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14 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF YAVAPAI**

16 ARIZONA FREE ENTERPRISE CLUB,)
17 an Arizona nonprofit corporation, and)
18 MARY KAY RUWETTE, individually,)
19 Plaintiffs,)
20 v.)
21 ADRIAN FONTES, in his official capacity)
22 as the Secretary of State of Arizona,)
23 Defendant.)

No. _____

**VERIFIED SPECIAL ACTION
COMPLAINT**

24 Plaintiffs Arizona Free Enterprise Club and Mary Kay Ruwette (“Plaintiffs”), by and
25 through attorney undersigned, for their Verified Complaint for Special Action state and allege as
26 follows:

SUMMARY OF THE CASE

27 1. Arizona statutory law establishes four different methods for secure early voting.
28 This case is about a fifth method, not sanctioned by the Arizona Legislature by statute but
instead created out of whole cloth by the Defendant Arizona Secretary of State Adrian Fontes
 (“Defendant” or “Secretary”). This statutorily unauthorized manner of early voting relies on
 unmonitored (“unstaffed”) ballot “drop-boxes.” Because voting by means of unstaffed ballot

1 drop-boxes has not been authorized by the Legislature, it is an illegal method of voting under
2 Arizona law. Defendant and his predecessor in office created and continue to maintain this
3 unauthorized and illegal method of voting, which must be enjoined.

4 2. Arizona requires early voting options in every election, including both on-site
5 voting at an early voting location and off-site voting. A.R.S. §§ 16-541 & 16-542. Early voting is
6 available to every Arizona voter on-demand, and election officials must mail a ballot to every
7 voter on an active early voting list. A.R.S. §§ 16-542 & 16-544(F).

8 3. The Arizona Legislature has established multiple laws to protect this broad voting
9 access provision from abuse and to ensure the integrity of Arizona elections. The comprehensive
10 protections cover the entire voting process, from ballot printing to tabulation reporting.

11 4. Laws governing the return of voted ballots from voters to election officials are
12 crucial for the integrity of the early voting process. To aid in the secure return of a completed
13 ballot, every ballot mailed to a voter must be accompanied by a return envelope, preprinted with
14 the post office address of the elections official responsible for tallying the ballot. A.R.S. § 16-
15 547(A).

16 5. Arizona law allows voters to select one of four secure options to return a
17 completed early voted ballot. The voter may “[1] deliver[] or [2] mail[] [the ballot] to the county
18 recorder or other officer in charge of elections of the political subdivision in which the elector is
19 registered or,” the voted ballot may be returned by “deposit[] by [3] the voter or [4] the voter’s
20 agent at any polling place in the county.” A.R.S. § 16-548(A). Arizona law provides for
21 (necessarily monitored) drop-boxes for early voted ballots *only* at polling places. A.R.S. § 16-
22 579.02(G). Arizona law otherwise requires that, “In order to be valid and counted, the ballot and
23 affidavit *must be delivered to the office of the county recorder* or other officer in charge of
24 elections *or may be deposited at any polling place* in the county *not later than 7:00 p.m. on*
25 *election day.*” A.R.S. § 16-547(D)(emphasis added).

26 6. These options reflect the Arizona Legislature’s careful balance between allowing
27 voters to conveniently cast their votes and maintaining the security and integrity of the early
28 voting process.

1 7. But the Secretary has invented a fifth option, wholly without authorization from
2 the Legislature. With no basis in statute, and supported by nothing more than executive fiat, the
3 Secretary has authorized election officials throughout the state to employ unstaffed drop-boxes
4 as another manner by which voters may cast their votes early. *See* Ariz. Sec’y of State, Elections
5 Procedures Manual (rev. Dec. 2019) [“EPM”] at 60-62, available at
6 https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVE
7 [D.pdf](#) (retrieved Oct. 11, 2023) & Ariz. Sec’y of State, 2023 Draft Elections Procedures Manual
8 (rev. Sep. 2023) [“Draft 2023 EPM”] at 62-64, available at
9 https://azsos.gov/sites/default/files/final_2023_epm_submission_20230929a.pdf (retrieved Oct.
10 11, 2023). The current Secretary has maintained and not repudiated the EPM’s policies allowing
11 unstaffed ballot drop-boxes.

12 8. While not yet approved by the Governor, the Secretary transmitted the final 2023
13 EPM via a Sep. 30, 2023 letter. *See* Ariz. Sec’y of State, 2023 Election Procedures Manual
14 Letter, available at
15 https://azsos.gov/sites/default/files/cover_letter_epm_submission_20230930a.pdf (retrieved Oct.
16 11, 2023).

17 9. These unlawful unstaffed drop-boxes circumvent the balanced protections put in
18 place by the Legislature in its judgment through enactment of A.R.S. § 16-548. Early voted
19 ballots have not been “delivered to the office of the county recorder” by the voter or the U.S.
20 Postal Service or “deposited at any polling place in the county” by the voter or the voter’s agent
21 “not later than 7:00 p.m. on election day.” *See* A.R.S. § 16-547(D).

22 10. By issuing instructions in the EPM that nullify or amend express statutory
23 provisions, the Secretary has exceeded his lawful jurisdiction to prescribe procedures for early
24 voting pursuant to A.R.S. § 16-548 and other applicable law.

25 11. Plaintiffs are entitled to have the Secretary exercise the non-discretionary duty of
26 properly instructing and requiring county recorders on how to receive ballots in compliance with
27 Arizona statutes.

28

1 18. “Arizona law generally makes it very easy to vote.” *Brnovich v. Democratic*
2 *Nat’l. Comm.*, 141 S. Ct. 2321, 2330 (2021). In 2020, about 89% of all ballots cast in Arizona
3 were from early voting. Arizona voting officials mailed over three million ballots to Arizona
4 voters for the 2022 general election. Under this permissive regime, eligible voters may cast a
5 ballot anytime during the 27-day period preceding an election. *See* A.R.S. § 16-542(C).

6 **Arizona Provides Four Ways to Return an Early Voted Ballot to One of Two Locations**

7 19. Arizona law provides specific methods by which a voter may return a ballot
8 completed away from an election location (“off-site”). These off-site ballots must be returned to
9 elections officials for counting. But to ensure reliable chains of custody and to provide voters
10 confidence that no one tampers with their (or others’) votes, the Arizona Legislature established
11 reasonable limitations that balance the need for easy voting access with the need for security.
12 Accordingly, A.R.S. § 16-548(A) requires that a voted ballot shall be:

13 “[1] delivered or [2] mailed to the county recorder or other officer
14 in charge of elections of the political subdivision in which the
15 elector is registered or deposited by [3] the voter or [4] the voter’s
 agent at any polling place in the county.”

16 20. Similarly, A.R.S. § 16-547(D) requires that early voters *must* be instructed that
17 “the ballot and affidavit must be delivered to the office of the county recorder or other officer in
18 charge of elections or may be deposited at any polling place in the county not later than 7:00
19 p.m. on election day.”

20 21. Thus, Arizona law specifically authorizes two—and only two—destinations for
21 voters to submit their ballots: (1) the office of the county recorder or other officer in charge of
22 elections (“elections official”) or (2) a polling place.

23 22. Furthermore, Arizona law specifically authorizes two—and only two—entities
24 who may deliver voted ballots in lieu of voters themselves: (1) a federal postal worker or (2) a
25 voter’s designated agent. A voter’s agent is limited by law to “a family member, household
26 member, or caregiver of the voter.” A.R.S. § 16-1005(I)(2); *see also* A.R.S. § 16-547(E)
27 (instructing voters that: “A person may only handle or return their own ballot or the ballot of
28

1 family members, household members or persons for whom they are a caregiver. It is unlawful
2 under section 16-1005 to handle or return the ballot of any other person.”).

3 **Arizona’s Statutory Methods to Return Early Voted Ballots Adheres to Best Practices**

4 23. With these safeguards, Arizona ensures that the chain of custody between voters
5 and their counted ballots remains short, traceable, and trustworthy.

6 24. These return options align with the recommendations of the Commission on
7 Federal Election Reform. This commission, led by President Jimmy Carter and former Secretary
8 of State James Baker, was formed in 2004 to recommend ways to raise confidence in the
9 electoral system by addressing issues left unresolved by the Help America Vote Act of 2002. The
10 Commission issued a report in 2005 documenting its findings and recommendations. *See*
11 Commission on Federal Election Reform, *Building Confidence in U.S. Elections* (Sep. 2005)
12 [hereafter, “CFER Report”], available at
13 https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF (retrieved Oct. 11,
14 2023).

15 25. The CFER Report documented multiple vulnerabilities inherent in voting by
16 absentee ballot and concluded that “[a]bsentee ballots remain the largest source of potential voter
17 fraud.” *Id.* at 46. To mitigate these vulnerabilities, the CFER Report recommended that “[s]tate
18 and local jurisdictions . . . prohibit a person from handling absentee ballots other than the voter,
19 an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election
20 officials.” *Id.* at 47. A.R.S. § 16-548(A) mirrors these recommendations.

21 26. A.R.S. § 16-548(A) also explicitly ties the destination to a carrier. For instance,
22 Arizona’s Legislature has determined that, if a voter wishes for her voted ballot to be deposited
23 at a polling place, “the voter or the voter’s agent” (as defined by law) must do so.

24 27. Likewise, under A.R.S. § 16-548(A), if the voter wishes for her voted ballot to be
25 delivered to an election official’s address, only the voter or the United States Postal Service
26 (“USPS”) may do so.

27 28. Notably, the statute does *not* allow the USPS as an option for deposit with a
28 polling place. Thus, voters may not rely on the USPS to take their ballots anywhere except to the

1 “post office address of the recorder or other officer in charge of elections,” printed on the ballot
2 return envelope. A.R.S. § 16-547(A). Allowing anything else, the Legislature has obviously
3 determined, would create unnecessary confusion in the ballot’s chain of custody.

4 29. The structure of A.R.S. § 16-548(A) (“Preparation and transmission of ballot”)
5 reinforces this conclusion about the relevant statutory design. Section 16-548(A) provides that
6 the “early voter” (and no one else) may mail or deliver a voted ballot to the county recorder.¹ In
7 discussing the deposit of a ballot at a polling place, though, A.R.S. § 16-548(A) allows that the
8 voted ballot may be “deposited by the voter *or the voter’s agent* at any polling place in the
9 county.” The Legislature’s addition of “the voter’s agent” distinguishes this polling place
10 provision from the county recorder provision, where the Legislature decided to *not* allow a
11 voter’s agent to mail or deliver a voted ballot to a county recorder or election official.

12 **The Secretary, Through the EPM, Illegally Establishes Unstaffed Drop-Boxes**

13 30. The Secretary of State, however, exceeding any legislative or constitutional
14 authorization or authority granted to that office, has recognized another option for early voting:
15 the “unstaffed drop-box.” *See* EPM at 60-62 & Draft 2023 EPM at 62-64. Having created this
16 new option, the Secretary has issued rules for drop-boxes. The Secretary’s rules require a variety
17 of physical characteristics for drop-boxes and require county recorders to “develop and
18 implement secure ballot retrieval and chain of custody procedures.”

19 31. There is no statutory authority for unstaffed drop-boxes, much less for treating
20 early voted ballots deposited in such unstaffed drop-boxes as if they were “delivered to the office
21 of the county recorder” by the voter or the U.S. Postal Service “not later than 7:00 p.m. on
22 election day.” Instead, the Secretary purports to establish this scheme through the EPM. In
23 Arizona, “once adopted, the EPM has the force of law; any violation of an EPM rule is

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27 ¹ More specifically, A.R.S. § 16-548(A) allows the voted ballot to be “mailed to the county
28 recorder or other officer in charge of elections.” This explicitly permits the USPS to carry the
ballot, because the USPS retains a statutory monopoly on the U.S. mail. *See* 18 U.S.C. §§ 1693-
99 & 1724, and 39 U.S.C. §§ 601-06.

1 punishable as a class two misdemeanor.” *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63
2 (2020).

3 32. The EPM, however, is a document of limited scope, and “an EPM regulation that
4 exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does
5 not have the force of law.” *Leach v. Hobbs*, 250 Ariz. 572, 576 (2021); *see also Fontes*, 250
6 Ariz. at 64 (granting Plaintiff injunctive relief upon a finding that the recorder “has acted
7 unlawfully and exceeded his . . . statutory authority,” by issuing supplemental early voting
8 instructions).

9 33. The most recent EPM approved by the Secretary of State, the Governor, and the
10 Attorney General was published in December 2019. While the production of a new EPM is
11 statutorily required in “each odd-numbered year” (A.R.S. § 16-452(B)), the multiple offices of
12 the executive branch have not consistently adhered to the statute’s decrees. They were unable to
13 produce an EPM in 2021. Therefore, the 2019 version of the EPM is still in force, as of yet
14 notwithstanding the submission of the 2023 EPM by the Secretary to the Governor, as the
15 Governor has not yet approved the 2023 EPM.²

16 34. The EPM is the only document that purports to authorize unstaffed drop-boxes in
17 Arizona.

18 35. Arizona statutory law does not mention unstaffed drop-boxes, let alone authorize
19 them.

20 **Unstaffed Drop-Boxes Do Not Provide the Protections of the U.S. Postal Service**

21 36. Notwithstanding the law, the Secretary, through the EPM, has created and
22 regulated unstaffed drop-boxes, allowing them to be placed in a variety of locations, including
23 outdoors. EPM at 60.

24 37. These unstaffed drop-boxes lack crucial protections afforded to USPS mail
25 collection boxes.

26 _____
27 ² While approval of the 2023 EPM is pending, beyond a few minor and largely cosmetic changes
28 the 2023 EPM includes substantially similar drop-box provisions to the current (2019) EPM.

1 38. For instance, while there are certain federal laws relating to the election process,
2 the contents of USPS mail collection boxes enjoy additional special protections under federal
3 law. Obstruction of mail passage is punishable by a fine and imprisonment for up to six months.
4 18 U.S.C. § 1701. Destruction of mail is punishable by up to five years’ imprisonment. 18 U.S.C.
5 § 1702. Vandalism of a mailbox is punishable by three years’ imprisonment. 18 U.S.C. § 1705.
6 The USPS has its own federal law enforcement arm specifically dedicated to investigating postal
7 crimes. *See* <https://www.uspis.gov/> [retrieved September 13, 2023, <https://archive.ph/7T4Ia>]
8 (“Security: It Comes With the Stamp. The Postal Inspection Service is standing guard and ready
9 to help.”).

10 39. These special protections do not apply to Arizona’s ballot drop-boxes or the
11 ballots deposited into them. The EPM does not describe any equivalent protections covering
12 drop-boxes or deposited ballots.

13 40. Moreover, USPS mail collection boxes have locks. The EPM does not require
14 locks on drop-boxes. EPM at 61 (“All drop-boxes shall be clearly and visibly marked as an
15 official ballot drop-box and secured by a lock *and/or* sealable with a tamper-evident seal”)
16 (emphasis added).

17 41. The EPM also creates the position of “ballot retriever.” EPM at 61. In stark
18 contrast to mail carriers, who must take an oath of fidelity to the Constitution before transporting
19 ballots and other mail (*see* 39 U.S.C. § 1011), the EPM allows anyone to qualify as a ballot
20 retriever, so long as they “wear a badge” when performing their duties. EPM at 61. And unlike
21 voters’ agents who are authorized by statute and presumably (based on the statutory definition)
22 known to the voters who entrust their ballot to them, ballot retrievers remain unknown to voters
23 in nearly all cases. Moreover, each ballot sent via USPS is scanned so a record exists of its
24 deposit and delivery. *See, e.g.*, “Postal Service Confirms Photographing All U.S. Mail: The
25 Postal Service takes a picture of every letter and package mailed in the United States and will
26 give a photo to a requesting law enforcement agency, the postmaster general confirmed.” New
27 York Times, Aug. 2, 2013, [https://www.nytimes.com/2013/08/03/us/postal-service-confirms-](https://www.nytimes.com/2013/08/03/us/postal-service-confirms-photographing-all-us-mail.html)
28 [photographing-all-us-mail.html](https://www.nytimes.com/2013/08/03/us/postal-service-confirms-photographing-all-us-mail.html) [retrieved Sep. 13, 2023, <https://archive.ph/jN6Z6>]. However,

1 the EPM does not even require ballot retrievers to count the numbers of ballots retrieved from a
2 particular unstaffed drop-box, much less scan them. See EPM at 60-62.

3 42. Again, under Arizona law, only two entities may deliver a voted ballot to the
4 office of an elections official: the voter or the postal service. Even voters' agents, who may
5 deposit a voted ballot at a polling place, are not allowed to deliver a ballot to the office of an
6 elections official. If a voter's agent—who authorized to perform some function on behalf of a
7 voter—cannot make the delivery to an elections official's office provided by statute, ballot
8 retrievers—who are not referenced in the relevant statute, at all—cannot make this delivery.

9 43. A USPS mailbox is further likely to contain different varieties of mail at any
10 given time. From the outside, it is impossible to determine whether a particular mailbox contains
11 early voted ballots. A person seeking to interfere with ballots being returned via the mail would
12 have very little certainty that a particular mailbox contains any ballots at all.

13 44. By contrast, an unstaffed drop-box contains *only* completed ballots. From the
14 outside, one can know with certainty that the contents of a ballot drop-box are completed ballots,
15 likely a significant number of them.

16 **Unstaffed Drop-Boxes Increase the Possibility of Voter Intimidation**

17 45. The existence of unmonitored drop-boxes and the lack of security protecting them
18 has led to alleged incidents of voter intimidation. For instance, during the 2022 election, alleged
19 victims of voter intimidation secured a restraining order after claiming that their right to vote was
20 threatened by groups of armed observers trying to catch illegal ballot submissions at drop-boxes.
21 *See Arizona All. for Retired Americans v. Clean Elections USA*, No. CV-22-01823-PHX-MTL,
22 2022 WL 17088041, at *1 (D. Ariz. Nov. 1, 2022).

23 46. This risk of voter intimidation is not present at mail collection boxes, because it is
24 nearly impossible to tell whether any particular person depositing mail is depositing a voted
25 ballot.

26 47. The risk of voter intimidation is also not present at an election official's office,
27 because the presence of government officials deters such acts and can quickly obtain security
28 assistance should deterrence fail.

1 48. A person approaching an unmonitored ballot drop-box has no reason to be present
2 there except to deliver a voted ballot, making this person an easy and vulnerable target for voter
3 intimidation. Ballot drop-boxes thus increase the risk of voter intimidation compared to an early
4 voter’s statutorily authorized ballot return options, at a mail collection box or the office of the
5 county recorder.

6 **The EPM Allows Unstaffed Drop-Boxes in Insecure Locations, Inconsistently Distributed**

7 49. Additionally, the EPM suggests—but does not require—that election officials
8 install drop-boxes in the vicinity of a government building. Under this expansive guidance,
9 Arizona counties have placed drop-boxes in a variety of nongovernmental locations. For
10 instance, Coconino County elections officials established drop-boxes in a bookstore and a
11 humane society.³ Elsewhere, drop-boxes have popped up at a church,⁴ and even elementary
12 schools and restaurants.⁵ Yavapai County has placed drop-boxes at libraries, community centers,
13 fire departments, and, amazingly enough, United States Post Offices⁶—presumably mere feet
14 away from a mailbox where voters may legally return their ballots.

15 50. Arizona law does not permit voters to leave ballots at bookstores, humane
16 societies, churches, elementary schools, restaurants, libraries, community centers, or fire
17 departments. And, while voters may lawfully dispatch their ballots to elections officials from a
18 post office, Arizona law requires that such ballots travel through the USPS.

19 51. Furthermore, the EPM does not dictate the numbers or geographic distribution of
20 unstaffed drop-boxes that a county may or must provide. Under the EPM’s purported grant of
21 authority, counties are free to decide how many drop-boxes to install, if any. As a result, the
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25 ³ <https://coconino.az.gov/DocumentCenter/View/51730/Coconino-County-Ballot-Drop-Box-Locations-2022-Primary-Election> [retrieved Oct. 11, 2023, <https://archive.ph/ZkAJa>]

26 ⁴ https://www.gilacountyaz.gov/government/recorder/drop_off_boxes.php [retrieved Oct. 11, 2023, <https://archive.ph/ultsI>]

27 ⁵ <https://www.graham.az.gov/314/How-To-Return-Your-Early-Ballot> [retrieved Oct. 11, 2023, <https://archive.ph/U8bdi>]

28 ⁶ <https://www.yavapaivotes.gov/Voter-Registration/Drop-Box-Locations> [retrieved Oct. 11, 2023, <https://archive.ph/jMnx9>]

1 number and location of drop-boxes varies widely between counties. For instance, La Paz County
2 has only one drop-box location.⁷ Coconino County has 16 drop-boxes.⁸

3 52. The EPM further does not require any equality of apportionment of drop-boxes
4 based on county population or geography. Coconino County’s 16 drop-boxes serve a population
5 of 144,060, as determined by the 2020 Census.⁹ Yet, Yavapai County, with a population of
6 246,191,¹⁰ placed 19 drop-boxes—only three more than Coconino County despite having a 70%
7 greater population.

8 53. If allowed to stand, the EPM’s unstaffed drop-box scheme would result in
9 unlawful arbitrary and disparate treatment of voters in Arizona’s different counties.

10 **The EPM Provides No Statutory Authority for Its Invention of Unstaffed Drop-Boxes**

11 54. In fact, the EPM itself does not attempt to ground its unstaffed drop-box scheme
12 in any provision of Arizona law.

13 55. Excluding annexes and the index, the EPM contains 273 pages of regulations. In
14 these 273 pages, the EPM contains more than a thousand citations to enabling statutes—
15 averaging roughly four citations per page.

16 56. The EPM unstaffed drop-box guidance spans two full pages.

17 57. These two pages cite Arizona statutory law regarding unstaffed drop boxes—zero
18 times—that is, there is no statutory basis for these drop boxes and the Secretary makes no effort
19 to identify one.

20 58. The EPM’s omission of citations to Arizona’s statutes was surely not an
21 oversight. When a statute supports an EPM regulation, the EPM cites it. Apparently, though, the
22 EPM’s authors could find no enabling statute supporting unstaffed drop-boxes
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26 ⁷ <https://www.co.la-paz.az.us/619/Ballot-Drop-Box-Locations> [retrieved Oct. 11, 2023,
<https://archive.ph/geBzk>]

27 ⁸ [https://coconino.az.gov/DocumentCenter/View/51730/Coconino-County-Ballot-Drop-Box-
Locations-2022-Primary-Election](https://coconino.az.gov/DocumentCenter/View/51730/Coconino-County-Ballot-Drop-Box-Locations-2022-Primary-Election) [retrieved Oct. 11, 2023, <https://archive.ph/ZkAJa>]

28 ⁹ <https://www.census.gov/quickfacts/coconinocountyarizona> [retrieved Oct. 11, 2023]

¹⁰ <https://www.census.gov/quickfacts/yavapaicountyarizona> [retrieved Oct. 11, 2023]

1 59. Arizona is not the first state where election officials created an unstaffed drop-box
2 scheme without any basis in statute.

3 60. In *Teigen v. Wisconsin Elections Commission*, 976 N.W.2d 519 (2022), the
4 Wisconsin Supreme Court held that drop-boxes in that state were unlawful because the
5 Wisconsin Elections Commission had exceeded its statutory authority in purporting to authorize
6 them.

7 61. Wisconsin’s absentee voting statute provided, in relevant part, “that absentee
8 ballots ‘shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the
9 ballot or ballots.’” *Id.* at ¶ 55 (citing Wisc. Stat. § 6.87(4)(b)1).

10 62. Wisconsin Statute § 6.87(4)(b)1 is materially indistinguishable from A.R.S. § 16-
11 548(A), which, as stated above, requires that ballots “shall be . . . delivered or mailed to the
12 county recorder or other officer in charge of elections of the political subdivision in which the
13 elector is registered.”

14 63. The Wisconsin Supreme Court observed that “[a]n inanimate object, such as a
15 ballot drop box, cannot be the municipal clerk. At a minimum, accordingly, dropping a ballot
16 into an unattended drop box is not delivery to the municipal clerk.” *Teigan*, 976 N.W.2d 519 at
17 ¶ 55 (cleaned up).

18 64. The Wisconsin Supreme Court explained that the statute required delivery to “a
19 public office, held by a public official acting in an official capacity when performing statutory
20 duties such as accepting ballots.” *Id.*

21 65. The Wisconsin Supreme Court also noted that no one in that case could “point to
22 any statute authorizing ballot drop boxes.” *Id.* at ¶ 54. Further, as here, “the details of the drop
23 box scheme are found nowhere in the statutes, but only in memos prepared by WEC staff, who
24 did not cite any statutes whatsoever to support their invention.” *Id.* at ¶ 58.

25 66. As a result, the Wisconsin Supreme Court concluded that the “ballot drop box
26 scheme [is] entirely absent from Wisconsin’s election code.” *Id.* at ¶ 72. Thus, Wisconsin law
27 did “not permit voting via ballot drop boxes.” *Id.*

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1 72. An EPM provision that is inconsistent with, or that exceeds the authorizing scope
2 of, a governing statute is invalid and carries no legal force or effect. *See Leach v. Hobbs*, 250
3 *Ariz.* 572, 576, (2021). *See also Leibsohn v. Hobbs*, 254 *Ariz.* 1, 46, 517, (2022) (“[A]n EPM
4 regulation that contradicts statutory requirements does not have the force of law.”).

5 73. If allowed to stand, such an EPM provision would intrude on the Legislature’s
6 prerogative to regulate federal elections, which in the context of the U.S. Constitution’s Elections
7 Clause, is a “role specifically reserved to state legislatures by Article I, Section 4, of the Federal
8 Constitution.” *Moore v. Harper*, 143 S. Ct. 2065, 2090 (2023). This power “unquestionably calls
9 for the exercising of lawmaking authority.” *Arizona State Legislature v. Arizona Independent*
10 *Redistricting Comm’n*, 576 U.S. 787, 808 n.17 (2015).

11 74. Accordingly, the EPM unstaffed ballot drop-box scheme conflicts with Arizona
12 statutes governing early voting, contravenes the will of the Arizona Legislature as expressed in
13 those statutes, and exceeds the statutory and legal authority of the Secretary of State. *See Ariz. R.*
14 *Special Action Proc.* 3(b).

15 75. In addition, the Secretary has a nondiscretionary legal duty to implement and
16 effectuate the ballot transmission process prescribed by A.R.S. § 16-548(A), § 16-547(D) & (E),
17 and § 16-1005 in a manner consistent with the statute. *See Ariz. R. Special Action Proc.* 3(a);
18 A.R.S. § 12-2021. The Secretary has failed to duly discharge that duty because the authorization
19 of, and receipt of ballots from, unstaffed ballot drop-boxes directly conflicts with Arizona
20 statutory law governing early voting.

21 76. Each of the Plaintiffs has a beneficial interest in ensuring that the Secretary of
22 State carries out his nondiscretionary legal duty to implement and act in a manner consistent
23 with, rather than contrary to, the terms of controlling Arizona statutes; therefore, they have
24 standing to bring this action and seek the requested relief. *See A.R.S.* § 12-2021; *Ariz. R. Special*
25 *Action P. 3; Fontes*, 250 *Ariz.* at 62.

26 77. In addition, because the Secretary “has acted unlawfully and exceeded his . . .
27 statutory authority,” Plaintiffs are entitled to injunctive relief. *Fontes*, 250 *Ariz.* at 64.

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Secretary of State’s lawful authority, and that the Secretary has, to that extent, failed to carry out a nondiscretionary duty to implement the EPM in a manner consistent with A.R.S. § 16-548(A), § 16-547(D) & (E), and § 16-1005.

- B. An injunction pursuant to Ariz. R. Civ. P. 65, Arizona Rule of Special Action Procedure 3, or other applicable law prohibiting the Secretary of State and anyone acting in concert with him from enforcing or implementing any provision of the EPM that authorizes county recorders or other officers in charge of elections to install or receive voted ballots from unstaffed ballot drop-boxes.
- C. A declaration pursuant to A.R.S. §§ 12-1831 & 12-1832 that any provision of the EPM that authorizes county recorders or other officers in charge of elections to install or receive voted ballots from unstaffed ballot drop-boxes is inconsistent with A.R.S. § 16-548(A), § 16-547(D) & (E), and § 16-1005, and that, because such provision is invalid and unenforceable, such programs may not be utilized by elections officials in any federal, state, or local election in the State of Arizona.
- D. An award of reasonable attorneys’ fees and costs pursuant to A.R.S. §§ 12-341, 12-2030, the private attorney general doctrine, and other applicable law.
- E. Such other relief as the Court deems necessary, equitable, proper, and just.

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DATED this 17th day of October, 2023.

By: /s/ Timothy A. La Sota
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** pro hac vice to be filed*

VERIFICATION

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I declare under penalty of perjury of the laws of the State of Arizona that the foregoing Verified Complaint is true and correct to the best of my knowledge and belief and that this Declaration is executed by me on the 17th day of October, in Yavapai County, AZ.
