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**Admitted Pro Hac Vice*

ARIZONA SUPERIOR COURT

YAVAPAI COUNTY

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED, et al., Plaintiffs, v. YAVAPAI COUNTY, et al., Defendants, ALLIANCE FOR RETIRED AMERICANS and VOTO LATINO, Intervenor-Defendants.	No. S1300CV202400175 **INTERVENOR-DEFENDANTS ARIZONA ALLIANCE FOR RETIRED AMERICANS AND VOTO LATINO'S RENEWED MOTION TO DISMISS** (Assigned to the Hon. Tina R. Ainley)

INTRODUCTION

Plaintiffs Strong Communities Foundation of Arizona, Inc., and three individual voters seek to fundamentally reshape Yavapai County's election administration from top to bottom—from procedures regarding vote centers and drop boxes to signature verification and curing processes—all because Yavapai does not administer elections according to Plaintiffs' distorted interpretations of Arizona law. Plaintiffs' requests for relief are as drastic as they are untethered from Arizona law, demanding among other things that the Court prohibit Yavapai from using vote centers entirely, *see* Compl. at 40, and appoint a special master to oversee the County's elections, *id.* at 42. Plaintiffs' Complaint fails on every level.

At the threshold, Plaintiffs have a fatal problem: None of the Plaintiffs allege *any* injury to themselves, past, present, or future, in *any* Arizona election, let alone an election in Yavapai County. For similar reasons, Plaintiffs lack a cognizable interest under Arizona's declaratory judgment statute; they fail to identify any personal, legal interest that has been affected by a Defendant's conduct. And Plaintiffs can't evade these basic standing requirements by recasting their complaint as a writ of mandamus. Mandamus does not lie to force government officials to perform their duties as Plaintiffs prefer or to forbid officials from acting as Plaintiffs repeatedly request. Plaintiffs thus lack standing, and the Court should dismiss their Complaint for this reason alone.

Plaintiffs fare no better on the merits of their claims, some of which have already been dismissed by another division of this Court. Throughout their sprawling Complaint—most of which focuses on long-passed elections in Maricopa County, which is no longer a party to this action—Plaintiffs consistently fail to allege actual violations of Arizona law in Yavapai County. Instead, their claims hinge on imagined administrative errors in prior elections, which Plaintiffs assume—based on nothing more than pure conjecture—will occur in future elections. In other words, Plaintiffs not only mischaracterize Arizona law and previous elections, but also baselessly speculate about future hypothetical misconduct in elections.

Without more than policy disputes and hypothetical grievances, Plaintiffs fail to state a claim upon which any of the extraordinary relief they seek can be granted. The Court should dismiss Plaintiffs' Complaint with prejudice.

LEGAL STANDARD

A complaint must be dismissed if it fails to allege particularized harm sufficient to confer standing or fails to state a claim upon which relief can be granted. *See Arcadia Osborn Neighborhood v. Clear Channel Outdoor, LLC*, 256 Ariz. 88, 88 ¶ 8 (App. 2023); *Stauffer v. Premier Serv. Mortg., LLC*, 240 Ariz. 575, 577–78 ¶ 9 (App. 2016). Although the court "must assume the truth of all the complaint's material allegations" and "accord the plaintiffs the benefit of all inferences that the complaint can reasonably support," *Stauffer*, 240 Ariz. at 577 ¶ 9 (cleaned up), it cannot "accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389 ¶ 4 (App. 2005).

ARGUMENT

I. Plaintiffs lack standing to bring their claims.

The Complaint should be dismissed in its entirety because Plaintiffs fail to meet Arizona's "rigorous standing requirement." *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140 ¶ 6 (2005). Standing is a threshold question that must be resolved before reaching the merits. *See Sears v. Hull*, 192 Ariz. 65, 68 ¶ 9 (1998). To have standing, a plaintiff must show "a distinct and palpable injury giving [it] a personal stake in the controversy's outcome." *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406 ¶ 8 (App. 2008) (citation omitted). The same principles apply in declaratory judgment actions: courts lack "jurisdiction to render a judgment" unless the complaint "set[s] forth sufficient facts to establish that there is a justiciable controversy." *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 310 (1972). A plaintiff seeking declaratory judgment must show both that its "rights, status or other legal relations are affected by a statute," *Ariz. Sch. Bds. Ass'n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 16 (2022) (quoting A.R.S. § 12-1832), and

"that there [is] an actual controversy ripe for adjudication," *Bd. of Sup'rs of Maricopa Cnty. v. Woodall*, 120 Ariz. 379, 380 (1978). "A contrary approach would inevitably open the door to multiple actions asserting all manner of claims against the government." *Bennett v. Napolitano*, 206 Ariz. 520, 524 ¶ 16 (2003). Because Plaintiffs allege no injury whatsoever from Defendants' purported transgressions and because this is not a proper mandamus action, the Court should dismiss the Complaint.

A. Plaintiffs lack standing because they fail to allege any cognizable injury.

Plaintiffs fail to allege *any* injury to *any* plaintiff, much less a "distinct and palpable injury," *Sears*, 192 Ariz. at 69 ¶ 16, stemming from Yavapai County's election administration. Plaintiffs' Complaint offers the barest of details about Plaintiffs' identities and critically fails to allege any harm to them resulting from Yavapai County's past, present, or future actions. *See* Compl. ¶¶ 13, 16.

As for Plaintiff Laura Harrison, the Complaint merely alleges that she is a resident of Yavapai and that she is registered to vote—not that she experienced any of the harms Plaintiffs claim occurred in prior elections. *See* Compl. ¶ 16. Nor does the Complaint allege that she is likely to experience any injury in a future election, or even that she intends to vote in a future election, much less explain how any of Yavapai County's allegedly illegal practices will harm her whatsoever. *Id.*[1]

Plaintiff Strong Communities similarly fails to allege any injury at the hands of Yavapai County. Although organizational plaintiffs may sue in their representational capacity if they "identify particularized harm" to their members, *Arcadia*, 256 Ariz. at 88 ¶ 25, Plaintiffs admit that Strong Communities is not a membership organization, *see* Compl. ¶ 13 (describing "donors, subscribers, and followers" of the organization, but no members). While organizations may sometimes sue to protect a distinct constituency they represent from harm, Strong Communities fails to allege that it represents specific constituents harmed by Yavapai County's administration of Arizona elections or that it even has any

[1] Two additional individual Plaintiffs reside in Maricopa County and Coconino County, *see* Compl. ¶¶ 14–15. Neither of those plaintiffs alleges any harms resulting from Yavapai County's conduct.

constituents who reside and vote in Yavapai County. Without such individuals who "would have standing to sue in their own right," Strong Communities lacks representational standing to proceed. *Arcadia*, 256 Ariz. 88, ¶ 24. Nor does it have direct standing to sue. The Complaint alleges no harm that the organization has or will experience because of the actions of Yavapai County. *See* Compl. ¶ 13.

Rather than allege a particularized injury, Plaintiffs note a vague, generalized interest in ensuring Defendants follow the law. *See id.* (alleging part of Strong Communities' mission is to "ensur[e] that Arizona's elections are free, fair, and lawfully administered"). As explained below in Part II, though Plaintiffs repeatedly insist that their contorted interpretations of various statutes are the correct readings, they do not identify any actual violations of Arizona law. But even if they had identified a genuine illegality, Plaintiffs' broad complaint that they are harmed if elections are not "lawfully administered," Compl. ¶ 13, fails to identify any concrete, particularized injury resulting from the violation beyond a mere interest that the law be followed—a classic generalized grievance that is insufficient to confer standing. *See Sears*, 192 Ariz. at 70–71 ¶ 23 (declining to find standing where plaintiffs alleged a violation of law but failed to "show that they ha[d] been injured by the alleged . . . violation"). Because Plaintiffs' allegation of generalized harm if elections are not "lawfully administered," Compl. ¶ 13, "is shared alike by all or a large class of citizens generally," it is "not sufficient to confer standing," *Arcadia*, 256 Ariz. at 88 ¶ 11 (quoting *Sears*, 192 Ariz. at 69 ¶ 16)). This is true not only under Arizona law, but federal law, too.[2] *See, e.g.*, *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) ("[A] citizen does not have standing to challenge a government regulation simply because the plaintiff believes that the government is acting illegally. A citizen may not sue based only on an asserted right to have the Government act in accordance with law." (cleaned up)); *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (holding generic claim that "the law . . . has not been followed" in conducting elections is "precisely the kind of undifferentiated,

[2] Although "not bound by federal jurisprudence on the matter of standing," Arizona courts find "federal case law instructive." *Fernandez*, 210 Ariz. at 141 ¶ 11 (quotation omitted).

generalized grievance about the conduct of government" that cannot confer standing). The Court should decline Plaintiffs' invitation to serve as an "open forum for citizens to press general complaints about the way in which government goes about its business." *Hippocratic Med.*, 602 U.S. at 379 (cleaned up).

Plaintiffs lack standing for an additional, independent reason: Speculation about hypothetical future harm is insufficient to create a cognizable injury. The ripeness doctrine "prevents a court from rendering a premature judgment or opinion on a situation that may never occur." *Winkle v. City of Tucson*, 190 Ariz. 413, 415 (1997); *see Bennett v. Brownlow*, 211 Ariz. 193, 196 ¶ 16 (2005) ("[T]he standing doctrine . . . ensures that courts refrain from issuing advisory opinions, that cases be ripe for decision."). Plaintiffs' claims depend on rank speculation, including that minor errors that allegedly occurred in past elections will repeat in future elections. As just one example, Plaintiffs leap from the allegation that *one* printer in Yavapai County experienced a technical error that led *one* polling place to experience *one* instance of a 45-minute wait time in 2022, Compl. ¶¶ 61–62, to the unwarranted conclusion that Yavapai voters in 2024 will be "unable to vote" because "same problems are [] likely to recur," *id.* ¶¶ 164–165. Plaintiffs offer no basis to presume that even a single error will recur in future elections and nothing to suggest that such a mistake will disenfranchise voters. Indeed, Plaintiffs' own exhibit to their Complaint shows that the "one printer issue reported in Yavapai" was "fixed" as of 7:21 a.m. the morning it was reported. Compl. Ex. B; *see also* Yavapai Cnty Defs.' Answer ¶¶ 3, 61 (same).

Most of Plaintiffs' allegations of prior misconduct and future harm do not concern Yavapai County at all. Plaintiffs' allegation, for example, that "there is a near-certainty" that the 2024 election "will be marred by the same mistakes and maladministration as the 2020, 2022, and 2023 elections," Compl. ¶ 8, is based on Plaintiffs' (baseless and speculative) allegations about prior elections in Maricopa County, which has been dismissed from this action. These allegations are all the more baseless and speculative against Yavapai County, whose elections are run by separate Defendants. Courts may not "speculate about hypothetical facts that might entitle the plaintiff to relief," *Cullen v. Auto-*

Owners Ins. Co., 218 Ariz. 417, 420 ¶ 14 (2008), and Plaintiffs' conclusory allegations assuming future harms cannot survive a motion to dismiss. *See also Jeter*, 211 Ariz. at 389 ¶ 4 (holding "unreasonable inferences [and] unsupported conclusions" insufficient to survive a motion to dismiss).

Plaintiffs' allegations about the mere opportunity for possible election fraud are similarly too speculative to confer standing. *See, e.g*., Compl. ¶ 226 (Count XI) (alleging that "a voter may have submitted his or her signed ballot envelope only for it to have been lost and/or substituted with a fraudulent ballot"); *id.* ¶ 142 (Count XII) (alleging unstaffed drop boxes "may be used to facilitate illegal ballot harvesting or other fraud"). Plaintiffs allege only the remote chance for possible misconduct by unknown third parties, but the Court "cannot predict" "troubles which do not exist; may never exist; and the precise form of which, should they ever arise." *Velasco v. Mallory*, 5 Ariz. App. 406, 411–12 (1967). The Court should decline Plaintiffs' invitation to eviscerate standing doctrine, adjudicate hypothetical disputes, and issue an advisory opinion. *Bennett*, 211 Ariz. at 196 ¶ 16.

Plaintiffs may not like Arizona law and how Yavapai County administers it. But because they have not shown any concrete injury to themselves caused by those policies, Plaintiffs' "generalized grievances [] are more appropriately directed to the legislative and executive branches of the state government"—not this Court. *Sears*, 192 Ariz. at 69 ¶ 16 n.6 (quotation omitted); *see Hollingsworth v. Perry*, 570 U.S. 693, 700, 704 (2013) (courts should "not engage in policymaking properly left to elected representatives" and "[t]he presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself" for standing (internal quotations omitted)). Without any cognizable injury, Plaintiffs lack standing, and the Court should dismiss their Complaint on this basis alone.[3]

[3] Plaintiffs also seek to resurrect claims regarding the long-since-passed 2022 elections. *See* Compl. at 40 (seeking declaration that Yavapai's use of printers in 2022 violated Arizona law); *id.* ¶¶ 57, 59, 61–62, 65–67, 162–65 (Count III) (alleging printer malfunctions in Yavapai during the 2022 election only). These claims lack merit, *see infra* Part II, but are also moot: the time to seek relief for injury that occurred in 2022 was in 2022, not 2024 and beyond. Because the "mootness doctrine directs that opinions not be given concerning issues which are no longer in existence," *Flores v. Cooper Tire & Rubber Co.*, 218 Ariz. 52, 57 ¶ 24 (App. 2008) (quotation omitted), the Court should not issue an advisory opinion on long-expired circumstances from prior elections.

B. Plaintiffs are not entitled to declaratory relief.

Plaintiffs likewise lack standing under the Declaratory Judgment Act ("DJA"), which doesn't "create standing where standing [does] not otherwise exist." *Dail v. City of Phoenix*, 128 Ariz. 199, 201 (App. 1980). As with usual standing requirements, Plaintiffs are entitled to a declaratory judgment only if their "rights, status or other legal relations are affected by a statute," A.R.S. § 12-1832. But even Plaintiff Harrison, the sole Plaintiff who lives in Yavapai County, does not allege that any of her legal rights have been affected, only that she is a registered voter in the county. *See* Compl. ¶ 16; *see also Arcadia*, 256 Ariz. at 88 ¶¶ 31, 33 (denying plaintiffs declaratory relief under they DJA where the complaint alleged an official "acted in excess of legal authority" but did not allege "that plaintiffs' rights, status, or other relations are affected by" the challenged law (cleaned up)).

Declaratory relief is also unavailable as to issues which "may or may not arise in the future." *Lake Havasu Resort, Inc. v. Com. Loan Ins. Corp.*, 139 Ariz. 369, 377 (App. 1983); *Moore v. Bolin*, 70 Ariz. 354, 356 (1950) ("No proceeding lies under the declaratory judgments acts to obtain a judgment which is merely advisory or which merely answers a moot or abstract question."). Plaintiffs' claims, however, allege speculative harms, *see supra* Part I(A), which precludes the DJA as a basis for relief.

C. Plaintiffs cannot rely on a general "beneficial interest" to confer standing because this is not a proper mandamus action.

Finally, while Arizona law requires a lesser showing of injury to confer standing in mandamus actions, Plaintiffs cannot rely on that more relaxed "beneficial interest" standard because this is not a proper mandamus action. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 ¶¶ 11–12 (2020). "Mandamus is an extraordinary remedy issued by a court to compel a public officer to perform an act which the law specifically poses as a duty," and does not apply "if the public officer is not specifically required by law to perform the act," *i.e.*, if the duty is discretionary. *Sears*, 192 Ariz. at 68 ¶ 11 (quotations omitted). Similarly, "a mandamus action cannot be used to compel a government employee to perform a function in a particular way if the official is granted any discretion about how to perform it." *Yes on*

Prop 200 v. Napolitano, 215 Ariz. 458, 465 ¶ 12 (App. 2007); *see also Blankenbaker v. Marks*, 231 Ariz. 575, 577 ¶ 7 (App. 2013) (confirming mandamus cannot be used to compel an official "to exercise [] discretion in any particular manner" (citation omitted)).

Plaintiffs' action, however, repeatedly seeks to compel the Yavapai County Defendants to engage in conduct not required by Arizona law. Most notably, Plaintiffs claim Yavapai cannot use drop boxes that are not physically monitored by two elections officials, but Arizona law contains no such requirement. *See infra* at pp. 13–14. Mandamus is not available to compel Defendants to use drop boxes in the manner Plaintiffs prefer. For this precise reason, earlier this year Judge Napper held that plaintiffs seeking to impose a similar physical monitoring requirement for drop boxes lacked standing to challenge those procedures because the manner in which officials use drop boxes is discretionary. *See* Under Advisement Ruling & Order at 5–6, *Ariz. Free Enter. Club v. Fontes*, No. S1300-CV-2023-00872 (Yavapai Cnty. Sup. Ct. Apr. 25, 2024) (attached as Exhibit 1). The same is true of Plaintiffs' attempts to compel Yavapai to conduct signature curing in the manner that Plaintiffs prefer, but is not in fact required by Arizona law, *see infra* at pp. 11–12. Simply put, mandamus does not lie to force election officials to administer elections according to Plaintiffs' policy preferences, none of which Defendants are "required by law to perform." *Sears*, 192 Ariz. at 68 ¶ 11 (quotation omitted).

Plaintiffs' action is also inappropriate for mandamus because mandamus cannot be used to "restrain a public official from doing an act." *Sears*, 192 Ariz. at 68 ¶ 11 (quotation omitted). But that is precisely what Plaintiffs seek here—to stop Yavapai from taking a variety of actions, including forbidding the County from using vote centers, *see* Compl. at 40, preventing them from canceling certain voter registrations, *see id*., eliminating the use of physically "unstaffed" drop boxes, *see id.* at 42, and prohibiting counting any votes collected from such drop boxes, *see id.* As each of those requests seeks to "restrain" Yavapai

election officials from "act[ing,]" Plaintiffs have not brought a proper mandamus action and cannot avail themselves to the lesser standing requirements for mandamus actions.[4]

Because mandamus relief is not appropriate, the Court need not consider whether Plaintiffs are "beneficially interested" in the outcome of the Defendants' duties, as required to establish standing in a mandamus action. *Sears*, 192 Ariz. at 68 ¶ 11. Were the Court to reach that question, however, it should hold that Plaintiffs do not have a beneficial interest because as already explained, they allege no impact to themselves at all from Defendants' actions; they do not even allege that they intend to vote in 2024 or would be affected by any of Defendants' challenged conduct. Plaintiffs' mere disagreement with the law falls far short of what is required to bring a mandamus action: if Plaintiffs' allegations sufficed, "virtually any citizen could challenge any action of any public officer under the mandamus statute by claiming that the officer has failed to uphold or fulfill state or federal law, as interpreted by the dissatisfied plaintiff. Such a result would be inconsistent with section 12–2021," (the mandamus statute). *Id.* at 69 ¶ 14.

II. Plaintiffs fail to state a claim as to Counts III, VIII, XI, and XII.

To begin, Plaintiffs' claims as to Counts I–II, IV–VII, and IX should be dismissed because those claims were directed only to the Maricopa County Defendants, who have been dismissed from this action. This Court should also dismiss Counts III, VIII, XI, and XII, for failure to state a claim.[5]

Count III (Provision of Ballots at Vote Centers). Plaintiffs' Count III, which alleges printing malfunctions caused some voters to wait in "long lines" in 2022, Compl. ¶ 164, does not demonstrate any violation of A.R.S § 16-411(B)(4), a statute which allows counties to establish vote centers that give voters the flexibility to vote at any polling location they choose rather than voting at an assigned precinct location.

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[4] Plaintiffs' Complaint alleges just once that Yavapai County is failing to perform a "non-discretionary duty"—to verify signatures on early ballot envelopes as applied to voter-assisted ballot affidavits. *See* Compl. ¶¶ 106–08, 194. Because these allegations are not well-pled, *see infra* at pp. 11–12, they too cannot support a mandamus action.

[5] Intervenor-Defendants take no position on whether Plaintiffs state a claim as to Count X, but maintain that Plaintiffs lack standing as to all of their claims. *See supra* Part I.

Plaintiffs wholly misunderstand section 16-411(B)(4), which allows counties to choose between a vote center model (under which voters can appear at any polling location in the county to cast their ballot) and a precinct model (which requires voters to cast ballots at a particular polling location). In both systems, the races, candidates, and issues that a voter may cast their ballot for depend on where the voter resides. Thus, in counties like Yavapai that use vote centers, section 16-411(B)(4) requires that vote centers "shall allow any voter in that county to receive the appropriate ballot *for that voter*"—*i.e.*, a ballot with the races, candidates, and issues for which that voter is eligible to vote. *Id.* § 16-411(B)(4) (emphasis added); *see also* 2023 Election Procedures Manual ("EPM") at 126 ("A vote center allows voters from any precinct within the county to cast a ballot with the correct ballot style on Election Day.").[6] Yavapai County complies with Section 16-411(B)(4) when it provides all Yavapai voters who appear at a vote center with a ballot that contains the offices and issues they are eligible to vote for. Plaintiffs do not allege that Yavapai has failed to provide appropriate ballots, *see* Compl. ¶¶ 163–65, which alone dooms Count III.

Even if the Court were to entertain Plaintiffs' misreading of Section 16-411(B)(4)—that when voters wait in a line at a vote center, they are disenfranchised and not "allowed" to vote as required under Section 16-411(B)(4), *see* Compl. ¶ 65, 164—Plaintiffs' sole factual allegation in support of this claim is that that there was one 45-minute line at one vote center in Yavapai County in 2022, *see id.* ¶¶ 61–62. But Plaintiffs don't allege that Yavapai took any action to prohibit—*i.e.*, not "allow,"—any voter from casting a ballot. Plaintiffs do not even suggest that any voter was unable to vote. To the contrary, Plaintiffs' own exhibit to the Complaint shows that the "one printer issue reported in Yavapai" was "fixed" as of 7:21 a.m. the morning it was reported. Compl. Ex. B; *see also* Yavapai Cnty. Defs.' Answer ¶¶ 3, 61 (same). Plaintiffs offer no basis to presume that a single, short-lived printer glitch from 2022 will recur in future elections or that any such technical error will

[6] *2023 Elections Procedures Manual* 126, ARIZ. SEC'Y OF STATE (2023), available at https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf.

in fact disenfranchise anyone, and this Court may not "speculate about hypothetical facts that might entitle the plaintiff to relief," *Cullen*, 218 Ariz. at 420 ¶ 14.

Count III thus fails to state a claim. Plaintiffs do not sufficiently allege that "any" voter will not be "allowed" to vote under A.R.S. § 16-411(B)(4) in Yavapai County, either under the proper interpretation of the statute, or even under Plaintiffs' gross distortion of the statute.

Count VIII (Signature Verification Procedures for Voter-Assisted Ballot Affidavits). In Count VIII, Plaintiffs claim that "[n]o provision of Arizona law allows the Defendants to deem a signature valid where the signature or mark is inconsistent with the signature or mark on the voter registration record, even where a voter assistant is listed." Compl. ¶ 196. But current Arizona law does not require traditional signature comparison for all voter-assisted ballots. As it was amended in February 2024, A.R.S. § 16-550 now states: "[O]n receipt of the envelope containing the early ballot and the mail ballot affidavit, the county recorder or other officer in charge of elections shall compare the signature on the envelope with the signature of the elector on the elector's registration record ***as prescribed by section 16-550.01.***" (emphasis added). A.R.S. § 16-550.01(H), similarly enacted earlier this year, "codifie[s] procedures based on the 2020 secretary of state signature verification guide[.]" The 2020 signature verification guide, in turn, has a specific section on how counties should handle signature matching for "Assisted Voters." That section states that signature verification is not necessary when the voter leaves a "mark" in lieu of a signature or leaves the line blank, as long as there is a voter assistant signature *and* the county confirms that the voter required assistance to vote.[7] In so doing, the county must take affirmative measures to confirm the identity of the voter and verify that the voter indeed relied on an assistant to mark their ballot. This procedure also makes good sense: In most cases, if a voter needs physical assistance marking their ballot at all, it is unlikely the voter can fill out the signature line of the ballot themselves.

[7] *Signature Verification Guide* 14–16, ARIZ. SEC'Y OF STATE (July 2020), available at https://azsos.gov/sites/default/files/docs/2020_Signature_Verification_Guide.pdf.

Plaintiffs are not just wrong on the law, they also blindly speculate on the facts, claiming, "[o]n information and belief" *alone*, that the Yavapai Defendants intend to violate Arizona law by "deeming valid any signature or mark contained on the ballot affidavit." *See* Compl. ¶¶ 108, 194. Such bare conclusory statements fail to state a claim. *See Cullen*, 218 Ariz. at 419 ¶ 7; *Yule v. State*, 16 Ariz. 134, 137 (1914) ("We must presume that the sworn officers of the law will perform their official duties."). In any event, Yavapai confirmed that they *do* plan to conduct signature matching for voter-assisted ballot affidavits, which is more than is even required under Arizona law. *See* Yavapai Cnty. Defs.' Answer ¶ 108.

Count XI (Procedures for Curing Ballots). Count XI is another attempt to substitute Plaintiffs' policy preferences for Yavapai's lawful election administration practices. Here, Plaintiffs invent two curing requirements for early ballots with insufficient signatures not found in Arizona law: (1) that election officials cannot use the phone number a voter writes on their early ballot envelope to contact them, and instead must use "the phone number listed in the voter's registration file or other authoritative government database," Compl. ¶¶ 221–22; and (2) that election officials cannot rely on the "voter's verbal affirmation" to confirm their ballot, but must "actually *show* a copy of the signature to the voter," *id.* ¶¶ 225–26. But Arizona law requires neither. The governing statute says:

> 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 the voter to correct *or the county to confirm the inconsistent signature*.

A.R.S. § 16-550(A) (emphases added). The process Plaintiffs allege that Yavapai County employs, again upon "information and belief"—calling the voter on a number they provided to inform them of a signature issue and confirm their signature, Compl. ¶ 133—plainly constitutes "reasonable efforts" that allow "the county to confirm the inconsistent signature," as required by Arizona law. A.R.S. § 16-550(A). Plaintiffs thus fail to state a claim, alleging only that Yavapai's "reasonable efforts" are not the specific practices

Plaintiffs would prefer. The Court should decline Plaintiffs' request to substitute their chosen procedures for the "reasonable efforts" to correct signature issues that Yavapai County has discretion to determine. *Id.*

Count XII (Drop Boxes). Count XII fails because nothing in Arizona law requires that drop boxes be continuously monitored "by at least two election officials" who are "positioned close enough to be able to view each person who deposits ballots into the box," as Plaintiffs demand. Compl. ¶ 231. In April 2024, Judge Napper rejected a similar claim, holding that Arizona law permits "the use of drop boxes that are not always monitored by election officials," Ex. 1 at 5. As Judge Napper explained, because neither the EPM nor Arizona law require drop boxes to be physically monitored by elections officials, it is consequently within the discretion of the Secretary (who promulgates the EPM) and county officials how to utilize drop boxes. *See id.* at 5-6. This is a well-reasoned prior decision from another division of this Court that is "considered highly persuasive and binding" because it is not "clearly erroneous" and "conditions have [not] changed so as to render the prior decision inapplicable." *State v. Healer*, 246 Ariz. 441, 445 ¶ 9 (App. 2019) (quotation omitted).

None of Plaintiffs' allegations or convoluted interpretations of Arizona law changes this conclusion. Section 16-1005(E), the only provision Plaintiffs cite in support of their theory, is a penal provision, not an election procedure. By its plain language, the statute prohibits "[a] person or entity" from soliciting the collection of ballots "by misrepresenting itself as an election official or as an official ballot repository or . . . as a ballot drop off site, other than those established and staffed by election officials[.]" A.R.S. § 16-1005(E). Ballot drop boxes established and administered by Yavapai County election officials are obviously not "misrepresenting" themselves whatsoever—they *are* "official ballot repositories." *Id.*

Plaintiffs' precise "staffing" requirement—that at least two election officials be positioned close enough to view each person who deposits a ballot, *see* Compl. ¶ 231—is invented from whole cloth. As Judge Napper held, nothing in the language of the statute or

any other provision of Arizona law mandates how often drop boxes need to be physically monitored, much less in the precise fashion that Plaintiffs demand. Ex. 1 at 5–6.

Indeed, the election code permits the use of ballot drop boxes without any requirement that election officials be physically present at all times. *See* A.R.S. § 16-548(A) (stating only that early ballots must be "delivered or mailed to the county recorder"). Nothing else in the statutory scheme prescribes or proscribes how voted ballots must be "delivered . . . to the county recorder," *id.*, and drop boxes—physically monitored or not—are simply one such means of ballot delivery. In this context, "staffed" simply means a drop box that is maintained by election officials. *See Boyd v. State*, 256 Ariz. 414, ¶ 9 (App. 2023) (noting courts "interpret the statutory language in view of the entire text, considering the context and related provisions" (citing *Fann v. State*, 251 Ariz. 425, 434 ¶ 25 (2021))). The Court should reject Plaintiffs' invitation to violate the "basic principle that courts will not read into a statute something which is not within the manifest intention of the legislature as indicated by the statute itself." *Town of Scottsdale v. State ex rel. Pickrell*, 98 Ariz. 382, 386 (1965); *see also Mussi v. Hobbs*, 255 Ariz. 395, 402 ¶ 34 (2023) (court will not read into statutes processes not in the statutory language). In short, Plaintiffs repeatedly seek to displace Arizona election law in favor of their policy preferences. But because such policy disputes must be directed to the Legislature, not the Court, *Sears*, 192 Ariz. at 69 ¶ 16 n.6, Counts III, VIII, XI, and XII each fail to state a claim upon which relief may be granted.

III. Plaintiffs' claims should be dismissed with prejudice.

Dismissal with prejudice is appropriate when amending the complaint could not cure its legal defects. *See Wigglesworth v. Mauldin*, 195 Ariz. 432, 439 ¶¶ 26–27 (App. 1999). Plaintiffs fail to allege any actual injury, their allegations are based on rank speculation about Defendants' hypothetical future conduct, and their claims fail as a matter of law. With zero factual or legal basis for any legal violation or resulting injury, no amount of amendments will cure the fatal deficiencies in Plaintiffs' Complaint. Indeed, this is the *third* time Plaintiffs have brought these claims before a court: they previously filed a substantively identical action in Maricopa County before amending and then voluntarily

dismissing that action. *See Strong Cmtys. Found. of Ariz., Inc. v. Maricopa Cnty.*, No. CV-2024-002441 (Maricopa Cnty. 2024). This Court should dismiss their claims with prejudice to ensure this same baseless action cannot simply be re-filed yet again in another county.

CONCLUSION

For these reasons, Intervenor-Defendants request that this Court dismiss all of Plaintiffs' claims with prejudice.

RESPECTFULLY SUBMITTED this 31st day of October, 2024.

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EXHIBIT 1

SUPERIOR COURT, STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

ARIZONA FREE ENTERPRISE CLUB, an Arizona nonprofit corporation, and MARY KAY RUWETTE, individually, Plaintiffs, vs. ADRIAN FONTES, in his official capacity as the Secretary of State of Arizona, Defendant, ARIZONA ALLIANCE OF RETIRED AMERICANS; and MI FAMILIA VOTA, Intervenors-Defendants.	**Case No.** S1300CV202300872 S1300CV202300202 **UNDER ADVISEMENT RULING AND ORDER**
ARIZONA FREE ENTERPRISE CLUB, an Arizona nonprofit corporation; RESTORING INTEGRITY AND TRUST IN ELECTIONS, a Virginia nonprofit corporation; and DWIGHT KADAR, an individual, Plaintiffs, vs. ADRIAN FONTES, in his official capacity as the Secretary of State of Arizona, Defendant.	

HONORABLE JOHN NAPPER	**BY:** Felicia L. Slaton, Judicial Assistant
DIVISION 2	**DATE:** April 25, 2024

The Court has received and reviewed the parties' cross-*Motions for Summary Judgment*, *Motions to Dismiss*, the *Responses*, and the *Replies*. The Court also held oral arguments and reviewed supplemental pleadings and evidentiary submissions. The Court has reviewed the files in both cause numbers. In both cases, the Court finds the 2023 Elections Procedures Manual complies with Arizona law. Accordingly, the Plaintiffs' *Motions for Summary Judgment* are **denied**, and the Defendants' *Motions for Summary Judgment* are **granted**.

Facts and Procedural History

The Arizona Legislature is responsible for passing laws controlling elections. *Ariz. Const. Art.VII §1, Moore v. Harper,* 143 S. Ct. 2065, 2090 (2023). Conducting elections is a complicated process and the Legislature has required the Secretary of State (the elections officer for the State)("Secretary"), to draft an election procedures manual ("EPM"). *A.R.S. § 16-452(A)*. The purpose of this manual is 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." *Id.* Once signed by the Governor, the Attorney General, and the Secretary, the EPM is binding and violating its requirements is a criminal offense. *A.R.S. §16-452(C).* However, any section of the EPM which violates an election statute does "not have the force of law." *Leibsohn v. Hobbs*, 254 Ariz. 1, ¶22 (2022).

The issues before the court are: (1) did the Legislature intend for a prior ballot envelope to be a part of a voter's registration record pursuant to A.R.S. §16-550 and §16-550.01 (Cause # P1300CV202300202); and (2) does the use of unmonitored drop-boxes to collect early ballots violate Arizona law. (Cause # P1300CV202200872)

Application of Law

Registration Record

This part of the litigation involves how early ballots are verified based on the definition of the phrase "registration record" in A.R.S. §16-550 and §16-550.01. In a prior ruling on a Motion to Dismiss, the Court found the signature on a previous ballot envelope did not meet the definition of a registration record in A.R.S. §16-550. Since this ruling, a new EPM has been adopted and the Arizona Legislature has relied on the new EPM when reenacting and amending the relevant statute. As explained below, based on these changes, the Court finds the Legislature intends for a previous ballot envelope to be included in a voter's registration record.

Verification

In order to have his/her early vote counted, a voter must fill out their ballot and place it in a pre-printed envelope. *A.R.S. §16-547(A)*. The outside of this envelope contains an affidavit indicating the voter is: (1) registered to vote in the county; (2) has not voted and will not vote anywhere else; and (3) personally filled out the ballot within the envelope. *Id.* The voter signs the envelope attesting to these facts under penalty of perjury. *Id.*

When the early ballot is received by the county recorder, they then go about trying to determine if the signature on the envelope is the signature of the registered voter. *A.R.S. § 16-550(A)*. This is done by comparing the ballot envelope to the signature "on the elector's registration record." If the two signatures are clearly consistent, then the vote is counted. *A.R.S. §16-550.01(B).* If the two signatures are not consistent, the voter is notified and given the opportunity to confirm the signature. *Id.*

The current EPM allows a county recorder to compare the signature on the current voter envelope to the signature on the envelope from prior early votes. The signature from the prior early vote envelopes being a part of the "registration record." Meaning, the 2023 EPM includes in the definition of "registration record" the previous act of early voting.

Legislative Reenactment

When this litigation began, the 2019 EPM remained in effect. The 2019 EPM did not include this method for verifying a signature. However, the parties do not dispute the Secretary told recorders that a prior verified vote was a proper tool for comparison. The 2023 EPM formally adopts this process and includes "prior early ballot affidavits" as part of the registration record. *Ariz. Sec. State. 2023 Elec. Pro. Man. VI.(A)(1)*.

As mentioned above, the Legislature recently amended several elections statutes. These include changes to A.R.S. §16-550 and the addition of A.R.S. §16-550.01. These statutory amendments came after the 2023 EPM was implemented. The amendments rely heavily on the text from the 2023 EPM. In some places the statutes outright adopt language directly from the 2023 EPM. The new statutes also use the phrase "registration record" multiple times.

The Legislature had every opportunity to eliminate "prior early ballot affidavits" as a comparison tool but chose not to do so. Nothing in these amendments suggests the Legislature found the EPM's working definition of registration record was improper. The Legislature also chose not to provide a definition of registration record in the amended or newly enacted statutes.

The Legislature is presumed "to know how an administrative department interprets the statutes it is responsible to administer." *State, ex rel., Arizona Dept. Revenue v. Short*, 192 Ariz. 322, 325 ¶14 (App. 1998). In a different context, the Arizona Supreme Court has held courts can infer that the legislature approves of another body's definition of a statute when there, "is some reason to believe that the legislature has considered and declined to reject that interpretation." *Lowing v. Allstate Ins. Co.*,176 Ariz. 101, 106 (1993). More directly, when the, "legislature re-enacts a statute after uniform construction by the officers required to act under it, the presumption is that the legislature knew of such construction and adopted it in re-enacting the statute." *Jenny v. Arizona Express, Inc.*, 89 Ariz. 343, 346 (1961) (*see also*, *Mummert v. Thunderbird Lanes*, Inc, 107 Ariz. 244 (1971).

This is exactly what has happened here. The Arizona Legislature tasked the Secretary of State, the Attorney General and the Governor with constructing the EPM. When they did so in 2023, they included prior ballot envelopes in the working definition of "registration record." There can be little doubt the Legislature was aware of this definition because they included much of the language from the EPM into this new legislation, including the phrase registration record.

This Court may or may not have been correct about the definition of registration record when it ruled on the previous Motion to Dismiss. However, its prior reasoning is no longer sound based on the Legislature's adoption of the definition of registration record from the 2023 EPM when reenacting A.R.S. §16-550(A) and enacting of A.R.S. §16-550.01. Regardless of the prior ruling of this Court, it is now presumed from these legislative changes that the Legislature intended to adopt the EPM's use of prior ballot envelopes to verify signatures.

Off the Rolls

This reading of registration record also complies with Arizona statute in other ways. Intervenor *Mi Familia Vota* points out: a person that requests to vote by early ballot must actually do so or they will be removed from the early voting rolls. *A.R.S. §16-544(H)(4)*. This failure to early vote could ultimately cause a

voter to be dropped from the voting rolls altogether. Meaning, the act of early voting keeps an individual registered to vote in future elections. In Arizona, early voting is simultaneously registering.

Plaintiffs acknowledge the failure to early vote across time can result in a person no longer being able to vote. They argue this path to being off the rolls is so byzantine that it could not have been on the Legislature's mind when they used the phrase "registration record." However, there is no factual record before the Court substantiating this argument. Even though somewhat convoluted, in the system constructed by the Legislature, the act of early voting operates to ensure a voter remains registered.

While not conclusive of legislative intent, this voting/registration paradigm is consistent with the Legislature adopting the 2023 EPM's use of prior ballot envelopes to verify signatures as registration records. Courts are to "harmonize and give effect" to all provisions of a statutory scheme. *Marsh v. Atkins*, 256 Ariz. 233, ¶14 (App. 2023). Including prior ballot envelopes in the definition of registration accomplishes this goal.

Database Argument

The Secretary argues signatures on prior ballot envelopes are registration records because they are kept in a database containing other records related to voters and elections. This database must be kept pursuant to federal statute. The Court is not compelled by this argument. Where or how something is stored does not define the item. Whether or not a record is a "registration record" can only be determined by the content of its character, as defined by the Legislature, and not by the company it keeps.

Conclusion

The Court finds the Legislature intended to adopt the 2023 EPM's use of prior voting envelopes in the definition of registration record when it reenacted A.R.S. §16-550 and adopted A.R.S. §16-550.01. Using this definition also harmonizes other portions of the Arizona elections statutes. Accordingly, the Plaintiffs' *Motion for Summary Judgment* is **denied**. The cross-*Motions for Summary Judgment* are **granted**.

Drop Boxes

Staffed vs. Monitored

When this litigation began, the 2019 EPM was also still in effect. The prior version of the EPM allowed for "unstaffed drop-boxes." The Plaintiffs objected to this portion of the EPM arguing unstaffed drop boxes were not allowed by Arizona statute. The direction of this litigation was also impacted by the enactment of the 2023 EPM and the Legislature amending several voting statutes.

The 2023 EPM creates a process for counties to use drop boxes for the collection of early ballots. *2023 Elections Procedures Manual II(I) pg. 71*. A county recorder may opt to use drop-boxes and the location of the drop-boxes must be approved by the board of supervisors for the county. *Id*. Any county choosing to utilize drop-boxes must comply with the EPM's drop-box requirements. *Id.*

The EPM requires that, "a ballot drop-box shall be located in a secure location such as inside or in front of a federal, state, local or tribal government building." *Id.* At issue here are drop-boxes that are placed outside government buildings. As to these drop-boxes, the EMP states, "A drop-box staffed by elections officials may be placed outdoors and shall be securely fastened in a manner to prevent moving or tampering." *Id.* at II(I)(1)(a).

The section of the EPM matches A.R.S. §16-1005(E) which states, "a person or entity that knowingly solicits the collection of voted or unvoted" that is found "to be serving as a ballot drop off site, other than those established and staffed by certain election officials" is guilty of a class 5 felony. The text of the 2023 EPM does not deviate from Arizona statute.

The issue before the Court is: what is the definition of the word "staffed" as used in the EPM and Arizona statute. The Arizona code states, "in order to be valid and counted, the ballot affidavit must be delivered to the office of the county recorder or other officer in charge of elections or may be deposited at any polling place in the county not later than 7:00 p.m. on election day." *A.R.S. §16-547(D)*. From this, Plaintiffs argue "staffed" must mean the ballot must be delivered to a drop-box which is monitored by an officer in charge of elections. Plaintiffs appear to be arguing "staffed" and "monitored" are equivalents.

While not defining the term "staffed," the EPM does not require that staffed drop-boxes always be monitored by an election worker. For instance, the EPM mandates that a fire suppression device be placed inside all ballot drop-boxes, "that are placed outdoors or not within the sight of elections officials." *2023 Elections Procedures Manual Sec. I(5) pp. 7.* Therefore, the definition of staffed in the EPM clearly does not require a drop-box to be indoors or be monitored at all times.

The Arizona Legislature recently amended A.R.S. §16-547(D). This amendment occurred after the creation of the 2023 EPM. As outlined above, the Legislature is presumed to be aware of the EPM's use of staffed but unmonitored drop-boxes. *State, ex rel., Arizona Dept. Revenue v. Short*, 192 Ariz. 322, 325 ¶14 (App. 1998). Further, the reenactment of A.R.S. §16-547(D) without providing an alternative definition for deliver or staffed, indicates the Legislature was adopting the use of these types of drop-boxes for the delivery of ballots. *Jenny v. Arizona Express, Inc.*, 89 Ariz. 343, 346 (1961) (*see also*, *Mummert v. Thunderbird Lanes*, Inc, 107 Ariz. 244 (1971).) The leaving of item for another to pick up later is also consistent with the dictionary definition of deliver. (*See*, *Merriam Dictionary* https://www.merriam-webster.com/Dictionary/Deliver, searched 4/23/2024 "to take and hand over to or leave for another.").

The Legislature has delegated to the Secretary the responsibility to "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting," including the "collecting of ballots." *A.R.S. §16-452(A)*. In this instance, the Secretary has included as a method for collecting ballots the use of drop-boxes that are not always monitored by elections officials. After the reenactment of the A.R.S. §16-547(D), the use of these drop-boxes to collect ballots is well within the discretion of the Secretary.

Standing

The 2019 EPM contained a definition of "unstaffed" drop-box and outlined the requirements for their use. Plaintiffs argued these drop-boxes violated the text of Arizona statute. Therefore, the Plaintiffs sought to force the Secretary to perform the non-discretionary act of following Arizona law. A writ of mandamus may be an appropriate tool in these circumstances. *State Board of Technical Registration v. Bauer*, 84 Ariz. 237, 239 (1958).

The 2019 EPM is no longer in effect and the 2023 EPM no longer uses unstaffed drop-boxes. The 2023 EPM requires all drop-boxes to be staffed. The 2023 EPM does not require the staffed drop-boxes to always be monitored. As outlined above, the Legislature was aware of the use of this type of drop-box when it reenacted A.R.S. §16-457(D). At a very minimum, the reenactment of this statute indicates the legislative intent that the

use of these drop-boxes is well within the discretion of the Secretary. While mandamus is a tool to require a government official to, "compel a public officer to perform a discretionary act" it cannot be used to require the official "to exercise that discretion in a particular manner." *Blankenbaker v. Marks*, 231 Ariz. 575, 577 ¶7 (App. 2013).

The Secretary, the Attorney General and the Governor exercised their discretion in the defining of drop-boxes in the 2023 EPM. The Legislature adopted this defintion when it reenacted and amended the statute at issue. Accordingly, Plaintiffs do not have standing to require the Secretary to exercise his discretion in a particular manner. *Blankenbaker*, at ¶ 7.

Conclusion

It is within the Secretary's discretion to allow counties to choose to use drop-boxes. The Legislature has not required that these drop-boxes always be monitored. The decision to use staffed but unmonitored drop-boxes is within the discretion of the Secretary. Accordingly, the Plaintiffs' *Motion for Summary Judgment* is **denied**. The cross-*Motions for Summary Judgment* are **granted**.

IT IS THEREFORE ORDERED, in Cause # P1300CV202300202, the Plaintiffs' *Motion for Summary Judgment* is **denied**.

IT IS FURTHER ORDERED, in Cause # P1300CV202300202, the Defendant and Intervenors' *Cross-Motion for Summary Judgment* is **granted**.

IT IS FURTHER ORDEREED, in Cause # P1300CV202200872, the Plaintiffs' *Motion for Summary Judgment* is **denied**.

IT IS FURTHER ORDEREED, Cause # P1300CV202200872, the Defendants' *Motion for Summary Judgment and Intervenors' Motion to Dismiss* are **granted**.

IT IS FUTHER ORDERED, Defendants are to file a form of Judgment with the Court within 10 days of this Order. The Judgment shall contain the appropriate language from Rule 54 of the Arizona Rules of Civil Procedure.

DATED this 25th day of April, 2024.

eSigned by NAPPER, JOHN 04/25/2024 13:23:35 II8T1OaJ

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