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**SUPERIOR COURT OF THE STATE OF ARIZONA
MARICOPA COUNTY**

ARIZONA FREE ENTERPRISE CLUB,
an Arizona non-profit corporation, PHILIP
TOWNSEND, an Arizona individual,
AMERICA FIRST POLICY INSTITUTE,
a non-profit corporation,

Plaintiffs,

vs.

Case No.: CV2024-002760

**PLAINTIFFS' FIRST AMENDED
COMPLAINT**

(Assigned to the Honorable Jennifer
Ryan-Touhill)

1
2 ADRIAN FONTES, in his official capacity
3 as Arizona Secretary of State, KRIS
4 MAYES, in her official capacity as Arizona
Attorney General,

5 Defendants.

6 Plaintiffs bring this First Amended Complaint against Defendant Adrian Fontes in
7 his official capacity as Arizona Secretary of State (the “Secretary”) and Kris Mayes, in her
8 official capacity as Arizona Attorney General (the “Attorney General”), and allege as
9 follows:

10 **INTRODUCTION**

11 1. The Arizona 2023 Elections Procedures Manual (“EPM” or “2023 EPM”)¹
12 contains some of the most onerous restrictions on speech ever adopted by any State in the
13 history of the United States. In particular, one provision purports to criminalize “*any*
14 *activity*” taken “with the intent *or effect* of threatening, harassing, intimidating or coercing
15 voters.” EPM Chpt. 9 § 3(D) (pg. 181-83) (hereinafter, “Speech Restriction”) (emphasis
16 added). The Speech Restriction further makes clear that this criminal prohibition reaches
17 actions as ubiquitous as simply “raising one’s voice” or “using ... insulting or offensive
18 language to a voter.” *Id* at 182.

19 2. The Speech Restriction is breathtakingly broad in its application. There is
20 no temporal limitation: it thus applies equally on election day and all other 365 days of
21 2024. *Id*. There is also no geographic limitation: it applies both “inside *or outside* the 75-foot
22 limit [of electioneering activity] at ... voting location[s],” *id*. (emphasis added)—*i.e.*, on
23 every square inch of territory within Arizona’s borders. It further does not require any
24 connection of the speech to voting. A heated debate about sports with raised voices or in
25 which “insulting or offensive” language is employed is now a class-two misdemeanor in
26 Arizona if the debate participants happen to be voters—which the majority of adults in

27
28 ¹ The 2023 EPM is available at <https://azsos.gov/elections/about-elections/elections-procedures/elections-procedures-manual>.

1 Arizona are. *Id.* And a staggering number of family Thanksgiving dinners could now
2 generate multi-count criminal indictments under the EPM as crafted by the Secretary of
3 State (the “Secretary”).

4 3. Given its breadth, the Speech Restriction is utterly lawless. It patently violates
5 an impressive number of Arizona statutory and constitutional provisions. It thus merits this
6 Court’s decisive rejection.

7 4. As a statutory matter, the Speech Restriction is plainly unlawful because it
8 outright rewrites the criminal prohibition that it purports to be “implementing,”
9 A.R.S. § 16-1013. It does so in three distinct ways. *First*, the Speech Restriction unlawfully
10 eliminates the *mens rea* requirement adopted by the Legislature. Section 16-1013 prohibits
11 only acts that are taken “knowingly ...” *See also id.* (“It is unlawful for a person knowingly:”).
12 The Speech Restriction, however, purports to criminalize actions that have *either* “the intent
13 *or effect* of threatening” etc. voters. In doing so, the Speech Restriction creates a new strict-
14 liability crime where actions are prohibited without any requirement of *mens rea*—even
15 ordinary negligence—as long as they have the “effect” at issue.

16 5. *Second*, the Speech Restriction unlawfully shoehorns the concept of
17 harassment into the prohibition of A.R.S. § 16-1013. By its terms, § 16-1013 prohibits only
18 the actual (1) “use of force, violence or restraint,” (2) “threaten[ing to] inflict[] ... injury,
19 damage, harm or loss,” (3) “intimidation,” or (4) use of “abduction, duress or any forcible
20 or fraudulent device or contrivance.” Completely absent from § 16-1013 is any concept of
21 “harassment,” which instead was added wholecloth by the Secretary.

22 6. *Third*, the Speech Restriction eliminates any requirement that the
23 threatening/harassing/intimidating actions have any actual nexus to voting itself. Section
24 16-1013 specifically prohibits only actions that are taken “to induce or compel such person
25 *to vote or refrain from voting* for a particular person or measure at any election provided by law,
26 or on account of such person *having voted or refrained from voting* at an election” or “to impede,
27 prevent or otherwise interfere with the *free exercise of the elective franchise* of any voter, or to
28 compel, induce or to prevail upon a voter either *to cast or refrain from casting his vote* at an

1 election, or *to cast or refrain from casting his vote* for any particular person or measure at an
2 election.” A.R.S. § 16-1013 (emphasis added) (hereinafter, “Voting-Nexus Requirement”).
3 But the EPM’s Speech Restriction dispenses with this Voting-Nexus Requirement entirely,
4 and simply makes it a crime to raise one’s voice or use offensive language concerning *any*
5 *subject to any voter anywhere* in the State.

6 7. By rewriting a criminal statute enacted by the Legislature and signed into law
7 by the Governor, the Secretary has violated separation-of-powers principles and unlawfully
8 arrogated lawmaking power to himself. The Secretary has no authority whatsoever to
9 (1) eliminate *mens rea* requirements, (2) add to the list of activities prohibited by statute, or
10 (3) eliminate criminal elements (*i.e.*, the Voting-Nexus Requirement).

11 8. But even if the Secretary had authority to rewrite the criminal prohibition of
12 § 16-1013 as he purports to do, the Speech Restriction he crafted is patently
13 unconstitutional because it violates both the Free Speech and Due Process Clauses of the
14 Arizona Constitution. *See* Ariz. Const. art. 2, § 6 (“Free Speech Clause”); art. 2, § 4 (Due
15 Process Clause).

16 9. The violations of the Free Speech Clause are numerous and multi-faceted
17 here. The Free Speech Clause of the Arizona Constitution is *broader* than the First
18 Amendment of the U.S. Constitution. *See, e.g., Brush & Nib Studios, LC v. City of Phoenix*, 247
19 Ariz. 269, 281 (2019) (“[T]he Arizona Constitution provides broader protections for free
20 speech than the First Amendment.”) (collecting cases). And under First Amendment
21 principles, the Speech Restriction is plainly unconstitutional here for at least four reasons.

22 10. *First*, the U.S. Supreme Court has squarely held that “the First Amendment
23 ... requires proof that the defendant had some subjective understanding of the threatening
24 nature of his statements.” *Counterman v. Colorado*, 143 S. Ct. 2106, 2111 (2023). “The State
25 [thus] must show that the defendant consciously disregarded a substantial risk that his
26 communications would be viewed as threatening violence.” *Id.* at 2111-12. But the Speech
27 Restriction reads the “knowingly” *mens rea* out of § 16-1013, and instead makes actions
28 criminal purely based on their “effect”—without any proof of *mens rea* at all. By dispensing

1 with any requirement of *mens rea*, the Secretary has violated the Free Speech Clause.

2 11. *Second*, the State lacks authority to criminalize speech simply because voters
3 might find it “offensive”: “the fact that society may find speech offensive is not a sufficient
4 reason for suppressing it. Indeed, if it is the speaker’s opinion that gives offense, that
5 consequence is a reason for according it constitutional protection.” *FCC v. Pacifica*
6 *Foundation*, 438 U.S. 726, 745-46 (1978); *see also United States v. Williams*, 553 U.S. 285, 306
7 (2008) (“[W]e have struck down statutes that tied criminal culpability to whether the
8 defendant’s conduct was ‘annoying’ or ‘indecent.’”).

9 12. *Third*, by purporting to ban “insulting or offensive speech,” the Speech
10 Restriction is an unlawful content-based and viewpoint-based restriction on speech. *See, e.g.,*
11 *Matal v. Tam*, 582 U.S. 218, 249 (2017) (holding that when a restriction “reflects the
12 Government’s disapproval of a subset of messages it finds offensive... [it] is the essence of
13 viewpoint discrimination.”). “Giving offense is a viewpoint.” *Id* at 243. And “[b]y
14 mandating positivity, [speech restrictions] might silence dissent and distort the marketplace
15 of ideas.” *Id* at 249.

16 13. *Fourth*, even as applied to non-public forums such as voting locations, the
17 Speech Restriction violates the First Amendment because it is not reasonable and is not
18 “capable of reasoned application.” *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 23 (2018);
19 *accord Center for Investigative Reporting v. SEPTA*, 975 F.3d 300, 315 (3d Cir. 2020) (“According
20 to *Mansky*, a prohibition on speech is unreasonable if it fails to ‘articulate some sensible basis
21 for distinguishing what may come in from what must stay out.’” (quoting *Mansky*, 585 U.S.
22 at 29)).

23 14. The Speech Restriction’s use of amorphous, open-ended terms like “insulting
24 or offensive language” and “harassing” do not provide reasonable guidance that would
25 distinguish permissible and impermissible speech. For example, would wearing a MAGA
26 hat, an “All Lives Matter” button, or a “I Support the Second Amendment” T-shirt
27 constitute “offensive speech” or be considered “harassing” to a voter that sees them? The
28 EPM does not provide any guidance as to how to apply its indeterminate terms and thus

1 cannot be justified if the Speech Restriction were limited purely to the non-public forums
2 of voting locations (instead of applying everywhere else in the State, as it does by its plain
3 terms).

4 15. The Speech Restriction also violates the Due Process Clause of the Arizona
5 Constitution, by violating fair notice principles. As an initial matter, by imposing liability
6 directly contrary to § 16-1013's actual text, the Speech Restriction violates due process.
7 Government cannot provide citizens notice of a criminal prohibition's elements and
8 requirements by statute and then—having lulled citizens into the belief that the statute only
9 prohibits what it actually says it prohibits—impose liability on a *far broader* basis. In addition,
10 the Speech Restriction is void on vagueness grounds because it “fails to provide people of
11 ordinary intelligence a reasonable opportunity to understand what conduct it prohibits”
12 and because “it authorizes or even encourages arbitrary and discriminatory
13 enforcement.” *Johnson v. United States*, 576 U.S. 591, 612 (2015) (quoting *Hill v. Colorado*,
14 530 U.S. 703, 732 (2000)).

15 16. These legal violations are not mere drafting accidents, but rather intentional
16 policy choices made by the Secretary and approved by the Governor and Attorney
17 General. The Legislature specifically submitted comments to the Secretary on August 14,
18 2023, explicitly telling him that the Speech Restriction in the draft EPM violated the
19 underlying statutes as well as the Free Speech and Due Process Clauses. But the Secretary
20 refused to make any material changes, thereby making clear that he intended to adhere to
21 his chosen policy despite its glaring statutory and constitutional deficiencies—to which the
22 Secretary was made amply aware.

23 17. Given the severe legal infirmities that pervade the Speech Restriction and the
24 flagrant indifference to legal niceties that produced it, many other provisions of the EPM
25 are similarly (and blatantly) unlawful. This suit challenges several of them.

26 18. For example, A.R.S. § 16-544(B) specifically precludes mailing an early ballot
27 to “a mailing address that is outside of this state for the purpose of the active early voting list unless the
28 voter is an absent uniformed services voter or overseas voter as defined in the uniformed

1 and overseas citizens absentee voting act.” (Emphasis added). But despite this clear
2 prohibition, the 2023 EPM specifically authorizes voters to “make one-time requests to
3 have their ballot mailed to an address *outside of Arizona* for specific elections” without any
4 requirement that they are members of the uniformed services or overseas voters. 2023 EPM
5 chapter 2, § 1(B)(1) (emphasis added).

6 19. Similarly, A.R.S. § 16-165(A)(9) mandates that county recorders “*shall cancel*
7 *a registration*” where a jury questionnaire indicates the voters is not a resident of the county
8 and they do not respond to a notice. (emphasis added). But despite the statute requiring
9 outright cancellation of the registration in mandatory language (“shall cancel”), the 2023
10 EPM instead directs county recorders merely to have the voter “*put into inactive status.*” 2023
11 EPM Chapter 1 § 9(C)(1) (emphasis added).

12 20. As a final example, for signature verification, A.R.S. § 16-644(C) limits
13 county recorders to verifying “the signature on the request form *with the voter’s signature on the*
14 *voter’s registration form.*” (emphasis added). But the 2023 EPM violates this limitation by
15 directing county records to “consult *additional known signatures from other official election documents*
16 *in the voter’s registration record*” for purposes of matching signatures. 2023 EPM Chapter 2 §
17 6(A) (emphasis added).

18 21. The upshot is that the 2023 EPM flouts numerous unequivocal statutory
19 mandates in a manner that is indefensible. It is a thoroughly lawless document that
20 combines a wish list of ideological policy goals with a contempt of legal mandates.

21 22. Because the Secretary was unwilling to conform the EPM to statutory and
22 constitutional requirements, and because the Attorney General abdicated her responsibility
23 to ensure that the 2023 EPM complied with those legal mandates, Plaintiffs seek relief from
24 this Court to correct these manifest legal violations.

25 **LEGAL BACKGROUND**

26 23. Every odd-numbered year, the Secretary has the statutory responsibility to
27 “prescribe rules” for administering federal and state elections in Arizona. A.R.S. § 16-452.
28 The rules are meant “to achieve and maintain the maximum degree of correctness,

1 impartiality, uniformity[,] and efficiency on the procedures for early voting and voting, and
2 of producing, distributing, collecting, counting, tabulating[,] and storing ballots.” *Id.*

3 24. These rules are then outlined in “an official instructions and procedure
4 manual,” also known as the Elections Procedures Manual (“EPM”).

5 25. “The legislature has the exclusive power to declare what the law shall be.”
6 *State v. Prentiss*, 163 Ariz. 81, 85 (1989); *see also* Ariz. Const. art. IV (legislative power is vested
7 in the legislature with people reserving certain legislative powers).

8 26. The Legislature has exercised its legislative authority by constructing a
9 detailed statutory scheme governing elections, codified in Titles 16 and 19.

10 27. The Legislature delegated limited and specific authority to the Secretary of
11 State to create an EPM on a specified set of topics that, when properly promulgated and
12 approved, has the force and effect of law.

13 28. The scope of permissible topics that an EPM may address is generally set
14 forth in A.R.S. § 16-452(A). Specifically, it may issue regulatory provisions relating to
15 “procedures for early voting and voting,” as well as “fax transmittal of unvoted ballots,
16 ballot requests, voted ballots and other election materials to and from absent uniformed
17 and overseas citizens” and “internet receipt of requests for federal postcard applications
18 prescribed by section 16-543.” In addition, other statutory provisions supplement the
19 permissible topics of an EPM. *See* A.R.S. §§ 16-168(I), 16-246(G), 16-315(D), 16-341(H),
20 16-411(B)(5)(b), 16-449(A)–(B), 16-543(A)–(C), 16-544(B), 16-579(A)(2), (E), 16-602(B), 16-
21 926(A), 16-938(B), 19-118(A), 19-121(A)(5), 19-205.01(A).

22 29. “[A]n EPM regulation that exceeds the scope of its statutory authorization or
23 contravenes an election statute’s purpose does not have the force of law.” *Leach v. Hobbs*,
24 250 Ariz. 572, 576 ¶21 (2021).

25 30. By creating an EPM that violates Arizona law, the Secretary exceeded his
26 lawful jurisdiction to prescribe procedures pursuant to A.R.S. § 16-452 and other
27 applicable Arizona laws.

28 31. This Complaint asserts violations of Arizona statutory and constitutional law.

1 It does not assert any claim under/arising from the U.S. Constitution or federal statutory
2 law.

3 32. Because of the EPM’s violations of Arizona constitutional and statutory law,
4 parties like Plaintiffs, who participate in elections and election activities, cannot comply
5 with the Legislature’s statutory scheme without violating the EPM.

6 **THE PARTIES**

7 33. Plaintiff Arizona Free Enterprise Club (“AFEC”) is a nonprofit organization
8 in Arizona that is regularly involved in election activity in Arizona. AFEC advocates for
9 public policy solutions in Arizona, including policies related to election integrity, free
10 speech in the context of elections, and ensuring that government entities abide by their
11 constitutional limitations.

12 34. AFEC’s members include registered voters who are affected by the
13 threatened unlawful EPM provisions based on their election activities.

14 35. AFEC’s members, like virtually every U.S. citizen, occasionally raise their
15 voice when speaking to others, including other voters. They similarly may use language at
16 times that might be considered “threatening, insulting, or offensive” and that language may
17 be directed at other voters. While perhaps not ideal conduct if measured against the
18 standards of perfection, it is exceedingly common *human* conduct.

19 36. That AFEC’s members might use language that could be deemed
20 “offensive,” “threatening,” or “harassing,” is underscored by the bewildering array of
21 speech now deemed to be “microaggressions” by other citizens.

22 37. Indeed, “speech is violence” is an increasingly common mantra on college
23 campuses and elsewhere, underscoring that for many people mere words can readily be
24 deemed as threatening as actual violence. *See, e.g.,* Jonathan Turley, “*Your speech is violence*:
25 *the left’s new mantra to justify campus violence*, *The Hill* (June 3, 2023),
26 [https://thehill.com/opinion/education/4032778-your-speech-is-violence-the-lefts-new-mantra-to-](https://thehill.com/opinion/education/4032778-your-speech-is-violence-the-lefts-new-mantra-to-justify-campus-violence/)
27 [justify-campus-violence/](https://thehill.com/opinion/education/4032778-your-speech-is-violence-the-lefts-new-mantra-to-justify-campus-violence/).

28 38. Plaintiff Philip Townsend is an individual domiciled in Yuma County,

1 Arizona, registered to vote, and who plans on voting in the 2024 elections.

2 39. Plaintiff America First Policy Institute (“AFPI”) is a 501(c)(3) non-profit
3 organization. The organization works at the state level to get legislation enacted or stopped,
4 which necessarily involves promoting elections and raising awareness of issues at elections.

5 40. AFPI trains volunteers and poll workers on how to focus on election integrity
6 at polling locations before and during election day, how to be poll watchers, etc., which
7 requires credentialing and specific processes.

8 41. AFPI has conducted poll-worker training sessions in Arizona in the past and
9 intends to conduct at least two additional sessions in 2024.

10 42. Unless the provisions of the EPM regulating speech are enjoined or otherwise
11 invalidated, AFPI will be forced to include in those sessions training about how to comply
12 with the EPM’s speech provisions. In doing so, AFPI will incur compliance costs as a result
13 of its need to design and conduct EPM-specific training.

14 43. AFPI has also conducted grassroots workshops about election related issues
15 in Arizona in the past and intends to do so in the future. In doing so, AFPI engages in
16 communications with Arizona voters. For example, AFPI conducted a workshop on
17 ranked-choice voting in Mesa in January 2024.

18 44. As part of its policy objectives, AFPI regularly communicates with adults
19 throughout Arizona—many of whom happen to be voters.² Many of those adults/voters
20 are supportive of AFPI’s policy positions. Others may oppose AFPI’s positions and may
21 even be offended by AFPI’s messages about them, particularly in this recent era known for
22 snowflakes and strategic weaponization of taking offense to silence opposing viewpoints. As
23 a result of the EPM’s provisions, AFPI has had to alter how it conducts its operations and
24 communications in Arizona to avoid potential EPM violations (and has had to do so in a
25 manner not required in other states).

26
27 ² Although AFPI regularly communicates with individuals in Arizona, many of whom are
28 registered voters, it does not advocate for the election of specific candidates or adoption or
rejection of particular ballot measures.

1 45. AFPI also has about 300,000 members, who are widely dispersed throughout
2 the United States. Many of those members routinely advocate for governmental policies to
3 other adults, including in Arizona. Those members also face a risk of enforcement from the
4 EPM's provisions.

5 46. Therefore, AFPI faces a real threat and controversy with the 2023 EPM
6 because of how it directly conflicts with the Arizona Constitution and Arizona statutes.

7 47. Defendant Adrian Fontes is the Secretary of State and is named in this action
8 in his official capacity only. The Secretary is a constitutional officer who is part of the
9 Executive Branch of the government of the State of Arizona. His primary address in
10 Maricopa County.

11 48. Under A.R.S. § 16-452, the Secretary is responsible for promulgating an
12 EPM every two years, which, upon approval by the Arizona Governor (the "Governor"),
13 and the Arizona Attorney General, has the force of law. In addition, the Secretary is the
14 chief state election officer. *See* A.R.S. § 16-142(A)(1).

15 49. Defendant Kris Mayes is the Attorney General and is named in this action in
16 her official capacity only. The Attorney General is a constitutional officer who is part of the
17 Executive Branch of the government of the State of Arizona. She has her primary address
18 in Maricopa County. The Attorney General has the statutory authority to enforce and
19 prosecute election violations found in Title 16 under A.R.S. § 16-1021.

20 **JURISDICTION AND VENUE**

21 50. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the
22 Arizona Constitution and A.R.S. §§ 12-123, 12-1801, 12-1831, 12-2021, 41-1034(A), and
23 Rules 3(a)–(b) and 4(a), Ariz. R. P. Special Actions.

24 51. Venue lies in Maricopa County pursuant to A.R.S. §§ 12-401(16), 41-
25 1034(A), and under Rule 4(b), Ariz. R. P. Special Actions because Defendant resides and
26 holds office in Maricopa County and Plaintiff seeks declaratory, special action, and other
27 relief.

28 52. Venue is also proper in Maricopa County under Rule 4(b), Ariz. R. P. Special

1 Actions, A.R.S. 12-401(16), because the Secretary holds office in Maricopa County.

2 53. This Court has personal jurisdiction over Defendants, who reside in
3 Maricopa County.

4 **GENERAL ALLEGATIONS**

5 54. The Arizona Constitution vests the Legislature with the authority to enact
6 “laws to secure the purity of elections and guard against abuses of the elective franchise.”
7 Ariz. Const. art. 7, § 12.

8 55. The Legislature did so, and those laws are contained in Titles 16 and 19.

9 56. The Legislature also delegated limited authority to the Secretary to
10 “prescribe rules to achieve and maintain the maximum degree of correctness, impartiality,
11 uniformity[,] and efficiency on the procedures for early voting and voting, and of
12 producing, distributing, collecting, counting, tabulating[,] and storing ballots.” A.R.S. § 16-
13 452(A).

14 57. The Legislature delegated limited authority on other topics to be included in
15 the EPM, as stated by A.R.S. §§ 16-168(I), 16-246(G), 16-315(D), 16-341(H), 16-
16 411(B)(5)(b), 16-449(A)–(B), 16-543(A)–(C), 16-544(B), 16-579(A)(2), (C), 16-602(B), 16-
17 926(A), 16-938(B), 19-118(A), 19-121(A)(5), 19-205.01(A).

18 58. These statutory delegations are specific and exhausting, meaning that if a
19 provision of the EPM is not authorized by a statute, then it cannot carry the force of law.
20 *Leach*, 250 Ariz. at 576 ¶ 21.

21 59. The EPM must be “issued not later than December 31 of each odd-
22 numbered year immediately preceding the general election.” § 16-452(B).

23 60. Before doing so, the Secretary must submit a draft to the Governor and the
24 Attorney General, and each must approve it. *Id.*

25 61. “Once adopted, the EPM has the force of law; any violation of an EPM rule
26 is punishable as a class two misdemeanor.” *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, ¶ 16
27 (2020) (citing § 16-452(C)).

28 62. “It is generally agreed that the legislature may provide criminal penalties for

1 the violation of rules and regulations to be enacted by administrative agencies under proper
2 circumstances.” *State v. Phelps*, 12 Ariz. App. 83, 85 (1970) (citation omitted).

3 63. Courts reviewing such administrative rules strictly construe them to ensure
4 that they are “not broadened beyond the clear and express intent of the legislature.” *Id.*
5 at 86 (citation omitted).

6 THE 2023 EPM

7 64. On or around July 31, 2023, the Secretary published a 268-page draft EPM
8 for public comment.

9 65. The Secretary only permitted only 14 days to provide comments on the draft
10 EPM. Despite that, individuals and organizations submitted comments opposing provisions
11 in the draft EPM.

12 66. In particular, on August 14, 2023, Ben Toma, Speaker of the Arizona House
13 of Representatives, and Warren Peterson, President of the Arizona Senate, submitted
14 comments opposing provisions of the draft EPM. Among other comments, the legislative
15 leaders argued that the Speech Restriction violated Arizona statutory law, the First
16 Amendment, and the Free Speech and Due Process Clauses of the Arizona Constitution.

17 67. After receiving public comment, the Secretary published an updated draft
18 EPM and transmitted the same to the Governor and the Attorney General for their review
19 and approval under § 16-452.

20 68. The Speech Restriction of Chapter 9, §3(D) was not changed in response to
21 the statutory and constitutional concerns raised by the legislative leaders.

22 69. By refusing to make any changes to the Speech Restriction in response to the
23 comments objecting to it, the Secretary has refused to disavow enforcement of the provision
24 as written. Indeed, his actions demonstrate that Plaintiffs face a credible threat of
25 prosecution under the Speech Restriction, and the Secretary is likely to make criminal
26 referrals for perceived violations of the Speech Restriction.

27 70. “[T]he ‘credible threat of prosecution’ is a ‘quite forgiving’ requirement that
28 sets up only a ‘low threshold’ for a plaintiff to surmount” to establish standing. *Antonyuk v.*

1 *Chiumento*, 89 F.4th 271, 334 (2d Cir. 2023) (citation omitted). “Courts have not placed the
2 burden on the plaintiff to show an intent by the government to enforce the law against it
3 but rather presumed such intent in the absence of a disavowal by the government.” *Id.*
4 (cleaned up); *see also California Trucking Ass’n v. Bonta*, 996 F.3d 644, 653 (9th Cir. 2021)
5 (“Here, the state’s refusal to disavow enforcement is strong evidence that the state intends
6 to enforce the law and that the plaintiffs face a credible threat.” (cleaned up)).

7 71. The day before the deadline for the Secretary to publish the EPM, the
8 Secretary published the final draft, which was now 385 pages, included many provisions
9 not present in the prior drafts.

10 72. The Governor and the Attorney General provided their assent to the final
11 EPM.

12 73. By granting her assent to the Secretary’s EPM, the Attorney General made
13 a determination that the 2023 complied with federal and Arizona law notwithstanding the
14 objections made to it.

15 74. Because the Attorney General could have exercised a veto over the EPM’s
16 publication if she had deemed its provisions to violate the Arizona Constitution or Arizona
17 statutory law, her approval of the EPM signals that she believes that the EPM is lawful and
18 that she intends to enforce its provisions.

19 75. The Attorney General’s grant of consent to the EPM notwithstanding its legal
20 infirmities constitutes a “refusal to disavow enforcement” of the EPM. *Bonta*, 996 F.3d at
21 653.

22 76. On January 11, 2024, the Secretary published an updated “final” EPM,
23 which corrected and added dates in Chapter 15. This is the EPM at issue, and which the
24 Secretary seeks to enforce.

25 77. The 2023 EPM includes several rules and provisions that directly contradict
26 Arizona’s constitution and statutes. This Complaint challenges several of those violations.

27 **2023 EPM VIOLATIONS OF THE ARIZONA CONSTITUTION**

28 78. Chapter 2, section 1, of the 2023 EPM authorizes county recorders and other

1 election officials to take actions to prohibit “harassment” (hereinafter, “Harassment
2 Provision”). It states that:

3 The County Recorder or officer in charge of elections may establish and
4 implement additional local procedures for ballot drop-off locations to protect
5 the security and efficient operation of the ballot drop-off location. For
6 example, the County Recorder or officer in charge of elections may restrict
7 activities that interfere with the ability of voters and/or staff to access the
8 ballot drop-off location free from obstruction or harassment.

9 79. The 2023 EPM then gives examples of “harassment” in a footnote without
10 providing any specific definition of “harassment” means:

11 Some examples of actions that likely constitute voter intimidation or
12 harassment are: (1) repeatedly entering or staying within 75 feet of a ballot
13 drop box or the entrance to a building where a drop box is located for the
14 purpose of watching or monitoring individuals who are delivering ballots; (2)
15 intentionally following individuals delivering ballots to the drop box when
16 such individuals are not within 75 feet of a drop box; (3) speaking to or yelling
17 at an individual, without provocation, who that person knows is returning
18 ballots to the drop box and who is within 75 feet of the drop box; (4) openly
19 carrying firearms within 250 feet of a ballot drop box or visibly wearing body
20 armor within 250 feet of a ballot drop box. *See* Temporary Restraining Order
21 at 1–2, *Ariz. All. for Retired Ams., et al. v. Clean Elections USA, et al.*, 638 F. Supp.
22 3d 1033 (D. Ariz. 2022) (No. 2:22CV01823).

23 2023 EPM at 73-74 & n.40 (ch. 2, § I(I)(10)).

24 80. The Harassment Provision violates the Free Speech Clause.

25 81. Arizona’s constitution guarantees that “[e]very person may freely speak,
26 write, and publish on all subjects,” but holds each person “responsible for the abuse of that
27 right.” *Ariz. Const. art. 2, § 6.*

28 82. When the government opens property to the public, it cannot “arbitrarily
restrict the freedom of individuals, lawfully on the property to exercise their [free speech]
rights.” *New Times v. Ariz. Bd. of Regents*, 110 Ariz. 367, 371–72 (1974).

83. And under Arizona’s Free Speech Clause, the government can place “time,
place, and manner” restrictions, but they must do so with “narrow specificity,” *Mtn. States
Tel. & Tel. Co. v. Ariz. Corp. Comm’n*, 160 Ariz. 350, 357–58 (1989), keeping in mind that
“minor matters of public inconvenience or annoyance cannot be transformed into

1 substantive evils of sufficient weight to warrant curtailment of liberty of expression by
2 legislative preferences or beliefs.” *New Times*, 110 Ariz. at 372.

3 84. The Harassment Provision of the 2023 EPM violates Arizona’s Free Speech
4 Clause and inflicts injury upon Plaintiffs. For example, AFEC encourages and trains
5 workers and volunteers to watch polls, polling locations, and drop boxes to promote
6 election integrity and to help restore Arizona citizens’ confidence in the integrity of
7 elections.

8 85. At a minimum, the 2023 EPM will require AFEC to train its workers to avoid
9 violations of the 2023 EPM. Moreover, the combination of the (1) lack of any specific
10 definition of “harassment” with (2) the extremely broad examples constituting harassment
11 (*e.g.*, merely “speaking to ... an individual, without provocation, who that person knows is
12 returning ballots to the drop box and who is within 75 feet of the drop box”) means that
13 AFEC will have to curtail its planned election integrity efforts to comply with the 2023
14 EPM. Moreover, the breadth of the EPM’s breadth and the indeterminacy of its
15 amorphous “harassment” prohibition means that AFEC and its members face a credible
16 threat of prosecution if it were to carry out its planned election-integrity related activities.

17 86. As part of its election integrity efforts, AFEC may at times wish to speak to
18 voters returning ballots to ask them politely questions such as whether they have
19 encountered any issues with voting, were sent any ballots to individuals that do not/no
20 longer reside at their address, etc. But the Harassment Provision bans *all* attempts to speak
21 to voters returning ballots no matter how polite/non-harassing the speech might be.

22 87. Indeed, the Harassment Provision would seemingly ban even an
23 “unprovoked” saying “hello” to a neighbor or work colleague that happened to be
24 returning a ballot. While not harassing in any manner, initiation of a conversation by simple
25 “Hi!” would constitute “speaking to ... an individual, without provocation” and thus be
26 potentially punishable as a class two misdemeanor.

27 88. Similarly, AFPI engages in election-integrity-related efforts in Arizona and
28 other states, including training poll watchers and workers. AFPI will incur compliance costs

1 to train its workers to comply with the requirements of the Harassment Provision. And it
2 will similarly be forced to curtail its planned activities due to the expansive and ill-defined
3 nature of the Harassment Provision, which bans even initiation of social pleasantries to a
4 voter returning a ballot within 75 of a drop box.

5 89. The Harassment Provision alternatively violates § 16-452(A) by casting a net
6 far wider than necessary for the Secretary to “prescribe rules to achieve the maximum
7 degree of correctness, impartiality, uniformity[,] and efficiency” for Arizona elections.

8 90. Similarly, the Speech Restriction in chapter 9, section 3(D) of the 2023 EPM
9 violates Arizona’s Free Speech Clause. That provision purports to ban “*Any activity* by a
10 person with the intent *or effect* of threatening, harassing, intimidating, or coercing voters (or
11 conspiring with others to do so) *inside or outside the 75-foot limit at a voting location* is prohibited.”
12 (emphasis added).

13 91. The Speech Restriction appears in Chapter 9 of the EPM, which addresses
14 “Conduct of Elections/Election Day Operations.” Although other provisions in Chapter 9
15 are explicitly limited to election days, there is no temporal limitations in the Speech
16 Restriction. The Speech Restriction thus applies on all days, and not merely election days.

17 92. The Speech Restriction also has no geographic limitation. It explicitly applies
18 to “any activity ... *inside or outside* the 75-foot limit at a voting location.” (emphasis added).
19 The combination of all spaces *inside or outside* those perimeters is of course the entire
20 universe of land within Arizona’s borders.

21 93. The Speech Restriction purports to limit or ban many activities that would
22 otherwise be lawful under Arizona’s Free Speech Clause, claiming that it would constitute
23 “intimidating conduct.” For example, it lists all of the following as conduct that “may also
24 be considered intimidating conduct inside or outside the polling place”:

- 25 • “Aggressive behavior, *such as raising one’s voice* or taunting a voter or poll
26 worker;
- 27 • Using *threatening, insulting, or offensive language* to a voter or poll worker;
- 28 • Following voters or poll workers coming to or leaving a voting
location, including to or from their vehicles;

- 1 • [Q]uestioning, photographing, or videotaping voters or poll workers
- 2 in a harassing or intimidating manner, including when the voter or
- 3 poll worker is coming to or leaving the polling location;
- 4 • Posting signs or communicating messages about penalties for “voter
- 5 fraud” in a harassing or intimidating manner.”

6 94. But these prohibitions reach a broad swath of activities that are protected

7 under Arizona’s Free Speech Clause.

8 95. For example, AFEC’s and AFPI’s members are not only interested in

9 observing activity at drop boxes, but they are also just as interested in conveying a message

10 to others that the drop boxes are being watched and should be watched.

11 96. Moreover, AFEC’s and AFPI’s members are human beings that—like

12 virtually all of citizens—engage in universal human activities. They sometimes raise their

13 voices; they sometimes use language that could be deemed “insulting” or threatening; they

14 sometimes use “offensive language,” including occasional expletives. For example, some of

15 Plaintiffs’ members sometimes engage in heated discussions about sports—which

16 sometimes might involved raised voices, offensive language, or insults directed at other

17 teams and others’ loyalty to such teams. So too with a broad variety of other topics that

18 have nothing to do with voting or even politics or public policy. Such imperfect conduct

19 often occurs with and between other voters. And is now criminalized under the Speech

20 Restriction.

21 97. While these activities are perhaps not the pinnacle of ideal human behavior,

22 they are nonetheless extremely common human failings that mark the human condition.

23 As Thomas Jefferson remarked, “If men were angels, no government would be necessary.”

24 And while all men were “endowed by their Creator with certain unalienable Rights,” they

25 were not simultaneously endowed with the sort of perfect temperaments and absolute self-

26 control that would prevent them from raising their voices or forswearing all expletives for

27 the entirety of their earthly existences. Virtually all Arizona residents—including Plaintiffs’

28 members—have engaged in conduct that would violate the Speech Restriction, and are

virtually certain to do so again in the future.

1 98. Plaintiffs’ members thus face a credible threat of prosecution under the
2 Speech Restriction, particularly as the Secretary and Attorney General approved the
3 Speech Restriction *after* its manifest incompatibility with Arizona’s Free Speech Clause was
4 brought to their attention.

5 99. Plaintiffs and their members will also have their speech chilled and be
6 compelled to engage in self-censorship due to the Speech Restriction—particularly given
7 its astounding breadth.

8 100. In addition, Plaintiffs AFEC and AFPI will incur compliance costs attempting
9 to train their employees and members to avoid liability under the Speech Restriction.
10 Those compliance costs are particularly acute given the indeterminacy of the Speech
11 Restriction’s actual parameters, where its key terms are not defined but instead merely
12 discussed with illustrative and strikingly broad examples.

13 101. By criminalizing speech that is protected under Arizona’s Free Speech
14 Clause, the Speech Restriction violates the Arizona Constitution.

15 102. Furthermore, and as explained in more detail below, the Speech Restriction
16 unlawfully amends A.R.S. § 16-1013 by *inter alia*: (1) eliminating the *mens rea* requirement,
17 (2) expanding what conduct is criminal by adding “harassment”—a term found nowhere
18 in §16-1013’s actual text, and (3) eliminating the Voting-Nexus Requirement.

19 103. The Arizona Constitution states that “[n]o person shall be deprived of life,
20 liberty, or property without due process of law.” Ariz. Const. art. 2, § 4.

21 104. This Arizona Due Process Clause requires that if the government, including
22 one of its agencies, changes a criminal statute, it must give sufficient notice to the public.

23 105. The Speech Restriction violates the Due Process Clause because it attempts
24 to impose criminal liability well beyond what § 16-1013’s actual text provides—and thus
25 provides “fair notice” of what is criminally prohibited.

26 106. By purporting to impose liability well beyond what § 16-1013’s actual text
27 provides, the Speech Restriction violates the fair notice requirements of the Due Process
28 Clause.

1 107. The Harassment Provision and Speech Restriction also violate the Due
2 Process Clause under the void-for-vagueness doctrine. Under that doctrine, a criminal
3 prohibition violates due process where it “fails to provide people of ordinary intelligence a
4 reasonable opportunity to understand what conduct it prohibits” or “authorizes or even
5 encourages arbitrary and discriminatory enforcement.” *Johnson*, 576 U.S. at 612 (quoting
6 *Hill*, 530 U.S. at 732).

7 108. Here those two provisions do both: their amorphous and indeterminate
8 prohibitions fail to give fair notice as to what conduct is actually prohibited and, as a result,
9 authorize and encourage “arbitrary and discriminatory enforcement.” *Id.*

10 **2023 EPM VIOLATES ARIZONA STATUTORY LAW**

11 109. Many provisions of the 2023 EPM either conflict directly with the plain
12 language of Arizona statutes or lack any statutory authorization.

13 ***Voter Registration***

14 110. All of chapter 1 in the 2023 EPM deals with voter registration. However, no
15 Arizona statute authorizes or delegates rule-making authority to the Secretary regarding
16 voter registration. Therefore, the Secretary exceeded his statutory authorization, and this
17 entire chapter should be declared invalid. *See, e.g., Leach*, 250 Ariz. at 576 ¶21 (“[A]n EPM
18 regulation that exceeds the scope of its statutory authorization or contravenes an election
19 statute’s purpose does not have the force of law.”).

20 ***Non-Residency of Juror Questionnaire Rule***

21 111. In chapter 1, section 9(C)(1), the 2023 EPM states that upon reviewing the
22 summary report from a juror questionnaire and identifying a voter that has indicated that
23 the he or she is not a resident of the county in which he/she is registered:

24 [T]he County Recorder shall send the person notice by forwardable mail and
25 a postage prepaid, preaddressed return form requesting the person confirm
26 by signing under penalty of perjury that the person is a resident of the county
27 and is not knowingly registered to vote in another county or another state.
28 The notice shall inform the person that failure to return the form within
thirty-five days will result in the person’s registration *being put into inactive status*
and may ultimately lead to cancelation of their voter registration.

1 (Emphasis added).

2 112. Section 16-165(A)(9), however, provides that:

3 [A] county recorder *shall cancel a registration ... [w]hen* the county recorder
4 receives written information from the person registered that the person has a
5 change of address outside the country, including when the county
6 recorder ... [r]eceives a summary report from the jury commissioner or jury
7 manager pursuant to section 21-314 indicating that the person has stated that
8 the person is not a resident of the county. *Before the county recorder cancels a*
9 *registration pursuant to this subdivision,* the county recorder shall send the person
10 notice by forwardable mail and a posted prepaid preaddressed return from
11 requesting the person confirm by signing under penalty of perjury that the
12 person is a resident of the county and is not knowingly registered to vote in
13 another county or another state. *The notice shall inform the person that failure to*
14 *return the form within third-five days will result in the person's registration being canceled.*
15 *If the person fails to return the notice within thirty-five days the county recorder shall cancel*
16 *the person's registration.*

12 (Emphasis added)

13 113. Thus, the 2023 EPM directly conflicts with the language of § 16-165(A)(9).
14 That statute mandates *outright cancellation* of registrations where reports indicate the
15 individual is not a resident and the notice is not returned, but the 2023 EPM unlawfully
16 attempts to change the consequence to being placed in *inactive* status.

17 ***Investigations of Citizenship Status***

18 114. In chapter 1, section 9(C)(2)(a), the 2023 EPM states that there are “several
19 ways in which a County Recorder may obtain information pursuant to A.R.S. § 16-165
20 that a registrant is not a U.S. Citizen[, ...] third-party allegations of non-citizenship are not
21 enough to initiate this process.”

22 115. Section 16-165(I), however, states that the county recorder should initiate this
23 process when he or she “has reason to believe [the person is] not [a] United States
24 citizen[].”

25 116. The plain language of § 16-165(I) thus does exclude third-party allegations
26 from supplying the requisite “reason to believe” that an individual is not a U.S. citizen and
27 the 2023 EPM violates § 16-165(I) by categorically barring such information from ever
28 constituting a sufficient “reason to believe.”

Active Early Voting List

1
2 117. In chapter 2, section 1(B)(7), the 2023 EPM discusses a new statutory
3 requirement in A.R.S. § 16-544(H) that requires the county recorder to send Active Early
4 Voting List (“AEVL”) removal notices after the voter fails to vote in any election in two
5 consecutive election cycles.

6 118. That requirement came as a result of Senate Bill 1485, which was passed into
7 law when Governor Ducey signed it on May 11, 2021. Therefore, the 2022 election cycle
8 had not begun yet.

9 119. The 2023 EPM directs that “[b]ecause the 2022 election cycle began before
10 S.B. 1485 (2022) took effect and S.B. 1485 does not apply retroactively, the first two full
11 election cycles after S.B. 1485’s effective date are the 2024 and 2026 election cycles.
12 Therefore, the first AEVL removal notices must be sent out by January 15, 2027 to AEVL
13 voters who vote by early ballot in zero eligible elections in the 2024 and 2026 election
14 cycles.” (hereinafter “2027 Effective Date Provision”).

15 120. This 2027 Effective Date Provision contradicts the statute, however, because
16 § 16-544(H)(4) became effective during the 2022 election cycle, and thus, the registrant’s
17 subsequent voting (or non-voting) in the 2022 and 2024 election cycles must be given full
18 effect and the AEVL removal notices must be sent out in 2025. Failure to enforce this
19 section means that more voters will be included in the election than should be, which will
20 dilute Plaintiff’s vote.

21 121. Additionally, chapter 2, section 1(B)(1) states that “an AEVL voter may make
22 one-time requests to have their ballot mailed to an address outside of Arizona for specific
23 elections.”

24 122. Section 16-544(B), however, specifically prohibits such out-of-state AEVL
25 ballot mailings, providing that “[t]he voter shall *not list a mailing address that is outside of this*
26 *state for the purpose of the active early voting list* unless the voter is an absent uniformed services
27 voter or overseas voter as defined in the uniformed and overseas citizens absentee voting
28 act.” (Emphasis added).

1 ***UOCAVA Deadlines***

2 123. In chapter 2, section 1(F), the EPM grants the Secretary the ability to
3 “continue or lengthen the early voting process for UOCAVA [Uniformed and Overseas
4 Citizens Absentee Voting Act of 1986] voters,” if there is a natural disaster or emergency.

5 124. While A.R.S. § 16-543(C) allows for the Secretary in creating an EPM under
6 16-452 to create “emergency procedures regarding the early balloting process for persons
7 who are subject to [UOCAVA],” it does not grant the Secretary the authority to extend
8 the deadlines.

9 125. Extending the deadlines directly conflicts with the deadlines and plain
10 language of A.R.S. §§ 16-551(C), and -565(A).

11 ***Signature Verification***

12 126. In chapter 2, section 6(A), the 2023 EPM directs the county recorder, “upon
13 receipt of the return envelope with an early ballot and completed affidavit,” to “compare
14 the signature on the affidavit with the voter’s signature in the voter’s registration record,”
15 but also directs the county recorder to “consult *additional known signatures from other official*
16 *election documents in the voter’s registration record.*”

17 127. However, in A.R.S. § 16-644(C), the county recorder is limited to verifying
18 “the signature on the request form *with the voter’s signature on the voter’s registration form.*”

19 128. Therefore, the 2023 EPM here directly violates the plain language of § 16-
20 644(C).

21 ***Inconsistent Signatures on Early Ballots***

22 129. In chapter 2, section 6(A), the 2023 EPM states “early ballots cast in-person
23 should not be invalidated based solely on an allegedly inconsistent signature absent other
24 evidence.”

25 130. However, in A.R.S. § 16-550(A), requires the county recorder *not* to accept
26 the ballot, but instead to “make reasonable efforts to contact the voter, advise the voter of
27 the inconsistent signature[,] and allow the voter to correct or the county to confirm the
28 inconsistent signature.”

1 131. Thus, the 2023 EPM directly violates the plain language of § 16-550(A).

2 ***Validity of Circulator Registrations Rule***

3 132. In chapter 6, section 2, the 2023 EPM states that:

4 The requirement to list certain information on the circulator portal does not
5 mean that a circulator’s signatures shall be disqualified *if the circulator makes a*
6 *mistake or inconsistency in listing that information* (e.g., a phone number or email
7 address that is entered incorrectly; a residential address that doesn’t match
8 the residential address listed on that circulator’s petition sheets; etc.).

8 (Emphasis added).

9 133. However, A.R.S. § 19-118(B) requires that the circulator must submit his or
10 her “full name, residence address, telephone number[,] and email address” and an affidavit
11 that “all of the information provided *is correct* to the best of [his or her] knowledge.”

12 (Emphasis added).

13 134. Thus, not only does this portion of the 2023 EPM directly violate § 19-
14 118(B)’s plain language, it also causes problems because “statutory requirements for
15 statewide initiative measures must be strictly construed and persons using the initiative
16 process must strictly comply with those [] statutory requirements.” A.R.S. § 19-102.01(A).
17 Therefore, the 2023 EPM also violates the directly language and requirements of § 19-
18 102.01(A).

19 ***Redefining Criminal Liability***

20 135. The Speech Restriction, as already mentioned above, not only bans
21 protected speech inside or *outside* the 75-foot limit, but also invalidly criminalizes
22 significantly more acts than even the statutes that it purports to implement.

23 136. The Speech Restriction punishes “a person with the intent *or effect* of
24 threatening, *harassing*, intimidating, or coercing voters (or conspiring with others to do so)
25 inside *or outside* the 75-foot limit at a voting location.” (Emphasis added).

26 137. Sections 16-1013 and -1017, however, create a much narrower criminal law
27 than the rule in 2023 EPM. First, § 16-1013 states:

28 A. It is unlawful for a person *knowingly*:

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

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

11 (Emphasis added).

12 138. And § 16-1017 adds this:

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

15 ...

16 2. Interferes with a voter *within the seventy-five foot limit* of the polling place
17 as posted by the election marshal or within seventy-five feet of the main
18 outside entrance to an on-site early voting location established by a county
19 recorder pursuant to section 16-542, subsection A.

20 3. Endeavors while *within the seventy-five foot limit* for a polling place or on-
21 site early voting location *to induce a voter to vote for or against a particular*
22 *candidate or issue. ...*

23 (Emphasis added).

24 139. Thus, this 2023 EPM rule violates these statutes in four separate ways.

25 140. *First*, §§ 16-1013 and -1017 have a “knowing” *mens rea*, where the 2023 EPM
26 reduces the *mens rea* to criminal negligence if the person’s actions have the “effect of”
27 violating the statute. *See, e.g., State v. Phelps*, 12 Ariz. App. 83, 85-86 (1970) (“It is generally
28 agreed that the legislature may provide criminal penalties for the violation of rules and
regulations to be enacted by administrative agencies under proper circumstances....
However, it must be remembered that this being a crime, the statute must be strictly
construed and not broadened beyond the clear and express intent of the legislature.”).

141. *Second*, it includes possible conduct that is not included in either statute:

1 harassing, which is unrelated to what the statute is trying to protect against.

2 142. *Third*, the 2023 EPM is not tied to voters trying to vote, or coercing a voter
3 to vote for a particular candidate or issue.

4 143. For example, the Speech Restriction would penalize any of the Plaintiffs for
5 simply sitting 150 feet away from a polling location or drop box because it might have the
6 effect of harassing an unreasonably sensible voter.

7 144. By way of another example, the Speech Restriction would penalize those who
8 would be otherwise lawfully advocating or parading 100 feet away from a polling location
9 or drop box for something completely unrelated to any election measure—perhaps a
10 birthday party—because it might have the effect of harassing those who want to vote in
11 peace.

12 145. It would also criminalize, for example, a variety of activities that might be
13 deemed “harassing” under that undefined term. For example, wearing an MAGA hat, an
14 “All Lives Matter” button, or a “From the River to the Sea, Palestine Will Be Free” could
15 all be deemed “harassing” under that expansive-yet-undefined term.

16 ***Duty to Canvass***

17 146. In chapter 13, section 2, the 2023 EPM states that the “Secretary of State has
18 a non-discretionary duty to canvass the returns” but “[i]f the official canvass of any county
19 has not been received by [the] deadline, the Secretary of State must proceed with the state
20 canvass without including the votes of the missing county.”

21 147. Section 16-648(C), however, expressly states that “if the official canvass of
22 any county has not been received on the fourth Monday following the general election, the
23 canvass shall be postponed from day to day, *not to exceed thirty days from the date of the election,*
24 *until canvasses from all counties are received.*” (Emphasis added).

25 148. Thus, the 2023 EPM directly contradicts the plain language and procedure
26 of § 16-648(C).

COUNT I
Violations of Arizona Constitution
(Declaratory and Injunctive Relief)

149. Plaintiffs incorporate the paragraphs above as if stated here.

150. The 2023 EPM criminalizes otherwise protected free speech inside or outside a 75-foot limit of a voting location through its Harassment Provision and Speech Restriction.

151. Plaintiffs face a real threat of prosecution because the Attorney General signed off on this version of the 2023 EPM, meaning that there is a threat of prosecution for violations of the 2023 EPM.

152. The Attorney General has not disavowed enforcing the Harassment Provision and Speech Restriction.

153. Plaintiffs engage in election activities that would otherwise be lawful under Arizona's Free Speech Clause but would violate 2023 EPM.

154. Organizations like AFEC and AFPI have standing to assert their own respective free speech rights as well as that of their respective members. *Mtn. States Tel. & Tel. Co. v. Ariz. Corp. Comm'n*, 160 Ariz. 350, 356 (1989).

155. But under the current 2023 EPM, such conduct would be considered criminal. Therefore, Plaintiffs' members face an actual threat of prosecution from the Attorney General for actions that are otherwise lawful under the Arizona Constitution.

156. Furthermore, the 2023 EPM changed criminal laws by broadening the scope of conduct that would be criminal well beyond what is written in the statutes related to election violations.

157. The Speech Provision also violates the Due Process Clause because (1) it imposes criminal liability well beyond what § 16-1013 provides fair notice is prohibited and (2) is unconstitutional under the void-for-vagueness doctrine.

1 **COUNT II**
2 **Violations of Arizona Statutes**
3 **(Declaratory and Injunctive Relief)**

4 158. Plaintiffs incorporate the paragraphs above as if stated here.

5 159. The 2023 EPM has many provisions that are not authorized by Arizona
6 statutes, or directly contradict the relevant statutory provisions that the EPM purports to
7 implement.

8 160. Plaintiffs face a real threat because the Attorney General signed off on this
9 version of the 2023 EPM, meaning that there is a threat of prosecution for violations of the
10 2023 EPM.

11 161. Plaintiffs are affected by these statutory problems because Plaintiffs (1) will
12 incur compliance costs in training members to comply with the unlawful requirements of
13 the EPM and (2) will be forced to curtail activities they otherwise planned to engage in as
14 a result of the EPM's criminalization of those provisions. Plaintiffs are further harmed
15 because the EPM's broad provisions will chill their planned speech and conduct.

16 162. Alternatively, many of these statutory problems create issues of diluting
17 Plaintiffs, or the institutional Plaintiffs' members' votes by allowing others to vote that
18 otherwise would not be allowed to vote, counting votes that should otherwise not be valid
19 under Arizona statutes, or extending the deadlines to vote beyond the statutory timeframe.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request that the Court provide the following
22 expedited relief:

23 A. A declaratory judgment under A.R.S. §§ 12-1831, -1832 and special action
24 relief pursuant to Arizona Rule of Special Action Procedure 3(b) or other applicable law
25 providing that that the 2023 EPM provisions challenged in this action violate article II,
26 sections 2, 4, and 26 of the Arizona Constitution, and thus are void;

27 B. A declaratory judgment under A.R.S. §§ 12-1831, -1832 and special action
28 relief pursuant to Arizona Rule of Special Action Procedure 3(b) or other applicable law
29 providing that that the 2023 EPM provisions challenged in this action contradict or exceed

1 statutory authority and therefore lack the force of law and are void;

2 C. A declaratory judgment under A.R.S. §§ 12-1831, -1832 and special action
3 relief pursuant to Arizona Rule of Special Action Procedure 3(b) or other applicable law
4 providing that that A.R.S. § 16-452(C) does not apply to the provisions challenged in this
5 action because they violate either the Arizona Constitution or Arizona statutes and thus
6 are void.

7 D. A preliminary and permanent injunction pursuant to Ariz. R. Civ. P. 65 or
8 other applicable law prohibiting the Secretary from enforcing or implementing the
9 challenged provisions of the 2023 EPM.

10 E. Issuance of a writ of mandamus against the Secretary under A.R.S. § 12-
11 2021, directing him to promulgate an EPM that complies with the Arizona Constitution
12 and statutory law.

13 F. An award of Plaintiffs' reasonable attorneys' fees and costs pursuant to A.R.S.
14 §§ 12-341, 12-348.01, 12-1840, and 12-2030 (the private attorney general doctrine) or any
15 other applicable law.

16 G. Any other relief as the court deems necessary, equitable, proper, and just.

17 Dated this 15th day of April, 2024.

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