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9  
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA COUNTY**

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13  
14 WARREN PETERSEN, in his official  
15 capacity as President of the Arizona State  
16 Senate; BEN TOMA, in his official capacity  
17 as Speaker of the Arizona House of  
Representatives,

18 Plaintiffs,

19 v.

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

22 Defendant.

Case No. CV2024-001942

**BRIEF OF *AMICI CURIAE* ARIZONA  
ELECTION OFFICIALS**

(Assigned to the Honorable Scott Blaney)

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1 **STATEMENT OF INTEREST**

2 *Amici* are current and former local election officials from Coconino, Maricopa, Mohave,  
3 Pima, and Pinal Counties.<sup>1</sup> The primary duty of election officials is to ensure that all eligible  
4 citizens in their jurisdictions can exercise the right to vote. Their responsibilities include  
5 overseeing federal, state, and local elections, as well as managing voter rolls and canvassing  
6 returns. *Amici* have relied and do rely upon the Election Procedures Manual (EPM) for guidance  
7 in conducting impartial, uniform, and efficient elections across the state. The EPM fills gaps and  
8 resolves ambiguities in the statutory scheme governing elections. It also provides *amici* with  
9 critical tools for managing emerging challenges to election administration. At a time when every  
10 aspect of election administration is under intense scrutiny—not only from good-faith actors but  
11 also from those seeking to sow discord and undermine confidence in elections—it is more  
12 important than ever for election officials to have clear guidance and to adopt consistent  
13 procedures. The EPM provides the clarity election officials need to effectively conduct  
14 elections. Accordingly, *amici* have a strong interest in ensuring that the EPM remains an  
15 available source of guidance during this election cycle.

16 **SUMMARY OF ARGUMENT**

17 The Election Procedures Manual (EPM) is of essential importance to local election  
18 officials. Plaintiffs’ challenges to key provisions of the 2023 EPM contradict state law and  
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26 <sup>1</sup> No counsel for a party authored this brief in whole or part, and no party or counsel for a  
27 party made a monetary contribution intended to fund its preparation or submission. No person  
28 other than *amici* or *amici*’s counsel made a monetary contribution to the preparation or  
submission of this brief. A list of all *amici* is available at Appendix A.

1 threaten local election officials’ ability to do their jobs and protect the integrity of Arizona  
2 elections. Of particular concern to *amici* are the risks that Plaintiffs’ challenges would: (1) allow  
3 county boards of supervisors to reject or change election results during the canvassing process,  
4 or to refuse or delay certification of election results; and (2) enable bad actors to waste county  
5 resources with frivolous voter citizenship challenges.  
6

7  
8 Plaintiffs’ arguments on both issues are meritless. The EPM’s canvassing provision  
9 merely restates the settled principle that county boards have a mandatory, ministerial duty to  
10 canvass and certify election results. Arizona law provides many other opportunities—outside the  
11 canvassing process—to address any concerns about irregularities, mistakes, or fraud in the vote  
12 count. With respect to non-citizenship challenges, the EPM offers reasonable guidance grounded  
13 in state and federal law designed to preserve administrative resources and prevent abuse of  
14 process. Moreover, recent developments in federal litigation make clear that utilization of  
15 federal databases must be limited so as not to favor native-born citizens over naturalized  
16 citizens. The EPM’s prescriptions comport with these recent developments.  
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## 19 ARGUMENT

### 20 **I. The EPM Provides Crucial Guidance to Election Officials.**

21  
22 The EPM is an essential and indispensable component of election administration in  
23 Arizona. Under state law, the Secretary of State is required to issue a new Election Procedures  
24 Manual every two years. A.R.S. § 16-452. The EPM provides crucial guidance to election  
25 officials, including *amici*, by clarifying ambiguities and filling gaps in the statutory scheme  
26 governing Arizona elections. That statutory scheme—Title 16 of the Arizona Revised Statutes—  
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1 provides a comprehensive body of state election law but does not always provide the level of  
2 specificity and clarity election officials need when developing election procedures. And in some  
3 instances, state law overlaps or conflicts with federal law, creating additional opportunities for  
4 uncertainty. The EPM addresses election officials’ need for clarity and ensures that officials  
5 across the state employ uniform procedures throughout the election process—from voter  
6 registration to certification of election results.  
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9         The EPM clarifies ambiguities in state statute. For example, state law creates ambiguity  
10 about the permissible timing of challenges to early ballots,<sup>2</sup> *see* A.R.S. § 16-552(D), (F), but the  
11 EPM eliminates that ambiguity, *see* 2023 EPM at 79. The EPM also provides guidance on issues  
12 largely unaddressed by state law, such as by detailing the supplies to be provided at each voting  
13 location. *See* 2023 EPM at 163–65. Still other portions of the EPM implement explicit  
14 delegations under state statute: State law requires that the EPM prescribe certain aspects of  
15 election procedure, such as the timing of election equipment testing and the format for campaign  
16 finance reports. A.R.S. §§ 16-449(A), 16-926(A). In its totality, the EPM provides necessary  
17 direction to election officials and enables them to adopt consistent approaches across the state.  
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21         In 2021, because of a dispute with the Attorney General, the Secretary of State did not  
22 issue a new EPM. Election officials were forced to rely on the 2019 EPM when conducting the  
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<sup>2</sup> State law implies that challenges to early ballots must be made after the ballot is returned, A.R.S. § 16-552(D), and before the affidavit envelope is opened, A.R.S. § 16-552(F), but only explicitly states that that such challenges must be made before the ballot is placed in the ballot box, A.R.S. § 16-552(D).

1 2022 election cycle. Given the significant changes to Arizona’s election laws since 2019 and the  
2 rapidly evolving challenges election officials face, the 2019 EPM is now outdated and the new  
3 2023 EPM is playing a vital role in ensuring a smooth 2024 election cycle. Election officials  
4 need stability and certainty. They have already conducted this year’s presidential preference  
5 election using the 2023 EPM, and are continuing to train staff, allocate resources, and prepare  
6 for the July primary election and November general election based on the EPM. *Amici* urge the  
7 court to reject misguided challenges to EPM provisions that protect against efforts to subvert the  
8 will of Arizona’s voters and ensure the integrity and efficiency of our election system.  
9

## 10 **II. The EPM Properly Recognizes a Board of Supervisors’ Limited and** 11 **Nondiscretionary Role in Canvassing and Certifying Elections**

12 *Amici* are particularly concerned about Plaintiffs’ objection to the EPM provision that  
13 describes the county boards’ role in the canvassing and certification process. The provision  
14 states that a board of supervisors has “a non-discretionary duty to canvass the returns as  
15 provided by the County Recorder or other officer in charge of elections and has no authority to  
16 change vote totals, reject the election results, or delay certifying the results without express  
17 statutory authority or a court order.” 2023 EPM at 248. That provision is nearly identical to the  
18 language of the 2019 EPM<sup>3</sup> and is entirely consistent with Arizona law. Indeed, Plaintiffs’ reply  
19 brief makes no substantive argument to the contrary. *See* PI Reply at 11. Plaintiffs suggest in  
20 passing that the provision “abridge[s]” the boards’ authority, *id.* at 2, but that is incorrect. As in  
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22 <sup>3</sup> *See* 2019 EPM at 240 (“The Board of Supervisors has a non-discretionary duty to  
23 canvass the returns as provided by the County Recorder or other officer in charge of elections  
24 and has no authority to change vote totals or reject the election results.”).  
25

1 virtually every other state, Arizona law has long made clear that a board’s duty to canvass and  
2 certify election results is mandatory and ministerial in nature. Arizona law provides multiple  
3 opportunities—both before and after the county canvass—to address concerns about  
4 irregularities, mistakes, or fraud. Allowing a board to refuse or delay certification based on  
5 alleged concerns would create a significant risk of partisan abuse and could interfere with  
6 Arizona courts’ ability to adjudicate election disputes in a timely manner.  
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9 **A. Arizona Law Makes Clear That Certification Is Mandatory and Ministerial**

10 The challenged provision accurately states the limited—but crucial—role that the county  
11 canvass plays in Arizona’s post-election process.  
12

13 1. The statutory scheme makes clear that the duties of each board of supervisors to  
14 canvass and certify election results are mandatory in nature. Each board “shall meet and  
15 canvass” by a specific date. A.R.S. § 16-642(A)(1). The canvass “shall be made in public by  
16 opening the returns, other than the ballots, and determining the vote of the county, by polling  
17 places,” for each candidate and ballot measure. A.R.S. § 16-643. The law prohibits a board from  
18 setting aside or rejecting polling-place returns so long as the returns “can be clearly understood”  
19 and the facts disclosed by the returns “can be definitely ascertained.” A.R.S. § 16-644. Once  
20 complete, the official canvass “shall be entered on the official record” and “shall show,” among  
21 other things, the number of votes received by each candidate by precinct and county. A.R.S.  
22 § 16-646(A). For county offices and other political subdivisions, a board “shall declare elected”  
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1 the person who received the most votes and “shall . . . deliver” a certificate of election to each  
2 person elected, unless enjoined by a court order. A.R.S. § 16-647.<sup>4</sup>

3  
4 These statutes repeatedly use the word “shall” in describing a board’s obligations during  
5 the canvassing and certification process. That alone makes clear that a board’s duties are  
6 mandatory, not discretionary. *See Democratic Party of Pima Cnty. v. Ford*, 228 Ariz. 545, 548  
7 (App. 2012) (“Generally, the use of the word ‘may’ indicates permissive intent while ‘shall’  
8 denotes a mandatory provision.”). By contrast, many other statutes use the word “may” to grant  
9 boards discretion over matters of election administration, which further reinforces their lack of  
10 discretion in the canvassing process. *See, e.g.*, A.R.S. § 16-411(B)(4) (a board “may authorize”  
11 the use of voting centers instead of designated polling places).

12  
13  
14 Arizona courts have long recognized the nondiscretionary nature of the canvass. In 1917,  
15 the Arizona Supreme Court made clear that mandamus would be available to compel a county  
16 board to canvass election results if the board “neglected or refused to perform its plain duty” to  
17 do so. *Hunt v. Campbell*, 19 Ariz. 254, 278–79 (1917); *see also Howard v. Luke*, 18 Ariz. 563,  
18 566, 570 (1917) (holding a board had “only a ministerial duty to perform” after an election  
19 authorizing the issuance of school bonds, as “[t]he law does not place upon them the obligation  
20 of investigating an election and determining whether the law has been followed or not”); *State v.*  
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26 <sup>4</sup> For statewide, state legislative, and federal races, Arizona law provides that the  
27 Secretary of State “shall canvass” the election results in the presence of the Governor and  
28 Attorney General on a specific date. A.R.S. § 16-648(A). The Secretary of State “shall declare  
elected” the person who received the most votes and “shall . . . deliver” a certificate of election  
to that person unless enjoined by a court order. A.R.S. § 16-650.

1 *Osborne*, 14 Ariz. 185, 194 (1912) (“Members of a canvassing board, while performing a high  
2 public function, act strictly in a ministerial capacity.”). Two years ago, the Superior Court  
3 swiftly granted mandamus relief when the Cochise County board refused to certify the 2022  
4 election by a 2-1 vote. *See Hobbs v. Crosby*, 2022 WL 17406494, at \*2, Minute Entry Order  
5 (Ariz. Super. Ct. Dec. 1, 2022). Ruling from the bench, the Court ordered the board to meet and  
6 certify the results that same day because it had a “clear” and “non-discretionary” duty to do so  
7 under state law.<sup>5</sup>

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10 Plaintiffs nonetheless contend that the statutory authorization to “determin[e] the vote of  
11 the county” gives a board the power to withhold certification when there are “legitimate  
12 concerns” about fraud. Compl. ¶¶ 100–02. But the statute itself explains exactly how the boards  
13 must “determin[e] the vote.” The boards must do so solely by “opening the returns” from each  
14 polling place—not by independently investigating or verifying those returns. A.R.S. § 16-643;  
15 *cf. Goff v. Kimbrel*, 849 P.2d 914, 917 (Colo. App. 1993) (“It is not within the province of a  
16 canvassing board to investigate questions concerning irregularities, frauds, and illegal votes in  
17 the ballot box[.]”). The EPM thus correctly recognizes that state law does not allow a board to  
18 reject or change the vote totals reflected in the returns.  
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23 **2.** The limited nature of a board’s canvassing obligations makes good sense. By the  
24 time the county canvass takes place, local election officials have spent weeks inspecting and  
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26 <sup>5</sup> Hansi Lo Wang, *Arizona’s Cochise County finally certifies its election results after a*  
27 *court order*, NPR (Dec. 2, 2022), <https://tinyurl.com/9su6k5ze>; Fredreka Schouten, *Rural*  
28 *Arizona county certifies midterm election results after judge’s order*, CNN (Dec. 1, 2022),  
<https://tinyurl.com/y4chctap>.

1 processing ballots, counting votes, and verifying the election results. The post-election period  
2 provides several opportunities for mistakes and irregularities to be detected, investigated, and  
3 resolved by officials with relevant expertise.  
4

5 For example, as local officials receive early ballots by mail, they undertake a rigorous  
6 process to verify signatures, A.R.S. § 16-550.01; 2023 EPM at 82–84, and resolve any  
7 challenges by party representatives, A.R.S. § 16-591; 2023 EPM at 79–82. Similarly, local  
8 officials extensively review all election-day ballots received from voting locations. Among other  
9 things, officials document the chain of custody for all voted ballots, A.R.S. § 16-621(E); 2023  
10 EPM at 202–03, resolve questions that arise about any ballot’s legality, A.R.S. § 16-609, and  
11 process provisional ballots (by, for example, checking the voter’s registration status and  
12 ensuring the voter has not previously voted in that election), A.R.S. § 16-584(D)–(E); 2023  
13 EPM at 212–13. After all votes are counted, local officials continue to take steps to verify the  
14 results. Most notably, local officials conduct hand-count audits to verify the accuracy of the  
15 electronic vote tabulation. A.R.S. § 16-602(B), (F). The hand counts include election-day ballots  
16 from a randomly selected set of precincts, as well as a sampling of early ballots, and must be  
17 completed before the canvass. *Id.* § 16-602(B), (F), (I); *see generally* 2023 EPM at 221–42.  
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23 All of these post-election steps help ensure that the returns used in a county canvass are a  
24 complete and accurate reflection of all votes lawfully cast in the election. As the culmination of  
25 this extensive process, it makes sense for the canvass to be ministerial in nature. A board is not  
26 itself verifying election results; it is confirming that the counting and verification process  
27 prescribed by state law is complete. Allowing a board to conduct its own investigation at the  
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1 canvassing stage—and either change vote totals or withhold certification as a result—would  
2 create significant opportunities for partisan abuse that the Arizona Legislature has wisely sought  
3 to avoid.<sup>6</sup>

#### 5 **B. Arizona Law Provides Post-Canvass Mechanisms to Address Alleged Fraud** 6 **and Other Concerns**

7 Plaintiffs argue that the boards must have discretion in the canvassing process in case  
8 “legitimate concerns” about election returns arise. Compl. ¶¶ 101–02. But in that unlikely  
9 scenario, Arizona law provides two principal ways to address those concerns: recounts and  
10 election contests. Both options take place *after* the canvass, and both can result in a court  
11 determination that the previously announced results were incorrect. This, too, confirms the  
12 lawfulness of the EPM’s canvassing provision. The boards have no choice but to canvass and  
13 certify elections so that any concerns can be promptly resolved through appropriate channels.

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16 **1.** Both recounts and election contests present meaningful opportunities—outside the  
17 certification process—to address election integrity concerns. An automatic recount is triggered  
18 whenever the canvass reveals that the vote margin in an election is one-half of one percent or  
19 less. A.R.S. § 16-661. A superior court oversees the recount and ensures that it takes place  
20 promptly after the canvass. A.R.S. § 16-663. The recount must use programs for vote tabulation  
21 that are different from those used in the initial tabulation, and the automated tabulating system to  
22 be used in the recount must undergo additional testing for accuracy, A.R.S. § 16-664(C)–(D)—  
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27 <sup>6</sup> See, e.g., Lauren Miller & Will Wilder, *Certification and Non-Discretion: A Guide to*  
28 *Protecting the 2024 Election*, 35 *Stanford L. & Pol’y Rev.* 1, 26–28 (2024) (discussing  
historical examples of certification abuses).

1 making a recount a particularly good vehicle for addressing concerns about mechanical errors.  
2 The results of the recount are then presented to the court, which enters an order announcing the  
3 election results. A.R.S. § 16-665(A). The court’s order is delivered to the relevant state or  
4 county official, who must issue a certificate of election to the winning candidate as declared by  
5 the court. A.R.S. § 16-665(B).  
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7  
8 Election contests can address an even wider range of election integrity concerns  
9 (assuming there is competent evidence to support them). Arizona law specifies five permissible  
10 grounds for a contest, including “misconduct” by local election officials, an “erroneous count,”  
11 and the counting of “illegal votes.” A.R.S. § 16-672(A). The superior court must promptly hold  
12 a hearing and issue a judgment either confirming or setting aside the election. A.R.S. § 16-  
13 676(A)–(B). If the court decides that a person other than the declared winner received the  
14 highest number of legal votes, the court declares that person elected and issues an order  
15 nullifying the previously issued certificate of election. A.R.S. § 16-676(C); *see, e.g., Hunt*, 19  
16 Ariz. at 300 (reversing the results of a gubernatorial election). This outcome is, of course,  
17 exceedingly rare; it is well-settled that “[t]he validity of an election is not voided by honest  
18 mistakes or omissions unless they affect the result, or at least render it uncertain.” *Ward v.*  
19 *Jackson*, 2020 WL 8617817, at \*2 (Ariz. Dec. 8, 2020) (unpublished) (citing *Findley v.*  
20 *Sorenson*, 35 Ariz. 265, 269 (1929)). But election contests, like recounts, undeniably remain an  
21 available tool if, as Plaintiffs fear, “legitimate concerns” about an election arise.  
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23  
24 **2.** Importantly, Arizona law makes clear that recounts and election contests are both  
25 *post-canvass* mechanisms. As noted, an automatic recount is triggered whenever “the canvass”  
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1 shows a vote margin of one-half of one percent or less. A.R.S. § 16-661. An election contest  
2 involving a statewide or federal office must be filed “within five days after completion of the  
3 canvass of the election and declaration of the result thereof.” A.R.S. § 16-673(A). And an  
4 election contest involving a local election similarly takes place only after “a person [has been]  
5 declared elected.” A.R.S. § 16-674(A). These statutory frameworks provide further evidence  
6 that the boards’ role in canvassing and certifying election results is nondiscretionary. Because  
7 the canvass must be complete before recounts and election contests can take place, a board that  
8 refuses to canvass and certify an election due to alleged fraud is likely delaying the opportunity  
9 for candidates and voters to have those concerns addressed in a systematic way. *See, e.g.,*  
10 *Schahrer v. Bell*, 34 Ariz. 334, 336 (1928) (“If the election was held and for any reason, lawful  
11 or unlawful, the officers whose duty it was to declare the result refused or neglected to do so, no  
12 contest could be instituted.”). The EPM thus correctly makes clear that a board lacks the  
13 discretion to withhold or delay certification, which would interfere with the post-certification  
14 remedies prescribed by Arizona law.  
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### 20 **III. The EPM’s Guidance on Citizenship Challenges Is Consistent with Current Law and** 21 **Necessary to Mitigate Threats to Resources**

22 The EPM’s guidance regarding citizenship challenges is reasonable and necessary to  
23 ensure the limited resources of local officials are not starved by baseless challenges. The EPM  
24 ensures that only U.S. citizens are allowed to vote, but also prevents frivolous challenges to  
25 voter citizenship from overwhelming the offices of county recorders, who are responsible under  
26 Arizona law for canceling the registration of ineligible voters. The challenged provision states:  
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1 “There are several ways in which a County Recorder may obtain information . . . that a  
2 registrant is not a U.S. citizen. However, third-party allegations of non-citizenship are not  
3 enough to initiate this process.” 2023 EPM at 42.<sup>7</sup> Plaintiffs object, arguing that mere third-party  
4 allegations can be sufficient to initiate the process for removing noncitizens from the voter rolls.  
5 Plaintiffs’ position is legally unsupported and threatens to burden election officials with a deluge  
6 of frivolous citizenship challenges.  
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8  
9 In other states, including Georgia, Michigan, and Texas, outside groups—motivated by  
10 conspiracy theories, seeking partisan advantage, and attempting to sow distrust in election  
11 administration—have abused provisions that allow private citizens to challenge their peers’  
12 eligibility to vote.<sup>8</sup> These actors have often sought to challenge the eligibility of tens of  
13 thousands of voters at a time, lacking sufficient evidence to support the overwhelming majority  
14 of their challenges. Regardless of the motivation for these tactics, their effect is to burden  
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19 <sup>7</sup> Plaintiffs have agreed to stay their challenge to this provision pending the outcome of  
20 appellate proceedings in a separate case, *see* PI Reply at 1 n.1, but have not withdrawn their  
21 claim.

22 <sup>8</sup> Nick Corasaniti & Alexandra Berzon, *Activists Flood Election Offices with Challenges*,  
23 N.Y. Times (Sept. 28, 2022), <https://tinyurl.com/4ppb2yza>. Recent high-profile mass voter  
24 challenges have not focused primarily on citizenship status, but some past efforts have. *See, e.g.*,  
25 DeWayne Wickham, *Why Renew Voting Rights Act? Alabama Town Provides Answer*, USA  
26 Today (Feb. 22, 2006), <https://tinyurl.com/4rr4vj7c> (describing effort to challenge citizenship  
27 status of voters who did not speak fluent English); *Feds eyeing ‘un-American’ challenges*,  
28 Spokesman-Review (Apr. 10, 2005), <https://tinyurl.com/mr6cyajb> (describing effort to challenge  
the citizenship of hundreds of Washington State voters whose names had “no basis in the  
English language”); *see also* Alexa Ura, *Texas will end its botched voter citizenship review and  
rescind its list of flagged voters*, Texas Tribune (Apr. 26, 2019), <https://tinyurl.com/5xpc3sjk>  
(detailing Texas Secretary of State’s flawed effort to remove noncitizens from voter rolls, which  
ultimately targeted naturalized citizens).

1 election officials, forcing them to devote scarce resources to addressing frivolous challenges.  
2 This, in turn, undermines election officials’ ability to effectively administer elections—including  
3 their ability to focus on removing truly ineligible voters from the rolls. By providing that third-  
4 party allegations of non-citizenship alone are insufficient to trigger an investigative process, the  
5 EPM helps shield Arizona election officials from the sort of unsupported mass challenges seen  
6 in other states. Given this backdrop, the EPM provision is eminently reasonable and necessary to  
7 meet the needs of the current climate.  
8

9  
10 The challenged EPM provision is also on strong legal footing. State law does not suggest  
11 that third-party allegations, standing alone, are sufficient to require county recorders to initiate  
12 an investigative process. Plaintiffs’ argument for striking the challenged EPM provision relies  
13 entirely on A.R.S. § 16-165(I), which states:  
14

15  
16 To the extent practicable, each month the county recorder shall  
17 compare persons who are registered to vote in that county and who  
18 the county recorder has reason to believe are not United States citizens  
19 . . . with the systematic alien verification for entitlements program  
20 maintained by the United States citizenship and immigration services  
21 to verify the citizenship status of the persons registered.

22 A.R.S. § 16-165(I). Mere third-party allegations of non-citizenship, without additional evidence,  
23 do not provide “reason to believe” a person is a noncitizen. But even when a county recorder  
24 does have “reason to believe” a person is a non-citizen, the statute does not include a blanket  
25 requirement to initiate an investigative process. Rather, it requires the county recorder, “to the  
26 extent practicable,” to conduct a comparison using a specific federal service, namely the U.S.  
27 Citizenship and Immigration Services’ (USCIS) Systematic Alien Verification for Entitlements  
28

1 (SAVE) program. *Id.* As the EPM explains, it is not currently practicable for county recorders in  
2 Arizona to conduct such comparisons because the agreement between USCIS and the Secretary  
3 of State does not permit SAVE to be used “for list maintenance purposes, i.e. to cancel an  
4 existing registration.” 2023 EPM at 43 n.28; *accord* 2019 EPM at 5 n.6. Under their agreement,  
5 SAVE can only be used to verify the citizenship status of voters “when they register to vote.” *Mi*  
6 *Familia Vota v. Fontes*, No. CV-22-00509, 2024 WL 862406, at \* 6 (D. Ariz. Feb. 29, 2024)  
7  
8 (quoting the agreement). Because it is not practicable for county recorders to conduct  
9 comparisons using SAVE for the purpose of canceling registrations, A.R.S. § 16-165(I) is  
10 inoperative. There is accordingly no conflict between Arizona law and the EPM’s guidance that  
11 third-party allegations of non-citizenship are insufficient to initiate the process of removal from  
12 the voter rolls.  
13  
14

15  
16 Furthermore, as Plaintiffs recognize, *see* PI Reply at 1 n.1, a federal district court recently  
17 invalidated the “reason to believe” provision of A.R.S. § 16-165(I) under a section of the Civil  
18 Rights Act that prohibits officials from applying differential standards or procedures in  
19 determining whether individuals are qualified to vote. *See Mi Familia Vota*, 2024 WL 862406,  
20 at \*38 (citing 52 U.S.C. § 10101(a)(2)). The court held that although the provision purports to  
21 apply to all voters, in practice it subjects only naturalized citizens to database checks because the  
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1 SAVE program requires an immigration number, and thus can never be applied to native-born  
2 citizens.<sup>9</sup> *Id.*

3  
4 Plaintiffs' argument for striking the challenged EPM language is thus premised wholly on  
5 a statutory provision that has been invalidated by the district court and that is inoperative as a  
6 practical matter under the terms of Arizona's agreement with the federal government. As such,  
7 Plaintiffs have no legal basis for their claim.  
8

9 **CONCLUSION**

10 For the foregoing reasons, the Court should grant the Secretary's Motion to Dismiss with  
11 regard to Count II of the complaint and the portion of Count V challenging the EPM's statement  
12 that a board of supervisors has a "non-discretionary duty to canvass the returns as provided by  
13 the County Recorder" and may not reject or change the results or delay certification. The Court  
14 should also deny Plaintiffs' Motion for Preliminary Injunction with regard to those provisions.  
15  
16

17 RESPECTFULLY SUBMITTED this 25th day of March, 2024.

18 **MAYNARD CRONIN ERICKSON**  
19 **& CURRAN, P.L.C.**

20 By: /s/Daniel D. Maynard  
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25

26 \_\_\_\_\_  
27 <sup>9</sup> As the court noted "USCIS considers SAVE to be generally reliable, but recognizes that  
28 data integrity issues can arise, including data entry errors." *Mi Familia Vota*, 2024 WL 862406,  
at \*7.

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26 Maricopa County Superior Court

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By: /s/ Deb Czajkowski

**APPENDIX A — List of Amici**

Gabriella Cázares-Kelly  
*Pima County Recorder*

Michele Forney  
*Former Pinal County Elections Director*

Patty Hansen  
*Coconino County Recorder*

Brad Nelson  
*Former Mohave County Elections Director*  
*Former Pima County Elections Director*

Candace Owens  
*Former Coconino County Recorder*

Tammy Patrick  
*Former Federal Compliance Officer, Maricopa County Elections Department*

Helen Purcell  
*Former Maricopa County Recorder*

Coconino County Board of Supervisors