

ARIZONA COURT OF APPEALS  
DIVISION TWO

**Arizona Free Enterprise  
Club, et al.,**

Appellants,

v.

**Adrian Fontes, in His Official  
Capacity as the Secretary of  
State,**

Appellee,

and

**Arizona Alliance of Retired  
Americans, et al.,**

Intervenors/Appellees.

No. 2 CA-CV 2024-0221

Yavapai County  
Superior Court

No. S1300CV202300202

FILED WITH WRITTEN  
CONSENT OF ALL  
PARTIES

**BRIEF OF *AMICUS CURIAE* NEAL KELLEY, WITH EIGHT ELECTION  
OFFICIALS SIGNING ON, IN SUPPORT OF THE  
SECRETARY OF STATE**

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## INTERESTS OF *AMICUS* AND ADDITIONAL SIGNATORIES<sup>1</sup>

*Amicus* and additional signatories are a bipartisan group of current and former election officials with experience administering and overseeing mail voting systems, including the process of verifying signatures on ballots by mail. *Amicus* and eight election officials signing on in support of the brief include five officials from counties in Arizona, two former secretaries of state, and two officials from counties in other states (collectively “election officials”):

- **Michele Forney**, Elections Director, Pinal County, Arizona (former) (2015–2020);
- **Patty Hansen**, Recorder, Coconino County, Arizona (2013–present);

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<sup>1</sup> All parties consented in writing to the filing of this brief. *See* Ariz. R. Civ. App. P. 16(b)(1)(A). This brief is sponsored by the Brennan Center for Justice. *See* Ariz. R. Civ. App. P. 16(b)(3). No party or its counsel authored this brief in whole or in part. No person or entity — other than the Brennan Center — contributed money that was intended to fund preparing this brief.

- **Candace Owens**, Recorder, Coconino County, Arizona (former) (1993–2012);
- **Tammy Patrick**, Federal Compliance Officer, Maricopa County Elections Department, Arizona (former) (2003–2014);
- **Helen Purcell**, Recorder, Maricopa County, Arizona (former) (1989–2017);
- **Trey Grayson**, Secretary of State, Kentucky (former) (2004–2011);
- **Kim Wyman**, Secretary of State, Washington (former) (2013–2021);
- **Dana DeBeauvoir**, Clerk, Harris County, Texas (former) (1987–2022); and
- **Neal Kelley**, Registrar of Voters, Orange County, California (former) (2005–2022) (as *amicus curiae*).

Their interest in this case arises from their mission to protect the integrity of mail voting and ensure that mail ballots are processed

fairly and that eligible votes are counted. Election officials have collectively overseen the processing of millions of mail ballots under the signature-verification system at issue in this case or highly similar systems in other states.

Appellants seek to require Arizona election officials to employ a more error-prone and inefficient system in which election staff can only compare ballot signatures to a limited category of election documents. Without explaining how, they characterize their proposed approach as “encapsulat[ing] a sensible equilibrium between flexibility and integrity in the signature verification process” by reducing “erroneous validation[s].” [[OB 9/23/2024](#) ep 19]. In fact, the exact opposite is true.

Appellants’ narrow interpretation of Arizona law would increase the risk that lawful votes are not counted and worsen the administrative burden on election officials — a risk the Arizona legislature addressed when it wrote the law that Appellants now challenge. And the timing for this risk could not be worse. Election officials and staff are already under stress, a problem we see

reflected in unprecedented turnover rates and losses of institutional experience.<sup>2</sup> Accordingly, election officials respectfully submit this brief to underscore the alarming policy ramifications of adopting Appellants' interpretation.

## INTRODUCTION

Arizona's Constitution enshrines an express fundamental right to vote. Ariz. Const. art. 2, § 2; *id.* art. 2 § 21. *See also Harrison v. Laveen*, 67 Ariz. 337, 342 (1948) (“To deny the right to vote, where one is legally entitled to do so, is to do violence to the principles of freedom and equality.”). Consistent with this right, the Arizona

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<sup>2</sup> *See, e.g.,* Ruby Edlin & Lawrence Norden, *Poll of Election Officials Shows High Turnover Amid Safety Threats and Political Interference*, Brennan Ctr. for Just. (Apr. 25, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/poll-election-officials-shows-high-turnover-amid-safety-threats-and> (discussing how, in the face of rising threats and harassment, 11 percent of election officials surveyed were very or somewhat likely to leave their positions before November 2024); Joshua Ferrer, Daniel M. Thompson & Rachel Orey, *Election Official Turnover Rates from 2000-2024*, Bipartisan Policy Ctr. (Apr. 9, 2024), <https://bipartisanpolicy.org/report/election-official-turnover-rates-from-2000-2024> (“Increasing demands have coincided with widespread reports of threats and harassment that put the physical and psychological safety of election officials at risk.”).

legislature has created a robust early voting system. Voters can request an early ballot by mail by enrolling in the Active Early Voting List or by making a one-time request for an early ballot. See *Early Voting*, Ariz. Sec’y of State, <https://azsos.gov/elections/voters/voting-elections/early-voting> (last visited Nov. 18, 2024). And Arizonans have overwhelmingly taken to voting by mail. Nearly 90 percent of Arizona voters voted by mail in the 2020 general election and, more generally, “[a]pproximately 80% of Arizona voters” regularly choose to do so. See *Ballot by Mail*, Citizens Clean Elections Comm’n, <https://www.azcleanelections.gov/how-to-vote/early-voting/vote-by-mail> (last visited Nov. 18, 2024).

As one part of a series of checks that secures mail-in voting, Arizona uses a signature-matching process — as do thirty other states — to verify the identity of voters who cast ballots by mail.<sup>3</sup> To submit a ballot by mail, a voter must place the ballot in a provided

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<sup>3</sup> For a list, see *Table 14: How States Verify Voted Absentee/Mail Ballots*, Nat’l Conf. of State Legis. (Oct. 9, 2024), <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>.

envelope and sign an affidavit on the envelope. *See* A.R.S. §§ 16-547, 16-548. When a county recorder or other election official receives the envelope, the official must compare the signature on the ballot affidavit envelope to the voter’s signature on the voter’s “registration record.” *Id.* § 16-550(A). If the signatures appear inconsistent, the official must then notify the voter and attempt to cure the inconsistency. *See id.*

In keeping with Arizona law and scientific best practices, the Arizona Secretary of State has interpreted the signatures encompassed in a voter’s “registration record,” and therefore available to be compared, to include any “known signatures from [] official election documents in the voter’s registration record, such as signature rosters, prior early ballot affidavits, and early ballot/AEVL request forms.”<sup>4</sup> *Ariz. Sec’y of State, Elections Procedures Manual,*

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<sup>4</sup> Provided the Secretary is acting within the scope of his authority

83 (Dec. 2023), [https://apps.azsos.gov/election/files/epm/2023/EPM\\_20231231\\_Final\\_Edits\\_to\\_Cal\\_1\\_11\\_2024.pdf](https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf). Appellants, however, attempt to read the word “registration” in isolation, arguing that the phrase “registration record” limits officials to documents that are used to “updat[e]” a voter’s registration. [[OB 9/23/2024](#) ep 16-17]. They further assert, with no support, that their reading will increase the accuracy of the process. As explained in the Secretary’s and Intervenors’ briefs, principles of statutory interpretation refute Appellants’ claims. [[Sec’y AB 11/4/2024](#) ep 20-39; [Mi Familia Vota AB 11/4/2024](#) ep 6, 10-15]. As election officials explain below, principles of accuracy and efficiency also support the Secretary’s position.

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and not contravening a statute, his Elections Procedures Manual carries the force of law. *See Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63 ¶ 16 (2020) (“Once adopted, the [Elections Procedures Manual] has the force of law. . . .”); *cf. Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021) (“[A]n [Elections Procedures Manual] regulation that exceeds the scope of its statutory authorization or contravenes an election statute’s purpose does not have the force of law.”).

Drawing from their substantial experience administering elections in Arizona and across the country, election officials agree with the Secretary: comparing a voter's signature to a greater number of signature samples from a wider range of official election documents signed over a longer time-period allows for a more accurate and efficient signature-matching process. Restricting this comparison to fewer signatures, on the other hand, would make signature matching more difficult for already-overburdened election officials and increase the risk that an authentic signature will be rejected — which, ultimately, could disenfranchise Arizonans.

Thus, not only is the Secretary's position consistent with statute, it also is supported by scientific literature and mirrors the practices of most states that use signature-matching to verify the identity of voters who cast ballots by mail. For these reasons, the Secretary's position, as laid out in the Election Procedures Manual, comports with the statutory directive to “achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting.” A.R.S. § 16-452(A)-(C).



## ARGUMENT

### **I. Experts Recommend Comparing a Signature Against More Than One Sample to Ensure an Accurate Match.**

The Secretary's interpretation of "registration record" is supported by a scientific consensus: the more sample signatures election staff have available to compare, the more accurate the signature verification process is.

According to experts, a person's signature can vary over time due to biological, environmental, or other factors. *See Forensic Handwriting Examination and Human Factors: Improving the Practice Through a Systems Approach*, Nat'l Inst. of Standards & Tech. & Nat'l Inst. of Just. 28 (May 2021), <https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8282r1.pdf> (noting that "[g]enerally, the [Forensic Document Examiner] will prefer to see as many known specimens as are available" when conducting signature verification).

Courts have heeded this fact. *See, e.g., Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1320 (11th Cir. 2019) (relying in part on expert testimony by a forensic document examiner indicating that

“innocent factors like the writer’s body position, writing surface, type of pen, and mental and physical states, as well as the surrounding noise, can alter a person’s signature and produce mismatches” to support its holding that Florida’s signature verification system imposes a serious burden on the right to vote); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 212 (D.N.H. 2018) (relying in part on an opinion from the same expert explaining that a person’s signature can vary for reasons of “age, physical and mental condition, disability, stress, accidental occurrences, inherent variances in neuromuscular coordination, and stance” to support its holding that New Hampshire’s signature verification system entails a risk of erroneous deprivation); *Frederick v. Lawson*, 481 F. Supp. 3d 774, 785, 796 (S.D. Ind. 2020) (same for Indiana’s signature verification system).

So, too, have election officials and those who train them to do this work. *Mo. Sec’y of State Records Regarding Abortion Initiative Petition*, Am. Oversight 398, 400 (July 30, 2024), <https://s3.documentcloud.org/documents/25052779/missouri-secretary-of-state-records-regarding-abortion-initiative-petition.pdf>

(featuring guidance from the office of Missouri Secretary of State Jay Ashcroft informing local elections officials that “[l]ooking at more than one voter registration database signature, if available, may help with your analysis because people develop certain signature habits over time.”); Larry Buchanan & Alicia Parlapiano, *Two of These Mail Ballot Signatures Are by the Same Person. Which Ones?*, N.Y. Times (Oct. 7, 2020), <https://www.nytimes.com/interactive/2020/10/07/upshot/mail-voting-ballots-signature-matching.html> (quoting a former Arizona election official attributing mismatching signatures to, among other reasons, “broken arms,” “signing with the other hand,” strokes, and voters signing a ballot affidavit “on their dashboard while they were driving down the highway[,] . . . on top of the blue collection box at the post office, or on top of their mailbox”); Susie Armitage, *Handwriting Disputes Cause Headaches for Some Absentee Voters*, ProPublica (Nov. 5, 2018, 11:56 AM), <https://www.propublica.org/article/handwriting-disputes-cause-headaches-for-some-absentee-voters> (quoting an FBI-trained handwriting analyst — who has trained Colorado

election workers in signature verification — explaining that an individual’s signature can be affected by changes in that person’s “[h]ealth, eyesight, [or] medications” and differences in “the writing surface, paper[, or] pen used”).

Some voters face a particularly high risk of their signatures appearing inconsistent. These higher-risk groups include voters who are young,<sup>5</sup> who are elderly, who have disabilities,<sup>6</sup> or whose primary

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<sup>5</sup> As a recent example, thousands of younger voters in Nevada needed to verify signatures on their ballots before the state’s deadline five days after the election. *See Rachel Pannett & Shawn Boburg, Gen Z Voters’ Signatures Are Causing Problems For Nevada Ballot Counters, WASH. POST (Nov. 6, 2024), <https://www.washingtonpost.com/politics/2024/11/06/nevada-ballots-digital-signatures/>* (quoting the Nevada Secretary of State’s observation that younger voters especially “may not have a set signature developed yet”).

<sup>6</sup> Signatures can change over time for individuals who may not be able to sign in a small area on an envelope, such as those who have cognitive disabilities or trouble with their hands or are aging with disability. *See Jen Fifield & Hannah Bassett, Signed. Sealed. Rejected. Arizona Rejects Thousands of Mail Ballots for Mismatched*

language is not English. *See, e.g., Frederick*, 481 F. Supp. 3d at 785-86, 795 (noting that a “variety of intentional and unintentional factors, including age, health, native language, and writing conditions” can cause a person’s signature to vary, which is why “a minimum of ten signature samples are recommended . . . and more signature samples may be recommended for individuals who are impaired, elderly, or have difficulty signing documents”); *La Follette v. Padilla*, No. CPF-17-515931, 2018 WL 3953766, at \*1 (Cal. Super. Ct. Mar. 5, 2018) (“Experts cite several reasons why a person’s signature may differ on two occasions: physical disability, injury, a primary language that does not use Roman characters (*e.g.*, many Asian Americans), or simply the passage of time.”).

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*Voter Signatures. But Flaws In the Process Are Disproportionately Affecting Young, New, and Unaffiliated Voters.*, Votebeat (Oct. 16, 2024), <https://www.votebeat.org/arizona/2024/10/16/maricopa-county-signature-verification-process-flaws-disenfranchisement>.

For example, one lawyer’s paralysis due to muscular dystrophy led to his signature initially being flagged as a mismatched signature. *Id.*

Arizona legislators heard testimony to this effect when considering Senate Bill 1054, the 2019 bill that amended section 16-550 to codify the process by which election officials compare signatures to the “registration record” and notify voters of perceived inconsistencies. Speaking to the Senate Judiciary Committee, a representative from the League of Women Voters of Arizona stressed that a person’s vote “is too precious to be lost as a result of a signature that has changed” and explained that her own “signature has been questioned because it is [] a scrawl these days.” *See* Senate Comm. on Judiciary Hearing, Ariz. State Legis. (Jan. 24, 2019), <https://www.azleg.gov/videoplayer/?eventID=2019011156&startStreamAt=612> [at 13:15 – 13:26]. A representative from the Arizona Recordors Association seconded that testimony, reiterating that “people’s signatures [] change over time” due to, among other reasons, health events ranging in severity from a broken hand to “massive strokes.” *See id.* at 17:03 – 17:10. And in response to that testimony, one senator questioned whether medications might also

affect a person's signature, specifically citing medications taken by elderly voters. *See id.* at 17:30 – 17:53.

Modern technology can increase the risk of mismatches between valid signatures. Electronic signature pads are used at Arizona Motor Vehicle Division Driver's License offices and in some counties' vote locations. *See* Ariz. Sec'y of State, *Signature Verification Guide* 10 (Feb. 2024), [https://azsos.gov/sites/default/files/docs/2024\\_AZ\\_Signature\\_Verification\\_Guide\\_4.pdf](https://azsos.gov/sites/default/files/docs/2024_AZ_Signature_Verification_Guide_4.pdf).

Signatures from these pads then become part of a voter's "registration record" used to verify a voter's signature. *Id.* But, as the Secretary's guidance has recognized, an electronic signature "may not be as precise" and can even look "blurry" or "messy" compared to a handwritten signature. *Id.* The prevalence of electronic signatures makes it even more important that election workers be permitted to review a voter's entire record, which may include other handwritten signatures, to verify the handwritten signature on that voter's mail-in ballot. *See id.*; *see also, e.g., La Follette*, 2018 WL 3953766, at \*1 (explaining how voter registrations

completed on computer touch pads “yield[] signatures that differ in appearance from those made on paper ballot envelopes”). The Secretary’s guidance permits exactly that. It provides that an election official “may always look through the voter’s entire signature history” to find “other signatures on file that may be easier to read and distinguish” compared to “the electronic signature found in the voter’s history.” Ariz. Sec’y of State, *Signature Verification Guide* 11 (Feb. 2024).

To sum up, not only is the Secretary’s interpretation of “registration record” the correct reading of Arizona statutory law, but it also comports with a broad consensus on how to most accurately review signatures for authenticity. Rather than unnecessarily restricting the number of signatures available to county recorders or election officials who are conducting a signature match, as Appellants seek to require, the Secretary’s interpretation authorizes an official to compare the ballot and affidavit signature against all known examples from official election documents in a voter’s file.



## **II. Having Fewer Signatures to Match Will Burden Elections Officials and Voters.**

A more accurate signature-verification process promotes greater efficiency in election administration. Conversely, an inaccurate process that produces false flags would burden election officials and voters — particularly for ballots that arrive on or just before Election Day.

Arizona election law rightly ensures that ballots with inconsistent signatures are not immediately discarded. When a “county recorder or other officer in charge of elections” determines that the signature on a voter’s ballot and affidavit “is inconsistent with the elector’s signature on the elector’s registration record,” the officer must “make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature.” A.R.S. § 16-550(A). As Appellants acknowledge, this cure process provides necessary protections to reduce the risk that eligible voters are disenfranchised based on perceived inconsistencies across signatures. [[OB 9/23/2024](#) ep 19]. But in Arizona, where elections have been decided by just a

few hundred votes, ballots rejected because mismatched signatures cannot be cured — statewide, 7,732 ballots were rejected in 2020 for this reason — could affect the outcome of an election. *See* Fifield & Bassett, *supra*; U.S. Election Assistance Commission, *Election Administration and Voting Survey 2020 Comprehensive Report 35* (Aug. 2021), [https://www.eac.gov/sites/default/files/document\\_library/files/2020\\_EAVS\\_Report\\_Final\\_508c.pdf](https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf).

The cure process also takes substantial time and resources from election administrators. If a voter drops off their ballot on or just before Election Day and inconsistencies across their signatures are found, Arizona law provides a short cure period after Election Day — five business days for elections involving federal office and three business days for all other elections. *See* A.R.S. § 16-550(A). Earlier this year, as part of a set of measures to ensure timely certification of election results, the legislature shortened the signature cure period for elections for federal office in 2024, 2025, and 2026, prohibiting voters from correcting their signatures after

more than five *calendar* days. See 2024 Ariz. Legis. Serv. Ch. 1 (H.B. 2785), 2024 Ariz. Sess. Laws, ch. 1, § 22 (56th Leg., 2nd Reg. Sess.). Accordingly, voters whose ballots were not received until Election Day on Tuesday, November 5, 2024, had only until Sunday, November 10, 2024, at 5 p.m. to cure their early ballot signatures. *Am. Civil Liberties Union of Ariz. v. Richer*, No. CV-24-0263-SA, 2024 WL 4792864, at \*1 (Ariz. Nov. 10, 2024).

As local election officials and voters adjust to this compressed cure period, a flood of signature mismatches could make it difficult — if not impossible — to provide sufficient notice to flagged voters to allow them to cure their signatures. Many ballots are dropped off at the polls close to or on Election Day.<sup>7</sup> That gives elections staff little

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<sup>7</sup> In the 2022 general election, approximately 290,000 ballots — approximately 9 percent of all ballots cast — were dropped off at polling locations on Election Day. Richard Ruelas, *Why Did So Many Arizona Voters Hold On To Their Mail-In Ballots Until The Last Day?*, Ariz. Republic (Nov. 10, 2022), <https://www.azcentral>

time to process ballots that are mailed back, put in a ballot drop box, or otherwise returned before Election Day. Case in point, as of Friday, November 8, 2024, at 8 p.m. — less than 48 hours before the cure deadline — over 250,000 early mail ballots statewide had not been checked for signatures or otherwise verified. Emergency Petition for Special Action, *Am. Civil Liberties Union of Ariz. v. Richer*, No. CV-24-0263-SA, at \*2 (Nov. 9, 2024), available at <https://www.aclu.org/cases/american-civil-liberties-union-of-arizona-v-richer?document=Emergency-Petition-for-Special-Action#legal-documents>. After Election Day, eligible voters could receive as little

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[.com/story/news/politics/elections/2022/11/10/arizona-election-results-delayed-voters-late-return-mail-ballots/8320472001](https://www.aznews.com/story/news/politics/elections/2022/11/10/arizona-election-results-delayed-voters-late-return-mail-ballots/8320472001); see also Ariz. Sec’y of State, State of Arizona Official Canvass: 2022 General Election – Nov 08, 2022 1 (Dec. 5, 2022), [https://apps.azsos.gov/election/2022/General/canvass/2022dec05\\_general\\_election\\_canvass\\_web.pdf](https://apps.azsos.gov/election/2022/General/canvass/2022dec05_general_election_canvass_web.pdf) (listing total number of ballots cast).

as one day to correct signature mismatches,<sup>8</sup> increasing the likelihood that some Arizonans slip through the cracks and are effectively disenfranchised — an outcome at odds with Arizona’s constitutional commitment to protect the fundamental right to vote.

Even for ballots delivered well before Election Day, local election officials will have to take more time and dedicate more resources to deal with swaths of signature mismatches, potentially delaying the processing of early ballots and making it harder to meet deadlines for canvassing returns. And local election officials in Arizona publish election results on an ongoing basis, so a delay in ballot processing would also postpone the release of results. As Stephen Richer, the Maricopa County recorder, recently noted, delays in the announcement of election results due to election administration — including signature-matching and curing — can

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<sup>8</sup> When it comes to voters whom officials cannot reach by phone to cure their ballots, some voters may not get the message in time. In a recent attempt to mail notices to the 1,798 Maricopa County voters whose ballots were rejected in the 2022 midterm election due to signature mismatches, only about half of the letters were delivered within five days. Fifield & Bassett, *supra*.

hinder public confidence in elections, stoke misinformation about election integrity, and lead to harassment and even threats against public officials. See Stephen Richer, *Arizona Election Law Reform* 5-7 (Jan. 2023), [https://elections.maricopa.gov/asset/jcr:2587d93a-a545-49e1-b941-1dc19e3089c/Arizona%20Election%20Law%20Reform%20Proposals\\_Recorder%20Richer.pdf](https://elections.maricopa.gov/asset/jcr:2587d93a-a545-49e1-b941-1dc19e3089c/Arizona%20Election%20Law%20Reform%20Proposals_Recorder%20Richer.pdf).

In short, adopting the more error-prone signature-matching process Appellants propose — one which does not correspond with the recommendations of experts — would likely only increase the volume of ballots that must be handled through the notice-and-cure process set forth in section 16-550(A). The resulting administrative burden risks prolonging the processing of early ballots, delaying the publishing of election results, and, most importantly, disenfranchising voters.

### **III. Most Other States That Conduct Signature-Matching for Ballots by Mail Allow Election Workers to Compare Ballot Signatures to Multiple Known Examples.**

As set forth above, the Secretary's signature-matching policy ensures a more accurate match and a process more conducive to timely, accurate, and fair results. That is why most other states that

conduct signature-matching for ballots by mail mirror the Secretary's policy and not Appellants' proposed approach.

For example, in Colorado, election judges compare the signature on a mail ballot with the signature “stored in the statewide voter registration system.” Colo. Rev. Stat. § 1-7.5-107.3(1); *see also* Colo. Sec’y of State, *Signature Verification Guide* 10 (Sept. 13, 2018), <https://coloradosos.gov/clerk/policyLegal/electionPolicy/SignatureVerificationGuide.pdf>. In Nevada, similarly, a county clerk manually checking the signature used for a mail ballot must compare the signature “against all signatures of the voter available in the records of the clerk.” Nev. Rev. Stat. § 293.269927(3)(a). And under Texas law, election officials “may [] compare the signatures” on a mail-in ballot with not only “the signature on the voter’s ballot application” but also “with any known signature of the voter on file with the county clerk or voter registrar to determine whether the signatures are those of the voter.” Tex. Elec. Code § 87.027(i).

Some states, like Arizona, have statutory directives to compare signatures to a voter’s “registration record.” In those states too,

consistent with Arizona’s Election Procedures Manual, officials consult a range of signatures beyond those provided to create or update a voter registration. In Kansas, for example, a county election official must “verify the signature of each elector on the return identification envelope with the signature on the elector’s *registration record*” and, if those signatures do not match, notify the voter and provide an opportunity to cure. Kan. Stat. Ann. § 25-433(e) (emphasis added). The Kansas Secretary of State has promulgated regulations to require that a “voter’s signature shall be compared to as many recorded signatures as possible from the voter registration database.” Kan. Admin. Regs. § 7-36-9(g)(1).

In Utah, similarly, poll workers handling mail ballots must “first[] compare the signature of the voter on the affidavit of the return envelope to the signature of the voter in the voter *registration records*.” Utah Code Ann. § 20A-3a-401(2)(b) (emphasis added). Those records include a voter’s previous ballots. *See Securing Your Mail Ballot*, Vote.Utah.gov, <https://vote.utah.gov/securing-your-mail-ballot/> (last visited Nov. 18, 2024) (explaining that if a voter’s



signature on their ballot envelope does not match, “[y]our county election officials will compare the signature on your ballot envelope with the signature *on your previous ballots* and your voter registration form.”) (emphasis added). Kentucky officials do likewise. See Ky. Rev. Stat. Ann. §§ 117.087(3)(c), 186.010(22) (allowing for “registration record” comparisons with an identity card, such as a voter’s identification card or driver’s license; mail-in or absentee ballot application; or voter registration card). Appellants, in contrast, would limit officials to just four types of documents that update a voter’s registration.<sup>9</sup> That would make Arizona an outlier.

The bottom line is that in many states like Arizona with laws that provide for signature-matching against the voter’s “registration

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<sup>9</sup> Appellants submit that only four types of documents should be used for signature-matching: the voter’s initial registration form, any amendments submitted through the Motor Vehicles Division, an early ballot request or response to an Active Early Voting List Notification, or a provisional ballot submission envelope. [[OB 9/23/2024](#) ep 17].

record,”<sup>10</sup> those laws have authorized election officials to compare the signature on a ballot envelope to a wide range of election-related samples that are available.

#### **IV. The Secretary’s Interpretation of “Registration Record” Advances the Legislature’s Intent to Expand the Number of Documents Used for Signature-Matching.**

In addition to squaring with best practices among states, the Secretary’s signature-matching procedure furthers the goals of Arizona’s legislature and its constitution. Arizona courts have emphasized that plain language analysis “does not focus on statutory words or phrases in isolation,” but rather that “words in statutes should be read in context in determining their meaning.” *Glazer v. State*, 244 Ariz. 612, 614 ¶ 10 (2018) (quoting *Stambaugh v. Killian*,

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<sup>10</sup> This language sets Arizona apart from the few states that limit — usually with explicit statutory language — the documents that may be used for signature-matching. *See, e.g.*, Fla. Stat. § 101.68(1) (directing a county supervisor to compare the signature on the back of a voter’s mail-in ballot “with the signature of the elector in the registration books or the precinct register”); Mont. Code Ann. § 13-13-241(1)(a) (directing an election administrator to compare the signature on a voter’s mail-in ballot envelope with “the signature of the elector or elector’s agent on the absentee ballot request or on the elector’s voter registration form”).

242 Ariz. 508, 509 ¶ 7 (2017)); *see also State v. Santacruz*, 2 CA-CR 2021-0088, 2022 WL 17578875, at \*2 (Ariz. Ct. App. Dec. 12, 2022) (quoting *Glazer*). In contrast, Appellants’ narrow focus on the words “registration record” overlooks the impact of amendments passed by the Arizona legislature in 2019 and 2024. [*Compare* [OB 9/23/2024](#) ep 20-24, *with* [Sec’y AB 11/4/2024](#) ep 20-23]. Through those amendments, the legislature repeatedly endorsed comparing a voter’s ballot affidavit signature with a range of available signatures.

Prior to 2019, Arizona had statutory language like what Appellants propose — but that language, among other factors, led to due process concerns due to high rates of ballots by mail being rejected. That language directed officials to specifically consult a voter’s “registration form” to verify their ballot signature. *See* 2007 Ariz. Sess. Laws, ch. 183, § 5 (48th Leg., 1st Reg. Sess.) (codified at A.R.S. § 16-544). That narrow language, coupled with a lack of uniform standards for comparing signatures or notifying voters whose signatures did not match, contributed to thousands of ballots

that were rejected. This was because officials were not satisfied that voters' ballot signatures matched voters' registration signatures.<sup>11</sup>

In response, the legislature amended the relevant provision of A.R.S. § 16-550(A) in 2019 to direct officials to consult the voter's entire "registration record." *See* 2019 Ariz. Sess. Laws, Ch. 39, § 2 (54th Leg., 1st Reg. Sess.) (codified at A.R.S. § 16-550(A)). And the 2019 amendment provided for a cure period: if a county recorder or other election official deems the signature on a ballot affidavit "inconsistent" with that record, the official must "make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature." *See id.* In effect, the 2019 amendment

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<sup>11</sup> In 2016, for example, mail ballots accounted for nearly three-quarters of votes statewide, but 2,657 of these ballots were rejected. *See* Letter from Campaign Legal Center, Am. Civil Liberties Union, Scharff PLC & ACLU of Arizona to Secretary of State Michele Regan regarding Arizona's absentee ballot signature matching procedures (Oct. 22, 2018), <https://campaignlegal.org/sites/default/files/2018-10/Letter%20to%20Arizona%20Secretary%20of%20State%20Michele%20Reagan%20Regarding%20Signature%20Matching%20Process.pdf>.

expanded the pool of sample signatures available for matching purposes and set forth a process for notifying voters of inconsistent signatures and enabling them to cure their ballots.

The next year, the Secretary issued guidance under the goals of the 2019 amendment. According to the 2020 Secretary of State's Signature Verification Guide, a county recorder or other election official "may always look through the voter's *entire signature history* to determine if the current ballot affidavit signature was written by the registered voter." Ariz. Sec'y of State, *Signature Verification Guide* 10 (July 2020), [https://azsos.gov/sites/default/files/docs/2020\\_Signature\\_Verification\\_Guide.pdf](https://azsos.gov/sites/default/files/docs/2020_Signature_Verification_Guide.pdf) (emphasis added). This means that an official can refer to every signature in a voter's record in the registration database, not just the signature on file from a voter's registration form. The Secretary reiterated this understanding in the 2023 Election Procedures Manual, *see* Ariz. Sec'y of State, *Elections Procedures Manual* 83 (Dec. 2023), and in the 2024 update to the Signature Verification Guide, *see* Ariz. Sec'y of State, *Signature Verification Guide* 11 (Feb. 2024).

Earlier this year, the Arizona legislature amended section 16-550 with a new section 16-550.01 that codifies the signature-matching procedures in the Secretary’s Signature Verification Guide. 2024 Ariz. Sess. Laws ch. 1, § 7 (56th Leg., 2nd Reg. Sess.). While Appellants note in a single sentence that the new section 16-550.01 incorporates “certain handwriting matching criteria formulated by the Secretary,” [\[OB 9/23/2024 ep 20\]](#), that glosses over the 2024 amendment’s impact for signature-matching. In section 16-550.01, the legislature also required election officials to use the Secretary’s guide “as [a] reference” when matching signatures,” A.R.S. § 16-550(F), and stated that it “intends [section 16-550.01] to codify procedures based on the 2020 secretary of state signature verification guide,” *id* at (H). In other words, as the Secretary points out, this section adopted the signature verification guide into law. [\[Sec’y AB 11/4/2024 ep 14\]](#). And, as the Superior Court here correctly emphasized, the legislature adopted the Secretary’s definition of registration record when it both reenacted section 16-550 and enacted section 16-550.01. [\[See ROA 69 ep 3\]](#).

In short, the legislature’s 2019 amendment to Arizona law clarified that election officials can consult a voter’s entire “registration record” — not just a registration or update form — to verify a ballot affidavit signature. The Secretary’s 2020 Signature Verification Guide accordingly directed election officials to look at a voter’s entire signature history. The legislature’s 2024 amendment endorsed that direction. Thus, the Secretary’s interpretation of section 16-550 as authorizing election workers to consult known signatures from any official election document in a voter’s file comports with both amendments. And by protecting against the disenfranchisement of eligible voters, the Secretary’s interpretation fulfills the Arizona Constitution, which recognizes “consent of the governed,” Ariz. Const. art. 2, § 2, guarantees “free and equal” elections, *id.* art. 2 § 21, and safeguards the “free exercise of the right of suffrage,” *id.*

### CONCLUSION

For the reasons set forth above, this Court should affirm the judgment of the Superior Court. Not only is the Secretary’s

signature-matching policy consistent with the governing statute, but it also reflects the best practice of comparing a voter's signature to samples from a wide range of official election documents. This practice protects voters against inadvertent rejections, and helps to ensure an orderly, efficient, and timely voting process — objectives consistent with the promises of the Arizona Constitution.

RESPECTFULLY SUBMITTED this 20th day of November, 2024.

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## CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Brief of *Amicus Curiae* Neal Kelley, with Eight Election Officials Signing On, In Support of the Secretary of State uses type of at least 14 points, is double-spaced, and averages no more than 280 words per page. Under Ariz. R. Civ. App. P. 14(a)(4), this Brief contains 5,132 words, according to the word count of the processing system used to prepare the Notice.

/s/Paul K. Charlton  
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## CERTIFICATE OF SERVICE

Pursuant to Rule 4(c) of the Arizona Rules of Court Appellate Procedure, the undersigned certifies that the Brief of *Amicus Curiae* Neal Kelley, with Eight Election Officials Signing On, In Support of the Secretary of State was e-filed with the Arizona Court of Appeals, Division Two this 20th day of November, 2024, and that a copy was served via email, upon the following counsel for the parties:

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