**SUPREME COURT OF ARIZONA**

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| REPUBLICAN NATIONAL COMMITTEE; et al.,<br><br>Plaintiffs/Appellants/Respondents,<br><br>v.<br><br>ADRIAN FONTES, in his official capacity as Arizona Secretary of State,<br><br>Defendant/Appellee/Petitioner,<br><br>-and-<br><br>VOTO LATINO; et al.,<br><br>Intervenor-Defendants/Appellees. | Arizona Supreme Court<br>No. CV-25-0089-PR<br><br>Court of Appeals<br>Division Two<br>No. 2 CA-CV 24-0241<br><br>Maricopa County<br>Superior Court<br>No. CV2024-050553 |

# SECRETARY OF STATE'S SUPPLEMENTAL BRIEF


Joshua Bendor (# 031908)
Joshua Whitaker (# 032724)
Kara Karlson (# 029407)
Karen Hartman-Tellez (# 021121)
Kyle Cummings (# 032228)
OFFICE OF THE ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-8323

Joshua.Bendor@azag.gov
Joshua.Whitaker@azag.gov
Kara.Karlson@azag.gov
Karen.Hartman@azag.gov
Kyle.Cummings@azag.gov
adminlaw@azag.gov (court use only)
ACL@azag.gov (court use only)

*Attorneys for Arizona Secretary of State Adrian Fontes*

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## INTRODUCTION

For decades, Secretaries of State have adopted Elections Procedures Manuals ("EPMs") via the unique process in A.R.S. § 16-452. But now, the RNC seeks to declare the entire 2023 EPM "invalid" under a long-existing provision of Arizona's Administrative Procedure Act ("APA"): A.R.S. § 41-1030(A). The RNC is advancing a novel theory that EPMs must undergo APA rulemaking (A.R.S. §§ 41-1021 through -1029).

But the RNC ignores the final clause of § 41-1030(A): A rule is invalid for failure to substantially comply with APA rulemaking "unless otherwise provided by law." That final clause applies here. In § 16-452, the Legislature "otherwise provided by law" a custom process for EPMs that fundamentally differs from APA rulemaking. Because the Secretary followed that process, the 2023 EPM is not "invalid" under § 41-1030(A).

The Superior Court correctly reached this conclusion and dismissed the RNC's claim. APP015–16, 20. But the Court of Appeals went astray by adding words to § 41-1030(A) that are not there. According to the Court of Appeals, the final clause in § 41-1030(A) applies only when the Legislature provides "some alternative to the APA's procedure *that expressly states* that it is such an alternative." APP011 ¶ 23 (emphasis added).

This judicial rewrite was an overstep. The Court of Appeals inferred this express-statement requirement because a more general APA provision states that the APA applies to agencies and proceedings not "expressly exempted." A.R.S. § 41-1002(A). But the Legislature's broad power to expressly exempt agencies or proceedings from the APA is in addition to its more specific power to "otherwise provide[] by law" an alternative process for an agency to make valid rules. A.R.S. § 41-1030(A). These statutory provisions have co-existed harmoniously for decades, without the need to transplant an express-statement requirement from one to the other.

The Secretary's interpretation of § 41-1030(A) is supported by text, context, and history. But even if the Court of Appeals was correct that any alternative to APA rulemaking must be "express," that requirement is met: Section 16-452 expressly provides a distinct rulemaking process, and it is in a statutory article that expressly supersedes conflicting laws.

For these reasons, the Superior Court correctly dismissed the RNC's APA claim. This Court should reverse the Court of Appeals. Alternatively, if this Court concludes that EPMs must follow APA rulemaking, the Court should apply this ruling only to future EPMs.

## ARGUMENT

The APA provisions at issue include general provisions in § 41-1002 and a more specific and recent clause in § 41-1030. The newer specific clause is meaningfully different, allowing the Legislature to "otherwise provide[] by law" an alternative rulemaking process. The Legislature did so by creating the EPM process in § 16-452. And the Legislature did so expressly.

### I. The Legislature may "otherwise provide[] by law" an alternative rulemaking process without "expressly" exempting an agency or proceeding from the APA.

The APA is in A.R.S. Title 41, Chapter 6. It contains several articles, including Article 1 ("General Provisions"), Article 2 ("Publication of Agency Rules"), Article 3 ("Rulemaking"), Article 4 ("Attorney General Review of Rulemaking"), Article 4.1 ("Administrative Rules Oversight Committee"), and Article 5 ("Governor's Regulatory Review Council").

Article 1 states that these APA articles apply to "all agencies and all proceedings not expressly exempted." A.R.S. § 41-1002(A). The Legislature added this broad presumption of applicability in 1986 when it adopted parts of the 1981 Uniform Model State Administrative Procedure Act. *See* Laws 1986, ch. 232, § 4 (37th Leg., 2nd Reg. Sess.) (adding A.R.S. § 41-1002).

In the same 1986 enactment, the Legislature specified in Article 3: "A rule is invalid unless adopted and certified in substantial compliance with [APA rulemaking]." *Id.* § 5 (adding A.R.S. § 41-1030). So in the late 1980's, for agencies and proceedings not expressly exempt from the APA, rules made without substantially complying with APA rulemaking were invalid.

But in 1992, the Legislature narrowed § 41-1030 by adding a clause: "A rule is invalid unless adopted and certified in substantial compliance with [APA rulemaking] *unless otherwise provided by law*." Laws 1992, ch. 239, § 8 (40th Leg., 2nd Reg. Sess.) (amending A.R.S. § 41-1030) (emphasis added). Notably, this amendment departed from the 1981 Model Act. As a result, rules made under a process that the Legislature "otherwise provided by law" are valid, even if the agency and proceeding are not expressly exempt from the APA and do not substantially comply with APA rulemaking.

The Legislature created this additional possibility by using language different from the pre-existing general APA provision. Whereas the general APA provision used the term "expressly exempted" to describe when the APA does not apply, the 1992 amendment to § 41-1030 used the phrase "otherwise provided by law" to describe when the APA itself permits an alternative process to make a valid rule. These "differences in statutory

language" indicate "differences in meaning." *Matter of Conservatorship of Chalmers*, 571 P.3d 885, 889–90, ¶ 20 (Ariz. 2025).

Moreover, "[w]hen the Legislature changes the language of a statute, the presumption is that they intended to make a change in existing law." *Brousseau v. Fitzgerald*, 138 Ariz. 453, 455 (1984). In 1992, the existing law was that the APA does not apply to agencies or proceedings "expressly exempted." A.R.S. § 41-1002. By amending § 41-1030, the Legislature did not just repeat itself, but instead specified what would happen when a non-exempt agency follows an alternative rulemaking process set by the Legislature: the rule would still be valid under the APA. This interpretation of the 1992 amendment gives it meaning, rather than making "parts of the statutory scheme superfluous." *Chalmers*, 571 P.3d at 889, ¶ 18.

This interpretation is not new. In 1993, after the Legislature amended § 41-1030, the Arizona Agency Handbook explained: "Unless exempt from rule making procedures, a rule is valid only if it is adopted in substantial compliance with the APA *or other statutory procedure* applicable to the agency." Ariz. Agency Handbook (1993), § 11.10 (emphasis added); *see also* A.R.S. § 41-192(A)(8) (requiring Attorney General to publish Handbook). The current Handbook has a similar sentence. *See* Ariz. Agency Handbook

(2018), § 11.7.[1] Although this Court owes no deference to the Handbook, "the longstanding practice of the government—like any other interpretive aid—can inform a court's determination of what the law is." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (cleaned up).

The Court of Appeals, however, interpreted the 1992 amendment to § 41-1030 as "reiterating § 41-1002's directive that any exemptions must be expressly made." APP011 ¶ 23. This view is mistaken. The idea that the Legislature amended § 41-1030 to "reiterate" a pre-existing directive in § 41-1002 creates superfluity. Courts should not give a statutory amendment "an interpretation that causes it to duplicate another provision." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012); *see also, e.g.*, *San Carlos Apache Tribe v. State*, 257 Ariz. 490, 500, ¶ 47 (2024) (interpreting terms as "not redundant"). Moreover, if the Legislature had wanted to reiterate the APA's general provision about express exemptions, it could have used the words "express" or "exemption" when amending

[1] The current version of the Handbook is available at https://www.azag.gov/office/publications/agency-handbook. Previous versions are available via https://azmemory.azlibrary.gov/. The Court may take judicial notice of the Handbook. *See* Ariz. R. Evid. 201(b); *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 65, ¶ 28 & n.2 (2020) (taking judicial notice of Secretary's website and County Recorder's website).

§ 41-1030. It did not. This "material variation in terms suggests a variation in meaning." Scalia & Garner, *supra*, at 170; *see also, e.g.*, *San Carlos Apache Tribe*, 257 Ariz. at 500, ¶ 46 (respecting "noteworthy differences in the text").

The Court of Appeals stated that its interpretation of § 41-1030(A) achieves "harmony" with § 41-1002(A). APP011 ¶ 23. But these provisions do not contradict, so no judicial reconciliation is required. While § 41-1002(A) recognizes that the Legislature may "expressly exempt[]" an agency or proceeding from the APA, § 41-1030(A) recognizes that non-exempt agencies can *also* make a valid rule without APA rulemaking if the Legislature "otherwise provide[s]" an alternative process. Perhaps the Legislature could have been clearer, but courts "cannot rewrite statutes to smooth their rough edges." *Molera v. Reagan*, 245 Ariz. 291, 297, ¶ 26 (2018).

Regardless, even if there were a contradiction between the general provision in § 41-1002(A) and the specific provision in § 41-1030(A), "the more recent, specific statute governs over an older, more general statute." *State v. Jones*, 235 Ariz. 501, 503, ¶ 8 (2014) (cleaned up). The Court of Appeals did the opposite, grafting an express-statement requirement from the general provision in 1986 to the more specific amendment in 1992. The Court of Appeals suggested that it was trying not to "void[]" the general

provision. APP011 ¶ 23. But "the general/specific canon does not mean that the existence of a contradictory specific provision voids the general provision." Scalia & Garner, *supra*, at 184; *see also In re McLauchlan*, 252 Ariz. 324, 326, ¶ 15 (2022) (making this point). At most, the Court of Appeals should have viewed the amendment to § 41-1030 as a carve-out to § 41-1002.[2]

For these reasons, the Legislature may "otherwise provide[] by law" an alternative rulemaking process for agencies to make a valid rule, *see* A.R.S. § 41-1030(A), without "expressly" exempting the agency or proceeding from the APA, *see* A.R.S. § 41-1002(A).

## II. The Legislature "otherwise provided by law" an alternative to APA rulemaking by creating a unique process for EPMs.

This Court has observed that the statutory clause "[e]xcept as otherwise provided by law" is "critical." *May v. Ellis*, 208 Ariz. 229, 231, ¶ 11 (2004). When the clause is in a statute, it means that the rest of the statute "only applies when there is no other 'law' to the contrary." *Id.*

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[2] The Court of Appeals also cited the RNC's view that § 41-1030(A) is "remedial." APP010 ¶ 22. It is unclear what this view means. The remedy the RNC seeks is a declaration that the EPM is "invalid" under § 41-1030(A) and a corresponding injunction. IR 1, ¶¶ 45–48; *see* A.R.S. § 41-1034(A) (authorizing suit to seek declaration as to "validity" of rule). So, if the remedy under § 41-1030(A) is not available, then the RNC failed to state a "claim upon which relief can be granted." Ariz. R. Civ. P. 12(b)(6).

So too here. While the first part of § 41-1030(A) generally requires non-exempt agencies to substantially comply with APA rulemaking to make a valid rule, the final clause—"unless otherwise provided by law"—recognizes that the Legislature may establish a contrary process. *See* A.R.S. § 41-1030(A). The Legislature has done so for EPMs.

Specifically, the Legislature created a comprehensive process with unique features for the Secretary to follow when adopting EPMs:

- *Consultation with stakeholders*: The Secretary must consult with election officials of all fifteen counties.
- *Date of issuance*: The Secretary must issue EPMs by December 31 of each odd-numbered year before the general election.
- *Approval of others in Executive Branch*: The Governor and Attorney General must approve EPMs, and the Secretary must submit a draft to both officials by October 1 of the year of issuance.
- *Prescribed form*: EPMs are a "manual" for election workers.

A.R.S. § 16-452(A), (B). These unique features make sense because an EPM is a "manual prepared for use as a guide for the conduct of elections." *Id.* § 16-444(A)(6). And these features make the EPM process quite different from APA rulemaking, as the Secretary's petition explains. Pet. at 2–5, 8–9.

Moreover, the Legislature specified that EPMs are "adopted pursuant to *this section*"—that is, § 16-452. A.R.S. § 16-452(C) (emphasis added). And in many other statutes, the Legislature reiterated that EPMs are adopted "pursuant to" § 16-452, without mentioning the APA. *See* A.R.S. §§ 16-168(I); 16-246(G); 16-315(D); 16-341(H); 16-411(B)(5)(b), (K); 16-449(A); 16-542(A), (E), (I); 16-543(A), (B), (C); 16-544(B); 16-579(A)(2), (E); 16-602(B); 16-926(A); 16-938(B); 19-118(A); 19-121(A)(5); 19-205.01(A).

Statutory context and history confirm that the EPM process is unique. The basic contours of the process have existed since 1972. *See* Laws 1972, ch. 218, § 41 (30th Leg., 2d Reg. Sess.). Since renumbering in 1979, the process has been part of A.R.S. Title 16, Chapter 4, Article 4. *See* Laws 1979, ch. 209, § 3 (34th Leg., 1st Reg. Sess.). That article supersedes conflicting laws: "Any provision of law that conflicts with this article does not apply to the elections in which electronic tabulating devices are used." A.R.S. § 16-444(B).[3]

[3] Elections in Arizona use electronic tabulating devices. *See* 2023 EPM at 200 (citing Arizona statutes and stating: "Electronic ballot tabulating systems shall be used for every election, except in the rare circumstance when electronic tabulation is not practicable."), available at https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf. And EPMs are "for the conduct of elections by an approved electronic voting system." A.R.S. § 16-444(A)(6).

In addition, the longstanding consensus has been that the Secretary need only follow § 16-452, not APA rulemaking, when adopting EPMs. As far as the Secretary can tell, this has been the uniform and bipartisan practice since 1972. Throughout this case, no one has identified any prior instance where an EPM was thought to require APA rulemaking.

This fifty-years-long practice of issuing EPMs under § 16-452 rather than APA rulemaking is significant not only because of its duration, but also the amount of scrutiny that EPMs undergo. Governors, Secretaries, and Attorneys General have approved EPMs under this process for decades. All the while, the Legislature has been aware of the EPM process and has modified it several times, including:

- Requiring the Secretary to submit draft EPMs to the Governor and Attorney General at least "ninety days before each election." (1985)
- Revising the role of county election officers from EPM drafters to consultants. (1993)
- Requiring the Secretary to submit draft EPMs to the Governor and Attorney General by October 1 of each odd-numbered year, and requiring approval from those officials by December 31 of the same year. (2019)

*See* Laws 1985, ch. 292, § 1 (37th Leg., 1st Reg. Sess.); Laws 1993, ch. 98, § 31 (41st Leg., 1st Reg. Sess.); Laws 2019, ch. 99, § 1 (54th Leg., 1st Reg. Sess.).

Even this Court has described the EPM process by referring to § 16-452, not the APA. *See, e.g., Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63, ¶ 16 (2020) (stating that the "Secretary must follow a specific procedure in promulgating election rules" and citing A.R.S. § 16-452).

Such widespread consensus is persuasive for several reasons. First, laws are more stable when longstanding practice is not disrupted lightly. *See, e.g., Matter of Appeal In Pima Cnty. Juv. Action No. J-78632*, 147 Ariz. 584, 587 (1986) (finding persuasive "long acquiescence by this court and the Court of Appeals" in statutory construction by juvenile courts and agency). Stability is especially important for election procedures. *See, e.g., McKenna v. Soto*, 250 Ariz. 469, 473, ¶ 20 (2021) (EPM's purpose is "to ensure election practices are consistent and efficient throughout Arizona").

Second, the fact that the Legislature has been aware of the EPM process and modified it several times without requiring APA rulemaking is evidence of legislative intent. *See, e.g., Silver v. Pueblo Del Sol Water Co.*, 244 Ariz. 553, 561, ¶ 26 (2018) (Legislature's decision to order agency to amend specific regulation showed that Legislature was "capable of ordering amendments

to the ones it found objectionable"); *Jenney v. Arizona Exp., Inc.*, 89 Ariz. 343, 346 (1961) (Legislature's re-enactment of statute after "uniform construction by the officers required to act under it" indicates legislative intent). Indeed, the Legislature often specifies when rules must be "pursuant to" the APA. *E.g.*, A.R.S. §§ 5-104(S), 20-2121(B), 20-2539, 20-3604(A), 32-1404(D), 37-336(A), 42-5044(D), 43-1011(E), 44-330, 44-3131(A), 49-1203(C).

Third, allowing a party to participate in a practice for decades and *then* insist on an unprecedented interpretation invites gamesmanship. Here, for example, the RNC claims that its "members, candidates, and volunteers are necessarily affected by the administration of procedures that govern every stage of the electoral process," APP007 ¶ 15, but it has never before argued that EPMs must undergo APA rulemaking. This Court has viewed similar newfound arguments with suspicion. *See, e.g.*, *Dupnik v. MacDougall*, 136 Ariz. 39, 44 (1983) (rejecting sheriffs' claimed interpretation of statute when "for many years it has been the practice for the sheriffs" to do otherwise).

To be clear, the Secretary is not asking this Court to "defer" to his interpretation. *Cf.* A.R.S. § 12-910(F). When interpreting statutes, this Court may consider factors such as longstanding consensus and statutory history without deferring to an agency. *See, e.g.*, *Matter of Appeal In Pima Cnty. Juv.*

*Action No. J-78632*, 147 Ariz. at 586 (distinguishing between "construction of a statute by an agency" and "long period of uniform acquiescence in the meaning of a statute"); *Silver*, 244 Ariz. at 561, ¶ 28 (distinguishing between "judicial deference" and "legislative adoption"). As the U.S. Supreme Court recently explained: "[W]hile courts must exercise independent judgment in determining the meaning of statutory provisions, the contemporary and consistent views of a coordinate branch of government can provide evidence of the law's meaning." *Bondi v. VanDerStok*, 145 S. Ct. 857, 874 (2025) (cleaned up); *see also, e.g.*, *Kennedy v. Braidwood Mgmt., Inc.*, 145 S. Ct. 2427, 2455 (2025) (finding persuasive "the Executive Branch's actions for the last 26 years" "without any apparent objection from Congress").

In short, the Legislature "otherwise provided by law" an alternative process by which Secretaries, Governors, and Attorneys General have been adopting and approving valid EPMs for decades. A.R.S. § 41-1030(A).

## III. Conflicts between the EPM process and APA rulemaking confirm that the Legislature established a unique process for the EPM.

The uniqueness of the EPM process is further demonstrated by the fact that it conflicts with APA rulemaking, as the Secretary's petition explains. *See* Pet. at 10–15. For example, the Superior Court identified statutory

conflicts between these processes relating to "deadlines" and "obtaining governor approval." APP016. The deadline conflicts are especially critical: The Secretary must issue updated EPMs by December 31 of the year before each general election, as well as a draft to the Governor and Attorney General by October 1. A.R.S. § 16-452(B). Yet important legal developments requiring updates may occur *any time* before these deadlines. *See, e.g.*, *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d 1077, 1104–05 (D. Ariz. 2023) (declaring parts of Arizona election laws invalid in September 2023). These conflicts confirm that the EPM process was "otherwise provided by law" as an alternative to APA rulemaking. A.R.S. § 41-1030(A).

The RNC's responses are unpersuasive. The RNC naïvely suggests that the Secretary can resolve any conflicts by drafting EPMs earlier. Resp. at 6–7. But this ignores that important legal developments regarding election procedures may occur anytime. The earlier the Secretary drafts an EPM, the less up-to-date it will be. Just as a journalist seeking to summarize major news from 2024 and 2025 should write until the end of 2025, the Secretary should work until the end of 2025 to achieve "the maximum degree of correctness." A.R.S. § 16-452(A). And the RNC does not address other

conflicts between the EPM process and APA rulemaking, including that the processes require fundamentally different Executive Branch approvals.

The RNC also argues that any conflict between the EPM process and the APA must be resolved in the APA's favor, because the APA states that it supersedes conflicting statutes "unless the other statute expressly provides otherwise." Resp. at 3–4 (quoting A.R.S. § 41-1002(B)). But this argument suffers from the same flaws explained in Part I above: It relies on a general provision added to the APA in 1986, while ignoring the more specific amendment to § 41-1030 in 1992: that the Legislature can "otherwise provide[] by law" an alternative to APA rulemaking. Given this 1992 amendment, the APA *itself* contemplates that the Legislature may provide an alternative rulemaking process for non-exempt agencies.

Moreover, the RNC ignores the unique features, context, and history of the EPM process explained in Part II above—including the fact that the Legislature placed the process in a statutory article that supersedes conflicting laws. *See* A.R.S. § 16-444(B).

As the Superior Court put it: "Section 16-452 does not diminish any rights or duties under the APA. Rather, it is simply the 'otherwise provided by law' expressly contemplated by the APA." APP016. That is correct.

## IV. Alternatively, the Legislature has "expressly" provided that EPMs need not follow APA rulemaking.

Even if the Court of Appeals was correct to impose an express-statement requirement on the Legislature's ability to "otherwise provide[] by law" an alternative rulemaking process, the process set forth in § 16-452 satisfies that requirement.

Neither the APA nor this Court has defined what the Legislature must do to "expressly" provide an alternative to APA rulemaking. The most obvious methods are when (1) the APA itself specifies that it does not apply, *e.g.*, § 41-1005(A), or (2) another statute specifies that the APA does not apply, *e.g.*, § 16-974(D). But the existence of these methods does not mean they are the only possible ones. *See City of Phoenix v. Glenayre Elecs., Inc.*, 242 Ariz. 139, 143–44, ¶¶ 15–16 (2017) (explaining that, "[a]lthough the legislature could have followed" one of two previously used methods of express declaration, "it was not required to do so").

Here, the Legislature expressly created a unique process for adopting EPMs, as explained above. And the Legislature expressly stated, in § 16-452 and elsewhere, that EPMs are adopted "pursuant to" that process. A.R.S. §§ 16-168(I); 16-246(G); 16-315(D); 16-341(H); 16-411(B)(5)(b), (K); 16-449(A);

16-542(A), (E), (I); 16-543(A), (B), (C); 16-544(B); 16-579(A)(2), (E); 16-602(B); 16-926(A); 16-938(B); 19-118(A); 19-121(A)(5); 19-205.01(A). In contrast, the Legislature has specified that *other* agency rules are adopted "pursuant to" the APA. *E.g.*, A.R.S. §§ 5-104(S), 20-2121(B), 20-2539, 20-3604(A), 32-1404(D), 37-336(A), 42-5044(D), 43-1011(E), 44-330, 44-3131(A), 49-1203(C).

Moreover, the Legislature placed the EPM process in a statutory article that expressly supersedes conflicting laws: "Any provision of law that conflicts with this article does not apply to the elections in which electronic tabulating devices are used." A.R.S. § 16-444(B). And EPMs are manuals for "elections by an approved electronic voting system." *Id.* (A)(6).

Taken together, these legislative statements "expressly" provide an alternative rulemaking process for EPMs, even though they do not cite the APA. *See Marcello v. Bonds*, 349 U.S. 302, 310 (1955) (concluding that a deportation statute's "sole and exclusive procedure" expressly superseded different procedure under federal APA even though it did not cite federal APA, which required any modifications to its procedure to be "express"). This Court should "not require the legislature 'to employ magical passwords' to accomplish its manifest intent." *Glenayre Elecs., Inc.*, 242 Ariz. at 144, ¶ 18 (quoting *Marcello*, 349 U.S. at 310).

## V. At minimum, if EPMs must comply with APA rulemaking, the Court should clarify that this ruling applies only to future EPMs.

This Court has discretion to apply civil opinions prospectively only. *Turken v. Gordon*, 223 Ariz. 342, 351, ¶ 44 (2010). The Court considers factors including whether the opinion "establishes a new legal principle whose resolution was not foreshadowed" and whether retroactive application "would produce substantially inequitable results." *Id.* (cleaned up).

If this Court concludes that EPMs must comply with APA rulemaking, that would be a new legal principle not foreshadowed. For decades, EPMs have been made under A.R.S. § 16-452, not the APA. And here, the Superior Court dismissed the RNC's claims against the 2023 EPM in May 2024. APP007. So, when the Secretary began work on the 2025 EPM at the beginning of 2025, the Secretary continued to believe that APA rulemaking did not apply and thus did not take every step that the APA would require. *E.g.*, A.R.S. § 41-1022; *see also* Pet. at 5, 16. Even when the Court of Appeals reversed the dismissal in March 2025, it did not decide what should happen next, but instead remanded for "further proceedings." APP013 ¶ 28.

Equitable considerations also favor prospective-only application. The modern EPM is a several-hundred-page manual to guide election workers,

to ensure correct, impartial, uniform, and efficient elections. A.R.S. § 16-452(A). Adopting an EPM requires enormous work from the Secretary, election officers from all fifteen counties, and the Governor and Attorney General. *Id.* (A), (B). Jeopardizing an entire EPM for failing to follow the right procedure would be extremely strong medicine.

And such medicine is not needed. For the 2023 EPM, even though the Secretary did not believe that APA rulemaking applied, he gave the public (including the RNC) notice and invited fifteen days of comment anyway. *See* APP004 ¶ 4. And, for the 2025 EPM, the Secretary was even more cautious and invited thirty days of comment, which concluded on August 31. *See* https://azsos.gov/elections/about-elections/elections-procedures/epm.

Thus, if this Court concludes that EPMs must follow APA rulemaking, the Court should limit that ruling to EPMs prepared "after the date of [the Court's] opinion"—in 2026 and beyond. *Turken*, 223 Ariz. at 352, ¶ 49.

## CONCLUSION

This Court should reverse the Court of Appeals and affirm the Superior Court's dismissal of the RNC's claim that the 2023 EPM is invalid. If, however, this Court affirms the Court of Appeals, this Court should clarify that its opinion applies only to EPMs issued in 2026 and beyond.

RESPECTFULLY SUBMITTED this 8th day of September, 2025.

KRISTIN K. MAYES, ARIZONA
ATTORNEY GENERAL

By /s/ Joshua Whitaker

Joshua Bendor
Joshua Whitaker
Kara Karlson
Karen Hartman-Tellez
Kyle Cummings
2005 N. Central Ave.
Phoenix, Arizona 85004

*Attorneys for Arizona Secretary of State Adrian Fontes*

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**SUPREME COURT OF ARIZONA**

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| REPUBLICAN NATIONAL COMMITTEE; et al.,<br><br>Plaintiffs/Appellants/Respondents,<br><br>v.<br><br>ADRIAN FONTES, in his official capacity as Arizona Secretary of State,<br><br>Defendant/Appellee/Petitioner,<br><br>-and-<br><br>VOTO LATINO; et al.,<br><br>Intervenor-Defendants/Appellees. | Arizona Supreme Court<br>No. CV-25-0089-PR<br><br>Court of Appeals<br>Division Two<br>No. 2 CA-CV 24-0241<br><br>Maricopa County<br>Superior Court<br>No. CV2024-050553 |

**CERTIFICATE OF COMPLIANCE**


Joshua Bendor (# 031908)
Joshua Whitaker (# 032724)
Kara Karlson (# 029407)
Karen Hartman-Tellez (# 021121)
Kyle Cummings (# 032228)
OFFICE OF THE ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-8323

Joshua.Bendor@azag.gov
Joshua.Whitaker@azag.gov
Kara.Karlson@azag.gov
Karen.Hartman@azag.gov
Kyle.Cummings@azag.gov
adminlaw@azag.gov (court use only)
ACL@azag.gov (court use only)

*Attorneys for Arizona Secretary of State Adrian Fontes*

Pursuant to the Court's Order dated August 20, 2025, the undersigned certifies that the accompanying Supplemental Brief complies with that Order and the governing Arizona Rules of Civil Appellate Procedure. The brief is double-spaced and uses type of at least 14 points. The brief contains 20 pages, not including the cover, table of contents, table of authorities, and signature page.

RESPECTFULLY SUBMITTED this 8th day of September, 2025.

KRISTIN K. MAYES, ARIZONA
ATTORNEY GENERAL

By /s/ Joshua Whitaker
Joshua Bendor
Joshua Whitaker
Kara Karlson
Karen Hartman-Tellez
Kyle Cummings
2005 N. Central Ave.
Phoenix, Arizona 85004

*Attorneys for Arizona Secretary of State Adrian Fontes*

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**CERTIFICATE OF SERVICE**


Joshua Bendor (# 031908)
Joshua Whitaker (# 032724)
Kara Karlson (# 029407)
Karen Hartman-Tellez (# 021121)
Kyle Cummings (# 032228)
OFFICE OF THE ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-8323

Joshua.Bendor@azag.gov
Joshua.Whitaker@azag.gov
Kara.Karlson@azag.gov
Karen.Hartman@azag.gov
Kyle.Cummings@azag.gov
adminlaw@azag.gov (court use only)
ACL@azag.gov (court use only)

*Attorneys for Arizona Secretary of State Adrian Fontes*

The undersigned certifies that on September 8, 2025 (today), the Secretary of State's Supplemental Brief and accompanying Certificate of Compliance and this Certificate of Service were electronically filed with the Clerk's Office, and pursuant to Arizona Rules of Civil Appellate Procedure 4(f), a copy was e-served via AZTurboCourt to the following:

Christopher O. Murray (*admitted pro hac vice*)
Julian R. Ellis, Jr. (*admitted pro hac vice*)
FIRST & FOURTEENTH PLLC
2 N. Cascade Avenue, Suite 1430
Colorado Springs, Colorado 80903
Telephone: (719) 428-4937
chris@first-fourteenth.com
julian@first-fourteenth.com

Kurt Altman
Ashley Fitzwilliams
KURT M. ALTMAN, P.L.C.
ALTMAN LAW + POLICY
12621 N. Tatum Boulevard, Suite 102
Phoenix, Arizona 85032
Telephone: (602) 491-0088
admin@altmanaz.com

*Attorneys for Plaintiffs/Appellants/Respondents Republican National Committee, Republican Party of Arizona LLC, and Yavapai County Republican Party*

Roy Herrera
Daniel A. Arellano
Jillian L. Andrews
Austin T. Marshall
Herrera Arellano LLP
1001 North Central Avenue, Suite 404
Phoenix, Arizona 85004
roy@ha-firm.com
daniel@ha-firm.com
jillian@ha-firm.com
austin@ha-firm.com

Alexis E. Danneman
Matthew Koerner
Perkins Coie LLP
2525 E. Camelback Road, Suite 500
Phoenix, Arizona 85016
ADanneman@perkinscoie.com
MKoerner@perkinscoie.com

John M. Devaney
Perkins Coie LLP
700 Thirteenth Street NW, Suite 600
Washington, DC 20005
JDevaney@perkinscoie.com

*Attorneys for Intervenor-Defendants/Appellees Democratic National Committee and the Arizona Democratic Party*

D. Andrew Gaona
Austin C. Yost
Coppersmith Brockelman PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
agaona@cblawyers.com
ayost@cblawyers.com

Lalitha Madduri
Daniel J. Cohen
Elena Rodriguez-Armenta
Elias Law Group LLP
250 Massachusetts Ave NW, Suite 400
Washington, D.C. 20001
lmadduri@elias.law
dcohen@elias.law
erodriguezarmenta@elias.law

*Attorneys for Intervenor-Defendants/Appellees Arizona Alliance for Retired Americans and Voto Latino*

RESPECTFULLY SUBMITTED this 8th day of September, 2025.

KRISTIN K. MAYES, ARIZONA
ATTORNEY GENERAL

By /s/ Joshua Whitaker
Joshua Bendor
Joshua Whitaker
Kara Karlson
Karen Hartman-Tellez
Kyle Cummings
2005 N. Central Ave.
Phoenix, Arizona 85004

*Attorneys for Arizona Secretary of State Adrian Fontes*