills v. Ariz. Bd. Of Technical Registration*, 253 Ariz. 415, 423 ¶ 24 (2022). Plaintiffs are not required to be injured before the Court may address the claims. "The key inquiry in the absence of actual injury is whether an actual controversy exists between the parties." *Mills* 253 Ariz. at 424 ¶ 29. Plaintiffs argue they have standing for all the claims raised in their pleadings.

Defendants argue against standing, challenging multiple arguments raised by Plaintiffs, along with addressing various legal theories supporting dismissal. For the reasons stated in this Ruling, the Court finds Plaintiffs do and do not have standing for various claims.

Ripeness

The ripeness doctrine requires a situation in which a party has suffered an injury or if an actual controversy exists between the parties. *Arizona Downs v. Turf Paradise, Inc.,* 140 Ariz. 438, 444-45 (App. 1984); *Brush & Nib*, 247 Ariz. 269, 280 ¶ 36 (2019)("Ripeness is a prudential doctrine that prevents a court from rendering a premature decision on an issue that may never arise.")(Citation omitted). Prudence and judicial restraint affect the Court's application of the ripeness doctrine. *Fann v. State*, 251 Ariz. 425, 432 ¶ 11 (2021).

Defendants argue the alleged controversy is not ripe and should not be before this Court. Defendants assert Plaintiffs' requests do not identify any specific action Plaintiffs may take that could violate the EPM and, consequently, impact Plaintiffs' rights. Plaintiffs argue to the contrary. Plaintiffs contend they have incurred an injury (e.g., chilling free speech) and the case is ripe. *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280 ¶ 36 (2019). For the reasons stated in this Ruling, the Court is unpersuaded to dismiss any claims based upon the ripeness doctrine.

Laches

The trial court has discretion over the question of laches. *Cyprus Bagdad Copper Corp. v. Arizona Dept. of Revenue*, 196 Ariz. 5, 8 ¶ 9 (App. 1999). "In order to bar a claim on the basis of laches, a court must find more than mere delay in the assertion of the claim. 'The delay must be unreasonable under the circumstances, including the party's knowledge of his or her right, and it must be shown that any change in the circumstances caused by the delay has resulted in prejudice to the other party sufficient to justify denial of relief.'" *Id*., quoting *Mathieu v. Mahoney*, 174 Ariz. 456, 459 (1993). Laches is an affirmative defense. Ariz. R. Civ. P. 8(d)(1)(J).

The doctrine of laches only applies after consideration of the circumstances resulting in an alleged delay. *Day v. Estate of Wiswall*, 93 Ariz. 400 (1963). Fundamental fairness is at the heart of the laches doctrine, and will be considered by the Court. *See, e.g., Harris v. Purcell*, 193 Ariz. 409 (1998). Finally, even if a party delays in filing, that is not an excuse for failure to comply with the law. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 65 ¶ 30 (2020). For the reasons stated in this Ruling, the Court is unpersuaded to dismiss any claims based upon laches.

Analysis

The Court analyzes both MTD and addresses Plaintiffs' request for a preliminary injunction. When considering those requests for relief, the Court also recognizes Plaintiffs' request for a stay, writ of mandamus, and declaratory relief. The Court understands it must analyze each subject (alleged violation) request separately, along with separate consideration of standing for both the MTD and the preliminary injunction.

In argument, Defendants argue the FAC "is almost entirely comprised of legal conclusions and legal arguments and contains few, if any, factual allegations." AG MTD, p. 1 ¶ 4. Defendants provide multiple reasons for dismissal: failure to provide a basis for special action jurisdiction, lack of standing, and insufficient facts. The Court declines to dismiss the case in its entirety upon a purported technicality and instead analyzes arguments presented.

Conduct of Elections and Election Operations

At the outset, the Court declines to waive any standing requirement as urged by Plaintiffs. The Court will analyze standing, and all other relevant considerations, for all claims and especially for what this Court finds to be the paramount issue in the litigation: chapter 9, conduct of elections.

Chapter 9 contains law, rules, guidance, and instructions that encompass topics including setting up voting locations, opening (and closing) locations, assisting voters, and early ballot tabulation, among others. Much of the content in the chapter comports with the law, is helpful, and is necessary. Some of the chapter content goes too far. Plaintiffs are not likely to succeed on a request to eliminate the entire Chapter 9 of EPM but, frankly, this is not Plaintiffs' request. Moreover, the Court recognizes that parts of the rule (i.e., EPM) can operate without an unconstitutional restriction on freedom of speech. *See, e.g., Randolph v. Groscost*, 195 Ariz. 423, 427 ¶ 15 (1999).

Chapter 9's Audience

Defendants claim, both in pleadings and in argument, that the EPM is not directed at anyone but those poll workers, volunteers, or other professionals involved in elections. The Court admitted difficulty in understanding Defendants' arguments, pointing out that the EPM not only tells poll workers what they can and cannot do, it encompasses acts pertaining to members of the public. Upon conclusion of argument and reconsideration of pleadings, the Court is no more persuaded that the EPM only applies to poll workers, etc., versus the public.

Page 175 of the EPM belies Defendants' own argument: section (I)(A)(1) is entitled, "Instructions to Voters and Election Officers." That section focuses upon both polling works and the general public. The next page sets out content that is directed towards the public, including the words "your," "you," and "the election officers." (Citation omitted.)[3] Page 177 informs the public about their rights for a provisional ballot, while page 178 directs a voter on how to mark a ballot. Section II is directed towards poll workers, telling them when to arrive, confirm equipment readiness, etc. Obviously that section does not pertain to the public at large—it includes clarifying

[3] Hereafter the Court declines to continue to say "citation omitted" when referencing chapter 9.

references to "the election board" and "officer in charge." Similarly to these examples, section III regarding order and security specifically mentions voters and "a person."

THE COURT FINDS the EPM applies to all Arizonans, not just those professionally involved with elections or volunteering to assist in election operations.

Problematic Language

The Court is troubled by section III, "preserving order and security at the voting location." From pages 180 to 183, the EPM contains what this Court finds to be speech restrictions in violation of our Arizona Constitution, misstates or modifies our statutes, and fails to identify any distinction between guidance and legal mandates. The Court will highlight those portions of chapter 9 it finds troubling, impermissible or, in context, authorizes impermissible limitations on the public:

- [N]o electioneering may take place outside the 75-foot limit if it is audible from a location inside the door to the voting location.[4]
- Any activity by a person with the intent or effect of [ ] harassing, [ ] (or conspiring with others to do so) inside or outside the 75-foot limit at a voting location is prohibited.
- The officer in charge of elections has a responsibility to train poll workers and establish policies to prevent and promptly remedy any instances of voter intimidation.
- The officer in charge of elections should publicize and/or implement the following guidelines as applicable:
    - The inspector must utilize the marshal to preserve order and remove disruptive persons from the voting location.
    - Openly carrying a firearm outside the 75-foot limit may also constitute unlawful voter intimidation, depending on the context.
- Aggressive behavior, such as raising one's voice or taunting a voter or poll worker.
- Using [ ] insulting [ ] or offensive language to a voter or poll worker.
- Disrupting voting lines.
- Following voters or poll workers coming to or leaving a voting location, including to or from their vehicles.
- Intentionally disseminating false or misleading information at a voting location. . . .
- Directly confronting, questioning, photographing, or videotaping voters or poll workers in a harassing [ ] manner, including when the voter or poll worker is coming to or leaving the polling location.

[4] If a separate statute makes this a law, no party referenced that statute and it is not listed in the EPM.

- Asking voters for "documentation" or other questions that only poll workers should perform.
- Raising repeated frivolous voter challenges to poll workers without any good faith basis, or raising voter challenges based on race, ethnicity, national origin, language, religion or disability.
- Posting signs or communicating messages about penalties for "voter fraud" in a harassing or intimidating manner.

Standing

Plaintiffs "must allege a distinct and palpable injury" to gain standing. *Sears v. Hull*, 192 Ariz. 65, 69, ¶ 16 (1998). "However, we apply a more relaxed standard for standing in mandamus actions." *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 ¶ 11 (2020). A.R.S. § 12-2021 provides standing for a person who is "beneficially interested" in a performance of a legal duty, including "an action to compel a public official to perform an act imposed by law." *Id.* The intent is "to promote the ends of justice." *Id.* (citation omitted).

Vague allegations of harm are insufficient to confer standing. "[A] generalized harm shared by all or by a large class of people is generally insufficient." *Mills v. Ariz. Bd. Of Technical Registration*, 253 Ariz. 415, 423 ¶ 24 (2022). Plaintiffs allege they have standing to challenge the EPM due to a "credible threat of prosecution." FAC, p. 13 ¶ 70 (quotation and citation omitted). "Standing does not turn on the *merits* of a party's arguments. We instead accept a plaintiff's allegations and then analyze whether there is standing." *Toma v. Fontes,* 2024 WL 3198827 *5, ---P.3d--- (App. 2024)(emphasis in original); *Brewer v. Burns*, 222 Ariz. 234, 238 ¶ 14 (2009).

Plaintiffs are not required to be injured before the Court may address the claims. Here, for example, Plaintiffs have alleged they fear prosecution if they violation the speech restrictions contained in the EPM and have alleged increased costs and cumbersome implementation measures if the speech restrictions remain in place. Plaintiffs allege they have "a real and present need to know whether the [EPM] is constitutional and can therefore" result in possible prosecution and/or increased costs to adhere to restrictions. *Id*. at 425 ¶ 30. Plaintiffs request relief under Arizona's Uniform Declaratory Judgments Act, A.R.S.§ 12-1831 to -1846 (UDJA). The act provides that "[a]ny person. . . whose rights, status or other legal relations are affected by a statute. . . may have determined any question of construction or validity arising under the [statute] and obtain a declaration of rights, status or other legal relations thereunder." A.R.S § 12-1832. If rights are affected by a statute, a plaintiff "need not demonstrate past injury or prejudice so long as the relief sought is not advisory." *Ariz. Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 16 (2022)(citation omitted). "Although a declaratory judgment action is remedial and should be 'liberally construed

and administered,' a plaintiff must have 'an actual or real interest in the matter for determination.'" *Id*. (citation omitted).

The 2024 election cycle has begun; while the EPM remains in effect, Plaintiffs contend they have incurred compliance costs. *Response* to MTD p. 13 ¶ 5. Additionally, beyond costs incurred, Plaintiffs point to allegations that the Secretary modified statutory language for criminal referrals and the AG approved the proposed language, demonstrating both Defendants will seek to enforce those provisions when violated. *Id*. at p. 14 ¶ 2. (Later, the AG has indicated disavowal of enforcement provisions but Plaintiffs argue the legal analysis is incorrect, thus provided Plaintiffs with no reassurance that their members will avoid prosecution.[5]) Finally, Plaintiffs contend their speech is chilled by the EMP and, thus, it is unconstitutional. For the reasons stated in this Ruling, the Court finds an actual controversy exists between the parties.

Scot Mussi testified for Plaintiff Free Enterprise Club; Mr. Mussi explained that the organization engages in many activities, including going to polling places on election day to hand out flyers. Depo. Scot Mussi, 10:22. Mr. Mussi admitted that he does not know of anyone arrested, prosecuted, or threatened with prosecution for handing out flyers or any other "violation" of the EPM. Depo. Scot Mussi, 13:19. But Mr. Mussi expressed concerns about prosecution, along with confusion about the speech restrictions in the EPM. The witness opined the EPM's language was "vague and ambiguous" about election activities and, despite assurances from the AG, a threat of prosecution remains. Depo. Scot Mussi, 17:25. Mr. Mussi explained that the organization would "have to make sure that we're properly educating and training our employees to make sure that they comply with it. . . . We're going to have to get consistent legal guidance to comply with all this. It's going to cost a lot of money." Depo. Scot Mussi, 22:12-18. Mr. Mussi further testified that some of the EPM's prohibitions "could be interpreted differently by different people." Depo. Scot Mussi, 31:8. He explained, "What people consider threatening, harassing, or intimidating—those are terms that, you know, you know, that we use the wrong word on a flyer, they might think that it's threatening or harassing and would give an election official the ability to force us to have to leave or can lead to other consequences." Depo. Scot Mussi, 39:17-22.

The Court heard from Phillip Townsend, a Yuma resident. Mr. Townsend reported concern about speech restrictions beyond the 75-foot limit, testifying "that has a potential to curtail my speech, my free speech, because I'm concerned about being prosecuted potentially for whatever somebody might decide they want to prosecute me for." Depo. Phillip Townsend, 10:11-14. Mr. Townsend expressed his passion for politics and stated, "I speak loudly oftentimes, but somebody maybe could misconstrue as being aggressive, but it's just passion." Depo. Phillip Townsend, 15:14-15. He testified, "So in reviewing [the EPM] and knowing about this, I am attempting to

[5] Plaintiffs also argue the County Attorney's Office may choose to prosecute.

curtail my speech so as I'm not offensive, I'm not loud, I'm not intimidating to people. So I feel like this is chilling my right to speak out as I normally would." Depo. Phillip Townsend, 15:20-24. Like Mr. Mussi, Mr. Townsend testified he has not been threatened with prosecution for anything he's said. But Mr. Townsend provided specific examples of instances wherein he self-censored because of the EPM. For example, during interviews, the witness stated the EPM caused him "to not be perhaps as frank and aggressive as I would have normally been." Depo. Phillip Townsend, 17:18-19. Throughout his testimony, Mr. Townsend had many examples of circumstances at which he tempered his speech and future situations in which it may occur.

Catharine Cypher testified on behalf of the America First Policy Institute. The Plaintiff does not have a specific membership but rather a "grassroots network of people that we work with." Depo. Catharine Cypher, 8:5-6.[6] Ms. Cypher testified to the vagueness of the EPM, which creates difficulty in educating people on what is acceptable on election day. She stated the organization "need[s] to make sure that we are abiding by the laws of that state and we're not telling people—influencing people to do things that are against the law[.]" Depo. Catharine Cypher, 23:14-17. Ms. Cypher talked about the organization's costs related to trainings, opining that the organization has to conduct additional training for the general election in November 2024, but at the same time, acknowledging that training materials are revised in standard practice.

With respect to Plaintiffs' claims of speech infringement, Ms. Cypher testified that the EPM required additional training and will "incredibly suppress turnout to the trainings and individuals wanting to participate." Depo. Catharine Cypher, 59:11-13. Ms. Cypher testified that the EPM's restrictions resulted in the organization's reticence or unwillingness to sell or distribute merchandise to participants, not knowing how to comply with the EPM. The witness testified, "[W]hat defines these acts that we've been discussing[?] And I'm not seeing anywhere that, you know—if somebody wears a shirt that upsets another person, I mean, what—how do you mitigate that?" Depo. Catharine Cypher, 74:15-17.

Plaintiffs alleged the EPM contains multiple instances of speech restriction, which are unconstitutional. Plaintiffs contend the "harassment provision" violates Arizona's Free Speech Clause. FAC, p. 16 ¶ 84. Defendants' inclusion of language in the EPM that bans "[a]ny activity by a person with the intent or effect of threatening, harassing, intimidating, or coercing voters (or conspiring with others to do so) inside or outside the 75-foot limit at a voting location is prohibited" is likewise unconstitutional. FAC, p. 17 ¶ 90, quoting EPM Chapter 9, section 3(D)(emphasis omitted). Plaintiff alleges Defendants have violated the Free Speech Clause by criminalizing protected speech. FAC, p. 19 ¶ 101. That criminalization is also unlawful for improperly amending a criminal statute. FAC at ¶ 102. The improper amendment, per Plaintiffs, not only

[6] She later testified that the word "membership" is applicable to the organization. Depo. Catharine Cypher, 52.

violates a person's free speech but also violates the Due Process Clause for failure to provide notice to the public of a change in the law. FAC, p. 9 ¶¶ 104-106.

Defendants not only dispute Plaintiffs' interpretation of chapter 9, Plaintiffs argue that the doctrine of laches should prevent Plaintiffs from moving forward in this case. The Court is unpersuaded. Although Defendants reference prior EPMs that contain the same or strikingly similar language, this does not mean that Plaintiffs (1) knew of the language or, pertaining to Plaintiff America First, (2) the organization existed when prior EPMs were issued. Moreover, simply because time has passed between the first instance when the Secretary used this language (e.g., 2019) and now, that by itself fails to show how Defendants relied upon the passage of time to their detriment. Finally, regardless of when Plaintiffs filed suit, laches is not a defense to an unconstitutional act.

Defendants likewise fail on their ripeness argument: because Plaintiffs claim they have incurred an injury (e.g., chilling free speech), the case is ripe. *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280 ¶ 36 (2019). Defendants ignore "the fact that [Plaintiffs] challenge[ ] the constitutionality of" the speech restrictions contained in the EPM. *Fann v. State*, 251 Ariz. 425, 432 ¶ 13 (2021). Because the EPM has the force of law, because the EPM went into effect at the end of December 2023, and because it affects Plaintiffs, "[t]he case is ripe for decision." *Id*. at ¶ 14. Moreover, because Plaintiffs allege the EPM affects their freedom of speech, Plaintiffs claim they have suffered a constitutional injury.

Even if Plaintiffs are not defeated by either a laches or ripeness argument, Defendants argue that Plaintiffs lack standing because Plaintiffs have misunderstood or misinterpreted the issues presented in this case. What Defendants fail to recognize is that their alternative legal theories and interpretations—even if correct—do not defeat standing. *Toma v. Fontes,* 2024 WL 3198827 *6, ---P.3d--- (App. 2024). As previously stated by our courts, "[D]efendants cannot defeat standing merely by assuming victory." *Id*. (quoting *Brewer v. Burns*, 222 Ariz. 234, 238 ¶ 14 (2009). Regardless of whether Plaintiffs have organizational harm or identified particularized harm to any member, the Court finds that Plaintiffs have standing because of the presence of a serious question and, pertaining to Phillip Townsend, actualized harm. Mr. Townsend asserts his free speech is chilled because of the EPM and provided specific facts that he believes supports his claim—this is an (alleged) injury. *See, e.g., Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269 (2019).

Speech Restrictions

Arizona has a law that protects voters: A.R.S. § 16-1013. It is unlawful for a person to knowingly do any of the following:

> 1. Directly or indirectly, to make use of force, violence or restraint, or to inflict or threaten infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting for a particular person or measure at any election provided by law, or on account of such person having voted or refrained from voting at an election.
>
> 2. By abduction, duress or any forcible or fraudulent device or contrivance whatever, to impeded, prevent or otherwise interfere with the free exercise of the elective franchise of any voter, or to compel, induce or to prevail upon a voter either to cast or refrain from casting his vote at an election, or to cast or refrain from casting his vote for any particular person or measure at an election.

§ (A)(1) and (2). Likewise, Arizona has a law that defines "attempt" and when it may apply: A.R.S. § 13-1001(A). Title 13, arguably, has other provisions that can be used in conjunction with A.R.S. § 16-1013, including solicitation, conspiracy, and facilitation. All of these laws apply to all people in Arizona, including those who may seek to knowingly intimidate voters or do, in fact, intimidate voters. Nowhere in A.R.S. § 16-1013 is the word "harassment" used. This has a very specific legal (criminal) definition:

> A. A person commit harassment if the person knowingly and repeatedly commits an act or acts that harass another person or the person knowingly commits any one of the following acts in a manner that harasses:
>
> 1. Contacts or causes a communication with another person. . . .
>
> 2. Continues to follow another person in or about a public place after being asked by that person to desist.
>
> 3. Surveils or causes a person to surveil another person.
>
> . . .
>
> E. For the purposes of this section, "harass" means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, humiliated or mentally distressed. . . .

A.R.S. § 13-2921.

These laws apply everywhere—a person cannot intimidate or threaten another voter, regardless of where the act occurs. Likewise, a person cannot harass another, regardless of where the act occurs. Problematically, the EPM not only changes the *mens rea* of these crimes but also

inserts a subjective impression (i.e., "or effect"). Although the EPM raises the burden (from knowingly to intentional), the change remains impermissible. The Secretary has no authority to change a *mens rea*, regardless of the objective of the language. Moreover, neither law allows for a subjective belief of the alleged target of the crime but rather focuses upon the acts of the criminal (e.g., force, violence, infliction) or the victim ("a reasonable person"). The relevant EPM language is also impermissible. Contrasting this terminology in the EPM with the handout provided to law enforcement, the handout cites the actual law, not the Secretary's interpretation or expansion of same. D. Ex. 7.

The Secretary can include the word "harassment" in the EPM—it is against the law to harass another. However, the Secretary did not reference the correct statute but, instead, included the term when citing A.R.S. § 16-1013. Moreover, the EPM's examples focus upon the actor, not a "reasonable person" who may be seriously alarmed, annoyed, etc. (E.g., "aggressive behavior, such as raising one's voice. . ." or "using. . . offensive language to a voter or poll worker.") Contrary to Defendants' arguments, the EPM is expanding criminal liability for acts that may not otherwise fall under A.R.S. § 13-2921. And even in those situations where criminal liability is not a realistic outcome (e.g., a county attorney declines to prosecute), a person may nevertheless be removed from the polling location and unable to cast their ballot. Regarding prosecution, the Court is unpersuaded by Defendants' argument that no one has been prosecuted and no one will likely be prosecuted for these crimes in a voting context, and, therefore, this basis for standing is inapplicable. It does not matter whether someone was prosecuted in the past or if one law enforcement official has promised not to prosecute in the future; the threat of prosecution remains and argument during a contested court case is no guarantee of future (in)action.

Defendants urge this Court to apply *U.S. v. Rumely*: "[I]t is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." 345 U.S. 41, 45 (1953). If this Court can avoid such it should do so and find that "in the choice of fair alternatives that one construction may raise serious constitutional questions avoided by another." *Id.* Our Supreme Court acted consistently with this position by finding that when there is a reasonable basis for a statute, even when debatable, "we will uphold it unless it is clearly unconstitutional." *Fann v. State*, 251 Ariz. 425, 433 ¶ 23 (2021). However, "a statute cannot circumvent or modify constitutional requirements[.]" *Id.* at ¶ 24.

The Court is unpersuaded by Defendants' argument that the EPM does not restrict speech. "[W]hen public officials . . . change the law based on their own perceptions of what they think it *should* be, they undermine public confidence in our democratic system and destroy the integrity of the electoral process." *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 61 ¶ 4 (2020)(emphasis in original). The Court finds that in some instances this is exactly what the EPM does. For example, the EPM prohibits:

- Any activity with the effect of harassing another.
- Unspecified "disruptive" behavior.
- Unspecified "aggressive" behavior.
- Raising one's voice.
- Insulting or offensive language.
- Directly questioning voters or poll workers in a harassing manner.
- Raising repeated frivolous voter challenges.
- Posting signs or communicating messages in a harassing or intimidating manner.

EPM (paraphrased). Defendants point to similar language in other situations, asserting the "guidance" is consistent with both Arizona law and protecting the public. For example, Sky Harbor Airport posts information about their "SOAR" security program. D. Ex. 27. As counsel argued, it is the equivalent of "see something, say something." The intent behind the program is laudable and, in today's society, unfortunately necessary. However, the airport's postings contain the words "some examples of suspicious activity" and advises people to contact law enforcement, the TSA, or an airport employee. The EPM fails to delineate portions of chapter 9 with the words "guidance," "examples," or concrete, legal prohibitions on conduct. Additionally, while suspicious behavior at an airport may get a person removed from the premises (or arrested), a person does not have a constitutional right to fly in an airplane. A person has a constitutional right to vote.

The EPM's language has restricted what the Secretary finds acceptable regarding behavior, both speech and acts. Our state constitution guarantees a right to speak freely and is only restricted for an abuse of that right. *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281 ¶ 45 (2019). "Thus, by its terms, the Arizona Constitution provides broader protections for free speech that the First Amendment." *Id*. Pure speech is protected and "includes written and spoken words, as well as other media. . . [that] express thoughts, emotions, or ideas." *Id.*, 247 at 284 ¶ 58 (citation omitted). Therefore, words and pictures "qualify as pure speech when they are used by a person as a means of self-expression." *Id.,* 247 at 285 ¶ 60 (citation omitted). Using the same example discussed in court, a person could wear a t-shirt to vote that another voter or poll workers finds "offensive." That "offensive" content, having the effect of causing another to be offended or harassed, could result in either a call to law enforcement or, possibly, ejection from the polling place, which would bar the actor's vote. Likewise, a person's conduct *may* be protected if that conduct passes the "Spence-Johnson test." *Id.,* at ¶ 61 (2019). Here, the Court declines to analyze the EPM's proposed restrictions on conduct; as stated elsewhere in this Ruling, this Court is not tasked with rewriting the EPM to save it.

Plaintiffs' speech is not protected when it violates the law—members of the organizations are legally prohibited from saying many things (e.g., "vote for this person or else"-type of threats) and doing many things (e.g., electioneering within 75 feet of a polling place). But many of the prohibitions listed in the EPM are free speech and protected by both the Arizona Constitution and the U.S. Constitution. What, for example, constitutes a person communicating about voter fraud in a harassing manner? Or, for that matter, "posting" a sign in an intimidating manner? How does a person either do this behavior—whatever it means—or avoid it? And what content printed on a t-shirt might be offensive or harassing to one and not another? What if the t-shirt says, "I have a bomb and I intend to vote!"? Where does the Secretary draw the line?

If chapter 9 of the EPM is necessary to regulate speech and is content-neutral, and if the Secretary has the authority to provide these regulations pursuant to A.R.S. § 16-452 ("to achieve and maintain the maximum degree of correctness . . . on the procedures for early voting and voting"), then it is justified only if furthers a governmental interest, that interest is unrelated to the suppression of free speech, and any restrictions are not greater than necessary to further the government's interests. *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 292 ¶ 98 (2019)(citation omitted). Here, the government's interest is to ensure the sanctity and safety of voting for all eligible citizens and the EPM's intent and focus is not on speech restrictions but, rather, compliance with our laws and rights. Problematically, the EPM's restrictions *are* greater than necessary, vague, overbroad, and serves "as a universal prohibition on conduct." Plaintiffs' *Consolidated Response*, p. 5, ¶ 2.

Injunction

Plaintiffs' special action request is supported by Plaintiffs' claims of constitutional violation—impingement on freedom of speech and by alleged facts showing the EPM directly affected both Plaintiffs' rights and resources. *Ariz. Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 17 (2022). This is not a generalized harm insufficient to confer standing but instead specific harm suffered by Plaintiffs. Plaintiffs are affected by the EPM because they have to know what actions, advocacy, etc., is allowable and have an actual or real interest in the matter for determination. *Ariz. Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 225 ¶ 20 (2022)(citation omitted). Moreover, irreparable harm exists for constitutional violations. *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017).

The Court finds Plaintiffs have proven a strong likelihood of success on the merits for the reasons stated in this Ruling. Moreover, even if Plaintiffs have not shown a strong likelihood of success, Plaintiffs have presented the Court with a serious question and the balance tips sharply in their favor. The declaratory relief sought cannot result in money damages and as stated, the harm is not speculative or remote; the EPM is currently in effect and chilling speech. Here, the balance

of hardships and the public interest favor injunctive relief. People have a paramount interest in freedom of expression; a preliminary injunction that narrowly restricts content in the EPM allows other provisions to remain and minimizes harm to Plaintiffs. Moreover, as stated by our courts, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

IT IS ORDERED declaring chapter 9, section (III)(A)-(D) of the 2023 EPM unenforceable.

IT IS FURTHER ORDERED Defendants are enjoined from enforcing the restrictive speech provisions during the pendency of this litigation.

IT IS FURTHER ORDERED denying Defendants' MTD Plaintiffs' claims of speech restrictions.

Voter Registration

Plaintiffs ask this Court to throw out approximately 54 pages of the EPM because Plaintiffs contend the Secretary acted beyond the scope of his authority; Plaintiffs request the Court declare "[a]ll of chapter 1" in the EPM void. FAC, p. 20 ¶ 110. However, Plaintiffs devote one paragraph in their FAC to voter registration issues. Plaintiffs state that "no Arizona statute authorizes or delegates rule-making authority to the Secretary regarding voter registration. Therefore, the Secretary exceeded his statutory authorization, and this entire chapter should be declared invalid." FAC, p. 20 ¶ 110. In reply to the MTD, Plaintiffs conclude that the Secretary "exceeded his statutory authorization by delving into the waters of voter registration. And the Secretary has failed to point to any applicable statutory authority granting him rulemaking power in the voter registration context." *Consolidated Response*, p. 30 ¶ 4. Plaintiffs argue that if the EPM does not violate the law, they are nonetheless "entitled to a declaration that it is purely non-binding guidance." *Id*. at p. 31 ¶ 3.

Turning first to the law, A.R.S. § 16-452(A) provides: "[T]he 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 and voting. . . ." Plaintiffs believe because this statute does not contain the word "registration," chapter 1 of the EPM is invalid. Not so. Plaintiffs also argue that a recent appellate court decision necessitates the Court striking chapter 1. However, reliance upon *McKenna* is misplaced: the Court held EPM's references to candidate nominating procedures and petition circulators were guidance because they fell "outside the mandates of § 16-452 and do not have any other basis in statute. Because the statute that authorizes the EPM does not authorize rulemaking pertaining to candidate nominating petitions, those portions of the EPM relied upon by McKenna to invalidate the signatures" do not fall under

§ 16-452. *McKenna v. Soto*, 250 Ariz. 469, 473 ¶ 20 (2021). Contrast this with the exact language in the statute that requires the Secretary to prescribe rules "on the procedures for . . . voting." A.R.S. § 16-452(A). Registration is part of voting.

A person cannot vote if they are not registered to vote; necessarily, an election employee (or volunteer) must ensure that the person seeking to cast a ballot is allowed to do so. For example, the EPM states: "A minor who is qualified to register to vote is not necessarily a qualified elector for the next election. Although registered, a minor will not be eligible to vote in any elections until they turn 18 years of age as required by Ariz. Const. Art. VII, § 2." EPM, p. 14, section (II)(B). The EPM then discusses how to handle a registered voter that is too young to vote. This example falls squarely under the mandate for the Secretary to implement rules for voting and is authorized by A.R.S. § 16-452(A).

Not only does the Secretary need to ensure compliance with prerequisites to voting (e.g., registration), the Secretary is mandated by law to facilitate a person's access to the necessary paperwork to become a registered voter. *See* Secretary's MTD, p. 7 ¶ 2, *Reply*, p. 5 ¶ 2. Because those legal requirements have a basis in statute, chapter 1 does not conflict with *McKenna*. Even if there may or may not be a portion of chapter 1 that should be advisory, Plaintiffs have failed to identify any provision that is potentially unlawful besides the rule regarding non-residency (juror questionnaires)(discussed elsewhere). Moreover, Plaintiffs have failed to identify any injury they have or will suffer if this Court fails to address chapter 1, either by declaring it invalid or issuing a declaration that the chapter is "guidance" only.

The Court questions if the request for this Court to issue a declaration that chapter 1 of the EPM is "guidance" is, in fact, a request for an advisory opinion. If so, that is impermissible. *Ariz. Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 16 (2022)(citation omitted). Even if Plaintiffs' request is not for an advisory opinion, the Court finds that Plaintiffs have shown no distinct and palpable injury or the presence of an actual controversy that would defeat a motion to dismiss. *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998); *Mills v. Ariz. Bd. Of Technical Registration*, 253 Ariz. 415, 424 ¶ 29 (2022). The Court therefore finds that Plaintiffs do not have standing and Defendants are entitled to dismissal as a matter of law.

IT IS ORDERED granting Defendants' MTD Plaintiffs' claims regarding voter registration.

Non-residency Status

Plaintiffs alleged Defendants have improperly interpreted the "non-residency of juror questionnaire rule" by instructing staff as follows: when a voter has reported to a jury commissioner that they (the voter) are not a resident of the same county in which that person is

registered, the Recorder's Office shall send written communication to the voter with instructions for completion and failure to complete will result in "inactive" status. FAC, p. 20 ¶ 111 (rephrased). Plaintiffs contend this violates A.R.S. § 16-165(A)(9), which directs the Recorder's Office to "cancel a registration" when a voter states they are not a resident of the same county in which that person is registered. Stated differently, Defendants have changed a mandatory cancellation into a discretionary inactive status.

Defendants contend that A.R.S. § 16-165(A)(9) requiring cancellation without an inactive violates the National Voter Registration Act of 1993 (NVRA) and, consequently, the "EPM provision properly harmonizes county recorders' duties under federal and state law." Secretary MTD, p. 8 ¶ 2. Because, per Defendants, the Arizona law conflicts with federal law, Arizona's statute is preempted.

Here, the Court finds an actual controversy exists between the parties because Plaintiffs' rights are affected by the EPM's rules that allegedly conflict with the statute. The Court declines to analyze this issue further, finding that dismissal at this juncture is unwarranted because Defendants are not entitled to dismissal as a matter of law on any interpretation of the facts. Therefore,

IT IS ORDERED denying Defendants' MTD Plaintiffs' claim regarding non-residency juror questionnaires.

Active Early Voting List

Temporary Address

Plaintiffs take issue with Chapter 2, subsection (I)(B)(1), p. 59, where it states, "A voter enrolled in the AEVL may not request that ballots be automatically sent to an out-of-state address for each election unless the voter is also a UOCAVA voter. However, an AEVL voter may make one-time requests to have their ballot mailed to an address outside of Arizona for specific elections." Plaintiffs (and Defendants) have no issue with the first sentence; it is the second sentence Plaintiffs find objectionable. Plaintiffs seek a preliminary injunction prohibiting county recorders from sending these ballots to addresses outside the State of Arizona.

THE COURT FINDS Plaintiffs do not have standing for this claim, either for their FAC or for a preliminary injunction (PI).

Addressing the PI first, the Court does not find that Plaintiffs have shown a strong likelihood of success on the merits. Plaintiffs' claims of harm are vague and unsupported by evidence. In their request for a PI, Plaintiffs assert the EPM's recitation of the early ballot statutes ae "unlawful and should be enjoined." *Motion for* [PI], pp. 16-17. Plaintiffs provide this Court

with no allegations on how they, specifically, are harmed, instead arguing that a conflict between two statutes requires the Court to pick the more restrictive statute to comport with the law and reassure those Plaintiffs who have concerns about fraud.

In his testimony, Mr. Mussi expressed concerns about mailing ballots out of state because it goes to "the integrity of our election process." Depo. Scot Mussi, 36:25-37:1. He later stated, "Because there's no chain of custody. How do you know the ballot's going out there? So members are very concerned about it and see it as another way that could potentially cause new issues with the election process." 37:14-18. Even though Plaintiffs couch these concerns as cognizable harms, the Court disagrees. The Court also disagrees with Plaintiffs' claims that these mail-in ballots may dilute legitimate votes. The Court finds that argument nonsensical.

Plaintiffs find further support in their arguments from the deposition of Catharine Cypher, specifically pages 65-69 of her testimony. Defendants objected to this testimony, arguing that Plaintiffs failed to provide disclosure ahead of time informing Defendants that Ms. Cypher would present testimony on this issue. The Court took that objection under advisement: the Court now rules.

IT IS ORDERED overruling Defendants' objection to Ms. Cypher's disputed testimony. The Court will give the testimony the weight it deserves.

Ms. Cypher testified that allowing out-of-state ballots suppresses the organization's membership by creating a sense of distrust in the election process through nonresidents' votes in Arizona elections. 66:1-10. Ms. Cypher testified this goes to "election integrity" and impacts a free and fair election. 66:16-19. The Court gives this testimony, along with Ms. Cypher's opinions on this issue, little weight. For both witnesses, Plaintiffs' position rests on evidence that is not only vague but exceedingly overbroad. Plaintiffs presented no evidence on how the EPM will dilute votes, how a chain of custody issue even exists, non-residents have voted in Arizona elections, or any other support for their requested relief.

A person who requests and receives a one-time early ballot is an eligible, registered voter. The law proscribes steps that a county recorder must follow to send out an early ballot to *any* address, not just an out-of-state address. (See discussion, below.) The voter, wanting to have their voice heard but for various reasons may not be able to vote in person or from their permanent residence, asks for accommodation. This is the same person with the same vote who will participate in the same election. The identity of the voter has not changed—just the mechanism by which he or she engages in the process. Because the person casting the ballot has not changed, there is no dilution.

Plaintiffs believe a chain-of-custody issue necessarily causes distrust and room for illegitimate votes but provide no evidence. All ballots are mailed out via the United States Postal Service (USPS)[7]; the destination does not impact the processing. In other words, the USPS has to treat an early ballot the same if it is sent within Arizona as if it was sent outside of Arizona. Plaintiffs fail to explain how election dilution or irreparable harm (of any kind) would *not* occur if a voter went from Phoenix to Flagstaff for a long vacation (and received a temporary ballot in Flagstaff) but dilution or harm *would* occur if the same voter went from Phoenix to Salt Lake City for a long vacation (and received a temporary ballot in Salt Lake). Additionally, the USPS sends ballots out of state frequently to residents with temporary addresses under UOCAVA. Plaintiffs do not contest this provision—is it because the recipient is in the military versus a layperson on vacation? Even so, any chain of custody issues would still exist because the destination is not dispositive.

Regarding allegations that non-residents will then vote in an Arizona election, the Court received absolutely no evidence showing this occurs. The only person who can get an early ballot is an eligible, registered voter. That person has already proven to their county recorder that he or she can vote in Arizona. Presumably there may exist some situation where a non-resident creates a fictional domicile in Arizona in order to not only vote in the election but also cast that ballot from another state. But speculation and supposition are not facts and Plaintiffs have presented no evidence this has ever happened.

The Court agrees with Plaintiffs' admirable desire for free, fair, and transparent elections. That goal is not achieved, however, by prohibiting a large swath of people from exercising their constitutional right to vote because of a temporary address. In 2022, over five thousand people in Maricopa County asked for an early ballot to be mailed to a temporary address outside of Arizona. Def. Ex. 19. Over two thousand people asked for an early ballot for a temporary address inside Arizona. *Id*. While compared to the total number of early ballots mailed out in total during this same time period, the number is small. Def. Ex. 17. But even if one qualified person who wants an early ballot sent to a temporary address—and is denied—may not be able to otherwise cast their vote, it is objectionable and in violation of law.

In addition to failing to show strong likelihood of success, Plaintiffs have also failed to provide evidence showing irreparable injury. While Plaintiffs' organizational members have a strong interest in election integrity, vague and unsupported concerns do not show injury, irreparable or otherwise. Moreover, in balancing the hardships between the parties, the Court finds Defendants would have a greater burden and more significant hardships, including having to notify current, eligible voters that they cannot receive an early ballot at a non-Arizona address, along

[7] The EPM states "first class mail."

with having to change the process by which country recorders handle these requests (since approximately 1991). Not only would the State suffer hardship but so would the public. No public policy is served by granting an injunction preventing one-time, early ballots from going to a registered, eligible voter at a non-Arizona address. If anything, such an injunction would greatly harm those for whom a request was already made or will be made for the upcoming general election.

In addition to the above, the Court finds no presence of a serious question here. To reiterate, the Court finds no chain of custody issues that have merit such that the Court should consider Plaintiffs' requests, no serious question on dilution has been presented to the Court, and Plaintiffs' general, unsupported concerns about election integrity are valuable considerations in dialogue and general advocacy but do not translate to a serious question necessitating the Court's involvement. Even if Plaintiffs presented a serious question, the balance of hardships favors Defendants.

Assuming this Court is wrong in finding that Plaintiffs failed to meet their burden for a preliminary injunction, the Court will analyze the dispute, further.

Per Plaintiffs, a conflict exists between two statutes related to early ballots, and in interpreting the conflict and prescribing rules for same, the Secretary acted beyond the scope of his authority in allowing one-time early ballots to be mailed out of state. Plaintiffs request a temporary injunction on this issue yet Plaintiffs concede that the statutes are, at least, ambiguous. Nevertheless, Plaintiffs request this Court find the express prohibition in one statute applies to both, regardless of content. Defendants argue the opposite, asserting each statute serves a different purpose, and also argue that Plaintiffs' alleged harm of "vote dilution" is not a cognizable claim and should be rejected by this Court. Per Defendants, because Plaintiffs have not suffered a concrete and particularized injury, no harm exists and Plaintiffs' claim fails.

The Court turns first to the plain language of each statute.[8]

A.R.S. § 16-542(A) allows a voter to make a one-time request for an early ballot and provides deadlines for requests and processing. Subsection (C) states the county recorder "shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector[.]" Subsection (E) states, "In order to be complete and correct and to receive an early ballot by mail, an elector's request that an early ballot be mailed to the elector's residence or temporary address must include all of the information prescribed by subsection (A). . . ."

> Within ninety-three days before any election called pursuant to the laws of this state, an elector may make a verbal or signed request to the county recorder, or

[8] All parties agree the controversy here does not include an absent or overseas voter as defined in UOCAVA.

> officer in charge of elections for the applicable political subdivision of this state in whose jurisdiction the elector is registered to vote, for an early ballot. In addition to name and address, the requesting elector shall provide the date of birth and state or country of birth or other information that if compared to the voter registration information on file would confirm the identity of the elector.

A.R.S. § 16-542(A). Subsection (A) contains no restriction or prohibition on out-of-state address, and neither does (C), (E), or (F). Subsection (F) states, "Unless an elector specifies that the address to which an early ballot is to be sent is a temporary address, the recorder may use the information from an early ballot request form to update voter registration records."

Contrast these provisions with A.R.S. § 16-544(B), which specifically prohibits an out-of-state address:

> In order to be included on the active early voting list, the voter shall make a written request specifically requesting that the voter's name be added to the active early voting list for all elections in which the applicant is eligible to vote. [ ] The application shall allow for the voter to provide the voter's name, residence address, mailing address in the voter's county of residence, date of birth and signature and shall state that the voter is attesting that the voter is a registered voter who is eligible to vote in the county of residence. The voter *shall not* list a mailing address that is outside of this state for the purpose of the active early voting list[.]

(Emphasis added.)

From the Court's review, the statutes are clear and unambiguous. "[T]he best and most reliable index of a statute's meaning is the plain text of the statute." *State v. Christian*, 205 Ariz. 64, 66 ¶ 2 (2003). When the statute is clear and plain meaning evident, "there is no need to resort to other methods of statutory interpretation to determine the legislature's intent because its intent is readily discernable from the face of the statute." *Id*.; *see also Parsons v. Ariz. Dep't of Health Servs.,* 242 Ariz. 320, 323 ¶ 11 (App. 2017). Moreover, to the extent an ambiguity exists, the court "will not rewrite a statute to save it." *Fann v. State,* 251 Ariz. 425, 434 ¶ 23 (2021).

A.R.S. § 16-542 has four separate references to "address," and not one of those references prohibits an out-of-state address for a one-time ballot. Giving deference to the Legislature, this Court finds that if the Legislature intended to prohibit one-time, temporary ballots from going to an elector out-of-state, the Legislature would have said so. It did not. Contrasting this with A.R.S. § 16-544, the Court finds the Legislature has expressly prohibited an elector (voter) from giving an out-of-state address to the county recorder when that elector is placed on the active early voting list (AEVL). Moreover, A.R.S. § 16-544(B) adds a limitation to the prohibition by saying "for the

purpose of the [AEVL]." This limitation underscores the Legislative intent: the prohibition applies to the AEVL, nothing more.

Even if this Court is in error in finding the statutes clear and unambiguous, the fact remains the Court is extremely concerned about voter disenfranchisement if the Court finds in favor of Plaintiffs' request for a preliminary injunction. For example, as discussed in court, registered voters in Arizona may include college students who temporarily reside out of state to attend school. Those voters—who may or may not be on the AEVL—could call or write to their county recorder and ask for a one-time ballot, mailed to a temporary address, consistent with A.R.S. § 16-542(A). That temporary address may not be their permanent residence; the voter's eligibility turns, in part, on "the individual['s] intent to return [to Arizona] following his absence." A.R.S. 16-101(B). Provided that the college student only remains out of state for school and has the intent to return to Arizona, the student remains eligible to vote in an election and, furthermore, has the right to request a one-time early ballot.

Continuing with this example, if this Court were to decide, now, that a county recorder is legally prohibited from sending early ballots to this group of voters, those voters would have to return to Arizona to, at least, obtain their ballot in order to cast their vote. Nothing would preclude the voter from requesting the early ballot—the prohibition would be on *where* the recorder sends the ballot. At the very least, the voter would have to return to the Arizona residence (albeit temporary or permanent), obtain the one-time early ballot, and then cast their vote from whatever location they chose.

Using another example: what if the voter who requests the one-time, early ballot is a senior citizen who has chosen to take a six-month cruise around the world? That voter has no intent to leave Arizona permanently but, instead, enjoy a long vacation that removes them from the state for 180 days. That voter could seek a one-time early ballot but, according to Plaintiffs, would be prohibited from providing the county recorder with a temporary address outside Arizona at which they could receive the mail-in ballot. The ballot would be mailed to either (1) the voter's permanent address or (2) a temporary address that must be located within the State of Arizona. The voter then has the burden of returning to the state to obtain the ballot in order to have their vote counted.

If Plaintiffs' view is adopted, these examples show a possible practical effect of disenfranchising voters because those eligible voters would not be able to cast their ballot at all if the voter gave an out-of-state address or would place such restrictions on the voter that exercise of their right to vote becomes severely burdensome. *See, e.g., LaChance v. County of Cochise*, 2024 WL 3153610 (June 25, 2024). If the Court were to find in Plaintiff's favor, the Court would have to apply strict scrutiny to the government's action and find the "temporary address" provision

necessitating an in-state address is "narrowly tailored to advance a compelling state interest." *Arizonans For Second Chances, Rehabilitation, and Public Safety v. Hobbs*, 249 Ariz. 396, 409 ¶ 42 (2020). Here, Plaintiffs present no evidence showing why their interpretation of A.R.S. § 16-542(A), which may deprive a person of a constitutional right to vote, is controlling and enforceable. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780 (1983).

Of course, the law recognizes the need for regulation of elections in order to keep elections fair, honest, and transparent. Arizona, through its Legislature, has done so via enaction of multiple statutes governing elections and, when appropriate, delegating authority to the executive branch. This is because the State has important regulatory interests, including constitutional compliance. If this Court has erred in finding that the examples above demonstrate a more severe restriction on a person's right to vote, the Court nonetheless finds that Plaintiffs' argument is unreasonable.

While not conceding that Plaintiffs' position is a limited burden only, the Court recognizes that such burden only impacts a voter who has voluntarily excused themselves from the state and not, for example, a person compelled to leave because of active military duty. But the basis for a restriction on a temporary address serves no discernable purpose other than to make voting harder for a person who is outside of Arizona but intends to return. *Cf. Burdick v. Takushi*, 504 U.S. 428, 440 (1992). The integrity of the voting process remains, regardless of whether a county recorder sends a one-time ballot to 1234 Main Street, Idaho, or 5678 Smith Street, Arizona. Both mailings require a county recorder to use first class mail, and return of a completed ballot must comply with statutory requirements set forth in our laws. For these reasons,

IT IS ORDERED denying Plaintiffs' request for a preliminary injunction on this point.

The Court now analyzes Plaintiffs' standing—under a lesser burden—to bring their claim regarding "temporary" addresses and the AEVL to the Court.

Count I of Plaintiffs' FAC addresses speech restrictions: it has nothing to do with early voting. Count II claims the "2023 EPM has many provisions that are not authorized by Arizona statutes, or directly contradict the relevant statutory provisions that the EPM purports to implement." FAC, p. 28 ¶ 159. Plaintiffs reiterate their fear of prosecution; Plaintiffs also reiterate the harms of increased compliance costs, curtailed activities, and chilled free speech. Finally, Plaintiffs state "many of these statutory problems create issues of diluting votes by allowing others to vote that otherwise would not be allowed to vote [or] counting votes that should otherwise not be valid under Arizona[.]" *Id.* at ¶ 162. The only other reference to this issue is on page 22 of the FAC, wherein Plaintiffs conclusively state, "Section 16-544(B), however, specifically prohibits such out-of-state AEVL ballot mailings[.]" ¶ 122. The Court has found to the contrary.

Plaintiffs have failed to allege a "distinct and palpable injury." *Sears v. Hull*, 192 Ariz. 65, 69 ¶ 16 (1998). "[A] generalized harm shared by all or by a large class of people is generally insufficient." *Mills v. Ariz. Bd. Of Technical Registration*, 253 Ariz. 415, 423 ¶ 24 (2022). While Plaintiffs do not have to suffer injury before filing suit, there must be an actual controversy between the parties for this Court to have jurisdiction and for Plaintiffs to show standing. *Mills* 253 Ariz. at 424 ¶ 29. Not only do Plaintiffs have no injury, Plaintiffs have failed to show an actual controversy exists. Simply because Plaintiffs allege the EPM violates the law does not make it true.

Plaintiffs correctly assert they have a lower burden for standing to survive Defendants' motions to dismiss. But when analyzing the MTD, the Court must analyze whether Plaintiffs' alleged facts are sufficient to allow Plaintiffs to prevail. *Coleman v. City of Mesa*, 230 Ariz. 352, 363 ¶ 46 (2012)(citation omitted). The Court must "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.,* 218 Ariz. 417, 419 ¶ 7 (2008). The FAC has scant facts from which the Court could indulge Plaintiff's position: general allegations of unlawfulness and dilution are unsupported by facts that would defeat a motion to dismiss. Plaintiffs have no standing on this issue. Therefore,

IT IS ORDERED granting Defendants' MTD for the claim of early ballot/AEVL.

Effective Date of AEVL

Defendants seek dismissal of Plaintiffs' claim regarding the effective date of AEVL removal notices. FAC, p. 22. Defendants believe notices shall be mailed in 2027, while Plaintiffs argue notices are due in 2025. The statute provides:

> H. After a voter has requested to be included on the active early voting list, the voter shall be sent an early ballot by mail automatically for any election at which a voter at that residence is eligible to vote until any of the following occurs:
>
> . . .
>
> 4. The voter fails to vote an early ballot in *all* elections for *two consecutive election cycles*. For the purposes of this paragraph, "election" means any regular primary or regular general election for which there was a federal race on the ballot or for which a city or town candidate primary or first election or city or town candidate second, general or runoff election was on the ballot. . . .

A.R.S. § 16-544(H)(4)(emphasis added). An election cycle is defined as follows:

> S. For the purposes of this section, "election cycle" means the two-year period beginning on January 1 in the year after a statewide general election or, for cities

> and towns, the two-year period beginning on the first day of the calendar quarter after the calendar quarter in which the city's or town's second, runoff or general election is scheduled and ending on the last day of the calendar quarter in which the city's or town's immediately following [ ] is designated by the city or town.

A.R.S. § 16-544(S).

The Legislature amended the law in 2021; Plaintiffs argue the new provisions became law on May 11, 2021, when "the 2022 election cycle had not begun yet," and Defendants argue it "took effect on September 29, 2021, nine months into the 2022 election cycle." FAC p. 22 ¶ 118; Secretary's MTD, p. 10 ¶ 2. Governor Doug Ducey signed senate bill 1485 on May 11, 2021; the Legislature closed for business on July 31, 2021. The bill contained no language on when it became effective; because the bill is silent, the bill went into effect 90 days after *sine die* (adjournment). The Court is at a loss regarding both parties' positions on the effective date of the legislation and finds neither party gave the Court any information showing how they arrived at their proposed effective date of the new law.

Regardless of whether it was May or September, the fact remains both dates are after January 1st and the law itself contains no language that clarifies (e.g., "commencing January 1, 2026). Defendants believe the EPM correctly states the eligibility for early voting turns on two "full" election cycles, while Plaintiffs believe the EPM is wrong and the eligibility for early voting turns on lack of voting "during" two election cycles. Needless to say, this dispute could have been avoided if the new law included a start date.

The Court will, in its analysis, attempt to write plainly to not only avoid confusing itself but also to ensure the parties understand the Court's reasoning.

- November 2018: general election.
- January 1, 2019: beginning of a new election cycle.
- (2019-2020, announce, campaign, etc.)
- November 2020: general election.
- January 1, 2021: beginning of a new election cycle.
- (2021-2022, announce, campaign, etc.)
    - Fall 2021, S.B. 1485 goes into effect (the Court believes it is in October 2021).
- November 2022: general election.
- January 1, 2023: beginning of a new election cycle.
- (2023-2024, announce, campaign, etc.)
- November 2024: general election.
- January 1, 2025: beginning of a new election cycle.

- (2025-2026, announce, campaign, etc.)
- November 2026: general election.
- January 1, 2027: beginning of a new election cycle.

Subsection (S) of the law states the election cycle begins on January first *after* a statewide general election. Because Arizona held a general election in November 2020, the next election cycle began 1/1/2021, per A.R.S. § 16-544(S).

An election cycle is two years. This means the election cycle went from 1/1/2021, to 1/1/2023. The law went into effect in fall 2021, *during* an election cycle. Because the law went into effect during the election cycle, and because the law says it applies after two cycles beginning *after* a statewide general election, the clock didn't start.

The *next* election cycle began on 1/1/2023, per A.R.S. § 16-544(S). It lasts two years, until 1/1/2025. That is the "first" election cycle for per A.R.S. § 16-544(H)(4). The "second" election cycle starts 1/1/2025, and ends on 1/1/2027.

The notices shall be sent out for the election cycle commencing January 1, 2027, consistent with the statute. The statute contains no language for retroactivity; Plaintiffs' arguments fail. Therefore,

IT IS ORDERED granting Defendants' MTD for Plaintiffs' claim on the AEVL removal notice start date.

Deadline Extension

Plaintiffs alleged Defendants have promulgated language in the EPM that grants the Secretary "to continue or lengthen the early voting process" for absent military voters or oversea voters. FAC, p. 23 ¶ 123, quoting EPM Chapter 2, section 1(F). Plaintiffs agreed Defendants have the authority to create emergency procedures for early ballots in the event of an emergency, "it does not grant the Secretary the authority to extend the deadlines." FAC at ¶ 124.

A.R.S. § 16-543(C) states:

> The secretary of state shall provide in the instructions and procedures EPM issued [ ] for emergency procedures regarding the early balloting process for persons who are subject to the uniformed and overseas citizens absentee voting act of 1986[.] These emergency procedures may be implemented only on the occurrence of a national or local emergency that makes substantial compliance with the [UOCAVA]

> impracticable, including occurrences of natural disasters or armed conflict or mobilization of the national guard or military reserves of this state.
>
> The EPM states:
>
> In the event of a national or local emergency that makes substantial compliance with UOCAVA statute impracticable. . . the following procedures for the early balloting process shall apply for UOCAVA voters:
>
> - The Secretary of State will issue a press statement for immediate release . . . outlining applicable measures that will be taken to continue *or lengthen* the early voting process for UOCAVA voters.

(Emphasis added.) A.R.S. § 16-547(D) includes language to the voter as follows: "In order to be valid and counted, the ballot and affidavit must be delivered to the office of the county recorder [ ] or may be deposited at any polling place in the county not later than 7:00 p.m. on election day." A.R.S. § 16-551(C) also includes a 7:00 p.m. deadline for processing early ballots. Relatedly, the EPM provides: "A ballot-by-mail (with completed affidavit) must be delivered to the County Recorder, the officer in charge of elections, an official ballot drop-off site, or any voting location in the county no later than 7:00 p.m. on Election Day." EPM, p. 71, section (I)(H)

Defendants argue the Secretary's authorization to create rules for emergency procedures allows the Secretary to include this language in the EPM and nothing in the language "extends voting deadlines." Secretary MTD, p. 13 ¶ 1. Defendants also argue that because UOCAVA may require deadline extension, the language is permissible. *Id*. at ¶ 2. Finally, Defendants contend the EPM language is really just the Secretary providing information to voters, not actually extending deadlines and is necessary to make sure Arizona does not violate UOCAVA. The Court disagrees.

Early ballots are due by 7:00 p.m. The language in the EPM discusses lengthening the voting process. Arguably, this is not guidance, this is not a press release, this is not informational only. The disputed language in the EPM purports to allow the Secretary to implement measures *including* extending deadlines. That is not allowed.

Defendants' argument that the UOCAVA may require such deadlines—and did so in 2018—do not give the Secretary *carte blanche* to "lengthen" the early voting process. The EPM itself recognizes this by addressing what might happen if the Secretary cannot comply with the 45-day UOCAVA ballot transmission deadline. EPM, p. 69, section (I)(D)(3)(b). It is up to the federal government to evaluate and approve extensions, not the Secretary's. If the federal government

approves extensions—and the parties enter into a consent decree—the Secretary can then transmit that information to the public. At the very least, this provision in the EPM is misleading.

Presently, the Court does not find that Defendants have shown they are entitled to dismissal as a matter of law. Whether Plaintiffs prevail later, including on ongoing "standing to sue" arguments, will not be decided by the Court now. Therefore,

IT IS ORDERED denying Defendants' MTD on the UOCAVA deadline extension claim.

Inconsistent Signatures

Plaintiffs alleged Defendants violated the law when including language that directs staff to consider information beyond an allegedly inconsistent signature. FAC, p. 23 ¶ 129. The EPM states, "early ballots cast in-person should not be invalidated based solely on an allegedly inconsistent signature absent other evidence." *Id*. Plaintiffs argued the law requires the County Recorder "*not* to accept the ballot, but instead" make efforts to contact the voter, etc. FAC, p. 23 ¶ 130.

A.R.S. § 16-550(A) states:

> [O]n receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on the elector's registration record. If the signature is inconsistent with the elector's signature on the elector's registration record, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature, and allow to correct or the county to confirm the inconsistent signature.

The relevant portion of the EPM begins on page 82, which outlines responsibilities for signature verification by a county recorder. The EPM alternates between the words "shall" and "should," indicating some compliance is mandatory (e.g., comparisons of signatures) and other discretionary (e.g., consult other documents in the voter's registration record). The disputed portion of the EPM states, "[E]arly ballots cast in-person should not be invalidated based solely on an allegedly inconsistent signature absent other evidence that the signatures were not made by the same person."

Here, the Court finds Plaintiffs' argument without merit. To reiterate, the EPM mandates those actions required by law, e.g., stating all early ballots "must be signature-verified by the County Recorder or other officer in charge of elections." EPM p. 83, section (VI)(A)(1). This is consistent with Arizona law ("shall compare the signatures. . .").

Although the law provides for declining a vote for lack of sufficiency, the law also provides a curing period. If the affidavit is insufficient, "the vote shall not be allowed." A.R.S. § 16-552(B). However, A.R.S. § 16-550(A) allows a voter to fix the problem within a specified timeframe. That means the insufficient affidavit is not *automatically* rejected but, instead, a county recorder must notify the voter of the issue and allow the voter to correct the problem. The EPM does not change or misinterpret the law; rather, the EPM clarifies that a vote—with a sufficiency issue—may be fixed by the voter. The EPM does not mandate acceptance of an insufficient ballot but, instead, reiterates the legal requirement of allowing a voter a chance to fix the problem before a vote is disallowed.

The Court understands that Plaintiffs take issue with Defendants' argument the EPM provides a method by which a voter will "pre-cure" the insufficiency. Secretary MTD, p. 14, ¶ 2. This is, perhaps, a misfortunate word choice. The Court does not agree that an early in-person voter is pre-curing an insufficiency through the disputed EPM language. Rather, the EPM tells poll workers that when person who shows up to vote, early and in person, and casts a ballot that contains an insufficiency, the poll worker should not *automatically* disallow the vote. Rather, the voter should be given an opportunity to cure any defect, including providing documentation to the poll worker that "confirm[s] the inconsistent signature." A.R.S. § 16-550(A). The only reason why Defendants contend this is a "pre-cure" is because the voter must show identification prior to casting their early, in-person ballot. This is a distinction without a difference. In either scenario, if a signature does not match, a poll worker must provide a cure opportunity by law before rejecting (disallowing) the vote for insufficiency.

The Court finds no controversy between the parties exists and, further, Plaintiffs have pointed to no injury they suffer because of the disputed language in the EPM. For these reasons, the Court finds Plaintiffs lack standing. Therefore,

IT IS ORDERED granting Defendants' MTD regarding early-voter signature verification claim.

Circulator Registrations

Plaintiffs sued Defendants over a portion of chapter 6 of the EPM regarding regulation of petition circulators. Plaintiffs take issue with footnote 58 on page 119. The annotated language is as follows: "The Secretary of State's Office has no obligation to review the substance of circulator registrations to ensure that accurate or proper information has been provided. The circulator remains solely responsible for compliance with all legal provisions.[fn 58]" The footnote then states:

> The requirement to list certain information on the circulator portal does not mean that a circulator's signatures shall be disqualified if the circulator makes a mistake or inconsistency in listing that information (e.g., phone number or email address that is entered incorrectly; a residential address that doesn't match the residential address listed on that circulator's petition sheets; etc.).

Plaintiffs argue the language in this footnote directly conflicts with Arizona law. Plaintiffs argue that inconsistency is not the same thing as a typographical error and this footnote gives broad authority to the Secretary to determine the nature of the mistake and, consequently, the validity of the content. Defendants disagree, arguing the footnote is consistent with Arizona law.

A.R.S. § 19-102.01(A) states, "Constitutional and statutory requirements for statewide initiative measures must be strictly construed and persons using the initiative process must strictly comply with those constitutional and statutory requirements." A.R.S. § 19-118(B)(5) requires a circulator to sign an affidavit that swears "I am eligible to register as a circulator in the state of Arizona, that all of the information provided is correct to the best of my knowledge and that I have read and understand Arizona election laws[.]"

In *Leach v. Hobbs*, our Supreme Court addressed petition validity, in part, by examining the actions of registered petition circulators. 250 Ariz. 572 (2021). The Court held that a petition circulator cannot use questionable tactics to evade statutory requirements. Finding registered circulators important, the Court found, "The circulator is the only person in the process who is required to make a sworn statement and is, therefore, the person under the greatest compulsion to lend credibility to the process." *Id*. at 575 ¶ 15 (quoting *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 432 (1991)(internal citations omitted).

Arizona law governs circulators: A.R.S. § 19-118(A) instructs the Secretary to include in the EPM a procedure for circulator registration. For example, circulators must provide an address at which they will accept service of process in case they need to testify regarding disputes over petitions. A.R.S. § 19-118(B)(4). When doing so, the "circulator must attest to the accuracy of this information, under criminal penalty, in a notarized affidavit." *Leach v. Hobbs*, 250 Ariz. at 576 ¶ 19; A.R.S. § 19-118(B)(5). In *Leach*, the Court stated, "Although the EPM provides for a cancellation of a circulator's registration—putting aside for the moment whether the EPM may abrogate a statutory duty—it does not even purport to discharge a circulator's duty to comply with [a] statutory obligation[.]" *Id*. at ¶ 20. The Court further stated, "[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election's statute purpose does not have the force of law." *Id*. at ¶ 21. In sum, the Court found that deregistering (i.e., a questionable tactic to avoid a subpoena) is not allowable because "[a]ny other interpretation would vitiate the statute's

purpose to foster the integrity" of elections. *Id*. Equivocation, especially related to statutes, is not allowed.

Here, the Court remains unclear on the Secretary's purpose for including footnote 58, even if the Secretary's intent was advisory (guidance). The Court is unprepared to find that Defendants are correct in their position that the footnote complies with Arizona law under any interpretation of the facts or legal argument. Dismissal is unwarranted at this time. Therefore,

IT IS ORDERED denying Defendants' MTD on Plaintiffs' claim regarding circulator registration guidance contained in the EPM.

The Court has addressed the issues presented to it. Therefore,

IT IS ORDERED denying any other relief sought by the parties not expressly addressed in this Ruling.