

1 Veronica Lucero (030292)  
2 **Davillier Law Group LLC**  
3 4105 N. 20<sup>th</sup> St. Ste. 110  
4 Phoenix, AZ 85016  
5 Telephone: (602) 730-2985  
6 Facsimile: (602) 801-2539  
7 Emails:  
8 [Vlucero@davillierlawgroup.com](mailto:Vlucero@davillierlawgroup.com)  
9 [PhxAdmin@davillierlawgroup.com](mailto:PhxAdmin@davillierlawgroup.com) (file copies)

10 Timothy A. La Sota (020539)  
11 **GRAND CANYON LEGAL CENTER**  
12 1835 E. Elliot Road Ste. 102  
13 Tempe, AZ 85284-1747  
14 Telephone: (602) 515-2649  
15 Email: [tim@timlasota.com](mailto:tim@timlasota.com)

16 Richard P. Lawson (*pro hac vice to be submitted*)  
17 Jessica H. Steinmann (*pro hac vice to be submitted*)  
18 **AMERICA FIRST POLICY INSTITUTE**  
19 1001 Pennsylvania Ave., NW, Suite 530  
20 Washington, DC 20004  
21 Telephone: (813) 952-8882  
22 Emails:  
23 [rlawson@americafirstpolicy.com](mailto:rlawson@americafirstpolicy.com)  
24 [jsteinmann@americafirstpolicy.com](mailto:jsteinmann@americafirstpolicy.com)

25 *Attorneys for Plaintiff*

26 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
27 **IN AND FOR THE COUNTY OF MARICOPA**

28 ARIZONA FREE ENTERPRISE CLUB,  
an Arizona non-profit corporation;

Plaintiff,

v.

ADRIAN FONTES, in his official capacity  
as Arizona Secretary of State;

Defendant.

Case No.

**COMPLAINT FOR  
DECLARATORY RELIEF**

(Expedited Consideration Requested)

1 Plaintiff Arizona Free Enterprise Club (“AFEC”), for its Complaint against Defendant  
2 Arizona Secretary of State Adrian Fontes (the “Secretary” or “Secretary Fontes”), alleges  
3 as follows:

#### 4 **INTRODUCTION**

5 1. This case is about the Secretary’s promulgation of certain unlawful rules set forth  
6 in the latest Elections Procedures Manual (“EPM”), which became operative in December  
7 2023.

8 2. Secretary Fontes has made several changes to the prior official version of the  
9 manual, which was promulgated in 2019 (i.e., the “2019 EPM”).

10 3. The new EPM (i.e., the “2023 EPM”) now contains several “rules” that are  
11 unconstitutional and that also contradict statutory requirements established by the  
12 legislature and therefore lack the force of law.

13 4. These rules implement the Secretary’s policies rather than those specifically  
14 delegated to him by the Arizona Legislature. In other words, the Secretary has prescribed  
15 rules without the power to do so.

16 5. Given that many of the 2023 EPM rules lack the force of law, A.R.S. § 16-452(C)  
17 (which subjects Plaintiff’s members to criminal penalties for the violation of “any rule”)  
18 cannot apply to these rules without raising constitutional issues.

19 6. Accordingly, AFEC seeks a declaration from this Court that the 2023 EPM rules at  
20 issue in this Complaint violate Arizona statutory law, the Arizona Constitution, and the  
21 United States Constitution.

#### 22 **PARTIES, JURISDICTION, AND VENUE**

23 7. Plaintiff Arizona Free Enterprise Club is a nonprofit organization in Arizona.

24 8. Plaintiff AFEC is a private organization that advocates for public policy solutions  
25 in Arizona, including policies related to election integrity, free speech in the context of  
26 elections, and ensuring that government entities abide by their constitutional limitations.

1 9. Plaintiff AFEC has an interest in ensuring that that the Secretary abides by the  
2 limitations imposed on him by the federal and state constitutions in his promulgation of  
3 the 2023 EPM.

4 10. Plaintiff's members include registered voters who are affected by unconstitutional  
5 laws set forth in the EPM.

6 11. Defendant Adrian Fontes is the Arizona Secretary of State and is named in his  
7 official capacity only.

8 12. Defendant has a duty to promulgate an EPM with rules that conform to statutory  
9 and constitutional requirements and limitations.

10 13. Defendant holds office in Maricopa County.

11 14. Jurisdiction over this action is proper pursuant to A.R.S. § 12-123, 12-1831, and the  
12 Arizona Constitution.

13 15. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

#### 14 **FACTUAL ALLEGATIONS**

15 16. As required by A.R.S. § 16-452(B), Secretary Fontes submitted the 2023 EPM to  
16 the governor and attorney general for final approval.

17 17. On December 30, 2023, Arizona Governor Katie Hobbs issued a letter approving  
18 the 2023 EPM and stating that the "Manual builds on the work done on the 2019 EPM and  
19 2021 draft EPM...."

20 18. On December 30, 2023, Arizona Attorney General Kris Mayes also issued a letter  
21 approving the 2023 EPM.

22 19. Pursuant to A.R.S. § 16-452(B), the EPM is official when it is "issued not later than  
23 December 31" and "approved by the governor and the attorney general."

24 20. The 2023 EPM is thus the purported effective and operating EPM for the 2024  
25 election cycle.

26 21. Accordingly, the 2023 EPM is purported to apply to the August 6, 2024, Primary  
27 Election and the November 5, 2024, General Election to occur in Arizona.

28

1 22. The 2023 EPM is also purported to apply to other elections for which important  
2 deadlines are immediately imminent, including the following: February 20, 2024 (last day  
3 to register to vote in the Presidential Preference Elections); March 12, 2024 (Election);  
4 March 19, 2024 (Presidential Preference Election).

5 23. Because these deadlines are imminent, expedited consideration of this case is  
6 warranted.

7 24. Plaintiff's members include registered voters and Arizona residents who are  
8 concerned with election integrity and who must abide by the 2023 EPM rules for this  
9 election cycle.

10 25. However, a 2023 "EPM regulation that contradicts statutory requirements does not  
11 have the force of law." *Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022) (citation omitted).

12 26. The 2023 EPM contains several provisions that contradict statutory requirements  
13 and thus do not have the force of law.

14 27. The 2023 EPM contains several provisions that contradict constitutional  
15 requirements and thus do not have the force of law.

16 28. A.R.S. § 16-452(C) (emphasis added) provides that "[a] person who violates *any*  
17 rule adopted pursuant to this section is guilty of a class 2 misdemeanor."

18 29. "It is generally agreed that the legislature may provide criminal penalties for the  
19 violation of rules and regulations to be enacted by administrative agencies under proper  
20 circumstances." *State v. Phelps*, 12 Ariz. App. 83, 85 (1970) (citation omitted).

21 30. "However, it must be remembered that this being a crime, the statute must be *strictly*  
22 construed and *not broadened beyond the clear and express intent of the legislature.*" *Id.* at  
23 86 (citation omitted; emphasis added).

24 31. Accordingly, the legislative power to enact criminal laws must be delegated  
25 expressly and not in a "sweeping," "oblique," or "indirect" fashion. *Roberts*, 253 Ariz. at  
26 269 ¶ 37 (quoting *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) ("Extraordinary  
27 grants of regulatory authority are rarely accomplished through 'modest words,' 'vague  
28 terms,' or 'subtle device[s].'")) (citation omitted)).

1 32. To the extent that the 2023 EPM contains vague rules that contradict statutory and  
2 constitutional requirements, these rules do not have the force of law such that a violation  
3 of any one of these rules is a crime pursuant to A.R.S. § 16-452(C).

4 33. Several of these EPM rules criminalize activity that is protected by the First  
5 Amendment.

6 34. For example, the following provisions of the EPM, among others, are  
7 unconstitutional:

8 a. **Drop Box Observation.** The EPM states that the “County Recorder or  
9 officer in charge of elections may restrict activities that interfere with the  
10 ability of voters and/or staff to access the ballot drop-off location free from  
11 obstruction or harassment” and in a footnote gives examples of “voter  
12 intimidation or harassment,” including but not limited to the following:

- 13 i. Repeatedly entering or staying within 75 feet of a ballot drop box or  
14 the entrance to a building where a drop box is located for the purpose  
15 of watching or monitoring individuals who are delivering ballots;  
16 ii. Intentionally following individuals delivering ballots to the drop box  
17 when such individuals are not within 75 feet of a drop box; and  
18 iii. Speaking to an individual who that person knows is returning ballots  
19 to the drop box and who is within 75 feet of the drop box.

20 EPM at 73-74 & n.40 (ch. 2, § I(I)(10)).<sup>1</sup>

21 b. **Polling Place Observation.** The EPM also states that, among other items,  
22 the following activity may be considered intimidating conduct inside or  
23 outside the polling place:

- 24 i. Aggressive behavior, such as raising one’s voice or taunting a voter  
25 or poll worker;

26  
27  
28 

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<sup>1</sup> The 2023 EPM is available at <https://azsos.gov/elections/about-elections/elections-procedures/elections-procedures-manual>.

- 1                   ii. Using threatening, insulting, or offensive language to a voter or poll  
2                   worker;
- 3                   iii. Directly confronting, questioning, photographing, or videotaping  
4                   voters or poll workers in a harassing or intimidating manner,  
5                   including when the voter or poll worker is coming to or leaving the  
6                   polling location; and,
- 7                   iv. Asking voters for “documentation” or other questions that only poll  
8                   workers should perform.

9 EPM at 181-83 (ch. 9, § III(D)).

10 35. The EPM prohibitions on Drop Box and Polling Place Observations cast a net far  
11 wider than necessary for the Secretary to “prescribe rules to achieve the maximum degree  
12 of correctness, impartiality, uniformity and efficiency” for Arizona elections pursuant to  
13 A.R.S. § 452(A).

14 36. By regulating conduct such as observing a drop box within 75 feet of the drop box,  
15 speaking to voters and election workers, and photographing activity at election sites, the  
16 EPM has criminalized activity which is plainly protected by the First Amendment and  
17 article 2, sections 5-6 of the Arizona Constitution.

18 37. These activities—watching drop boxes, speaking to people at election sites, and  
19 photographing activity at election sites—all constitute forms of speech.

20 38. For example, AFEC members are not only interested in observing activity at drop  
21 boxes, but they are also just as interested in conveying a message to others that the drop  
22 boxes are being watched and should be watched.

23 39. Simply put, AFEC and its members are just as concerned about election integrity at  
24 drop boxes as they are about raising the public’s awareness of election integrity in general.  
25 The First Amendment and article 2, sections 5-6 of the Arizona Constitution protect this  
26 speech.

27 40. As to photographing activity at election sites, there is a First Amendment right to  
28 film matters of interest, and the Supreme Court has recognized a right to gather news.

1 41. Even more clearly than with drop box observations or photography, the First  
2 Amendment and article 2, sections 5-6 of the Arizona Constitution protect AFEC's  
3 interests in talking to election workers and voters.

4 42. While the First Amendment and article 2, sections 5-6 of the Arizona Constitution  
5 do not protect all speech, their sweep is vast; thus, as a general rule, only speech that is  
6 "directed to inciting or producing imminent lawless action and is likely to incite or produce  
7 such action" can carry a criminal sanction. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

8 43. The EPM restricts speech that is not "directed to inciting or producing imminent  
9 lawless action and is likely to incite or produce such action," *id.*, but nevertheless  
10 criminalizes such speech.

11 44. This action for declaratory relief is timely even though AFEC and its members have  
12 not been charged or threatened with prosecution.

13 45. The EPM establishes that AFEC and its members are acting under a credible threat  
14 of prosecution for engaging in political speech.

15 46. AFEC and its members must be able to engage with the public and other officials,  
16 and the EPM is having a direct chilling effect on these duties and obligations.

17 47. Of all forms of protected speech, a chilling effect on political discourse is the gravest  
18 affront to the First Amendment.

19 48. Even if AFEC's speech might be incorrect or unpopular, it is no less protected by  
20 the First Amendment, as erroneous statements and unpopular opinions are inevitable in  
21 free debate.

22 49. AFEC requests that the Court declare that the challenged EPM rules do not have the  
23 force of law because they contradict statutory requirements and are also unconstitutional  
24 under the state and federal constitutions.

25 50. AFEC also requests that the Court declare that A.R.S. § 16-452(C) does not apply  
26 to the challenged EPM rules because these rules lack the force of law and are therefore  
27 void for vagueness.

28

1 51. Accordingly, to prevent the State of Arizona, through the Secretary, from chilling  
2 protected political speech and to prevent improper and selective prosecution, this Court  
3 should strike the 2023 EPM rules implementing drop box exclusion zones, the photography  
4 ban, and the gag order.

## 5 CAUSES OF ACTION

### 6 Count I

#### 7 **Arizona Constitution article 2, sections 5-6; First Amendment as Incorporated** 8 **Against the States—Speech**

9 52. Plaintiff incorporates the allegations in all preceding paragraphs as if fully set forth  
10 herein.

11 53. “[A] violation of First Amendment principles ‘necessarily implies’ a violation of  
12 the broader protections of article 2, section 6 of the Arizona Constitution[.]” *Brush & Nib*  
13 *Studios, LC v. City of Phx.*, 247 Ariz. 269, 282 (2019).

14 54. The 2023 EPM purports to criminalize the following conduct “inside or outside the  
15 polling place,” EPM at 182:

- 16 a. “**Any activity** by a person with the intent or effect of threatening, harassing,  
17 intimidating, or coercing voters (or conspiring with others to do so) inside  
18 or outside the 75-foot limit,” *id.* at 181 (emphasis added);
- 19 b. Electioneering “**outside** the 75-foot limit **if is audible** from a location inside  
20 the door to the voting location,” *id.* at 180 (emphasis added);
- 21 c. “Aggressive behavior, such as **raising one’s voice** or taunting a voter or poll  
22 worker,” *id.* at 182 (emphasis added);
- 23 d. “Using threatening, **insulting, or offensive language** to a voter or poll  
24 worker,” *id.*;
- 25 e. “Intentionally **disseminating false or misleading information** at a voting  
26 location, such as flyers or communications that misstate the date of the  
27 election, hours of operation for voting locations, addresses for voting  
28



1 locations, *or similar efforts intended to disenfranchise voters,*” *id.*  
2 (emphasis added);

3 f. “Directly confronting, *questioning*, photographing, or videotaping voters or  
4 poll workers *in a harassing or intimidating manner*, including when the  
5 voter or poll worker is coming to or leaving the polling location,” *id.*;

6 g. “*Posting signs or communicating messages* about penalties for ‘voter  
7 fraud’ in a harassing or intimidating manner,” *id.* at 183 (emphasis added);  
8 and

9 h. “(1) repeatedly entering or *staying within 75 feet of a ballot drop box or*  
10 *the entrance to a building* where a drop box is located for the purpose of  
11 *watching or monitoring individuals* who are delivering ballots; (2)  
12 intentionally following individuals delivering ballots to the drop box *when*  
13 *such individuals are not within 75 feet of a drop box*; (3) *speaking to* or  
14 yelling at *an individual*, without provocation, who that person knows is  
15 returning ballots to the drop box and who is within 75 feet of the drop box,”  
16 EPM at 74 n.40 (emphasis added).

17 55. The above EPM provisions, if they have the force of law, constitute restrictions on  
18 political speech. As such, even if the Secretary had the authority to criminalize such  
19 conduct, which he does not, the above EPM provisions are subject to strict scrutiny, making  
20 these restrictions unconstitutional unless they are narrowly tailored to achieve a compelling  
21 governmental interest. *Brush & Nib*, 247 Ariz. at 293.

22 56. These provisions, however, are not necessary to achieve a compelling governmental  
23 interest because the state legislature has already enacted laws against intimidation  
24 generally and voter intimidation specifically. *See* A.R.S. §§ 13-1202, 16-1013, 16-1017.<sup>2</sup>

25 57. A.R.S. § 13-1202, provides:  
26

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27  
28 <sup>2</sup> Congress, too, has enacted laws against voter intimidation. *See, e.g.*, 42 U.S.C. §  
1985(3), 52 U.S.C. § 10307(b).

1 A. A person commits threatening or intimidating if the person threatens or  
2 intimidates by word or conduct:

3 1. To cause physical injury to another person or serious damage to the  
4 property of another; or

5 2. To cause, or in reckless disregard to causing, serious public inconvenience  
6 including, but not limited to, evacuation of a building, place of assembly or  
7 transportation facility; or

8 3. To cause physical injury to another person or damage to the property of  
9 another in order to promote, further or assist in the interests of or to cause,  
10 induce or solicit another person to participate in a criminal street gang, a  
11 criminal syndicate or a racketeering enterprise.

12 B. Threatening or intimidating pursuant to subsection A, paragraph 1 or 2 is a class  
13 1 misdemeanor, except that it is a class 6 felony if:

14 1. The offense is committed in retaliation for a victim's either reporting  
15 criminal activity or being involved in an organization, other than a law  
16 enforcement agency, that is established for the purpose of reporting or  
17 preventing criminal activity.

18 2. The person is a criminal street gang member.

19 C. Threatening or intimidating pursuant to subsection A, paragraph 3 is a class 3  
20 felony.

21 58. A.R.S. § 16-1013(A) provides:

22 It is unlawful for a person knowingly:

23 1. Directly or indirectly, to make use of force, violence or restraint, or  
24 to inflict or threaten infliction, by himself or through any other person,  
25 of any injury, damage, harm or loss, or in any manner to practice  
26 intimidation upon or against any person, in order to induce or compel  
27 such person to vote or refrain from voting for a particular person or  
28 measure at any election provided by law, or on account of such person  
having voted or refrained from voting at an election.

2. By abduction, duress or any forcible or fraudulent device or  
contrivance whatever, to impede, prevent or otherwise interfere with  
the free exercise of the elective franchise of any voter, or to compel,  
induce or to prevail upon a voter either to cast or refrain from casting  
his vote at an election, or to cast or refrain from casting his vote for  
any particular person or measure at an election.

29 59. A.R.S. § 16-1017 provides:

A voter who knowingly commits any of the following acts is guilty of a class  
2 misdemeanor:

- 1 1. Makes a false statement as to the voter's inability to mark a ballot.
- 2 2. Interferes with a voter within the seventy-five-foot limit of the
- 3 polling place as posted by the election marshal or within seventy-five
- 4 feet of the main outside entrance to an on-site early voting location
- 5 established by a county recorder pursuant to section 16-542,
- 6 subsection A.
- 7 3. Endeavors while within the seventy-five-foot limit for a polling
- 8 place or on-site early voting location to induce a voter to vote for or
- 9 against a particular candidate or issue.
- 10 4. Prior to the close of an election defaces or destroys a sample ballot
- 11 posted by election officers, or defaces, tears down, removes or
- 12 destroys a card of instructions posted for the instruction of voters.
- 13 5. Removes or destroys supplies or conveniences furnished to enable
- 14 a voter to prepare the voter's ballot.
- 15 6. Hinders the voting of others.
- 16 7. Votes in a county in which the voter no longer resides, except as
- 17 provided in section 16-125.

18 60. A.R.S. § 16-515(A) provides: "[A] person shall not be allowed to remain inside the  
19 seventy-five-foot limit while the polls are open, except for the purpose of voting...and no  
20 electioneering may occur within the seventy-five foot limit. Voters having cast their ballots  
21 shall promptly move outside the seventy-five-foot limit."

22 61. These statutes are narrowly tailored to achieve a compelling governmental interest.  
23 For example, they not only define intimidation but also draw its bounds narrowly as  
24 encompassing the threatened use of violence or coercion or the use of fraud and do not  
25 seek to prohibit other speech-related conduct except within the 75-foot limit.

26 62. However, while these sections were narrowly tailored pursuant to the legislative  
27 process, the executive branch is poorly suited to such refinement. Accordingly, the  
28 Secretary's criminal laws sweep far beyond the voter protections in Titles 13 and 16 and  
into the ambit of constitutionally protected speech.

63. For example, it is highly unclear what might constitute "insulting" a poll worker,  
"aggressive behavior," or "raising one's voice." If a voter expresses frustration at a poll  
worker for long lines or tabulator failures, is the voter committing a crime? The Secretary's

1 laws do not tell us. Nor do they, for the most part, tell us when or how these “laws” apply  
2 outside of the polling place.

3 64. And certainly a law that criminalizes electioneering that is audible from within a  
4 polling place cannot be said, by any measure, to be narrowly tailored, especially as many  
5 polling places are in densely populated urban areas. If Burton Bar Central Library, for  
6 example, on Central Avenue in midtown Phoenix is again used as a polling place (as it has  
7 been in prior years), does this mean that someone parading down the street while touting  
8 the virtues of their favorite candidate from a megaphone has committed a crime? By the  
9 plain text of the Secretary’s laws, certainly; by the plain text of the Constitution, certainly  
10 not.

11 65. Because the Secretary’s laws do not satisfy strict scrutiny, they are repugnant to the  
12 state and federal constitutions and therefore null and void. This Court should declare it to  
13 be so.

14 **Count II**

15 **Arizona Constitution article 2, section 5; First Amendment as Incorporated Against**  
16 **the States—Free Association**

17 66. Plaintiff incorporates the allegations in all preceding paragraphs as if fully set forth  
18 herein.

19 67. “Freedom of association would prove an empty guarantee if associations could not  
20 limit control over their decisions to those who share the interests and persuasions that  
21 underlie the association’s being.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574  
22 (2000) (cleaned up).

23 68. The First Amendment protects “the freedom to join together in furtherance of  
24 common political beliefs,” *Tashjian v. Republican Party*, 479 U.S. 208, 214 (1986), which  
25 “necessarily presupposes the freedom to identify the people who constitute the association,  
26 and to limit the association to those people only,” *Democratic Party of United States v.*  
27 *Wisconsin*, 450 U.S. 107, 122 (1981).

28 69. “That is to say, a corollary of the right to associate is the right not to associate.”

1 530 U.S. at 574.

2 70. Moreover, requiring parties to select their nominees by a method antithetical to this  
3 position, and allowing voters who vote by such a method to participate in the selection of  
4 parties' nominees, necessarily slants the parties toward accepting federal only voting.  
5 "Ordinarily, however, being saddled with an unwanted, and possibly antithetical, nominee  
6 would not destroy the party but severely transform it. 'Regulating the identity of the  
7 parties' leaders,' we have said, 'may...color the parties' message and interfere with the  
8 parties' decisions as to the best means to promote that message.'" *Id.* at 579.

9 71. The 2023 EPM purports to require political parties, by law, to open their primaries  
10 to federal only voters: "A 'federal-only' voter is eligible to vote solely in races for federal  
11 office in Arizona (**including the Presidential Preference Election (PPE)**)." 2023 EPM  
12 at 3 (emphasis added). However, the Secretary cites no authority for the inclusion of the  
13 bolded text in Title 16. Instead, he is creating Arizona law from whole cloth.

14 72. Nothing in Title 16 remotely authorizes the Secretary to require political parties to  
15 open their primaries to federal only voters. To the contrary, Arizona law clearly provides  
16 that a "[a] person who has registered to vote and who has not provided satisfactory evidence  
17 of citizenship as prescribed by section 16-166 is not eligible to vote in presidential  
18 elections." A.R.S. § 16-127(A)(1).

19 73. Accordingly, this provision exceeds and contradicts statutory authority and thus  
20 lacks the force of law. *See Leach v. Hobbs*, 250 Ariz. 572, 576 (2021) ("[A]n EPM  
21 regulation that exceeds the scope of its statutory authorization or contravenes an election  
22 statute's purpose does not have the force of law.").

23 74. Because this provision also requires Arizona political parties to allow voters who  
24 are not registered as state-party voters to vote in the PPE, it violates the First Amendment

25 75. AFEC, as an Arizona nonprofit concerned with election integrity in this state,  
26 opposes opening federal only voting to Arizona primaries because federal only voting  
27 compromises election integrity by bypassing Arizona's stricter voter registration  
28 requirements.

1 Count III

2 **Arizona Constitution article 2, section 4; Fifth Amendment as incorporated against**  
3 **the states, and Fourteenth Amendment—Void for Vagueness**

4 76. Plaintiff incorporates the allegations in all preceding paragraphs as if fully set forth  
5 herein.

6 77. “To satisfy due process, a penal statute [must] define the criminal offense [1] with  
7 sufficient definiteness that ordinary people can understand what conduct is prohibited and  
8 [2] in a manner that does not encourage arbitrary and discriminatory enforcement.” *Skilling*  
9 *v. United States*, 561 U.S. 358, 402-03 (2010) (cleaned up).

10 78. As exemplified by the allegations in Counts I and II above, however, the Secretary’s  
11 laws do not define the offenses he seeks to criminalize with anywhere near the required  
12 degree of particularity to satisfy the requirements of due process.

13 79. Further, the 2023 EPM is almost four-hundred pages long. If the Secretary’s  
14 lawmaking authority is not limited to those that do not exceed or contradict statutory  
15 requirements, no ordinary poll worker or voter could be expected to understand which  
16 portions of the 2023 EPM carry the force of criminal law and which are advisory only.  
17 Therefore, the only way to reconcile A.R.S. § 16-452(C) with the requirements of due  
18 process is to hold that the Secretary’s power to make criminal law is limited to those that  
19 do not exceed or contradict statutory requirements.

20 80. A.R.S. § 16-452(C) provides that “[a] person who violates any rule adopted  
21 pursuant to this section is guilty of a class 2 misdemeanor.”

22 81. “It is generally agreed that the legislature may provide criminal penalties for the  
23 violation of rules and regulations to be enacted by administrative agencies under proper  
24 circumstances.” *State v. Phelps*, 12 Ariz. App. 83, 85 (1970) (citation omitted).

25 82. “However, it must be remembered that this being a crime, the statute must be strictly  
26 construed and not broadened beyond the clear and express intent of the legislature.” *Id.* at  
27 86 (citation omitted).

1 83. Accordingly, the legislative power to enact criminal laws must be delegated  
2 expressly and not in a “sweeping,” “oblique,” or “indirect” fashion. *Roberts*, 253 Ariz. at  
3 269 ¶ 37 (quoting *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) (“Extraordinary  
4 grants of regulatory authority are rarely accomplished through ‘modest words,’ ‘vague  
5 terms,’ or ‘subtle device[s].’”) (citation omitted)).

6 84. To the extent that the 2023 EPM contains rules purportedly adopted pursuant to  
7 A.R.S. § 16-452 but that exceed statutory authority or contradict statutory requirements,  
8 these rules—namely, the rules AFEC challenges in Counts I and II, do not have the force  
9 of law such that violation of *any* of them is a crime pursuant to A.R.S. § 16-452(C).

### 10 CONCLUSION

11 85. The 2023 EPM improperly places protected political speech at risk of criminal  
12 prosecution and has an unconstitutional chilling effect on protected political speech.

13 86. The 2023 EPM also contradicts statutory requirements and exceeds statutory  
14 authority by opening the Presidential Preference Election to federal only voters, in essence,  
15 creating a new law out of whole cloth.

16 87. Because the challenged 2023 EPM rules are thus unlawful, this Court must strike  
17 them down.

### 18 DEMAND FOR RELIEF

19 WHEREFORE, Plaintiff respectfully requests that this Court provide the following  
20 expedited relief:

- 21 A. A declaratory judgment that the 2023 EPM provisions challenged in this action  
22 contradict or exceed statutory authority and therefore lack the force of law;
- 23 B. A declaratory judgment that that the 2023 EPM provisions challenged in Count I  
24 violate article 2, sections 5-6 of the Arizona Constitution and the First Amendment  
25 and therefore lack the force of law.
- 26 C. A declaratory judgment that that the 2023 EPM provision challenged in Count II  
27 violates article 2, section 5 of the Arizona Constitution and the First Amendment  
28 and therefore lacks the force of law.

- 1 D. A declaratory judgment that A.R.S. § 16-452(C) does not apply to the provisions  
2 challenged in this action because they are void for vagueness pursuant to article 2,  
3 section 4 of the Arizona Constitution and the Fifth Amendment.
- 4 E. An order awarding Plaintiff its taxable costs under A.R.S. §§ 12-341 and 12-1840;
- 5 F. An order awarding Plaintiff its attorney fees under the private attorney general  
6 doctrine and any other applicable statute or equitable doctrine; and
- 7 G. Any other relief as may be appropriate.
- 8

9 RESPECTFULLY SUBMITTED this 9th day of February 2024.

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11 By: /s/ Veronica Lucero

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13 Veronica Lucero  
14 **Davillier Law Group, LLC**  
15 4105 N. 20<sup>th</sup> St. Ste. 110  
16 Phoenix, AZ 85016

17 Timothy A. La Sota  
18 **GRAND CANYON LEGAL CENTER**  
19 1835 E. Elliot Road Ste. 102  
20 Tempe, AZ 85284-1747

21 Richard P. Lawson (*pro hac vice to be submitted*)  
22 Jessica H. Steinmann (*pro hac vice to be submitted*)  
23 **AMERICA FIRST POLICY INSTITUTE**  
24 1001 Pennsylvania Ave., NW, Suite 530  
25 Washington, DC 20004

26 *Attorneys for Plaintiff*

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