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

24 **IN AND FOR THE COUNTY OF YAVAPAI**

25 Mark Brnovich, in his official capacity as
26 Arizona Attorney General; Yavapai County
Republican Committee, an unincorporated
association; and Demitra Manjoros, First
Vice Chair of the Yavapai County
Republican Committee and registered voter
in Yavapai County,

Plaintiffs

vs.

Katie Hobbs, in her official capacity as
Arizona Secretary of State,

Defendant.

Case No:

**PLAINTIFFS' VERIFIED COMPLAINT
FOR SPECIAL ACTION RELIEF**

[EXPEDITED ELECTION CASE]

1 For their complaint against Arizona Secretary of State Katie Hobbs (the “Secretary”),
2 Arizona Attorney General Mark Brnovich (“AG”), Yavapai County Republican Committee
3 (“Plaintiff Committee”), and Demitra Manjoros (“Plaintiff First Vice Chair”) (together referred
4 to as “Plaintiffs”) hereby allege as follows:

5 INTRODUCTION

6 1. This case is about the Secretary’s ongoing violation of her mandatory statutory duty
7 to promulgate an Elections Procedures Manual (“EPM”) for the 2022 election cycle. *See* A.R.S.
8 § 16-452. To cure that ongoing violation, Plaintiffs are entitled to special action relief ordering
9 the Secretary to comply with the mandatory requirement of providing a legally-compliant EPM
10 to the AG and Governor for approval.

11 2. “No right is more precious in a free country than that of having a voice in the
12 election of those who make the laws under which, as good citizens, we must live.” *Wesberry v.*
13 *Sanders*, 376 U.S. 1, 17 (1964). But that right means little without the necessary structure to
14 maintain the integrity of the democratic process. *See Burdick v. Takushi*, 504 U.S. 428, 441
15 (1992).

16 3. The laws and regulations creating and implementing the democratic process must
17 simultaneously serve a number of ends. While the security and integrity of the process is perhaps
18 first and foremost among those ends, election laws and regulations must also achieve uniformity
19 and correctness.

20 4. In Arizona, the democratic process derives from several sources, each of which is
21 critical to the overall functioning of the system.

22 5. First, the Arizona Constitution imposes certain requirements with respect to the
23 democratic process. *See generally* Ariz. Const. art. 7. For example, the Constitution requires
24 that “[a]ll elections shall be free and equal.” Ariz. Const. art. 2 § 21. The Constitution also
25 requires that only qualified voters shall be entitled to vote. Ariz. Connt. art. 7 § 2. To ensure
26 security, the Constitution directs the Legislature to “enact[] registration and other laws to secure

1 the purity of elections and guard against abuses of the elective franchise.” Ariz. Const. art. 7 §
2 12. The Constitution requires secrecy in voting too: “All elections by the people shall be by
3 ballot, or by such other method as may be prescribed by law; Provided, that secrecy in voting
4 shall be preserved.” Ariz. Const. art. 7 § 1.

5 6. Second, the Arizona Legislature has taken a number of steps to achieve a secure,
6 uniform, and correct democratic process through statute. The Legislature has enacted a number
7 of election laws—contained primarily in Title 16 of the Arizona Revised Statutes—to guide
8 officials and Arizona citizens in voting and to ensure the purity of Arizona’s elections. These
9 include laws on the methods for casting, collecting, and counting ballots. For example, the
10 Arizona Legislature requires that Arizona voters cast their ballots in an assigned precinct (unless
11 a voting center model is followed) and, with certain exceptions, prohibits individuals from
12 collecting and returning others’ ballots. *See* A.R.S. § 16-122; A.R.S. § 16-1005(H)-(I); *Brnovich*
13 *v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2343-44 (2021) (rejecting challenge to precinct
14 voting requirement and ballot harvesting ban under the Voting Rights Act).

15 7. Third, the Legislature has delegated authority over the various stages of the
16 democratic process to certain government officials, who through their actions must implement
17 and protect the democratic process. For example, county recorders are primarily responsible for
18 voter registration and early voting and county supervisors are responsible for election-day
19 operations and tabulation of votes. *See e.g.* A.R.S. §§ 16-101 *et seq.* (duties prescribed to county
20 recorders to register voters and maintain voter registration records), -542 to -550 (duties
21 prescribed to county recorder to provide for and administer early voting up to and including
22 comparing voter’s signatures on ballot affidavits to voter registration records), -551 (duties
23 prescribed to boards of supervisors to establish early election boards for tabulating early ballots),
24 -531 (duties prescribed to boards of supervisors to appoint election boards for each voting
25 location). The AG is responsible for enforcing Arizona’s elections laws and defending those
26 laws in state and federal court. *See* A.R.S. § 16-1021; *Brnovich*, 141 S. Ct. at 2336 (rejecting the

1 Secretary’s argument that Attorney General Brnovich did not have standing to defend the election
2 laws at issue). And the Secretary is responsible for promulgating election procedures to guide
3 county officials in implementing certain portions of the democratic process. *See* A.R.S. § 16-
4 452; *see Arizona Public Integrity Alliance v. Fontes*, 250 Ariz. 58, 62 (2020) (“The legislature
5 has expressly delegated to the Secretary the authority to promulgate rules and instructions for
6 early voting.”). As the Arizona Supreme Court recently explained, but which should go without
7 saying, “public officials should, by their words and actions, seek to preserve and protect [election]
8 laws.” *Arizona Public Integrity Alliance*, 250 Ariz. at 61.

9 8. Fourth, among the procedures the Secretary is tasked with promulgating is “an
10 official instructions and procedures manual,” otherwise commonly known as the “Elections
11 Procedure Manual” or “EPM.” A.R.S. § 16-452(B). The Secretary has a non-discretionary
12 statutory duty to promulgate the EPM “not later than December 31 of each odd-numbered year
13 immediately preceding the general election.” *See id.*

14 9. The Arizona Legislature delegated the mandatory duty of promulgating the EPM
15 to the Secretary “to achieve and maintain the *maximum degree* of correctness, impartiality,
16 uniformity and efficiency on the procedures for early voting and voting, and of producing,
17 distributing, collecting, counting, tabulating and storing ballots.” A.R.S. § 16-452(A) (emphasis
18 added).

19 10. To facilitate promulgation of the EPM by December 31 of each odd-numbered year
20 immediately preceding a general election, the Legislature requires the Secretary to provide a draft
21 EPM to the AG and Governor prior to October 1 of each odd-numbered year.

22 11. The Arizona Supreme Court has previously held that “[t]he Secretary must follow
23 a specific procedure in promulgating election rules,” including providing a draft EPM to the AG
24 and Governor by October 1 of each odd-numbered year. *Ariz. Public Integrity Alliance*, 250
25 Ariz. at 63 (emphasis added).

1 12. In the time since the Secretary promulgated the 2019 EPM, the Arizona Supreme
2 Court has twice provided new guidance on the proper scope of the EPM.

3 13. First, the Arizona Supreme Court held that because A.R.S. § 16-452 does not
4 mention candidate nominating petitions, the 2019 EPM’s procedures relating to that topic were
5 inconsistent with § 16-452 and did not have the force of law. *McKenna v. Soto*, 250 Ariz. 469,
6 473 ¶20 (2021).

7 14. Second, the Supreme Court subsequently made clear that “an EPM regulation that
8 exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does
9 not have the force of law.” *Leach v. Hobbs*, 250 Ariz. 572, 576 ¶21 (2021).

10 15. Applying the deadlines contained in § 16-452 to the 2022 election cycle, the
11 Secretary was statutorily required to provide the AG and Governor with a legally-compliant EPM
12 for approval prior to October 1, 2021 and to promulgate the EPM prior to December 31, 2021.
13 *See* A.R.S. § 16-452.

14 16. Despite her mandatory statutory duty to do so, the Secretary failed to provide the
15 AG and Governor with a legally-compliant EPM prior to October 1, 2021 and failed to
16 promulgate the EPM prior to December 31, 2021, thereby violating A.R.S. § 16-452. And the
17 Secretary’s violation of those mandatory statutory duties remains ongoing—she has still not
18 provided the AG and Governor with a legally-compliant draft or promulgated an EPM for the
19 2022 election cycle.

20 17. On October 1, 2021, the Secretary provided the AG and Governor with what she
21 claimed was a draft EPM (“Draft 2021 EPM”) consistent with A.R.S. § 16-452.

22 18. Contrary to the Secretary’s statement that the draft was provided “pursuant to
23 A.R.S. § 16-452,” the draft EPM contained numerous provisions that were inconsistent with the
24 text or purpose of Arizona election law.

25 19. For example, despite the Arizona Supreme Court’s conclusion in *McKenna* that §
26 16-452 does not authorize the Secretary to promulgate procedures relating to candidate

1 nominating petitions, the Secretary included numerous pages or procedures relating to candidate
2 nominating procedures in the draft.

3 20. Similarly, despite the U.S. Supreme Court upholding Arizona’s precinct-voting
4 system in *Brnovich*, the Secretary included procedures in her draft EPM that would allow voters
5 to cast a ballot outside of their assigned precinct, which she acknowledged in her cover letter to
6 the AG and Governor.

7 21. In response, the AG notified the Secretary that the Draft 2021 EPM violated A.R.S.
8 § 16-452 by including numerous provisions beyond the authority conferred therein or
9 inconsistent with Arizona election laws. The AG provided the Secretary with a redline showing
10 those provisions that would need to be removed before the AG would approve the draft.

11 22. Following an exchange of additional correspondence, the Secretary refused to
12 make the changes necessary for the EPM to be legally compliant and failed to issue an EPM for
13 the 2022 election cycle.

14 23. Arizona county election officials, therefore, now lack a valid, legally sufficient set
15 of uniform rules with which to administer the 2022 statewide primary and general elections.

16 24. Consequently, Plaintiffs seek special action relief compelling the Secretary to
17 promulgate a draft EPM to the AG and Governor that is fully compliant with A.R.S. § 16-452 by
18 May 4, 2022.

19 25. To comply with A.R.S. § 16-452, the draft EPM provided by the Secretary to the
20 AG and Governor must not contain any provision that “exceeds the scope of its statutory
21 authorization or contravenes an election statute’s purpose[.]” *Leach*, 250 Ariz. at 576 ¶21.

22 26. To ensure the “maximum degree of correctness, impartiality, uniformity and
23 efficiency,” *see* A.R.S. § 16-452(A), the draft EPM provided to the AG must also contain uniform
24 procedures regarding (1) verification of ballot affidavit signatures and (2) staffing ballot drop
25 boxes.

1 the Secretary to perform the duties of her office. *See State ex rel. Sawyer v. LaSota*, 119 Ariz.
2 253, 255 (1978) (“[T]he holder [of a state office] may be compelled by mandamus to perform
3 the duties of his office.”). Moreover, under A.R.S. § 16-1021, the AG has the authority to enforce
4 the provisions of Title 16, including A.R.S. § 16-452, “through civil and criminal actions.”

5 31. Plaintiff Yavapai County Republican Committee (“Plaintiff Committee”) is an
6 unincorporated association and is responsible, under various sections of title 16, for providing
7 political party representatives to participate and oversee critical election functions. Several
8 sections of the EPM provide uniform instructions on how Plaintiff Committee’s statutory
9 responsibilities are conducted. *See e.g.* A.R.S. § 16-531(A). Plaintiff Committee is, therefore,
10 beneficially interested in the Secretary’s non-discretionary duty to promulgate a legally-
11 compliant EPM, and the Plaintiff Committee, therefore has standing to bring this action. *See*
12 *Arizona Public Integrity Alliance*, 250 Ariz. at 62.

13 32. Plaintiff Demitra Manjoros is the First Vice Chair of the Yavapai County
14 Republican Committee (“Plaintiff Vice Chair”) and assists the Chair in fulfilling several statutory
15 obligations under Title 16. *See e.g.* A.R.S. § 16-531(A). The EPM provides uniform instructions
16 to county chairs to help county parties fulfill statutory responsibilities. Plaintiff Vice Chair is
17 also a registered voter in Yavapai County that would be harmed if procedures for signature
18 verification or ballot drop boxes failed to be correct, impartial, uniform, or efficient such that her
19 legal vote is not properly counted or is diluted by one or more illegal votes. Plaintiff Vice Chair
20 is, therefore, beneficially interested in the Secretary’s non-discretionary duty to promulgate a
21 legally-compliant EPM. *See Arizona Public Integrity Alliance*, 250 Ariz. at 62 (plaintiffs “as
22 Arizona citizens and voters” had standing to compel the Maricopa County Recorder to perform
23 non-discretionary election duties); *Arizona Dep’t of Water Resources v. McClennen*, 238 Ariz.
24 371, 377 ¶32 (2015) (explaining that the “mandamus statute [§ 12-2021] reflects the Legislature’s
25 desire to broadly afford standing to members of the public to bring lawsuits to compel officials
26 to perform their public duties”).

1 Action. *See Second Chances*, 249 Ariz. at 404 ¶18 (concluding that petitioners “have properly
2 alleged a mandamus action” where they alleged “that the Secretary has refused to perform her
3 constitutional duty to accept and file E-Qual petitions, and that this Court should order her to
4 perform that constitutional duty”).

5 37. Moreover, “one purpose of a mandamus action is to determine the extent of a state
6 official’s legal duties.” *Id.* at 404 ¶19. Here, Plaintiffs ask the Court to determine the extent of
7 the Secretary’s legal duties under A.R.S. § 16-452. Thus, Plaintiffs’ claims state a claim for
8 special action relief.

9 38. Other factors support that the Court should accept special action jurisdiction. The
10 issues presented—the scope of the Secretary’s duties under A.R.S. § 16-452 and whether the
11 Secretary has complied with those duties—are primarily legal questions, and the ultimate
12 resolution of those issues is not likely to turn on disputed facts. *See Second Chances*, 249 Ariz.
13 at 404-05 ¶20; *Brewer v. Burns*, 222 Ariz. 234, 237 ¶¶ 8-9 (2009) (granting special action
14 jurisdiction even though one party claimed “intense fact questions”). Although Plaintiffs do not
15 believe the issues presented will require factual development, to the extent there are disputed fact
16 questions, the Court can resolve those issues through an evidentiary hearing.

17 39. The issues presented are also of statewide importance. The stated purpose of the
18 EPM is to help “achieve and maintain the maximum degree of correctness, impartiality,
19 uniformity and efficiency on the procedures for early voting and voting, and of producing,
20 distributing, collecting, counting, tabulating and storing ballots.” A.R.S. § 16-452(A). The EPM
21 is used by election officials throughout the state in administering elections. The EPM carries the
22 force of law and a person who violates any rule contained in the EPM is guilty of a class 2
23 misdemeanor. *See* A.R.S. § 16-452(C). Without a valid EPM for the 2022 election cycle, the
24 rules that would otherwise be contained therein cannot be enforced. The absence of statewide
25 rules to guide county officials in the administration of the election could result in arbitrary
26 treatment of ballots, which could engender violations of Arizona election laws and post-election

1 challenges. *See Bush v. Gore*, 531 U.S. 98, 106 (2000) (“The formulation of uniform rules to
2 determine intent based on these recurring circumstances is practicable and, we conclude,
3 necessary.”). When validly promulgated under § 16-452, courts look to rules contained within
4 the EPM for guidance in deciding pre- and post-election legal issues. *See, e.g., Ward v. Jackson*,
5 CV-20-0343-AP/EL, 2020 WL 8617817, *2 (Ariz. Dec. 8, 2020) (“The Court recently considered
6 a challenge to an election process and granted relief where the county recorder adopted a practice
7 contrary to the EPM.”); *see id.* (rejecting a post-election challenge where “there are no allegations
8 of any violation of the EPM or any Arizona law”); *Arizona Public Integrity Alliance*, 250 Ariz.
9 at 64 ¶25 (“[O]nly the Overvote Instruction authorized by the 2019 EPM may be included with
10 mail-in ballots”).

11 40. Finally, there is a need for final, immediate relief. The 2022 statewide primary
12 election is rapidly approaching. Candidates were required to submit elector signatures to the
13 Secretary by April 4, 2022 and candidate challenges are currently underway. Election officials,
14 including the Yavapai County Recorder, will be mailing early ballots for the primary election to
15 uniformed and overseas voters no later than June 18, 2022 and all early ballots to Arizona voters
16 no later than July 6, 2022. Thus, the parties require expedited and final relief to ensure that an
17 EPM is in place for the start of the 2022 primary elections. *See Smoker v. Bolin*, 85 Ariz. 171,
18 172 (1958) (considering whether to grant mandamus against the Secretary where “time was of
19 the essence and the matters involved were of great public interest”).

20 VENUE

21 41. Pursuant to Rule 4(b) of the Rules of Procedure for Special Actions, a special action
22 brought in the superior court “shall be brought in the county in which the body or officer has or
23 should have determined the matter to be reviewed, or, in the case of a state officer or body, either
24 in Maricopa County or in the county of residence of the plaintiff.” The Plaintiff Committee and
25 Plaintiff Vice-Chair are residents of Yavapai County. Venue, therefore, is appropriate in this
26

1 Court. *See, e.g., Bishop v. Marks*, 117 Ariz. 50, 51 (App. 1977); *Belcher v. Raines*, 130 Ariz.
2 464, 465 (App. 1981).

3 FACTUAL BACKGROUND

4 **I. The Elections Procedures Manual**

5 **A. Historical Practice**

6 42. Beginning in 1979, the Legislature delegated to the Secretary of State the authority
7 to promulgate certain election-related rules, the scope of which has changed slightly over the
8 years. A.R.S. § 16-452(A) currently provides:

9 After consultation with each county board of supervisors or other officer in charge of
10 elections, the secretary of state shall prescribe rules to achieve and maintain the maximum
11 degree of correctness, impartiality, uniformity and efficiency on the procedures for early
12 voting and voting, and of producing, distributing, collecting, counting, tabulating and
13 storing ballots. The secretary of state shall also adopt rules regarding fax transmittal of
14 unvoted ballots, ballot requests, voted ballots and other election materials to and from
15 absent uniformed and overseas citizens and shall adopt rules regarding internet receipt of
16 requests for federal postcard applications prescribed by § 16-543.

17 43. Originally, the scope was limited to “absentee voting, voting, and of collecting
18 counting, tabulating and recording votes.” *See* Laws 1979, Ch. 209, § 3, eff. Jan. 1, 1980.

19 44. For four decades, A.R.S. § 16-452(B) included the following language:

20 Such rules shall be prescribed in an official instructions and procedures manual to be
21 issued not later than thirty days prior to each election. Prior to its issuance, the manual
22 shall be approved by the governor and the attorney general.

23 45. Over the ensuing four decades, Arizona Secretaries of State complied with the
24 obligation, generally promulgating what is now referred to as the “Elections Procedures Manual”
25 in advance of the statewide biennial elections with approval of the AG and Governor.

26 46. Promulgation of the EPM first became an issue starting in 2016, when the Secretary
of State at the time failed to promulgate an approved manual in 2016 and 2018.

1 47. As the counties continued to operate under the increasingly out-of-date 2014
2 Elections Procedures Manual (“2014 EPM”), the Arizona Legislature stepped in to amend A.R.S.
3 § 16-452(B) in 2019 to state:

4 B. The rules shall be prescribed in an official instructions and procedures manual to be
5 issued not later than December 31 of each odd-numbered year immediately preceding the
6 general election. Before its issuance, the manual shall be approved by the governor and
7 the attorney general. The secretary of state shall submit the manual to the governor and
8 the attorney general not later than October 1 of the year before each general election.
(emphasis added)

9 *See* Laws 2019, Ch. 99, § 1 (H.B. 2238) (emphasis added).

10 48. H.B. 2238, requiring the Secretary of State to promulgate the EPM by December
11 31 of every odd-numbered year, received not only bipartisan, but unanimous support in the
12 Legislature, and was supported by the Secretary (“Secretary Hobbs”). *See*
13 <https://apps.azleg.gov/BillStatus/BillOverview/71323> (last accessed Feb. 24, 2022); *see also*
14 Testimony of Betty McEntire on behalf of Secretary Hobbs, available at
15 <https://www.azleg.gov/videoplayer/?eventID=2019021416&startStreamAt=15523> (stating “we
16 are all on board” with issuing an EPM under the timelines contemplated in the revised statute)
17 (last accessed Feb. 24, 2022).

18 49. The clear intent of H.B. 2238 was to prevent a situation where the Secretary fails
19 to promulgate a valid EPM and county officials are left instead to rely on an outdated EPM that
20 no longer carries the force of law. *See e.g. id.* (House Elections Committee Chair Kelly
21 Townsend introduced the bill by saying, “we want to make sure that we are producing our
22 manuals in a timely manner, and we haven’t had one and I think it’s really important that that
23 does happen.”). Unfortunately, that is the very situation we are now facing.
24
25
26

1 **B. The 2019 EPM**

2 **1. Negotiation and Content**

3 50. Following H.B. 2238’s enactment in 2019, Secretary Hobbs produced a Draft 2019
4 Elections Procedures Manual (“Draft 2019 EPM”) on October 1, 2019. Arizona Secretary of
5 State, *Draft Elections Procedures Manual* (Oct. 1, 2019), available at
6 https://azsos.gov/sites/default/files/EPM_2019_FINAL.pdf (last accessed Apr. 6, 2022).

7 51. After a thorough review of the Draft 2019 EPM, the AG’s Office identified more
8 than 100 provisions that contravened, expanded, or reinterpreted Arizona law.

9 52. Through the course of lengthy negotiations, the offending provisions were removed
10 or made to conform to Arizona law. Without later guidance from the Arizona Supreme Court on
11 the proper scope of the EPM (discussed below), where Arizona law was silent and the rule was
12 arguably within the Secretary’s authority, the 2019 Elections Procedures Manual (“2019 EPM”)
13 was permitted to “gap-fill,” creating extra-statutory provisions not expressly precluded under
14 Arizona law. Arizona Secretary of State, *2019 Elections Procedures Manual* (Dec. 19, 2019)
15 available at
16 [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROV](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
17 [ED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf) (last accessed Apr. 19, 2022).

18 53. One example of such provisions is those allowing for early ballot drop-boxes. In
19 2019, Arizona law neither permitted nor excluded the use of early ballot drop boxes. In an initial
20 draft of the EPM, the Secretary proposed allowing county recorders to include “additional ballot
21 drop-off locations,” with almost no additional guidance. Through negotiations, however, the AG
22 insisted that the EPM instead provide uniform specifications for official early ballot drop-off
23 locations and drop boxes, which were included in the final EPM. *Compare e.g.* Draft 2019 EPM
24 at 56 (allowing County Recorders to include “additional ballot drop-off locations”) *to* the final
25 2019 EPM at 60-62 (providing uniform specifications for official early ballot drop-off locations
26 and drop-boxes).

1 54. After a series of meetings, the AG and Governor gave final approval to a version
2 of the 2019 EPM that reflected the final agreements on negotiated issues. *See* 2019 EPM
3 (approval letters from Governor Ducey and General Brnovich in the introduction).

4 55. Portions removed from the 2019 EPM at the behest of the AG pertaining to
5 electronically adjudicating votes on early ballots were later reinserted to the 2019 EPM as an
6 addendum, but only after Maricopa County obtained statutory authority from the Arizona
7 Legislature to electronically adjudicate votes. *See* Arizona Secretary of State, *Electronic*
8 *Adjudication Addendum to the 2019 Elections Procedures Manual* (Feb. 28, 2020) available at
9 [https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Election](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf)
10 [s_Procedures_Manual.pdf](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf) (last accessed Feb. 24, 2022); *see also* Laws 2020, Ch. 1, § 2, eff. Feb.
11 3, 2020 (S.B. 1135).

12 **2. The 2019 EPM Is No Longer Valid**

13 56. Because the statutory deadline for promulgating the 2021 EPM has now passed,
14 the 2019 EPM no longer has the force of law. There is nothing in A.R.S. § 16-452 or any other
15 statute supporting that an old EPM remains legally binding or valid once the deadline for
16 promulgation of a new EPM passes.

17 57. Construing the law to imply such a result would render the Legislature’s 2019
18 revisions superfluous and fail to take into consideration this Court’s intervening precedent in
19 *Leach* and *McKenna* (discussed below), which now provide clear direction on what can and
20 cannot be included in the EPM.

21 58. Construing the law to allow prior versions to retain the force of law would be
22 inconsistent with the purpose of the Legislature’s revision to § 16-452, which was intended to
23 avoid a situation like in 2016 and 2018 where no new manual was published.

24 59. Any motivation to promulgate a lawful manual decreases significantly if a
25 Secretary can simply instruct county election officials to follow an old version she prefers more.
26 That reality was borne out here when the Secretary failed to provide the AG and Governor with

1 a valid draft and instead signaled to county recorders that they should continue to follow the 2019
2 EPM.

3 **C. The Arizona Supreme Court’s Intervening Guidance On The EPM**

4 60. On at least three occasions after issuance of the 2019 EPM, the Arizona Supreme
5 Court provided guidance on the proper scope and implementation of the EPM.

6 61. In *Arizona Public Integrity Alliance*, the Court held that “[t]he Secretary must
7 follow a specific procedure in promulgating election rules.” 250 Ariz. at 63 ¶16. Relying on the
8 statutory language, the Court further explained that the EPM “must be issued no ‘later than
9 December 31 of each odd-numbered year immediately preceding the general election.’” *Id.*

10 62. In *Arizona Public Integrity Alliance*, the Court held that the proposed election rule
11 at issue “contradicts the purpose of the EPM, which is to ‘prescribe rules to achieve and maintain
12 the maximum degree of correctness, impartiality, uniformity and efficiency’” because it would
13 create a situation where “depending on the judgment of election officials, [a ballot] may or may
14 not be counted.” *Id.* at 64 ¶24.

15 63. The Court also made clear that the Secretary does not enjoy unlimited discretion in
16 determining what provisions to include in the EPM. In *McKenna v. Soto*, a candidate signature
17 challenge, the Arizona Supreme Court clarified that, because § 16-452 does not mention
18 candidate nominating petitions, the 2019 EPM’s procedures relating to that topic could not have
19 been promulgated under § 16-452 and do not have the force of law. 250 Ariz. 469, 473 ¶20
20 (2021). The court held that the Secretary’s statutory authority to promulgate rules in the EPM
21 are constrained to “procedures for early voting and voting, and of producing, distributing,
22 collecting, counting, tabulating and storing ballots” and that candidate nominating petition
23 procedures “fall outside of the mandates of § 16-452[.]” *Id.* at ¶20. Furthermore, the Court noted
24 that the rule permitting candidates to have otherwise valid signatures invalidated based on rules
25 promulgated in the EPM pertaining to the form of the date signed had no other basis in statute,
26

1 therefore “the 2019 EPM’s directive to reject a signature without a complete date does not have
2 the force of law, and simply acts as guidance.” *Id.* at ¶21.

3 64. Finally, in *Leach v. Hobbs*, the political action committee (“Committee”) that was
4 defending petition sheets gathered in support of a ballot initiative, asserted that the court should
5 not reject petitions sheets gathered by circulators who failed to appear at trial as “circulators were
6 not required to appear for trial pursuant to § 19-118(E) because the circulators had been ‘de-
7 registered’” as provided for in the 2019 EPM. 250 Ariz. at 574 ¶7. The court concluded that the
8 Committee’s interpretation was “untenable” and inconsistent with the purpose of the registration
9 requirement in A.R.S. § 19-102.01(A). *Id.* at 576 ¶20. Thus, the Court rejected the Committee’s
10 reliance on the EPM, explaining that “an EPM regulation that exceeds the scope of its statutory
11 authorization or contravenes an election statute's purpose does not have the force of law.” *Id.* at
12 576 ¶21.

13 **D. The AG’s Authority With Respect To The EPM**

14 65. The Secretary is also subject to oversight by other state officials—both the AG and
15 the Governor must approve the draft EPM before it enjoys the force of law. A.R.S. § 16-452(B).

16 66. To ensure that the EPM is timely promulgated, Arizona law requires the Secretary
17 to provide a draft EPM to the AG and Governor by October 1 of each odd-numbered year. *Id.*

18 67. The AG is not statutorily authorized to rubber stamp the draft EPM without regard
19 to what provisions the Secretary includes. Instead, “the authority of the [AG] must be found in
20 statute.” *State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127, 130 ¶8 (2020).

21 68. No Arizona statute, including A.R.S. § 16-452, allows the AG to approve an EPM
22 provision exceeding the scope of its statutory authorization or contravening an elections statute’s
23 purpose. *See Leach*, 250 Ariz. at 576 ¶20. Put differently, the AG has no statutory authority to
24 approve election procedures not adopted “pursuant to § 16-452” and which are mere guidance.
25
26

1 69. The limitations—scope and approval—on the Secretary’s authority to promulgate
2 rules through the EPM are particularly vital in light of the fact that “[a] person who violates any
3 rule adopted pursuant to [§ 16-452] is guilty of a class 2 misdemeanor.” A.R.S. § 16-452(C).

4 **E. The Draft 2021 EPM**

5 70. On October 1, 2021, after the Court’s guidance in *Leach* and *McKenna*, the
6 Secretary submitted a Draft 2021 EPM to the AG and the Governor for review and approval. *See*
7 Declaration and Verification of Jennifer J. Wright (“Wright Decl.”) attached hereto as Exhibit 1
8 at ¶2, AGO-002 to -003.¹

9 71. The Supreme Court’s new guidance in *McKenna* and *Leach* necessitated a fresh
10 look at the entire EPM. The Secretary readily admitted in her October 1 submission letter that
11 intervening cases necessitated the removal of some provisions, but failed to fully comport the
12 Draft 2021 EPM to the holdings in those cases.

13 **1. The Draft 2021 EPM Violated *Leach* and *McKenna***

14 72. Many of the draft provisions contained in the Draft 2021 EPM either exceeded the
15 scope of the Secretary’s authority or were inconsistent with the purpose of one or more election
16 statutes. In all, the Draft 2021 EPM contained over 75 pages of rules (not including appendices)
17 that the AG determined either exceeded the Secretary’s statutory authority or contravened an
18 election statute’s purpose. The following are just some of the more egregious examples and are
19 not meant to be exhaustive.

20 73. The Secretary included seventeen pages of rules and procedures relating to
21 candidate nominating procedures. *See* Wright Decl. ¶3, AGO-135 to -152. The Secretary
22 included those provisions despite the Court’s clear conclusion in *McKenna* that “the statute that
23 authorizes the EPM does not authorize rulemaking pertaining to candidate nomination petitions”
24 and that such provisions are “not adopted ‘pursuant to’ § 16-452.” 250 Ariz. at 473 ¶20. Because

25
26 ¹ Pinpoint citations to the bates-stamp on the upper righthand corner of each exhibit page are included to aid the Court.

1 candidate nominating provisions cannot be adopted pursuant to § 16-452, they should not again
2 have been included in the EPM and the AG could not approve them pursuant to § 16-452.

3 74. The Secretary also included over forty-five pages of rules and procedures relating
4 to voter registration. *See* Wright Decl. ¶3, AGO-016 to -060. Voter registration is not one of the
5 topics upon which the Secretary is empowered to promulgate rules under § 16-452, which
6 mentions instead “early voting and voting, and of producing, distributing, collecting, counting,
7 tabulating and storing ballots.” A.R.S. § 16-452(A). The Legislature granted statutory authority
8 for voter registration solely to county recorders. *See, e.g.*, A.R.S. §§ 16-131, 16-163(A). Because
9 voter registration provisions cannot be adopted pursuant to § 16-452, the Secretary should not
10 have again included them and the AG could not approve them pursuant to § 16-452.

11 75. For years, Arizona has, at least in part, followed a precinct system for in-person
12 voting. Those who vote in person in a county using the precinct system must vote in their
13 assigned precinct. A.R.S. § 16-122. The Democratic National Committee (“DNC”) challenged
14 Arizona’s out-of-precinct rule on the grounds that it violated § 2 of the Voting Rights Act. The
15 AG defended the law and the Court rejected DNC’s challenge, explaining that “[h]aving to
16 identify one’s own polling place and then travel there to vote does not exceed the ‘usual burdens
17 of voting.’” *Brnovich*, 141 S. Ct. at 2344. The Secretary’s Draft 2021 EPM, however, inserted
18 provisions allowing voters who appear at the wrong precinct to nonetheless cast a provisional
19 ballot for certain races, which is in direct conflict with A.R.S. §§ 16-122 and -584 (not to mention
20 *Brnovich*). *See* Wright Decl. ¶3, AGO-235 (indicating that “ballots cast in the wrong precinct
21 must also be manually duplicated in order to be tabulated”); *see also id.* at AGO-236 (“for out-
22 of-precinct ballots, only the voter’s selections for races and ballot measures for which the voter
23 is eligible to vote shall be duplicated onto the correct ballot style”).

24 76. The Draft 2021 EPM also included several provisions that purported to provide
25 what can only be construed as rendering a legal opinion, such as attempting to define through the
26 EPM when a statute becomes effective (*Id.* at AGO-072, n.25), defining what constitutes a

1 “business day” (*Id.* at AGO-090), authorizing counties to delegate statutory responsibilities to a
2 different constitutional officer than the one defined in statute (*Id.* at AGO-074), and unilaterally
3 dictating what a court would construe as substantially similar language where ballot envelope
4 language deviated from the prescribed statutory text (*Id.*).

5 77. Again, these examples are just a few of many problematic provisions. On
6 December 9, 2022, the AG sent the Secretary a redline EPM showing the provisions that were
7 inconsistent with *Leach* and *McKenna*. See Wright Decl. ¶3, AGO-004 to -313.

8 **2. The Draft 2021 EPM Omitted Provisions Required Under A.R.S. § 16-**
9 **452**

10 78. As explained, A.R.S. § 16-452 requires the Secretary to promulgate rules in the
11 EPM “to achieve and maintain *the maximum degree* of correctness, impartiality, uniformity and
12 efficiency.” A.R.S. § 16-452(A) (emphasis added). And, as the Arizona Supreme Court recently
13 held, election rules contradict the purpose of the EPM when they create a situation where a ballot
14 may or may not be counted “depending on the judgment of election officials.” *Arizona Public*
15 *Integrity Alliance*, 250 Ariz. at 64 ¶24.

16 79. The Draft 2021 EPM did not contain certain rules required to achieve and maintain
17 the maximum degree of correctness, impartiality, uniformity and efficiency of elections in
18 Arizona, and to ensure that ballots are not rejected based on the judgment of election officials.

19 **a. The EPM Must Contain Ballot Signature Verification Rules**

20 **i. Arizona’s Early Voting System Requires Robust Signature**
21 **Verification**

22 80. Arizona has permitted some form of absentee balloting since 1918 beginning with
23 World War I soldiers, and since the 1992 election cycle, Arizona has allowed no-excuse access
24 to voting-by-mail (colloquially referred to as “early voting”). See 1991 Ariz. Sess. Laws, ch. 51,
25 § 1.
26

1 81. Voters may elect to receive an early ballot by mail (with postage paid return
2 envelope) or at an early voting center. A.R.S. § 16-541 et seq.

3 82. Ballots cast through early voting, whether by mail or at a voting center, must be
4 accompanied by a ballot affidavit that not only serves as the primary form of identification for
5 the voter, but also requires the voter to declare, under penalty of perjury, that he or she “voted
6 the enclosed ballot.” A.R.S. § 16-547(A).

7 83. Both the ballot and the signed affidavit must be delivered to the county recorder no
8 later than 7:00 p.m. on election day, and a ballot is not considered complete, nor can it be counted,
9 unless and until it includes a signature on the ballot affidavit. A.R.S. §§ 16-548(A), -550(A).

10 84. Once received, county election officials compare the signature on the ballot
11 affidavit with the signature in the voter’s registration record to determine if the signature matches
12 that on file; if not, then the ballot cannot be counted unless the voter confirms the mismatched
13 signature is the voter’s signature. A.R.S. § 16-550(A).

14 85. Requiring a match between the signature on the ballot affidavit and the signature
15 on file with the county is the primary, if not only, and certainly most important election integrity
16 measure when it comes to absentee ballots. The Ninth Circuit acknowledged, in response to a
17 constitutional challenge to the deadline for submitting signed ballot affidavits, that “Arizona
18 requires early voters to return their ballots along with a signed ballot affidavit in order to guard
19 against voter fraud.” *Arizona Democratic Party v. Hobbs*, 976 F.3d 1081, 1085 (9th Cir. 2020).

20 86. County election officials, therefore, must be extremely diligent in ensuring that
21 early ballot affidavit signatures match those on file, regardless of the sheer quantity of early
22 ballots received, the administrative burdens imposed by verifying each one, or for other reasons
23 that could be construed as nefarious or partisan. County election officials and their staffs cannot
24 violate their statutory duty to match *every* signature.

1 **ii. Signature Verification Is Vulnerable To Non- or Mal-Feasance**

2 87. Early voting is widespread in Arizona: 79% of Arizona voters cast early ballots in
3 2018 and that number reportedly increased to 89% for the 2020 General Election. With over 3.4
4 million ballots cast in the General Election in 2020, Arizona elections officials were required to
5 match signatures on over 3 million early ballots during a five to six-week period.

6 88. This large number of early ballots combined with the administrative burden of
7 confirming every one of the signatures submitted in a very short period of time, when not
8 administered diligently, could result in election officials approving early ballot affidavits that
9 should not otherwise be approved without further verification.

10 89. Statistics for Maricopa County, for example, over the last three election cycles
11 reflect that the number of early ballots rejected because of missing and mismatched signatures is
12 trending down. Wright Decl. ¶8, AGO-329. During the 2016 General Election, when Helen
13 Purcell was county recorder, Maricopa County received 1,249,932 early ballots. *Id.* Of that
14 amount, Maricopa County rejected 2,209 early ballots because of missing signatures and 1,451
15 ballots because of mismatched signatures. *Id.*

16 90. Just two years later, during the 2018 General Election, after Adrian Fontes became
17 county recorder, Maricopa County received 1,184,791 early ballots, just 65,141 less than in 2016.
18 *Id.* Yet the number of ballots rejected in 2018 because of missing signatures (only 1,856) and
19 mismatched signatures (only 307) declined significantly—the number of early ballot rejected due
20 to missing signatures decreased by 353 and the mismatched signatures decreased by 1,144 (a
21 79% decrease). *Id.* By comparison, Pima County received 302,770 early ballots (882,081 less
22 than Maricopa) and rejected 488 (135 more than Maricopa) because of mismatched signatures.
23 *Id.*

24 91. During the 2020 General Election, Maricopa County saw a significant increase in
25 the number of mail-in ballots, receiving 1,908,067 mail-in ballots (an increase of 723,276 mail-
26 in ballots). *Id.* Yet the number of ballots rejected because of missing signatures continued its

1 dramatic decrease (to only 1,455 ballots) and the number of ballots rejected because of
2 mismatched signatures increased only slightly (to 587 ballots). *Id.*

3 92. In conjunction with a November 2020 election challenge brought under A.R.S. §
4 16-672, a judge authorized forensic examination of 100 ballot affidavit signatures that Maricopa
5 County accepted as matching. *Ward v. Jackson*, No. CV2020-015285, 2020 WL 13032880, *3
6 (Maricopa Cnty. Super. Ct. Dec. 4, 2020). The plaintiffs’ expert testified that 6 of the 100 ballots
7 affidavit signatures were “‘inconclusive,’ meaning she could not testify that the signature on the
8 envelope/affidavit matched the signature on file.” *Id.* at *4. Defendant Maricopa County
9 Recorder’s Office forensic examiner “testified that 11 of the 100 envelopes were inconclusive,
10 mostly because there were insufficient specimens to which to compare them.” *Id.*

11 **iii. Maricopa County Is Now Outsourcing Portions Of The**
12 **Signature Verification Process To A Non-Governmental Third-**
13 **Party And Using Automated Signature Verification Software**

14 93. On or around June 1, 2020, Maricopa County contracted with Runbeck Election
15 Service (“RES”) to use the Verus Pro “Automated Signature Verification” application for up to
16 four (4) million signatures per year. Wright Decl. ¶10(a), AGO-353 to -360.

17 94. Using this process for the general election in 2020, Maricopa County outsourced
18 initial ballot review to a non-governmental third party, using what Maricopa County’s Director
19 of Elections referred to as an “AI Signature process.”

20 95. In March 2020, when preparing the format for the affidavit envelopes to be used
21 during the 2020 primary and general elections, Maricopa County’s Director of Elections directed
22 that the “signature” section on the ballot affidavit be separated from the “phone & date” box so
23 that there would be a clean target area for the “AI signature process”: “We wanted to break apart
24 the signature box from the ‘Phone & Date’ box so that if and when we go to the AI Signature
25 process, we would have a very clean target area to focus in on that is free of the black signature
26 line and free of the text.” Wright Decl. ¶10(b), AGO-362 (emphasis added). The Director of

1 Elections later asked, “Is it possible to work on that signature box section to conform to what
2 would be best for that AI process?” *Id.* (emphasis added).

3 96. According to the RES, “Verus Pro exchanges files with the inbound mail sorter by
4 evaluating signature images captured [at RES facilities] from the mail packets and compares
5 them to the reference images [provided by Maricopa County] from the voter registration
6 database. This solution consists of a server running the Verus Pro application while exchanging
7 files with [MCRO’s] voter registration system.” Wright Decl. ¶10(a), AGO-353 to -360.

8 97. Based on email exchanges between RES and Maricopa County recently obtained
9 by the AG through a public records request, Verus Pro uses computer software to compare
10 signatures on file with ballot affidavit signatures to determine a confidence score. Wright Decl.
11 ¶10(c), AGO-365. Depending on the confidence score, the signatures are batched into “high
12 confidence”, “low confidence” and “manager” queues for review by examiners inside the
13 MCRO. Wright Decl. ¶10(d), AGO-367.

14 98. It is unclear at this point what factors determine whether a ballot signature is routed
15 to the “high confidence,” “low confidence” and “manager” queues for review. It is clear,
16 however, that Maricopa County has no written policies explaining the difference, instead relying
17 entirely on RES to do so. In a letter dated March 31, 2022, outside counsel for Maricopa County
18 admitted that “[t]here are no written procedures provided to or created for staff as it relates to
19 batching into high or low confidence because Runbeck does the batching with Verus Pro.” Wright
20 Decl. ¶9, AGO-331. This lack of guidance manifested in communications between RES and
21 Maricopa County. In July 2020, Maricopa County’s Director of Elections asked RES, “We
22 trained staff to look at High Confidence one way and Low Confidence another, so I need to have
23 them made aware that the ‘High Confidence’ is not really true and there can and will be a mix of
24 all types (match, no match, no signature, etc.) in the High Confidence queue, correct?” Wright
25 Decl. ¶10(e), AGO-369.

1 99. It is clear that Maricopa County and RES employees viewed this new process as at
2 least a partial substitute for manual signature verification. It appears Maricopa County began
3 testing the new system during the 2020 primary election. During that time, one Maricopa County
4 employee explained in an email that, “We provided 10001.tif, Runbeck created
5 10001_Document_Alpha.tif and that is what they use to do the actual signature verification.”
6 Wright Decl. ¶10(f), AGO-371 (emphasis added). The Director of Elections commented that
7 “[a]s for the Primary, we still have to look at 100% of the signatures so not a major issue,”
8 implying that Maricopa County would not have to look at 100% of signatures once the process
9 was implemented for the general election. Wright Decl. ¶10(g), AGO-373. At one point when
10 the system failed, a RES employee responded that “I’ve stopped Verus Pro from automatically
11 verifying new signatures, and am researching the cause of the failure now[.]” Wright Decl.
12 ¶10(h), AGO-375 (emphasis added). And the same RES employee later informed Maricopa
13 County that, “The incoming signatures from this morning are finished verifying[.]” Wright Decl.
14 ¶10(i), AGO-377 (emphasis added).

15 100. Entering the 2020 general election, Maricopa County immediately experienced
16 issues with RES and the Verus Pro system. On October 9, 2020, RES informed Maricopa County
17 that there would be a delay “to set up the General Election of the server” and that the system
18 might not be available until Monday morning, October 12, 2020. Wright Decl. ¶10(j), AGO-
19 379. Maricopa County’s Director of Elections responded, threatening to cancel the contract with
20 RES and commenting that “[s]o much for using Verus Pro for the General and me stating early
21 on to proceed, noting we should not see any major issues.” The Director of Elections went on to
22 say that, “Excuse my French but this shit show needs to be improved on post haste from RES
23 side.” (Emphasis in original). He also informed RES that he regretted the decision to use Verus
24 Pro: “Again, I am regretting my decision to proceed with using Verus Pro for the General and
25 to be proven wrong that we won’t have any issues, and to put my name to that decision and have
26 it be a first file issue is beyond frustrating.” (Cleaned up). The Director of Elections also notified

1 another Maricopa County employee that “I need to know if we can shut Verus Pro down and go
2 back to our former process after this first file?” Wright Decl. ¶10(k), AGO-381 to -382.

3 101. No statute allows counties to outsource any portion of the signature verification
4 process to a non-governmental third party or to use computer software as a substitute, in whole
5 or in part, for the human signature verification process.

6 **iv. The EPM Must Include Signature Verification Guidance**

7 102. Although the Secretary has published a “Signature Verification Guide” (the
8 “Guide”) on the Secretary’s website, the Guide is not only legally insufficient as it permits
9 missing, inconsistent, digital, and electronic signatures not statutorily authorized, but also
10 because it hasn’t been reviewed and approved by the AG and Governor as required by A.R.S. §
11 16-452(B). Arizona Secretary of State, *Signature Verification Guide* (July 2020), available at
12 https://azsos.gov/sites/default/files/AZSOS_Signature_Verification_Guide.pdf (last accessed
13 Apr. 19, 2022).

14 103. To ensure the *maximum degree* of correctness, impartiality, uniformity and
15 efficiency with respect to signature verification, the Secretary must include signature verification
16 rules in the draft EPM. Any and all such rules must be consistent with the text and purpose of
17 Arizona election law. And any and all such rules must make clear that county officials are not
18 permitted to outsource any portion of the signature verification process to non-governmental
19 entities and must include guidelines to ensure that computer software does not replace any portion
20 of the manual signature process and is used in a uniform and correct manner.

21 104. Nowhere in the 297 page Draft 2021 EPM, nor in its 331 page appendix, are
22 uniform instructions for the counties to use to verify early ballot affidavit signatures in order to
23 ensure the maximum degree of correctness, impartiality, uniformity and efficiency in early
24 voting. *See* Draft 2021 EPM.

1 **b. The EPM Must Contain Ballot Drop Box Rules**

2 105. Although the Secretary included uniform requirements for drop boxes in the Draft
3 2021 EPM, the provision allowing for *unstaffed* drop boxes contravenes the purpose of A.R.S. §
4 16-1005(E).

5 106. Arizona law requires that drop boxes to be properly staffed. A.R.S. § 16-1005(E)
6 provides that “[a] person or entity that . . . is found to be serving as a ballot drop off site, *other*
7 *than those established and staffed by election officials, is guilty of a class 5 felony.” (emphasis
8 added).*

9 107. In order for ballot drop-off sites to meet the statutory purpose of A.R.S. § 16-
10 1005(E), the drop-off site, including ballot drop boxes, must be *established* and *staffed* by
11 election officials.

12 108. To give the phrase “staffed” meaning separate from “established,” election officials
13 must do more than simply set up a ballot drop box and leave it for the duration of the early-voting
14 period. Instead, ballot drop boxes must be monitored by an election official’s staff.

15 109. Staffing must be sufficient “to secure the purity of elections” and in such a manner
16 that “secrecy in voting shall be preserved.” *See* Ariz. Const. art. VII §§ 12, 1, respectively. The
17 Arizona Constitution and § 16-1005(E) require that ballot drop boxes, if permitted, be monitored
18 at all times.

19 110. In the Draft 2021 EPM, the Secretary included provisions that explicitly permit
20 “unstaffed” drop-boxes, defined as “not within the view and monitoring of an employee or
21 designee of the County Recorder or officer in charge of elections[.]” Wright Decl. ¶3, AGO-
22 082.

23 111. Arizona law is silent on the use of ballot drop boxes. Instead, drop boxes were
24 introduced in the Draft 2019 EPM when the Secretary made a passing reference that County
25 Recorders “may add additional ballot drop-off locations” in their instructions to voters. *See* Draft
26 2019 EPM at 56.

1 112. Despite the AG’s objections to the ballot drop box provisions, the Secretary insisted
2 that she could and should provide *guidance* on the use of “additional ballot drop-off locations”
3 should county officials choose to use them, and thus she added chapter 2, section I, subsection I,
4 “Ballot Drop-Off Locations and Drop-Boxes” to the 2019 EPM. *See* 2019 EPM at 60-62.

5 113. In light of *Leach* and *McKenna*, it is clear that the EPM can no longer allow for
6 *unstaffed* drop boxes because allowing ballots to be returned at unstaffed drop boxes conflicts
7 with the statutory purpose of A.R.S. § 16-1005(E).

8 114. Instead, to achieve the *maximum degree* of correctness, impartiality, uniformity
9 and efficiency with respect to signature verification, the Secretary must include rules in the draft
10 EPM requiring ballot drop boxes to be properly staffed and providing guidance on how county
11 officials can satisfy that requirement.

12 **F. The AG Objected To The Draft 2021 EPM And The Secretary Failed To Issue**
13 **An EPM**

14 115. After receiving the Draft 2021 EPM from the Secretary on October 1, 2021, the
15 AG concluded that numerous provisions in the draft violated A.R.S. § 16-452, particularly in
16 light of the Arizona Supreme Court’s guidance in *Arizona Public Integrity Alliance*, *Leach*, and
17 *McKenna*.

18 116. On December 9, 2021, the AG, therefore, returned the draft EPM to the Secretary
19 noting the specific provisions that had to be removed as the “proposed regulations exceed the
20 scope of the Secretary’s statutory authorization or contravene an election statute’s purpose, and
21 therefore cannot be approved[.]” Wright Decl. ¶3, AGO-016.

22 117. The Secretary refused to make each of the changes identified by AG prior to the
23 December 31 statutory deadline for promulgating the EPM. Instead, the Secretary responded on
24 December 17, 2021, offering to remove some offending provisions but refusing to remove others
25 and criticizing the AG for retaining outside counsel. Wright Decl. ¶4, AGO-314 to -321.

1 118. After the Secretary responded by refusing to conform the Draft 2021 EPM to
2 Arizona law, the AG again responded on December 22, 2021, stating that his prior letter and
3 redlined Draft 2021 EPM “made clear what changes need to be made to assure the EPM complies
4 with the law and does not unnecessarily expose election officials and workers to criminal
5 penalties.” Wright Decl. ¶5, AGO-323.

6 119. On December 23, 2021, the Secretary signaled to County Recorders and County
7 Election Directors that they should continue to follow the 2019 EPM, while also acknowledging
8 that the 2019 EPM is no longer “fully up-to-date[.]” Wright Decl. ¶6, AGO-325.

9 120. Contrary to the Secretary’s suggestion to county officials that they should rely on
10 the 2019 EPM, the AG has not approved the 2019 EPM for use during the 2022 election cycle.

11 121. On December 31, 2021, Governor Doug Ducey sent a letter to the Secretary noting
12 that because the Secretary and the AG had not come to an agreement there was no action for him
13 to take as he could not independently approve the Draft 2021 EPM. However, the Governor
14 explained that “[a]n accurate and updated EPM ensures both consistency throughout our
15 counties and predictability for our electorate” and that as “the EPM carries with it the force of
16 law, the first objective must always be compliance with the law by ensuring that the executive
17 branch is not straying into the responsibilities of the legislature.” Wright Decl. ¶7, AGO-327.

18 **G. The *Arizona Republican Party* Arizona Supreme Court Litigation**

19 122. On February 25, 2022, the Arizona Republican Party (“ARP”) filed an Application
20 for Issuance of Writ Under Exercise of Original Jurisdiction (“Application”) in the Arizona
21 Supreme Court against the Secretary and the State of Arizona (“the State”).

22 123. In the Application, ARP requested that the Court grant it special action relief by,
23 as relevant here, including signature verification rules in the 2019 EPM and prohibiting the
24 Secretary from authorizing ballot drop boxes “in the 2022 general election and beyond.”
25 Application at 44.

1 124. The State and the AG responded that the Court should “order the Secretary to
2 comply with § 16-452 by promptly providing a valid draft EPM to the AG and Governor by a
3 date certain.” State’s Resp. to Application at 12.²

4 125. The State and AG further explained that they did not object to additional signature
5 verification rules being included in the EPM, “provided that such guidance complies with the
6 Court’s statements in *Leach* about the scope of the EPM.” State’s Resp. to Application at 20.
7 The State and AG explained, however, that “[t]he only effective way Petitioners requested relief
8 can be granted . . . is by ordering the Secretary to provide the AG and Governor with a valid draft
9 EPM[.]” *Id.*

10 126. Finally, the State and AG explained that “the Court should accept jurisdiction” and
11 provide the relief requested in part “to provide election officials with clarity about allowable
12 procedures, including with respect to ballot drop boxes, for the 2022 election cycle.” State’s
13 Resp. to Application at 21.

14 127. On April 5, 2022, the Arizona Supreme Court entered an Order Declining
15 Jurisdiction, in which the Court declined to exercise special action jurisdiction. The Court
16 explained that ARP had not convinced the Court that the issues regarding the EPM could be
17 resolved without a factual record. The Court made clear, however, that “[t]his order is without
18 prejudice to the parties’ refileing this case in superior court.” *Arizona Rep. Party v. Hobbs*, CV-
19 22-0048-SA, Order Declining Jurisdiction (Apr. 5, 2022).

20 **H. The AG Again Demands That The Secretary Comply With Arizona Law**

21 128. On April 11, 2022, within six days of the Arizona Supreme Court’s denial of special
22 action jurisdiction, the AG wrote to the Secretary, giving her one week, until April 18, 2022, to
23 provide the AG and Governor with “a legally compliant and updated EPM.” Wright Decl. ¶11,
24

25 ² The docket and copies of filings, including the Application and the State’s Response to
26 Application, in *Ariz. Rep. Party v. Hobbs*, CV-22-0048-SA is available at
<https://www.azcourts.gov/newsandinfo/CV-22-0048> (last accessed Apr. 20, 2022).

1 AGO-385 to -386. Moreover, the AG notified the Secretary that “the submitted EPM must also
2 include legally enforceable signature verification standards to ensure that all counties provide the
3 necessary level of scrutiny to early ballot affidavits to confirm the voter’s identity.” *Id.* Finally,
4 the AG indicated that the Secretary should update the EPM “to prohibit the use of unstaffed drop
5 boxes to prevent counties from violating A.R.S. § 16-1005(E) and its statutory purpose of
6 preventing ballot harvesting.” *Id.*

7 129. On April 18, 2022, the Secretary responded, flatly refusing to provide the AG and
8 Governor with a legally-compliant draft EPM for approval. Wright Decl. ¶12, AGO-388.

9 **CLAIM FOR RELIEF**

10 **Special Action Relief**

11 130. The Plaintiffs incorporate by reference the foregoing allegations as if set forth
12 herein.

13 131. As explained above (*see* ¶¶ 37-40), this case satisfies each and all of the factors for
14 granting special action relief.

15 132. Rule 3 of the Rules of Procedure for Special Action provides that, in a special
16 action, the Court may decide “[w]hether the defendant has failed to exercise discretion which he
17 has a duty to exercise; or to perform a duty required by law as to which he has no discretion.”
18 Ariz. R. P. Spec. Act. 3(a); *see also Blake v. Schwartz*, 202 Ariz. 120, 127 n.6 (App. 2002)
19 (mandamus action used to compel public official to perform duty; mandamus now “replaced with
20 special actions”).

21 133. Special action relief is also available where a government official has acted in an
22 arbitrary or capricious manner. *See Town of Paradise Valley v. Golf Leisure Corp.*, 27 Ariz.
23 App. 600, 611 (1976) (“[I]f the actions of a municipality are arbitrary, capricious and in error
24 with prevailing law, mandamus and/or special action injunctive relief will lie.”); *Rhodes v. Clark*,
25 92 Ariz. 31, 35 (1962) (explaining that mandamus relief will lie where “the officer has acted
26

1 arbitrarily and unjustly and in the abuse of discretion”); *Book Cellar, Inc. v. City of Phoenix*, 139
2 Ariz. 332, 335-36 (App. 1983) (“[T]he trial court could have considered this matter as a special
3 action in the nature of mandamus which also lies to correct an arbitrary or unjust act or abuse of
4 discretion.”).

5 134. Moreover, where a government official has acted unlawfully or exceeded her
6 statutory authority, a plaintiff need not satisfy the standard for injunctive relief. *See Arizona*
7 *Public Integrity Alliance*, 250 Ariz. at 64 ¶26 (“Because Plaintiffs have shown that the Recorder
8 has acted unlawfully and exceeded his constitutional and statutory authority, they need not satisfy
9 the standard for injunctive relief.”).

10 135. The Arizona Supreme Court has held that “[t]he Secretary must follow a specific
11 procedure in promulgating election rules.” *Id.* at 63 ¶16.

12 136. The Secretary has a statutory duty to provide the AG and Governor with a draft
13 EPM that “prescribe[s] rules to achieve and maintain the maximum degree of correctness,
14 impartiality, uniformity and efficiency on the procedures for early voting and voting, and of
15 producing, distributing, collecting, counting, tabulating and storing ballots” by October 1 of
16 every “odd-numbered year immediately preceding the general election.” A.R.S. § 16-
17 452(A),(B).

18 137. Similarly, the Arizona Supreme Court has held that election rules contradict the
19 purpose of the EPM when they create a situation where a ballot may or may not be counted
20 “depending on the judgment of election officials.” *Arizona Public Integrity Alliance*, 250 Ariz.
21 at 64 ¶24.

22 138. By providing a 2021 Draft EPM to the AG and Governor that included numerous
23 provisions outside the scope of § 16-452 or that are inconsistent with the text or purpose of
24 Arizona election law, the Secretary violated her statutory duty to provide the AG and Governor,
25 by October 1, 2021, with a draft EPM consistent with § 16-452 and the holdings in *Leach* and
26 *McKenna*. In so doing, the Secretary acted unlawfully.

1 139. By failing to promulgate a lawfully-compliant EPM by December 31, 2021, the
2 Secretary violated her statutory duty under A.R.S. § 16-452(A) to promulgate an updated and
3 legally-compliant EPM for each primary and general election cycle.

4 140. By failing to include provisions in the 2021 Draft EPM that did not include rules
5 regarding ballot signature verification, the Secretary also violated her mandatory statutory duty
6 to promulgate election rules that “achieve and maintain the maximum degree of correctness,
7 impartiality, uniformity and efficiency.” A.R.S. § 16-452(A).

8 141. By failing to include provisions in the 2021 Draft EPM regarding ballot signature
9 verification, the 2021 Draft EPM contradicts the purpose of the EPM statute by allowing ballots
10 to be counted depending on the judgment of election officials.

11 142. By failing to include provisions in the 2021 Draft EPM regarding ballot signature
12 verification, the Secretary acted arbitrarily or capriciously and abused her discretion, thereby
13 justifying special action relief. *See Rhodes*, 92 Ariz. at 35.

14 143. By failing to include provisions in the 2021 Draft EPM prohibiting county election
15 officials from outsourcing any part of the ballot signature verification process to a non-
16 governmental third party and by failing to provide guidance regarding the procurement and use
17 of computer software to verify, at least in part, ballot signatures (an “AI Signature process” as
18 Maricopa County’s Director of Elections described it), the 2021 Draft EPM contradicted the
19 purpose of the EPM statute.

20 144. By failing to include provisions in the 2021 Draft EPM prohibiting county election
21 officials from outsourcing any part of the ballot signature verification process to a non-
22 governmental third party and by failing to provide guidance regarding the procurement and use
23 of computer software to verify, at least in part, ballot signatures (an “AI Signature process” as
24 Maricopa County’s Director of Elections described it), the Secretary acted arbitrarily or
25 capriciously and abused her discretion, thereby justifying special action relief. *See Rhodes*, 92
26 Ariz. at 35.

1 145. By failing to include provisions in the 2021 Draft EPM that provide county officials
2 guidance on how to properly staff ballot drop boxes, the Secretary violated her mandatory
3 statutory duty to promulgate election rules that “achieve and maintain the maximum degree of
4 correctness, impartiality, uniformity and efficiency.” A.R.S. § 16-452(A).

5 146. By failing to include provisions in the 2021 Draft EPM that provide county officials
6 guidance on how to properly staff ballot drop boxes, the Secretary acted arbitrarily or capriciously
7 and abused her discretion, thereby justifying special action relief. *See Rhodes*, 92 Ariz. at 35.

8 147. Based on the foregoing, the Court should grant Plaintiffs special action relief by
9 ordering the Secretary to comply with A.R.S. § 16-452 by promptly providing the AG and
10 Governor with a valid draft EPM by a date certain.

11 148. Based on the foregoing, the Court should grant Plaintiffs special action relief by
12 ordering the Secretary to comply with A.R.S. § 16-452 by promptly providing the AG and
13 Governor with a draft EPM that includes rules for county officials regarding ballot signature
14 verification.

15 149. Based on the foregoing, the Court should grant Plaintiffs special action relief by
16 ordering the Secretary to comply with A.R.S. § 16-452 by promptly providing the AG and
17 Governor with a draft EPM that includes rules prohibiting county election officials from
18 outsourcing any part of the ballot signature verification process to a non-governmental third party
19 and by failing to provide guidance regarding the procurement and use of computer software to
20 verify, at least in part, ballot signatures (an “AI Signature process” as Maricopa County’s
21 Director of Elections described it).

22 150. Based on the foregoing, the Court should grant Plaintiffs special action relief by
23 ordering the Secretary to comply with A.R.S. § 16-452 by promptly providing the AG and
24 Governor with a draft EPM that includes rules for county officials to properly staff ballot drop
25 boxes.

1 RESPECTFULLY SUBMITTED this 21st day of April, 2022.

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