IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ARIZONA FREE ENTERPRISE CLUB, AN ARIZONA NONPROFIT CORPORATION; RESTORING INTEGRITY AND TRUST IN ELECTIONS, A VIRGINIA NONPROFIT CORPORATION; REPUBLICAN PARTY OF ARIZONA, LLC, A STATEWIDE POLITICAL PARTY COMMITTEE; AND DWIGHT KADAR, AN INDIVIDUAL,
Plaintiffs/Appellants,

v.

ADRIAN FONTES, IN HIS OFFICIAL CAPACITY AS THE SECRETARY OF STATE,
Defendant/Appellee,

ARIZONA ALLIANCE FOR RETIRED AMERICANS AND MI FAMILIA VOTA,
Intervenor-Defendants/Appellees.

No. 2 CA-CV 2024-0221
Filed August 27, 2025

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Yavapai County
No. S1300CV202300202
The Honorable John Napper, Judge

AFFIRMED

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MEMORANDUM DECISION

Judge Sklar authored the decision of the Court, in which Presiding Judge Eckerstrom and Judge Vásquez concurred.

¶1 Plaintiffs Arizona Free Enterprise Club, Restoring Integrity and Trust in Elections, Republican Party of Arizona, LLC, and Dwight Kadar appeal from the superior court's summary-judgment ruling in favor of the Arizona Secretary of State, Arizona Alliance for Retired Americans, and Mi Familia Vota. Because the plaintiffs lack standing, we affirm the grant of summary judgment.

BACKGROUND

¶2 The plaintiffs are two social-welfare corporations concerned about election security and protecting the "rule of law" in the voting process, as well as the state Republican party and an elector. They challenge a provision of the 2023 and 2019 Elections Procedures Manuals that allows county recorders and election officials to compare early-ballot-affidavit signatures with known signatures outside those on registration-related forms. The plaintiffs argue that this provision contravenes A.R.S. § 16-550(A), which limits the signatures available for comparison to those in a voter's "registration record." The plaintiffs seek mandamus relief via an injunction preventing the secretary from enforcing the provision and declaratory relief invalidating it.

¶3 The defendants moved to dismiss on various grounds, including the plaintiffs' asserted lack of standing. The trial court denied the motions, rejecting the argument that the plaintiffs lacked standing. After all parties moved for summary judgment, the superior court granted the defendants' summary-judgment motion. The plaintiffs appealed.

¶4 While this appeal was pending, this court invalidated the 2023 Elections Procedures Manual for failure to provide a proper notice-and-comment period as required by the Administrative Procedure Act. *Republican Nat'l Comm. v. Fontes*, ___ Ariz. ___, ¶¶ 2, 8, 28, 566 P.3d 984 (App. 2025). A petition for review has been granted. Nevertheless, the parties have asked us to decide this case, in part because the next version of

the manual may include the same provision. This arguably amounts to a request for an advisory opinion in a case that may be moot, depending on our supreme court's resolution of the EPM's validity. *See Progressive Specialty Ins. Co. v. Farmers Ins. Co. of Ariz.*, 143 Ariz. 547, 548 (App. 1985) (appellate court should not give advisory opinions or decide issues other than those required to dispose of appeal under consideration). We are therefore reluctant to resolve the case. But we do so because we may resolve it on the separate justiciability doctrine of standing. The parties addressed this issue in their briefing, which was completed before this court invalidated the 2023 manual.

STANDING

¶5 We review de novo whether a party has standing to sue. *Home Builders Ass'n of Cent. Ariz. v. Kard*, 219 Ariz. 374, ¶ 8 (App. 2008). The case may proceed if only one of the plaintiffs has standing. *See City of Tucson v. Pima County*, 199 Ariz. 509, ¶ 14 (App. 2001). Because the plaintiffs appeal from the superior court's grant of summary judgment, we review that grant de novo, considering all facts in the light most favorable to the plaintiffs. *See Dinsmoor v. City of Phoenix*, 251 Ariz. 370, ¶ 13 (2021).

I. General background on standing inquiry

¶6 The standing inquiry addresses whether a party has an interest in the litigation's outcome. *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, ¶ 8 (App. 2008). Generally, to establish standing, a party must demonstrate "an injury in fact, economic or otherwise, caused by the complained-of conduct, and resulting in a distinct and palpable injury giving the plaintiff a personal stake in the controversy's outcome." *Id.*

¶7 We are not constitutionally required to "decline jurisdiction based on lack of standing." *Sears v. Hull*, 192 Ariz. 65, ¶ 24 (1998). *Compare* Ariz. Const. art. VI *with* U.S. Const. art. III, § 2, cl. 1. But we waive standing and consider the merits "only in exceptional circumstances, generally in cases involving issues of great public importance that are likely to recur." *Id.* ¶ 25. The few cases in which our supreme court has done so show its "reluctance" to waive standing and "the narrowness of this exception." *Id.*

¶8 Different standing requirements exist for the forms of relief sought by the plaintiffs—an injunction in the nature of mandamus relief and a declaratory judgment. *Compare Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, ¶ 11 (2020) (requiring plaintiff seeking mandamus relief to demonstrate beneficial interest in action to have standing), *with Ariz. Sch.*

Bds. Ass'n v. State, 252 Ariz. 219, ¶ 16 (2022) (requiring plaintiff seeking declaratory relief to demonstrate actual or real interest in action to have standing), *and Ariz. Creditors Bar Ass'n v. State*, 257 Ariz. 406, ¶ 12 (App. 2024) (requiring plaintiff seeking declaratory relief to demonstrate existing facts showing how challenged statute affects plaintiff's "rights, status, or other legal relations" to have standing (quoting A.R.S. § 12-1832)). We therefore evaluate the plaintiffs' standing under the rules applicable to those forms of relief. *See Ariz. Pub. Integrity All.*, 250 Ariz. 58, ¶¶ 10-12.

II. Standing to seek mandamus or injunctive relief

¶9 In Count One, the plaintiffs seek an injunction and mandamus relief under A.R.S. § 12-2021. That statute allows a party "beneficially interested, to compel, when there is not a plain, adequate and speedy remedy at law, performance of an act which the law specially imposes as a duty." *Id.* Standing in mandamus actions is liberally construed. *Ariz. Pub. Integrity All.*, 250 Ariz. 58, ¶ 11. It is generally sufficient to confer standing on Arizona voters if they seek to compel an elections official to "comply with Arizona law." *Id.* ¶¶ 11-12.

¶10 While this inquiry is somewhat relaxed, it is premised upon the relief being sought actually being in the nature of mandamus. *See Sears*, 192 Ariz. 65, ¶ 11 (declining to determine whether plaintiffs had standing under mandamus statute because plaintiffs' requested relief was not in nature of mandamus). We must therefore evaluate whether the remedy sought by the plaintiffs—invalidation of the relevant EPM provision—fits the definition of mandamus relief.

¶11 A mandamus action "seeks to compel a public official to perform a non-discretionary duty imposed by law." *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 231 Ariz. 366, ¶ 19 (2013). Mandamus relief is not available where the complainant alleges that a public officer misapplied or misinterpreted the applicable regulations. *See id.* ¶ 21. Moreover, mandamus actions generally require that the duty be "purely 'ministerial,'" leaving the public official with no discretion in exercising the legally-imposed duty. *Ponderosa Fire Dist. v. Coconino County*, 235 Ariz. 597, ¶ 19 (App. 2014) (quoting *El Paso Nat. Gas Co. v. State*, 123 Ariz. 219, 221 (1979)). Where the law provides the official with discretion, mandamus is available only to remedy an arbitrary act or abuse of that discretion. *Bd. of Cnty. Supervisors v. Rio Rico Volunteer Fire Dist.*, 119 Ariz. 361, 364 (App. 1978).

¶12 Here, the secretary's duty is to create the EPM. A.R.S. § 16-452. He must "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency" in voting procedures and "issue[]" the manual. § 16-452(A), (B). He also must submit the manual to the governor and attorney general for their approval within a certain timeframe before the general election. § 16-452(B).

¶13 The plaintiffs do not allege that the secretary failed to "prescribe rules," "issue[]" the manual, or timely submit the manual to the governor and attorney general as required by Section 16-452. These are the types of claims that might sound in mandamus. *See Ariz. Pub. Integrity All.*, 250 Ariz. 58, ¶¶ 15-16 (summarizing required procedures to promulgate manual). They instead allege that the secretary exceeded his legal authority by adopting a provision that, in their view, conflicts with Arizona law. But as our supreme court recently noted, albeit in a case involving different issues, mandamus relief is "typically unavailable" for a claim that the EPM conflicts with relevant statutes. *Ariz. Republican Party v. Richer*, 257 Ariz. 237, ¶ 23 (2024).

¶14 This case has parallels to *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458 (App. 2007). There, the plaintiffs requested mandamus relief based on an attorney general's opinion that they alleged erroneously stated the law. *Id.* ¶ 11. They asserted that the attorney general violated his duty by issuing the opinion. *Id.* This court rejected their argument, explaining that mandamus generally cannot compel a public official "to perform a function in a particular way if the official is granted any discretion about how to perform it." *Id.* ¶ 12. Mandamus relief, therefore, is available in such cases only when a public official "abuses that discretion." *Id.* Because the attorney-general opinion did not make law but "merely opine[d]" about it and was not "so deficient as to be a complete failure to fulfill" his legal obligation, the court concluded the attorney general did not abuse his discretion. *Id.* ¶¶ 13-17.

¶15 Here too, the secretary has at least some discretion in drafting the EPM. *See* § 16-452(A) (stating secretary must enact EPM provisions to attain and maintain "*maximum* degree of correctness, impartiality, uniformity and efficiency" on voting and ballot procedures (emphasis added)). Otherwise, there would be no need for an EPM; it would simply reiterate the statutory scheme. *See id.* Although the plaintiffs allege that the secretary exceeded his authority by enacting an unlawful EPM provision, these allegations derive from their claim that the secretary "misapplied or misinterpreted" A.R.S. § 16-550(A). That is not a sufficient basis for

mandamus relief. *See Stagecoach Trails MHC, L.L.C.*, 231 Ariz. 366, ¶ 21 (concluding that property owner was not entitled to mandamus relief against zoning administrator that had not issued permit because administrator had complied with duty to consider and act upon permit application).

¶16 In that regard, this case differs from *Arizona Public Integrity Alliance*, 250 Ariz. 58, upon which the plaintiffs rely heavily. The plaintiffs in that case, an interest group and an elector, sought mandamus relief against the Maricopa County Recorder. *Id.* ¶¶ 2, 12. The recorder had sent mail-in voters an instruction about overvotes that was inconsistent with the instruction contained in the EPM. *Id.* ¶¶ 1-4. Our supreme court concluded that the plaintiffs had standing to seek mandamus relief because they challenged the recorder's authority to provide an instruction that differed from the EPM. *Id.* ¶ 12.

¶17 In this case, by contrast, the secretary has the authority to promulgate the EPM. *See* §§ 16-452(A), (B); 16-550(A). The plaintiffs simply allege that in doing so, he misinterpreted applicable law. But mandamus relief is unavailable to resolve disputes about the law's meaning. *See Yes on Prop 200*, 215 Ariz. 458, ¶ 26 (stating that "mandamus is not an appropriate method to use to obtain a definition of duties that are otherwise subject to dispute"); *Sears*, 192 Ariz. 65, ¶ 14 (explaining that mandamus relief is unavailable for claim constituting mere disagreement with public official's statutory interpretation). The plaintiffs therefore do not contend the conflict amounts to a failure by the secretary to perform a legally imposed duty. Nor do the plaintiffs argue that the secretary abused his discretion in adopting the provision at issue. Thus, mandamus relief is not available, and the standard for mandamus standing is not applicable.

III. Standing to seek declaratory relief

¶18 In Count Two, the plaintiffs seek declaratory relief under A.R.S. § 12-1832 to resolve the meaning of the phrase "registration record." Declaratory relief is governed by the Uniform Declaratory Judgments Act. A.R.S. §§ 12-1831 to 12-1846. Section 12-1832 of that act allows a party "whose rights, status or other legal relations are affected by a statute" to have a court determine "any question of construction or validity" concerning the statute and "obtain a declaration of rights, status or other legal relations thereunder." The act is "remedial," and "its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." § 12-1842. Thus, we must construe and administer it "liberally." *Id.*

¶19 Actual injury is not required to confer standing under the Act. *Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 12. A plaintiff "need not demonstrate past injury or prejudice so long as the relief sought is not advisory." *Ariz. Sch. Bds. Ass'n*, 252 Ariz. 219, ¶ 16. Instead, standing requires (1) "an actual controversy ripe for adjudication" and (2) "parties with a real interest in the questions to be resolved." *Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 12 (quoting *Bd. of Supervisors v. Woodall*, 120 Ariz. 379, 380 (1978)).

¶20 That interest must be more than a speculative fear. *Id.* ¶ 14. Similarly, "merely asserting an interest" is insufficient to demonstrate standing, and a party lacks standing when the impaired right, status, or legal obligation is simply issue advocacy. *See Ariz. Sch. Bds. Ass'n*, 252 Ariz. 219, ¶ 18; § 12-1842.

¶21 The plaintiffs focus their argument concerning standing under the act on the individual plaintiff, Dwight Kadar, and the state Republican party. We examine these parties' standing separately. *See City of Tucson*, 199 Ariz. 509, ¶ 14. Because they do not argue that the other entity plaintiffs have standing, we do not address that issue. *See Ariz. Sch. Bds. Ass'n*, 252 Ariz. 219, ¶ 15 (plaintiff bears burden of demonstrating standing to seek declaratory relief).

A. Dwight Kadar

¶22 The individual—Dwight Kadar—alleges that he is a "resident and qualified elector of Yavapai County and the State of Arizona." His asserted interest is "in the proper and uniform enforcement by the county recorders of statutory strictures governing the verification of early ballot affidavit signatures." We must therefore determine whether this constitutes "actual controversy" or "a real interest in the questions to be resolved." *See Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 12 (quoting *Woodall*, 120 Ariz. at 380).

¶23 Two recent cases illustrate the types of potential, particularized interest that can satisfy these standards. First is *Arizona Creditors Bar Association*, where the plaintiffs were creditors that had to comply with a new law concerning debt collection. 257 Ariz. 406, ¶¶ 2-5, 16. This court concluded that the creditors had standing to seek declaratory relief. *Id.* ¶¶ 16, 19. An actual controversy existed because the creditors were required to comply with the challenged statute and were "squarely in the group of businesses impacted by" it. *Id.* ¶ 16. Moreover, the creditors

had alleged a particularized interest because the statute negatively impacted the amount the creditors could garnish. *Id.*

¶24 Likewise, in *Mills v. Arizona Board of Technical Registration*, 253 Ariz. 415, ¶ 26 (2022), our supreme court held that an engineer had standing to challenge the requirement that he register with the Arizona Board of Technical Registration. The court reached this conclusion even though the board had not begun enforcement proceedings. *Id.* ¶ 30. It reasoned that the engineer had an interest in having that legal question resolved because he had "a real and present need to know" if he would be allowed to practice engineering without registering. *Id.*

¶25 Kadar, by contrast, fails to demonstrate an actual controversy or real interest necessary to confer standing. His rights and duties as an elector are neither affected nor regulated by the challenged EPM provision. Unlike the creditors in *Arizona Creditors Bar Association*, Kadar has no duty to comply with the EPM provision at issue. 257 Ariz. 406, ¶ 16. And unlike the engineer in *Mills*, Kadar has not identified any right, status, or legal obligation impaired by the EPM provision that would provide him with "a real and present need to know" whether the provision is legally erroneous. 253 Ariz. 415, ¶ 30; § 12-1842.

¶26 Nor has Kadar articulated any interest in the issue that could not be generalized to all other Arizona voters. *Cf. Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 16 (stating plaintiffs "are squarely in the group of businesses impacted by" challenged statute). He instead asserts a concern that could be asserted by anyone—a disagreement with the secretary about what the law requires. *See Mills*, 253 Ariz. 415, ¶ 24 (stating that "a generalized harm shared by all or by a large class of people is generally insufficient" to demonstrate standing). This amounts to issue advocacy, which as we have explained, cannot confer standing. *See Ariz. Sch. Bds. Ass'n*, 252 Ariz. 219, ¶ 18. Kadar thus lacks standing to seek declaratory relief.

B. State Republican party

¶27 Most of the analysis above also applies to the state Republican party. The Republican party asserts the same interest as Kadar "in the proper and uniform enforcement by the county recorders of statutory strictures governing the verification of early ballot affidavit signatures." As we have explained, this interest does not confer standing.

¶28 The Republican party also argues that it has an "integral role in the electoral infrastructure," which in its view is an independent basis for standing. It points to two such roles—it may obtain a list of voters whose signatures are inconsistent, and it may nominate people for appointment to early-ballot boards.

¶29 In asserting this argument, the Republican party points to *Arizona School Boards Association*, 252 Ariz. 219, ¶ 20. There, three plaintiffs, including a school-board trade association, challenged a bill prohibiting local jurisdictions from imposing mask mandates during the COVID-19 pandemic. *Id.* They alleged that the bill caused the Pima County Board of Supervisors to refuse to impose mask mandates in schools, which impeded local government's "ability to exercise local control to protect its residents." *Id.* Our supreme court noted that plaintiffs, including the "trade association with members living and working in Pima County," were sufficiently affected by the bill to have standing to challenge it. *Id.* (citing *State v. Direct Sellers Ass'n*, 108 Ariz. 165, 166-67 (1972) (stating that trade association with "some" members who "conduct home sales solicitation" had standing to challenge home-sales-solicitation statute's constitutionality)).

¶30 Here, the Republican party analogizes its interest to that of the trade associations, which it says had a real interest merely because its members resided in a county that wanted to issue mask mandates. But it misconstrues our supreme court's reasoning. The trade association's interest did not arise from them merely living and working in Pima County. *Ariz. Sch. Bds. Ass'n*, 252 Ariz. 119, ¶ 20. It instead arose because their members worked in schools, which were directly affected by the county's inability "to exercise local control" by implementing COVID-19 protection measures due to the challenged bill. *Id.*

¶31 The Republican party also cites *Pena v. Fullinwider*, 124 Ariz. 42, 43-44 (1979). In that case, consumer plaintiffs challenged as unconstitutional the repeal of a prior statute that had required prices to be displayed on a per-unit basis. *Id.* Our supreme court concluded that they had standing because the repeal deprived them of access to information to which they had previously been entitled. *Id.* The repeal thus directly impacted their rights and provided them a real interest in its constitutionality. *Id.*

¶32 Here, by contrast, the Republican party has focused primarily on its interest in uniform enforcement of the statutory scheme. This too is the type of interest that could be asserted by any Arizona voter. Although the Republican party has identified specific rights it has in the election

system—the abilities to obtain a list of voters whose signatures are inconsistent and nominate people for appointment to early-ballot boards—it did not explain at the trial court or in its briefing how the EPM provision might impair these rights.

¶33 For the first time at oral argument, the Republican party did attempt to do so, pointing to its entitlement to the list of voters with inconsistent signatures. That entitlement is set forth in Section 16-550(A), which provides that during the period in which signatures may be cured, political parties are entitled to a daily list of "all voters whose signatures are inconsistent with the voter's signature on the voter's registration record and all voters who voted with a conditional provisional ballot." The Republican party explained that based on that list, it engages in "chase" operations to encourage Republican voters to cure their signatures. Because the universe of signatures in the "registration record" could affect the size of that list, and consequently the Republican party's expenditure of resources in its chase operation, it argues that it has a real interest in the issue.

¶34 We generally deem arguments waived when raised for the first time at oral argument. *Mitchell v. Gamble*, 207 Ariz. 364, ¶ 16 (App. 2004). This rule is procedural rather than jurisdictional and may be suspended. *Id.* But we decline to do so here. At least on this record, the Republican party's argument amounts to little more than a hypothetical interest in the dispute, which we lack the ability to evaluate. *See Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 20 (concluding that "[t]here is no actual controversy between interested parties alleging existing facts to support a declaratory judgment" where alleged injury is hypothetical).

¶35 We express no opinion on whether the Republican party might be able to assert standing on a more complete record in a subsequent proceeding, such as a challenge to a future version of the EPM. And given that the current EPM has been invalidated, we see no basis for remanding to the superior court for the parties to develop a record on the issue, as suggested at oral argument.

¶36 At oral argument, the Republican party also pointed to *Republican National Committee v. Fontes*, ___ Ariz. ___, 566 P.3d 984 (App. 2025), this court's decision that invalidated the EPM. That case concluded that the Republican National Committee had standing to seek a declaratory judgment that the EPM was enacted in violation of the Administrative Procedure Act. *Id.* ¶¶ 13-15. But because the APA has its own standing requirement and that case concerned a broader range of procedures than

the specific EPM provision at issue here, we do not find that its analysis aids us here. Thus, the Republican party has failed to identify "an existing state of facts" demonstrating any direct effect the provision has had or will have on it. *See Ariz. Creditors Bar Ass'n*, 257 Ariz. 406, ¶ 12. It has therefore failed to demonstrate a real interest necessary to have standing to seek declaratory relief.

DISPOSITION

¶37 We affirm the superior court's grant of summary judgment.