



**NOTICE OF PUBLIC MEETING
AND POSSIBLE EXECUTIVE SESSION OF THE
STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION**

Virtual Meeting: Citizens Clean Elections Commission

Zoom Meeting: <https://us02web.zoom.us/j/88628354899>

Meeting ID: 886 2835 4899

One tap mobile: +1-719-359-4580,,88628354899# US

Commission Address: 1110 W. Washington, Suite 250, Phoenix,
Arizona 85007

Date: Thursday, March 19, 2026

Time: 11:00 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on March 19, 2026. **This meeting will be held at 11:00 a.m. This meeting will be held virtually. The Zoom meeting room will be open by 10:45 a.m. at the latest.** Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ccec@azcleelections.gov.

The meeting may be available for live streaming online at <https://www.youtube.com/c/AZCCEC>. You can also visit <https://www.azcleelections.gov/clean-elections-commission-meetings>. Members of the Citizens Clean Elections Commission may attend in person, by telephone, video, or internet conferencing.

Join Zoom Meeting

<https://us02web.zoom.us/j/88628354899>

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Please note that members of the public that choose to use the Zoom video link must keep their microphone muted for the duration of the meeting. If a member of the public wishes to speak, they may use the Zoom raise hand feature and once called on, unmute themselves on Zoom once the meeting is open for public comment.

Members of the public may participate via Zoom by computer, tablet or telephone. A dial-in option is also available but you will not be able to use the Zoom raise hand feature, so the meeting administrator will assist phone attendees. Please keep yourself muted unless you are prompted to speak.

The Commission may allow time for public comment on any item on the agenda. Commission members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing Commission staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.

The Commission may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. § 38-431.03 (A)(3). The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below.

<p>Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.</p>

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on notice of cross-appeal of Superior Court’s February 17, 2026 ruling in *Montenegro v. Fontes*, No. CV2023-011834 (Ariz. Super. Ct. Maricopa Cnty), *appeal docketed*, No. 1 CA-CV 26-0154 (Ariz. Ct. App. Div. 1 2026).

The Commission may vote to go into Executive Session, which will not be open to the public for legal advice or discussion or consultation with its attorneys in order to consider its position and instruct its attorneys regarding its position in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. A.R.S. § 38-431.03(A)(3), (4).

- III. Public Comment.

This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or

rescheduling the matter for further consideration and decision at a later date or responding to criticism.

IV. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1110 W Washington St, #250, Phoenix, AZ 85007.

Dated this 17th day of March, 2026
Citizens Clean Elections Commission
Thomas M. Collins, Executive Director

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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02/17/2026

HONORABLE GREG S. COMO

CLERK OF THE COURT

C. Lacey

Deputy

STEVE MONTENEGRO, et al.

BRETT W JOHNSON

v.

ADRIAN FONTES, et al.

KAREN HARTMAN-TELLEZ

TRAVIS C HUNT
JARED G KEENAN
ALEXANDRIA N KARPURK
MARY R O'GRADY
NATHAN T ARROWSMITH
DAVID KOLKER
ERIC M FRASER
RYAN P HOGAN
JUDGE COMO

MINUTE ENTRY

On January 22, 2026, the Court held a hearing on Plaintiffs' motion for preliminary injunction and took the matter under advisement. The Court now issues its ruling.

Background

This case concerns the constitutionality of the Voters' Right to Know Act (Prop 211), which Arizona voters passed in 2022 with 72% of the votes. The purpose of Prop 211 is to disclose funding sources by providing Arizona voters with more information about who is spending money

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in Arizona’s elections. Essentially, Prop 211 is designed to shine light on what is often referred to as “dark money” spent in Arizona elections.

Prop 211 requires a “covered person” to disclose the original source of donations exceeding \$5,000 which are used for campaign spending. Violating the disclosure requirements carries a steep penalty -- at least the amount of the undisclosed contribution and up to three times that amount. A.R.S. § 16-976(A).

Prop 211 designates the Arizona Clean Elections Commission (“the Commission”) as the agency authorized to implement and enforce its provisions. The Commission is vested with an array of powers to implement and enforce the statutes, including (1) adopting and enforcing rules; (2) issuing and enforcing subpoenas; (3) initiating enforcement actions; (4) conducting fact-finding investigations; (5) imposing civil penalties; (5) seeking relief in court; and (6) establishing the records that must be maintained. A.R.S. § 16-974(A)(1)-(7).

Challenging Prop 211 are Plaintiffs Steve Montenegro and Warren Peterson, respectively, the current Speaker of the Arizona House of Representatives and President of the Arizona State Senate.

Defending Prop 211 are: the Arizona Clean Elections Commission, Arizona Secretary of State Adrian Fontes, Arizona Attorney General Kris Mayes, and Voters’ Right to Know (“VRTK”), a political action committee. VRTK drafted Prop 211 and collected and gathered signatures to place the initiative on the ballot.

Legal Issues and Analysis

Standing

The Arizona Supreme Court has determined that Plaintiffs have standing to challenge those parts of Prop 211 which arguably infringe on the legislative branch of government. *Montenegro v. Fontes*, 576 P.3d 692, 696, 698–700 (Ariz. 2025).

Plaintiffs, however, also challenge provisions in Prop 211 which do not relate to legislative functions, specifically A.R.S. § 16-974(A)(2)-(7). These sections grant the Commission power to issue subpoenas, initiate enforcement actions, conduct hearings and investigations, impose civil penalties, seek judicial relief and establish the records people must maintain to support their disclosures. *Montenegro* does not address whether Plaintiffs have standing to challenge A.R.S. § 16-974(A)(2)-(7), as the issue was not raised then. *Id.* at ¶¶ 20-21.

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Plaintiffs are legislative leaders. They suffer no “institutional injury” nor “particularized injury” from the grant of executive and quasi-judicial powers to the Commission.

The Court finds that Plaintiffs lack standing to challenge A.R.S. § 16-974(A)(2)-(7).

Facial Challenge

Plaintiffs bring a facial challenge to Prop 211. A facial challenge is “the most difficult challenge to mount successfully” because it requires the party to “establish that no set of circumstances exists under which the Act would be valid.” *United States v. Rahini*, 602 U.S. 680, 693 (2024); *AZ Petition Partners LLC v. Thompson*, 255 Ariz. 254, 258 ¶ 17 (2023).

In certain circumstances – such as the First Amendment context – the “no set of circumstances” standard is relaxed because the mere existence of a law may have a chilling effect on a person’s exercise of free speech. *AZ Petition Partners LLC*, 255 Ariz. at ¶ 18. However, this case does not involve a First Amendment challenge to Prop 211. Thus, to succeed, Plaintiffs must show that there is no set of circumstances under which the challenged laws pass constitutional muster.

A.R.S. § 16-974(D)

A.R.S. § 16-974(D) states the Commission’s rules and any enforcement actions “are not subject to the approval of or any prohibition or limit imposed by any other executive or legislative governmental body or official.”

Plaintiffs argue that this provision violates separation of powers by preventing the legislature from enacting laws that prohibit or limit the Commission’s rulemaking and enforcement activities.

Defendants concede that if the phrase “legislative governmental body” includes the Arizona legislature, it is unconstitutional.

The Court finds that the plain meaning of the phrase “legislative governmental body” includes the Arizona legislature. *Toma v. Fontes*, 258 Ariz. 109, 123 ¶ 61(App. 2024) *vacated on other grounds by Montenegro v. Fontes*, 576 P.3d 692 (Ariz. 2025). Indeed, the state legislature is the quintessential example of a “legislative governmental body.” The Court declines to engage in other means of statutory interpretation given the statute’s clear language.

A.R.S. § 16-974(D) also violates the Voter Protection Act. Under the VPA, the Legislature may amend or supersede any popularly enacted measure when the proposed legislation “furthers the purpose of such measure and at least three-fourths of the members of each house of the

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legislature” vote to amend or supersede the initiative. *See* Ariz. Const. art. IV, pt. 1 § 1(6)(B)–(C), (14).

A.R.S. § 16-974(D) exceeds the limitations placed on the Legislature by the VPA. As *Toma* explains: “Section 16-974(D) ... statutorily prohibits the Legislature from passing any law limiting or prohibiting any Commission *rule or enforcement action*, even when the VPA does not apply, or its requirements are met.” 258 Ariz. at 125 ¶¶ 77.

Moreover, there is “no set of circumstances” under which A.R.S. § 16-974(D) is constitutional. One legislature (or the voters by initiative) cannot prevent a future legislature from exercising its lawmaking power. *Toma*, 258 Ariz. at 125 ¶¶ 75-76.

A.R.S. § 16-978(B)

This provision states: “[t]o the extent that the provision of this chapter conflict with any state law, this chapter governs.” Plaintiffs did not challenge this provision in their Amended Complaint. The Court finds that Plaintiffs waived this issue by not raising it in their Amended Complaint.

A.R.S. § 16-974(A)(1) and (A)(8)

A.R.S. § 16-974(A) established that the Commission is the primary agency authorized to “implement and enforce this chapter.” It then lists the Commission’s powers to achieve these aims, including to “adopt and enforce rules.” A.R.S. § 16-974(A)(1).

After listing other Commission powers, discussed above, the statute includes a catch-all phrase authorizing the Commission to “[p]erform any other act that may assist in implementing” Prop 211. A.R.S. § 16-974(A)(8).

Plaintiffs argue that (A)(1) and (A)(8) violate both separation of powers and the non-delegation doctrine. Plaintiffs argue that these provisions are standardless and limitless, and therefore unconstitutionally delegate legislative power to the Commission.

“The legislature may properly delegate power to implement a statute so long as it plainly authorizes the executive agency to do so.” *Roberts v. State*, 253 Ariz. 259, 268 ¶ 34 (2022). The statute need only provide a “basic standard, i.e., a definite policy and rule of action which will serve as a guide for the administrative agency.” *State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205-206 (1971). The standards which must accompany such a grant of legislative power need not be express if they may “reasonably be inferred from the statutory scheme as a whole.” *Id.*

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Applying these principles, the Court finds that granting the Commission the power to “adopt and enforce rules” violates neither separation of powers nor the non-delegation doctrine. The statute limits the Commission’s rule making authority to rules that “implement and enforce” Prop 211. Arizona courts have long upheld similar rulemaking delegations. *See Longbridge Inv. Co. v. Moore*, 23 Ariz. App. 353, 356 (1975) (upholding delegation to the Department of Liquor Licenses to adopt regulations “for carrying out the provisions of the title”); *Ethrdige v. Ariz. State Bd. of Nursing*, 165 Ariz. 97, 104 (App. 1989)(upholding delegation to State nursing board to “adopt rules and regulations necessary to effect the provisions of the statute”).

The catch-all provision of (A)(8) is more constitutionally problematic. First, it lacks any meaningful standard to guide the agency. What is meant by “any other act”? We know it does not include any of the seven listed actions that precede it, because it refers to “any *other*” act. Beyond this, there is no guidance for what the Commission may do, nor any meaningful limit on how it “may assist” in implementing Prop 211.

Despite the Court’s concerns about the vagueness and scope of A(8), Plaintiffs’ challenges to both provisions fail because they have not shown that there is “no set of circumstances” where (A)(1) or A(8) are valid. As Defendants note, the Commission could rely on A(1) to enact a rule establishing requirements for disclosure forms. This would not infringe on the lawmaking authority. Similarly, the Commission could rely on A(8) to create a website or materials to inform the public of Prop 211’s disclosure requirements. Such activities would assist in “implementing” Prop 211 without usurping the legislature’s role.

The Court finds that Plaintiffs have not established that either A.R.S. § 16-974(A)(1) or (A)(8) are facially unconstitutional.

Severability

Having found A.R.S. § 16-974(D) unconstitutional, the Court must decide whether the remainder of Prop 211 is valid and enforceable. This is known as severability.

Prop 211 includes this severability clause:

The provisions of this act are severable. If any provision of this act or application of a provision to any person or circumstance is held to be unconstitutional, the remainder of this act, and the application of the provisions to any person or circumstance, shall not be affected by the holding. The invalidated provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of this act.

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2022 Ariz. Legis. Serv. Prop. 211, § 4. When an act includes a severability clause, “all doubts are to be resolved in favor of severability.” *Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 523 ¶ 25 (2000).

Arizona employs a two-part test to determine severability. The Court first determines whether the valid provisions can operate independently and are workable. *Randolph v. Groscost*, 195 Ariz. 423, 427 ¶ 15 (1999). If so, the Court will uphold the remaining provisions unless doing so would “produce a result so irrational or absurd as to compel the conclusion that an informed electorate would not have adopted one portion without the other.” *Id.*

Prop 211 remains workable without the prohibition on legislative action present in A.R.S. § 16-974(D). All other provisions of Prop 211 operate independently and are enforceable regardless of whether the legislature may one day restrict them. Large campaign spenders and their donors will still be disclosed – the central aim of Prop 211. A.R.S. § 16-971(7). Covered persons must still file disclosure reports and donors must retain records. A.R.S. §§ 16-973(A); 16-972(D). The Commission may still make rules and enforce them. A.R.S. § 16-974(A)(1)-(7). The Commission may still impose penalties for violations. A.R.S. § 16-976. Voters may initiate complaints and civil actions. A.R.S. § 16-977.

Furthermore, all agencies, including the Commission, are subject to the legislature’s ability to enact laws. It is not unworkable for the Commission, or any agency, to be subject to the legislature’s lawmaking power. This is the norm.

Nor is it absurd for the voters to enact a law which lacks a limit on the legislature’s lawmaking power. On the contrary, it would be irrational for voters to believe they could constitutionally pass a law that prohibits the legislature from modifying the law under any circumstances.

Resolving all doubts in favor of severability, as it must, the Court finds that A.R.S. § 16-974(D) is severable from the remaining parts of Prop 211.

Specific Commission Rules

Plaintiffs also raise facial challenges to three specific regulations adopted by the Commission: (1) A.A.C. R2-20-808; (2) A.A.C R2-20-801; and (3) A.A.C. R2-20-803.

Plaintiffs’ first make a derivative challenge to all three regulations, arguing that they fail because the Commission lacks constitutional rulemaking authority. The Court rejects this argument because it has found that the grant of rulemaking authority in (A)(1) is constitutional.

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A.A.C. R2-20-808: Under this regulation the Commission empowered itself to issue advisory opinions concerning Prop 211 or any regulation prescribed by the Commission. This regulation also provides a safe harbor for any person “who relies upon an advisory opinion and acts in good faith in accordance with that advisory opinion.”

Plaintiffs argue that there is no provision in Prop 211 which authorizes the Commission to issue advisory opinions. Nor to create a safe harbor for those relying on such opinions.

Advisory opinions do not violate the separation of powers because legislatures do not issue advisory opinions. Moreover, a statute’s silence on an issue does not mean the agency lacks authority to act. *Joshua Tree Health Center, LLC v. State*, 255 Ariz. 220, 223 ¶ 12 (App. 2023). An agency can take actions “reasonably implied” from the “statutory scheme as a whole.” *Id.*

Plaintiffs lack standing to challenge the safe harbor provision. Plaintiffs are not regulated parties under the rule. They are not voters bringing a “civil action to compel it to take enforcement action.” A.R.S. § 16-977(C).

The Court finds that Plaintiffs lack standing to challenge R2-20-808 and further finds that the rule does not violate the separation of powers.

A.A.C. R2-20-801: This regulation limits donor disclosure requirements regarding upstream donations under A.R.S. § 16-972(D), specifying that a donor need only disclose donations “up to the amount of money being transferred to the requesting person.”

Plaintiffs argue that this rule is an impermissible exercise of a statutory authority because A.R.S. § 16-972(D) is silent on the amount of an upstream donation that must be disclosed.

Defendants counter that the rule merely clarifies the statute without changing the law.

Plaintiffs also assert that A.A.C. R2-20-801(B) alters the statutory definition of “campaign media spending” by exempting certain activities unless those activities are “specifically conducted in preparation” for or in conjunction with other enumerated examples of campaign media spending. Plaintiffs argue that the Commission, by altering the definition of “campaign media spending” has exercised legislative power in violation of separation of powers.

The Commission adopted R2-20-801 under its authority to “adopt and enforce rules” to implement Prop 211. Under the separation of powers doctrine, the legislature or the voters can exercise their lawmaking power by “allow[ing] another body to fill in the details of legislation already enacted.” *Ariz. Mines Supply*, 107 Ariz. at 205. The Commission “fill[ed] in the details”

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on the degree of relationship required between campaign media and preparatory activities under its delegated authority to implement Prop. 211.

Regarding both provisions of the rule, the Court finds they are not unconstitutional merely because they may incorrectly interpret a statute. Neither provision violates the separation of powers.

A.A.C. R2-20-803: A.A.C. R2-20-803(D) states that “after the initial notice period, a covered person may make subsequent written notices to a donor of their right to opt out and may set a time for response of no less than 1 day from the date the donor receives the notice.” Further, the rule requires that, if a covered person receives a donor opt-out request “after the initial notice period,” the donor shall still “subsequently . . . be treated as having opted out by the covered person.” *Id.* R2-20-803(E).

Plaintiffs note that A.R.S. § 16-972(B)-(C) says nothing about what a covered person must do after the 21-day holding period expires. This, presumably, would allow a covered person to commit the monies to campaign media spending.

Plaintiffs argue that the rule goes beyond the plain language of the statute and impermissibly exercises legislative authority.

Defendants argue that the statute does not specify what happens after 21 days, and the Commission’s rule is an example of “filling in the details” of legislation already enacted.

As with the other challenged rules, this rule is not unconstitutional merely because it may incorrectly interpret a statute. The Commission is granted authority to “make and enforce rules” to implement Prop 211. The Court finds that R2-20-803 does not violate the separation of powers.

Remedy

The Court has found only one provision of Prop 211 unconstitutional: A.R.S. § 16-974(D).

Plaintiffs seek injunctive relief. However, an injunction “is not appropriate where a party’s interests will be adequately protected by a declaratory judgment.” *N.H. Lottery Comm’n v. Barr*, 386 F. Supp. 3d 132, 159-60 (D.N.H. 2019).

An injunction would not afford Plaintiffs additional relief because there are no actions Defendants could take to block the legislature from exercising its lawmaking powers. An injunction would be a meaningless remedy on these facts.

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Disposition

IT IS ORDERED:

1. Declaring that A.R.S. § 16-974(D) is an unconstitutional violation of the separation of powers.
2. Declaring that A.R.S. § 16-974(D) violates the Voters Protection Act.
3. Denying Plaintiffs' request for preliminary and permanent injunctive relief.
4. Declaring that A.R.S. § 16-974(D) is severable from the rest of Prop 211 and, therefore, the remaining parts of the statutory framework are valid and enforceable.
5. Denying all other relief sought by Plaintiffs.
6. No further matters remain pending and judgment is entered under Arizona Rule of Civil Procedure 54(c).
7. Any party seeking an award of attorney fees or costs shall file such a request no later than **March 16, 2026**.

DATED this 17th day of February, 2026.

/s/ HONORABLE GREGORY S. COMO

HONORABLE GREGORY S. COMO
JUDICIAL OFFICER OF THE SUPERIOR COURT

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

12
13 STEVE MONTENEGRO, in his official
capacity as Speaker of the Arizona House
14 of Representatives; WARREN
PETERSEN, in his official capacity as
15 President of the Arizona Senate,

16 Plaintiffs,

17 v.

18 ADRIAN FONTES, in his official capacity
as Arizona Secretary of State; ARIZONA
19 CITIZENS CLEAN ELECTIONS
COMMISSION, an agency of the state of
20 Arizona,

21 Defendants,

22 and,

23 KRIS MAYES, in her official capacity as
Arizona Attorney General; VOTERS'
24 RIGHT TO KNOW, an Arizona political
action committee,

25 Intervenor-Defendants.
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No. CV2023-011834

PLAINTIFFS' NOTICE OF APPEAL

Assigned to: Hon. Gregory S. Como

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In accordance with Arizona Rules of Civil Appellate Procedure 8 and A.R.S. § 12-2101(A)(1), (5)(b), Plaintiffs Steve Montenegro and Warren Petersen (collectively, “Plaintiffs”) appeal to the Arizona Court of Appeals, Division One, the portions of the Court’s signed judgment entered on February 19, 2026, and all prior orders thereto, related to the following issues:

1. Whether Plaintiffs have standing to challenge A.R.S. § 16-974(A)(2)–(7) and A.A.C. R2-20-801; A.A.C. R2-20-803; and A.A.C. R2-20-808;
2. Whether the superior court correctly applied the “no set of circumstances” standard to Plaintiffs’ facial challenge.
3. Whether A.R.S. § 16-974(A) violates the separation of powers;
4. Whether A.R.S. § 16-974(A) violates the non-delegation doctrine;
5. Whether Plaintiffs waived any challenge to A.R.S. § 16-978 and if not, whether it violates the Voter Protection Act;
6. Whether any unconstitutional provisions of Prop 211 are severable;
7. Whether the Arizona Citizens Clean Elections Commission’s rules purporting to implement Prop 211 are facially unconstitutional; and
8. Whether Plaintiffs are entitled to injunctive relief permanently enjoining Prop 211, in whole or in part, and the rules promulgated by the Arizona Citizens Clean Elections Commission under Prop 211.

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DATED this 24th day of February 2026.

SNELL & WILMER L.L.P.

By: /s/Brett W. Johnson

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1 **ORIGINAL** of the foregoing e-filed
2 this 24th day of February 2026 and
3 a **COPY** of the foregoing e-mailed
4 this same date to:

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9 ARIZONA SUPERIOR COURT
10 MARICOPA COUNTY

11 Steve Montenegro, in his official capacity
12 as Speaker of the Arizona House of
Representatives; and Warren Petersen, in
13 his official capacity as President of the
Arizona Senate,

14 Plaintiffs,

15 v.

16 Adrian Fontes, in his official capacity as
17 Arizona Secretary of State; and Arizona
Citizens Clean Elections Commission, an
18 agency of the State of Arizona,

19 Defendants,

20 and,

21 Kris Mayes, in her official capacity as
22 Arizona Attorney General; and Voters’
Right to Know, an Arizona political action
committee,

23 Intervenor-Defendants.
24

No. CV2023-011834

DEFENDANTS’ MOTION TO ALTER
OR AMEND JUDGMENT AND
MOTION FOR NEW TRIAL

(Assigned to the Honorable
Gregory S. Como)

25
26 Pursuant to Ariz. R. Civ. P. 52(b) and 59(a)(1)(H) and (d), Defendants the Arizona
27 Citizens Clean Elections Commission and Arizona Secretary of State Adrian Fontes, and
28 Intervenors Voters’ Right to Know and Attorney General Kris Mayes (collectively,



1 “Defendants”) request the Court alter or amend its February 19, 2026 judgment to declare
2 unconstitutional only the one application the Court found constitutionally problematic—
3 i.e., preventing the legislature from exercising its lawmaking powers consistent with the
4 Voter Protection Act (“VPA”).

5 The Court found only one narrow application of § 16-974(D) unconstitutional:
6 Section 16-974(D) cannot “prevent[] the legislature from enacting laws that prohibit or
7 limit the Commission’s rulemaking and enforcement activities.” Ruling at 3-4. The Court
8 did not find the remainder of subsection (D) unconstitutional, and Plaintiffs did not
9 challenge subsection (D)’s remaining applications. Nevertheless, this Court’s order
10 declared all of § 16-974(D) to be unconstitutional. Both the general severability
11 framework and Prop. 211’s express severability clause support severing the single
12 unconstitutional application from the provision’s remaining valid applications, which are
13 uncontested, constitutional, and workable without the one application held
14 unconstitutional.

15 This motion does not ask the Court to revisit the substance of the Court’s
16 unconstitutionality finding, but instead simply asks the Court to clarify the scope of that
17 finding and the associated declaratory relief.

18 ARGUMENT

19 Under Rule 52(b), “[o]n a party’s motion filed no later than 15 days after the entry
20 of judgment, the court may amend its findings—or make additional findings—and may
21 amend the judgment accordingly.” Rule 52(b) thus “permits [a party] to ask the court to
22 correct, on the non-jury record before it, any errors of law, mistakes of fact or oversights
23 that require correction.” *U.S. Gypsum Co. v. Schiavo Bros., Inc.*, 668 F.2d 172, 180 (3d
24 Cir. 1981) (interpreting Federal Rule of Civil Procedure 52(b)). Rule 59 similarly
25 authorizes the Court to “alter or amend a judgment,” Ariz. R. Civ. P. 59(d), and to grant
26 a new trial where the “judgment ... is contrary to law,” *id.* 59(a)(1)(H). Motions under
27 both provisions must be filed no later than 15 days after entry of judgment. *See* Ariz. R.
28 Civ. P. 59(b)(1), (d).

1 Rule 59’s scope is broad. “Rule 59(d) does not limit the reasons why a party may
2 seek a judgment’s amendment.” *Atreus Communities Grp. of Ariz. v. Down Dirtworks,*
3 *LLC*, No. 2 CA-CV 2023-0242, 2024 WL 5251996, at *9, ¶¶ 53–54 (App. Dec. 30, 2024)
4 (mem. decision). Nor is a trial a prerequisite: “[a] party may properly file a motion for
5 new trial even though there has been no ‘trial’ in the first place.” *Tripati v. Forwith*, 223
6 Ariz. 81, 85, ¶ 19 (App. 2009).

7 **I. A.R.S. § 16-974(D).**

8 In their supplemental preliminary injunction motion (at 4-5), Plaintiffs argued that
9 A.R.S. § 16-974(D) violates the separation of powers and the VPA because it
10 unconstitutionally restrains legislative power. That provision limits rulemaking oversight:

11 The commission’s rules and any commission enforcement actions pursuant
12 to this chapter are not subject to the approval of or any prohibition or limit
13 imposed by any other executive or legislative governmental body or official.
Notwithstanding any law to the contrary, rules adopted pursuant to this
chapter are exempt from title 41, chapters 6 and 6.1.

14 A.R.S. § 16-974(D).

15 **The first sentence of (D).** Defendants argued (at 6-7) that as to the legislative
16 branch, the reference in the first sentence of § 16-974(D) to “legislative governmental
17 body” does not affect the legislature’s lawmaking power, but instead limits only the
18 Administrative Rules Oversight Committee’s (or any other name that entity may bear in
19 the future) role in connection with rules promulgated by the Commission. As the Court
20 acknowledged (at 3), Defendants did not dispute that preventing the legislature from
21 legislating consistent with the VPA would be unconstitutional.

22 The Court concluded (at 3-4) that the phrase “legislative governmental body” in
23 subsection (D) includes the Arizona legislature, and followed the uncontested view of the
24 parties that it would be unconstitutional to “prevent[] the legislature from enacting laws
25 that limit or prohibit the Commission’s rulemaking and enforcement activities,”
26 consistent with the VPA. Ruling at 3-4. The Court found only one narrow application of
27 § 16-974(D) unconstitutional: Section 16-974(D) cannot prohibit the legislature “from
28 passing any law limiting or prohibiting any Commission rule or enforcement action, even

1 when the VPA does not apply, or its requirements are met.” *Id.* at 4 (quoting *Toma v.*
2 *Fontes*, 258 Ariz. 109, 125, ¶ 77 (App. 2024), *vacated by Montenegro v. Fontes*, 576 P.3d
3 692 (Ariz. 2025)).

4 The Court did not rule that any other application of subsection (D) is
5 unconstitutional, either under separation of powers or the VPA. There are two remaining
6 parts of subsection (D) that remain constitutional—and unchallenged.

7 **The remaining applications of the first sentence of subsection (D).** As to the
8 first sentence of (D), only one application of the sentence has been adjudicated
9 unconstitutional—the application to the legislature’s lawmaking power. But the first
10 sentence covers far more: “The commission’s rules and any commission enforcement
11 actions pursuant to this chapter are not subject to the approval of or any prohibition or
12 limit imposed by any other executive or legislative governmental body or official.” A.R.S.
13 § 16-974(D). Even if that provision encompasses the legislature itself (as the Court held),
14 it also covers the Governor’s Regulatory Review Council (an executive committee), and
15 the Attorney General (an official). The Court did not rule, and Plaintiffs never argued,
16 that the Constitution requires the Commission’s rules to be reviewed by those entities.
17 Those applications should not be part of the declaratory judgment of unconstitutionality.
18 Moreover, even as to the legislative branch, that sentence applies (at a minimum) to the
19 Administrative Rules Oversight Committee (a legislative committee). Again, the Court
20 did not rule that the Administrative Rules Oversight Committee is a constitutional
21 requirement for Commission rules, nor did Plaintiffs ever argue that there is such a
22 requirement.

23 **The second sentence of (D).** The most straightforwardly unaffected portion of (D)
24 is the second sentence: “Notwithstanding any law to the contrary, rules adopted pursuant
25 to this chapter are exempt from title 41, chapters 6 and 6.1.” The Court did not rule this
26 sentence is unconstitutional, nor did it even suggest that there is any constitutional
27 problem with it. Indeed, Plaintiffs never contended that this sentence was independently
28 unconstitutional (i.e., they never contended that there is a Constitutional requirement to

1 follow title 41, chapters 6 and 6.1). This sentence, therefore, was never adjudicated to be
2 unconstitutional and should not be part of the declaratory judgment of unconstitutionality.

3 In sum, the Court’s substantive unconstitutionality ruling is limited to a single
4 application of § 16-974(D): a limitation on the legislature’s lawmaking power. Because
5 only this one application of this section was challenged and found unconstitutional, the
6 Court’s declaratory judgment should be accordingly limited.

7 **II. Severability.**

8 The severability framework asks “whether the valid portion can operate without
9 the unconstitutional provision.” *Citizens Clean Elections Comm’n v. Myers*, 196 Ariz.
10 516, 522, ¶ 23 (2000). If so, the Court “will uphold it unless the result is so absurd or
11 irrational that one would not have been adopted without the other.” *Id.*

12 The voters also included an express severability clause, directing the Court to sever
13 not just any “provision,” but rather directing the Court to sever any unconstitutional
14 “*provision*” or “*application*” of the Act:

15 The provisions of this act are severable. If any *provision* of this act or
16 *application of a provision to any person or circumstance* is held to be
17 unconstitutional, the remainder of this act, and the *application of the*
18 *provisions to any person or circumstance*, shall not be affected by the
19 holding. The invalidated provision or provisions shall be deemed reformed
20 to the extent necessary to conform to applicable law and to give the
21 maximum effect to the intent of this act.

20 2022 Ariz. Legis. Serv. Prop. 211, § 4 (emphases added).

21 The unit of analysis for severability purposes, therefore, is the *particular*
22 “application of a provision to any person or circumstance.” Here, that means that the
23 severability analysis must focus on the application of the first sentence of subsection (D)
24 to the legislature’s lawmaking power. That is the only “application of a provision to any
25 person or circumstance” that has been “held to be unconstitutional.” *Id.*

26 As the Court correctly acknowledged (at 5-6), in the presence of a severability
27 clause, “all doubts are to be resolved in favor of severability.” *Myers*, 196 Ariz. at 523,
28

1 ¶ 25. Both the severability framework and Prop. 211’s severability clause direct the Court
2 to sever specific unconstitutional applications from Prop. 211’s remaining valid
3 applications and provisions. The question is not whether subsection (D) as a whole is
4 severable from Prop. 211’s remaining provisions—the Court did not hold the entirety of
5 subsection (D) unconstitutional. Rather, the Court must determine whether the single
6 unconstitutional application of subsection (D) that would prohibit the legislature from
7 legislating is severable from subsection (D)’s remaining valid applications and from Prop.
8 211 as whole.

9 The remainder of subsection (D) is workable without the prohibition on legislative
10 action, and Plaintiffs have never suggested otherwise. The first sentence of subsection
11 (D) remains workable as applied to the Administrative Rules Oversight Committee, the
12 Governor’s Regulatory Review Council, and the Attorney General. These bodies and
13 officials constitutionally “approv[e],” “prohibit[,]” or “limit” agency rulemaking and
14 enforcement actions. Even if the legislature retains its lawmaking powers, the
15 Commission’s rules can still be exempt from oversight by the Administrative Rules
16 Oversight Committee, the Governor’s Regulatory Review Council, and the Attorney
17 General. The second sentence of subsection (D) also remains workable. The
18 Commission’s actions can still be exempted from rulemaking requirements. It is neither
19 absurd nor irrational that the voters would enact a law exempting the Commission’s rules
20 from certain oversight without a provision prohibiting the legislature from legislating.
21 The Commission is in the same position as many other agencies.

22 Because Prop. 211’s express severability clause directs this Court to sever
23 unconstitutional applications from valid applications and provisions, and because all
24 doubts are resolved in favor of severability, *Myers*, 196 Ariz. at 523, ¶ 25, the Court
25 should sever the single unconstitutional application of subsection (D) that prohibits the
26 legislature from legislating from its remaining constitutional applications of subsection
27 (D). The Court should not invalidate constitutional applications of the law that have not
28 been challenged in this case. Instead, it should declare only the narrow unconstitutional

1 application invalid, leaving intact the remaining unchallenged applications of
2 subsection (D).

3 This approach would not rewrite the statute. The Court need not strike “legislative
4 governmental body” from the text or add limiting language such as “besides the
5 legislature” to cure subsection (D)’s constitutional defect. This Court should take a similar
6 approach to the Court of Appeals in *Toma*, 258 Ariz. at 127, ¶ 92, and declare subsection
7 (D) unconstitutional insofar as it prevents the legislature from enacting laws that prohibit
8 or limit the Commission’s rulemaking and enforcement activities consistent with the
9 VPA. Doing so would leave intact subsection (D)’s application to all other executive and
10 legislative governmental bodies and officials, as well as the rulemaking exemptions,
11 which have not been challenged and are not unconstitutional.

12 REQUESTED RELIEF

13 The Court should amend page 9 of the Ruling to add the **bold underlined** text as
14 follows:

15 1. Declaring that A.R.S. § 16-974(D)’s **limitation on the legislature’s**
16 **lawmaking power** is an unconstitutional violation of the separation of powers.

17 2. Declaring that A.R.S. § 16-974(D)’s **limitation on the legislature’s**
18 **lawmaking power** violates the Voters Protection Act.

19 ...

20 4. Declaring that A.R.S. § 16-974(D)’s **limitation on the legislature’s**
21 **lawmaking power** is severable from the rest of Prop 211 and, therefore, the
22 remaining parts of the statutory framework are valid and enforceable.

23 DATED this 3rd day of February, 2026.

24 OSBORN MALEDON, P.A.

25 By /s/ Eric M. Fraser

26 Mary R. O’Grady

27 Eric M. Fraser

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1 This document was electronically filed and copy delivered/served via the TurboCourt
2 eFiling system, this 3rd day of March, 2026, on:

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4 Maricopa County Superior Court

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/s/ Sylvia Aguayo

Court of Appeals, Division One

Civil Appeal

1 CA-CV 26-0154

MONTENEGRO et al. v. FONTES et al.

Appellate Case Information

Case Filed: 26-Feb-2026

Case Closed:

Dept/Composition

Side 1. STEVE MONTENEGRO, et al., Plaintiff/Appellant

(Litigant Group) MONTENEGRO et al.

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Table with 6 columns: PREDECESSOR CASE(S), Cause/Charge/Class, Judgment/Sentence, Judge, Role <Comments>, Trial, Dispo. Row 1: MAR, CV 2023-011834, Motion for Preliminary Injunction, Gregory Como, Authoring Judge of Order.

OPEN DUE DATE

Record Filing Due

Due By:

Thursday, March 26, 2026

Re: FILED in Superior Court: Notice of Appeal

CALENDAR

Friday MOTION CALENDAR
6-Mar-2026 Department M;

File date: 2/26/2026.....* Motion to Suspend Rules, Accelerate Appeal, and Expedite Briefing Schedule for Appeal (Appellant)

DECISION RENDERED: See proceeding entry for ORDER dated 9-Mar-2026 for more information...

10 PROCEEDING ENTRIES

- 1. 26-Feb-2026 FILED: Motion to Suspend Rules, Accelerate Appeal, and Expedite Briefing Schedule for Appeal; Plaintiff's Notice of Appeal; Certificate of Service (Appellant)
2. 26-Feb-2026 ORDERED: Any response to the motion shall be filed by 03/03/2026. FURTHER IS ORDERED: Any reply shall be filed by 03/05/2026. The court will rule on the motion following expiration of the time for the response and reply. Hon Randall M Howe - Author
3. 26-Feb-2026 FILED: Appellants' Notice of Filing Transcripts; Certificate of Service (Appellant)
4. 26-Feb-2026 FILED: Reporters Transcript - 12/13/2023 - Oral Argument (Michele Kaley) (Appellant)
5. 26-Feb-2026 FILED: Reporters Transcript - 01/22/2026- Preliminary Injunction Hearing (Michaela H. Davis) (Appellant)
6. 3-Mar-2026 FILED: Response to Motion to Suspend Rules, Accelerate Appeal, and Expedite Briefing Schedule for Appeal; Certificate of Service; Attachment 1 (Appellees Mayers/Voters)
7. 5-Mar-2026 FILED: Reply in Support of Motion to Suspend Rules, Accelerate Appeal, and Expedite Briefing Schedule for Appeal; Certificate of Service; Exhibits A - F (Appellants)

Court of Appeals, Division One

Civil Appeal

1 CA-CV 26-0154

MONTENEGRO et al. v. FONTES et al.

10 PROCEEDING ENTRIES

8. 5-Mar-2026 FILED: ARCAP 9(e)(2) Notice; Certificate of Service; Exhibits A-B (Appellants)
9. 9-Mar-2026 ORDERED: Motion to Suspend Rules, Accelerate Appeal, and Expedite Briefing Schedule for Appeal (Appellant) = DENIED without prejudice to any party filing a motion to accelerate after this appeal is at issue. FURTHER ORDERED: Denying the request for an expedited briefing schedule without prejudice to the parties and any amici filing briefs as quickly as they wish before the due dates. FURTHER ORDERED: Denying appellants' request to treat this appeal as a special action without prejudice to appellants filing a petition for special action. The court does not express an opinion on whether special action jurisdiction will be accepted. Hon Randall M Howe - Author
10. 13-Mar-2026 FILED: Notice of Appearance; Certificate of Service (Appellee Mayes)