

ARIZONA COURT OF APPEALS

DIVISION ONE

LAURIE AGUILERA, et al.,

Plaintiffs-Appellants,

v.

ADRIAN FONTES, et al.,

Defendants-Appellees.

No. 1 CA-CV 20-0688 EL

Maricopa County Superior Court
No. CV2020-014562

BRIEF OF MARICOPA COUNTY APPELLEES

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Table of Contents

Table of Contents	i
Table of Citations	ii
Introduction	1
Statement of the Case and Facts	2
I. Aguilera filed and voluntarily dismissed a special action.....	2
II. Aguilera attempted to intervene in different election litigation.....	2
III. Aguilera filed this civil action.....	3
IV. The trial court held an evidentiary hearing.	4
A. Aguilera and Drobinina’s testimony	4
B. County’s testimony	5
V. The trial court dismissed Aguilera’s claims.....	7
Statement of the Issues.....	9
Standard of Review	10
Argument.....	11
I. Aguilera lacked standing to pursue her “open to public viewing” claim.	11
A. The undisputed facts show that Aguilera suffered no injury....	11
B. Aguilera cannot rely on the relaxed mandamus standard because she did not bring a mandamus action.....	12
II. Aguilera is not entitled to mandamus relief.	16
A. The Addendum does not require “in person” public viewing. .	17
B. The Addendum does not require the County to broadcast electronic adjudication with the level of detail Aguilera desires.	19
C. The County did not abuse its discretion under the Addendum.	20
III. Aguilera is not entitled to injunctive relief.	23
Conclusion	26
Appendix	27

Table of Citations

Cases

<i>Ariz. Pub. Integrity All. v. Fontes</i> , 250 Ariz. 58, 475 P.3d 303 (2020)	passim
<i>Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs</i> , 249 Ariz. 396 (2020).....	1, 11, 15
<i>Bd. of Ed. of Scottsdale High Sch. Dist. No. 212 v. Scottsdale Ed. Ass’n</i> , 109 Ariz. 342 (1973).....	16, 18
<i>Boswell v. Fintelmann</i> , 242 Ariz. 52 (App. 2017).....	21, 23
<i>Calnimptewa v. Flagstaff Police Dep’t</i> , 200 Ariz. 567 (App. 2001).....	17
<i>City of Phoenix v. Superior Court</i> , 110 Ariz. 155 (1973).....	2
<i>Clay v. Ariz. Interscholastic Ass’n, Inc.</i> , 161 Ariz. 474 (1989).....	10
<i>Coronado Co. v. Jacome’s Deft Store, Inc.</i> , 129 Ariz. 137 (App. 1981).....	10, 19
<i>Cullen v. Auto-Owners Ins. Co.</i> , 218 Ariz. 417 (2008).....	13
<i>Forszt v. Rodriguez</i> , 212 Ariz. 263 (App. 2006).....	10
<i>Globe Am. Cas. Co. v. Lyons</i> , 131 Ariz. 337 (App. 1981).....	10, 22
<i>In re Estate of Riley</i> , 231 Ariz. 330 (2013).....	17
<i>Kahn v. Thompson</i> , 185 Ariz. 408 (App. 1995).....	16
<i>Kondaur Cap. Corp. v. Pinal Cnty.</i> , 235 Ariz. 189 (App. 2014).....	21, 23
<i>Merkens v. Fed. Ins. Co.</i> , 237 Ariz. 274 (App. 2015).....	22

<i>MT Builders L.L.C. v. Fisher Roofing Inc.</i> , 219 Ariz. 297 (App. 2008).....	24
<i>Orfaly v. Tucson Symphony Society</i> , 209 Ariz. 260 (App. 2004).....	24
<i>Padilla v. Industrial Comm’n</i> , 113 Ariz. 104 (1976).....	19
<i>Robert Schalkenbach Found. v. Lincoln Found., Inc.</i> , 208 Ariz. 176 (App. 2004).....	10
<i>Sears v. Hull</i> , 192 Ariz. 65 (1998).....	9, 11, 16, 20
<i>Sensing v. Harris</i> , 217 Ariz. 261 (App. 2007).....	21, 23
<i>Shoen v. Shoen</i> , 167 Ariz. 58 (App. 1990).....	9, 10, 24, 25
<i>Shooter v. Farmer</i> , 235 Ariz. 199 (2014).....	10, 12
<i>Sotomayor v. Burns</i> , 199 Ariz. 81 (2000).....	16
<i>State Comp. Fund v. Superior Court</i> , 190 Ariz. 371 (App. 1997).....	14
<i>State v. Bible</i> , 175 Ariz. 549 (1993).....	22
<i>Union Interchange, Inc. v. Van Aalsburg</i> , 102 Ariz. 461 (1967).....	15
<i>United States v. Dunkel</i> , 927 F.2d 955 (7th Cir. 1991)	14
<i>Whitmore v. Arkansas</i> , 495 U.S. 149 (1990).....	12
Statutes	
A.R.S. § 12-2021.....	13
A.R.S. § 12-2030.....	13
A.R.S. § 16-452(B)	4
A.R.S. § 16-515(G).....	23

A.R.S. § 16-547(C)	14
A.R.S. § 16-551(C)	22
A.R.S. § 16-621(D)	20
A.R.S. § 16-622	22

Rules

Ariz. R. Civ. P. 8(a)	13
Ariz. R.P. Spec. Act. 3	13, 15
Ariz. R.P. Spec. Act. 3(a)	15

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Introduction

In this civil action—not a special action—Plaintiffs Laurie Aguilera and Donovan Drobina (collectively, “Aguilera”) raised a smorgasbord of issues about the November 2020 election. In part, Aguilera claimed that Maricopa County did not make “the electronic adjudication of votes . . . open to public viewing” consistent with the Electronic Adjudication Addendum to the 2019 Elections Procedures Manual. The trial court dismissed this claim because the County publicly broadcasted that process on the Internet. The court also found that Aguilera did not view the County’s broadcast and that she lacked standing to bring this civil action.

On appeal, Aguilera argues that she need not show standing because this civil action is actually a “mandamus type case[]”—even though she failed to comply with the special action rules. At bottom, Aguilera wants the benefit of mandamus—“a more relaxed standard for standing” than “a distinct and palpable injury”—without its structure: a special action “to compel a public official to perform an act which the law specifically imposes as a duty.” *See Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, ¶¶ 10, 11, 475 P.3d 303, 307 (2020) (in division).

Yet just two months before Aguilera filed this action, the Arizona Supreme Court expressly “caution[ed] parties to avoid this practice in the future.” *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404, ¶ 17 (2020). This Court should affirm the trial court’s dismissal.

Statement of the Case and Facts

I. Aguilera filed and voluntarily dismissed a special action.

Following the November 3, 2020 general election, Plaintiff-Appellant Laurie Aguilera filed a Verified Complaint for Special Action in *Aguilera v. Fontes*, No. CV2020-014083 (Maricopa Cnty. Sup. Ct.) (“*Aguilera I*”). (App. 27–36).¹ She based her special action on claims that Maricopa County’s provision of Sharpie-brand markers “cancel[ed]” voters’ ballots. (*Id.*). Aguilera then amended her complaint to add Drobina as a plaintiff. (App. 37–48). The factual averments continued the Sharpie claims, and both plaintiffs sought declaratory and injunctive relief to allow them to cast their ballots after election day. (*Id.*).

On November 6, 2020, the trial court set an expedited briefing schedule and set an expedited evidentiary hearing for Friday, November 12, 2020. (App. 49–52). But on November 7, Aguilera dismissed the special action without explanation just two days after filing it. (App. 53–54).

II. Aguilera attempted to intervene in different election litigation.

Two days later, Aguilera moved to intervene in *Trump v. Hobbs*, No. CV2020-014248 (Maricopa Cnty. Sup. Ct.), assigned to Judge Kiley. (App. 55–66). The complaint-in-intervention made the same allegations and sought essentially the same

¹ This Court can take judicial notice of the superior court’s records. *City of Phoenix v. Superior Court*, 110 Ariz. 155, 157 (1973).

relief as the special action that Aguilera had just voluntarily dismissed. (See App. 67–95). Aguilera claimed that intervention was required because (1) *Trump v. Hobbs* presented the only chance Aguilera would have to litigate the issues set forth in the complaint-in-intervention, and (2) Aguilera would have no other opportunity to protect those rights and interests, (App. 55–66), despite the fact the Aguilera had dismissed two days earlier essentially the same claims premised on the same facts. Judge Kiley denied Aguilera’s motion to intervene the same day it was filed. (App. 98).

III. Aguilera filed this civil action.

Aguilera then filed this civil action against the Maricopa County Recorder and individual members of the Maricopa County Board of Supervisors (“the County”), again alleging that ballots were “canceled” and “rejected.” (I.R. 1). Aguilera pursued the theory—later debunked by her own expert at an evidentiary hearing, (see I.R. 57)—that voting machines in Arizona are not legitimate unless they are “perfect.” And once again Aguilera sought the same relief: a chance to vote, contrary to law, after election day. (I.R. 1 at 12).

Aguilera claimed that the County failed to comply with the 2020 Electronic Adjudication Addendum to the 2019 Elections Procedures Manual (“the Addendum”).² The relevant provision of the Addendum states: “The electronic

² By law, the Elections Procedures Manual must be issued by December 31 in

adjudication of votes must be performed in a secure location, preferably in the same location as the EMS system, but open to public viewing.” Addendum at 3, § D.1. Aguilera alleged that the County “failed to open the location where electronic adjudication occurs to the public.” (I.R. 1 at 14–15). Aguilera did not otherwise explain this claim.

IV. The trial court held an evidentiary hearing.

A. Aguilera and Drobina’s testimony

On November 20, 2020, the trial court held an evidentiary hearing. (*See* I.R. 57). On direct examination, Laurie Aguilera testified about her experience at the polling place on election day. (Nov. 20, 2020 Hr’g Tr. (“Tr.”) at 99:21–121:6). Aguilera testified that she did not attempt to watch the County’s broadcast of the ballot tabulation process. (*Id.* at 123:1–12). Upon a question from counsel, she answered affirmatively that she “would . . . like to have the option to observe the adjudication process of ballots in person.” (*Id.* at 123:22–25). Aguilera did not describe the County’s broadcast and did not offer a recording of it.

each odd-numbered year. A.R.S. § 16-452(B). The most recent Elections Procedures Manual was issued in December 2019. It is a public document, available online at https://azsos.gov/sites/default/files/2019_ELECTIONS_-_PROCEDURES_MANUAL_APPROVED.pdf. The December 2019 approval letters from the Governor and Attorney General are included as unnumbered pages at the beginning of the Manual. A copy of the Addendum is available at https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf.

Similarly, on direct examination Donovan Drobina primarily testified about his experience casting a ballot on election day. (Tr. at 137:22–152:6, 158:5–23). Upon a question from counsel, Drobina answered affirmatively that he “would . . . like to have the opportunity to observe the electronic adjudication process in person.” (*Id.* at 152:17–20). Like Aguilera, Drobina did not testify that he had attempted to watch the County’s broadcast, did not describe the broadcast, and did not offer a recording of it.

B. County’s testimony

For the County, the Director of Election Day and Emergency Voting testified. Relevant to the Addendum claim, the Director testified that the tabulation center is “a secured room . . . under camera 24/7, 365 days a year.” (Tr. at 31:23–32:14). The Director explained:

[T]hat is where all programming of equipment occurs. That is where actual -- the counting of early ballots occur, and that is also where we have adjudication stations where we hire bipartisan adjudication boards to come in and perform adjudication actions on ballots that over votes, ambiguous marks. If there are write-in candidates, those adjudication boards perform that.

(*Id.* at 32:2-9). The Director stated that adjudication occurs to look for “voter intent” on “damaged ballots when they’re duplicated.” (*Id.* at 51:25–52:13).

The Director also testified that the tabulation center is viewable by the public: “we have several different camera views that can observe the entire room, including those adjudication stations, our central count tabulators, and other areas within that

room.” (*Id.* at 32:15–20). And he testified that the general public

can go to the Maricopa County Elections Department website, and we have a link available. So anyone from the public can log on to our website -- Maricopa.vote -- and find that link, and then they will have different views to [be] able to look at that room and observe all the activities going on within that room.

(*Id.* at 32:24–33:4). The Director testified that “we do have access restrictions. So we don’t just let any member from the public in. That’s why we offer the online viewing.” (*Id.* at 33:9–11).

The Director further testified that some members of the public—“appointees from the political parties”—are allowed into the room to observe the electronic adjudication process. (Tr. at 33:9–18). The County allows them in the room only after confirming that the party representative is registered to vote in Arizona “to confirm that they don’t have a felony or a criminal background before we let them in because we hold that room to a high stringent standard of security.” (*Id.* at 33:15–18).

The Director explained that the “political party observer would be able to view what the adjudicators are looking at [on the electronic adjudication screen] and overhear any conversations that the adjudicators are having to make their determinations” and “the adjudicators would be making decisions based off the training we provided and what they’re viewing on the screen.” (Tr. at 79:2–8). The Director also testified about the COVID-19-related restrictions, including the use of

plexiglass barriers at the adjudication stations. (*Id.* at 34:16–35:7).

And the Director testified that the County does not allow the general public to view particular ballots on the electronic adjudication screens through the broadcast because the County begins vote tabulation fourteen days before election day, but cannot release the results of the election that early, “[a]nd having cameras viewing those ballots before election day and even subsequent to election day would be releasing results prior to election day, which is not allowed through statute.” (Tr. at 79:16–24).

When questioned about the harm of the public having access to individual ballots, the Director testified that “[p]eople can infer from small limited samples of ballots of what the results may look like, and we cannot release any results, even whether it’s one ballot or a large grouping of all the ballots to the public.” (Tr. at 80:5–11). Further, the Director testified that in-person observers in the tabulation room are not permitted to photograph or otherwise record ballots close-up. (*Id.* at 97:23–98:7).

V. The trial court dismissed Aguilera’s claims.

After the evidentiary hearing, the trial court issued a written ruling. (I.R. 57).

On the Addendum issue, the trial court found

the uncontested evidence established that the public is able to view the adjudication process on an Elections Department website which broadcasts to the public these very Election Department activities, yet both Plaintiffs testified that they had not even looked at the website.

Although Plaintiffs' counsel argued that the website's camera view was distant or in some fashion inadequate to satisfy Plaintiffs, this was argument of counsel since Plaintiffs had never actually availed themselves of the website viewing opportunity to know personally what was visible or whether it was satisfactory.

(I.R. 57 at 8). And the court also found that "the adjudication of votes had been completed by or on the date of the Hearing." (*Id.*).

The trial court also found that Aguilera "fail[ed] to allege harm of the nature required to achieve standing. Plaintiffs both cast their ballots. Plaintiffs both allege that they would prefer the process to be different. A change in the established process goes to the process used with and available to all voters, not uniquely to Aguilera and Drobina." (I.R. 57 at 9). The court dismissed Aguilera's complaint for failure to state a claim and failing to produce evidence that she was entitled to relief. (*Id.* at 10).

Statement of the Issues

1. To show standing, “a plaintiff must allege a distinct and palpable injury” and cannot rely on “generalized harm that is shared alike by all.” *Sears v. Hull*, 192 Ariz. 65, 69, ¶ 16 (1998). Here, Aguilera claimed that the County did not make the electronic adjudication of votes “open to public viewing,” but she did not view the County’s public broadcast of that process. Did Aguilera establish standing?

2. To obtain mandamus relief, a petitioner must bring a special action “to compel a public official to perform an act which the law specifically imposes as a duty.” *Ariz. Pub. Integrity All.*, 475 P.3d at 307, ¶ 11. “[T]he general rule is that if the action of a public officer is discretionary that discretion may not be controlled by mandamus.” *Sears*, 192 Ariz. at 68, ¶ 11. Here, Aguilera did not bring a special action, the trial court found that the County made the electronic adjudication process “open to public viewing,” and the County had discretion to comply with § D.1. of the Addendum. Is Aguilera entitled to mandamus relief?

3. To obtain injunctive relief, a plaintiff must satisfy “four traditional equitable criteria”: (1) success on the merits, (2) “[t]he possibility of irreparable injury”; (3) “[a] balance of hardships favor[ing]” plaintiff; and (4) “[p]ublic policy favors the injunction.” *See Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Aguilera’s evidence failed to establish any of these criteria. Did the trial court err when it denied her request for injunctive relief?

Standard of Review

This Court reviews a trial court's interpretation of statutes, rules, and the Elections Procedures Manual *de novo*. *Ariz. Pub. Integrity All.*, 475 P.3d at 306–07, ¶ 8.³ Whether a litigant has standing to sue is also reviewed *de novo*. *Robert Schalkenbach Found. v. Lincoln Found., Inc.*, 208 Ariz. 176, 180, ¶ 15 (App. 2004). But this Court defers to a trial court's findings of fact unless they are clearly erroneous. *Shooter v. Farmer*, 235 Ariz. 199, 200, ¶ 4 (2014).

A trial court's denial of an injunction is reviewed for an abuse of discretion. *Shoen*, 167 Ariz. at 62; *see also Clay v. Ariz. Interscholastic Ass'n, Inc.*, 161 Ariz. 474, 476 (1989). Similarly, this Court “review[s] the denial of a writ of mandamus for an abuse of discretion.” *Forszt v. Rodriguez*, 212 Ariz. 263, 265, ¶ 9 (App. 2006).

This Court may affirm a trial court's dismissal for any reason supported by the record. *Coronado Co. v. Jacome's Deft Store, Inc.*, 129 Ariz. 137, 139 (App. 1981). “In reviewing the record, [this Court will] consider the evidence in the light most favorable to upholding the judgment.” *Globe Am. Cas. Co. v. Lyons*, 131 Ariz. 337, 340 (App. 1981).

³ For the remainder of this Brief, citations to *Arizona Public Integrity Alliance* will only use the Pacific Reporter because the pinpoint citations to the Arizona Reporter for this recent case are currently unavailable.

Argument

I. Aguilera lacked standing to pursue her “open to public viewing” claim.

A. The undisputed facts show that Aguilera suffered no injury.

Nothing in the record establishes Aguilera’s standing. “Arizona’s Constitution does not contain a specific case or controversy requirement.” *Arizonans for Second Chances*, 249 Ariz. at 405, ¶ 22. But Arizona’s courts have “traditionally required a party to establish standing.” *Id.* “To gain standing to bring an action, a plaintiff must allege a distinct and palpable injury.” *Sears*, 192 Ariz. at 69, ¶ 16. “An allegation of generalized harm that is shared alike by all or a large class of citizens generally is not sufficient to confer standing.” *Id.*

1. Aguilera lacked standing because the complaint’s “open to public viewing” claim did not allege an injury to Aguilera—let alone a “distinct and palpable injury.” For example, there is no allegation that she attempted to view the electronic adjudication process in person or that she watched the County’s broadcast. (*See, e.g.*, I.R. 1, ¶¶ 3.15–3.41). Instead, the complaint’s allegations and requests for declaratory and injunctive relief—not mandamus relief—generally alleged that the County “failed to open the location where electronic adjudication occurs to the public.” (I.R. 1, ¶ 3.6, ¶ 4.43 & 14–15; *see also* O.B. at 11–13 (relying on theories of declaratory and injunctive relief), 22–23 (requesting declaratory and injunctive relief directly from this Court)).

2. Even with an opportunity to correct this flaw at the evidentiary hearing, Aguilera failed to testify about any alleged injury. The trial court's findings of fact on this issue are dispositive:

[T]he uncontested evidence established that the public is able to view the adjudication process on an Elections Department website which broadcasts to the public these very Election Department activities, yet both Plaintiffs testified that they had not even looked at the website. Although Plaintiffs' counsel argued that the website's camera view was distant or in some fashion inadequate to satisfy Plaintiffs, this was argument of counsel since Plaintiffs had never actually availed themselves of the website viewing opportunity to know personally what was visible or whether it was satisfactory.

(I.R. 57 at 8 (emphasis added)); *see also Shooter*, 235 Ariz. at 200, ¶ 4.

On appeal, Aguilera appears to argue that she established an injury by testifying that she “would like to have the opportunity to observe the adjudication process in-person.” (O.B. at 7 (citing Tr. at 123:22–25, 152:17–20)). That testimony is wholly inadequate because “the alleged harm must be actual or imminent, not conjectural or hypothetical.” *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (quotation marks omitted). And redressability is inapposite because there is no injury to redress. (See O.B. at 21). This Court should affirm the trial court's dismissal on standing because Aguilera did not establish a distinct and palpable injury.

B. Aguilera cannot rely on the relaxed mandamus standard because she did not bring a mandamus action.

On appeal, Aguilera argues that traditional standing does not apply because this civil action was actually a “mandamus type case[.]” (See O.B. at 18–21).

Aguilera seeks the “more relaxed standard for standing in mandamus actions.” *Ariz. Pub. Integrity All.*, 475 P.3d at 307, ¶ 11. This argument fails.

1. Aguilera appears to base this argument on two fleeting references to A.R.S. § 12-2021 and § 12-2030 in the complaint. (*See* O.B. at 4). But mandamus relief can only be obtained through a special action. Ariz. R.P. Spec. Act. 1(a) (“Relief previously obtained against a body, officer, or person by writ[] of . . . mandamus . . . in the trial or appellate courts shall be obtained in an action under this Rule” (Emphasis added)). A special action must set out the specific “questions that may be raised in a special action.” *See* Ariz. R.P. Spec. Act. 3.

Here, Aguilera did not file a special action to enforce the Addendum; she filed a civil action seeking declaratory and injunctive relief on a smorgasbord of election claims. Aguilera repeated the requests for declaratory and injunctive relief on appeal. (O.B. at 11–13, 22–23). Notably, the complaint did not comply with Rule 3 or address “mandamus relief” or “duty”—necessary components of a mandamus action. It thus failed “to give the [County] fair notice of the nature and basis of the claim and indicate generally the type of litigation involved.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 6 (2008) (explaining Ariz. R. Civ. P. 8(a)).

These are not idle procedural concerns. Aguilera’s pleading effectively divested the trial court of its authority to accept or decline jurisdiction over a request for extraordinary relief. *See State Comp. Fund v. Superior Court*, 190 Ariz. 371, 374

(App. 1997) (addressing special action discretion); *see also United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (“Judges are not like pigs, hunting for truffles buried in briefs.”). Indeed, the trial court viewed Aguilera’s claims as an interconnected whole because that is how Aguilera presented them. (*See* I.R. 57 at 9 (“Plaintiffs both allege that they would prefer the process to be different. A change in the established process goes to the process used with and available to all voters, not uniquely to Aguilera and Drobina.”)). Adopting Aguilera’s position would render the special action superfluous because no litigant would ever risk a court denying jurisdiction if she could just file a civil action and force the court to hear a request for extraordinary relief.

2. Aguilera’s reliance on *Arizona Public Integrity Alliance* hurts—rather than helps—this argument. (*See, e.g.,* O.B. at 18–20). In that case, plaintiffs filed a “special action” in superior court to compel the county recorder to comply with the Elections Procedures Manual’s explicit ballot instructions language on overvotes because “the Recorder’s authority is limited to ‘supply[ing]’ the [Elections Procedures Manual’s] instructions to early voters.” *Ariz. Pub. Integrity All.*, 475 P.3d at 306, ¶ 6, 308, ¶ 17 (quoting A.R.S. § 16-547(C)). The Arizona Supreme Court concluded that the recorder’s preferred instructions did not match, entitling plaintiffs to mandamus relief. *Id.* at 309, ¶ 25. In contrast, Aguilera did not file a special action “to compel [the County] to perform an act which the law specifically imposes as a

duty.” *See id.* at 307, ¶ 11. Aguilera filed a civil action alleging a grab bag of election-related grievances. (*See also* Section II, *infra* (addressing inapplicability of mandamus relief on this record to § D.1. of the Addendum)).

3. Nor can Aguilera rely on *Arizonans for Second Chances* for support. The Arizona Supreme Court did not “jettison[]” standing in election matters as Aguilera argues. (*See* O.B. at 19–20). And it certainly did not approve Aguilera’s alphabet-soup pleading: the Court emphasized that “[j]urisdictional statements are important, particularly when a party is seeking special action relief.” *Arizonans for Second Chances*, 249 Ariz. at 404, ¶ 17. And it “caution[ed] parties to avoid this practice in the future”—meaning the practice of muddled pleadings that do not follow the special action rules. *Id.* (“Petitioners neither cite Rule 3(a), nor do they provide a clear and concise statement addressing our jurisdiction in this case.”).

4. Finally, belying any argument that this is a “mandamus type case[]” or that Aguilera’s neglect is excusable, Aguilera previously filed—and voluntarily withdrew—a special action with a Rule 3 jurisdictional statement in *Aguilera I*; Aguilera later replaced it with this civil action. “Rules of procedure are designed to facilitate the just and expeditious prosecution of a case through the courts and should not be burdened with the niceties of gamesmanship; the rules were promulgated to obviate that very evil.” *Union Interchange, Inc. v. Van Aalsburg*, 102 Ariz. 461, 464 (1967). Arizona’s courts have long-rejected gamesmanship in time-pressed election

matters. *See, e.g., Sotomayor v. Burns*, 199 Ariz. 81, 83, ¶ 9 (2000) (“Waiting until the last minute to file an election challenge places the court in a position of having to steamroll through the delicate legal issues in order to meet the deadline for measures to be placed on the ballot.” (Internal quotation mark omitted)). This Court should not reward Aguilera’s conduct, and it should affirm the trial court’s dismissal because Aguilera lacked standing.

II. Aguilera is not entitled to mandamus relief.

Assuming *arguendo* that Aguilera could seek mandamus relief without filing a special action, she is not entitled to it here. “Mandamus is an extraordinary remedy issued by a court to compel a public officer to perform an act which the law specifically imposes as a duty.” *Sears*, 192 Ariz. at 68, ¶ 11. “It does not lie if the public officer is not specifically required by law to perform the act.” *Bd. of Ed. of Scottsdale High Sch. Dist. No. 212 v. Scottsdale Ed. Ass’n*, 109 Ariz. 342, 344 (1973); *see also Kahn v. Thompson*, 185 Ariz. 408, 411 (App. 1995) (stating mandamus is not “available to compel an officer to perform acts not authorized or required by some plain provision of the law”).

Here, § D.1. of the Addendum states: “The electronic adjudication of votes must be performed in a secure location, preferably in the same location as the EMS system, but open to public viewing.” Addendum at 3. In stark contrast to this sparse direction, the Addendum provides detailed instructions to elections officials on the

“production of a paper audit log of the Electronic Vote Adjudication Board’s dispositions as to each ballot/vote electronically adjudicated.” Addendum at 4, §§ D.6.–9.

As the superior court correctly found, “the uncontested evidence established that the public is able to view the adjudication process on an Elections Department website which broadcasts to the public these very Election Department activities.” (I.R. 57 at 8). Mandamus relief is thus unavailable.

A. The Addendum does not require “in person” public viewing.

Aguilera argues that § D.1. requires the public to view the process “in person” at the Elections Department. (*See* O.B. at 13–15). This position is at odds with the most basic technique of interpretation: it seeks to change the Addendum’s scope by adding words that are not there. *See In re Estate of Riley*, 231 Ariz. 330, 333, ¶ 14 (2013) (“To adopt such a position would require us to add words to the statute that are not there.”); *Calnimptewa v. Flagstaff Police Dep’t*, 200 Ariz. 567, 570, ¶ 13 (App. 2001) (“[W]e are not authorized to supply words that would extend the scope of a statute beyond that intended by the legislature.”).

Aguilera’s argument that “secure . . . but open to public viewing” means “in person” is meritless. (*See* O.B. at 14). A common dictionary definition of the adjective “secure” is “[n]ot subject to threat; certain to remain or continue safe and unharmed.” *Secure*, Lexico.com <https://www.lexico.com/en/definition/secure> (last

visited Mar. 18, 2021) (providing U.S. definition from Oxford English Dictionary). The word “public” means “[o]pen to or shared by all the people of an area or country.” *Public*, Lexico.com <https://www.lexico.com/en/definition/public> (last visited Mar. 18, 2021). And the verb to “view” means “[l]ook at or inspect (something)” with a sub-meaning of “[w]atch (something) on television.” *View*, Lexico.com <https://www.lexico.com/en/definition/view> (last visited Mar. 18, 2021). The concept “in person” is not found in the plain meaning of these words.

Footnote 5 in the Opening Brief further demonstrates the absurdity of Aguilera’s argument. Aguilera states that she “do[es] not believe that the requirement to open the facility where electronic adjudication takes place to public viewing prohibits the County from placing reasonable restrictions on the number of members of the public who may be present in the facility at any one time.” (O.B. at 13–14 n.5). Aguilera does not source her “belie[f]” in the Addendum or explain why the County’s decision to exclude members of the general public from the Elections Department during a global pandemic is not a similarly “reasonable restriction[.]” Like “in person,” Aguilera invents it out of whole cloth.

But even if Aguilera’s untenable reading of the Addendum was correct, the addition of “in person” to § D.1. means mandamus “does not lie” because the County “is not specifically required by law to perform the act,”—i.e., allow the public’s in-person viewing. *See Scottsdale High Sch. Dist.*, 109 Ariz. at 344 (emphasis added);

see also Ariz. Pub. Integrity All., 475 P.3d at 307, ¶ 11 (describing mandamus as an “action to compel a public official to perform an act which the law specifically imposes as a duty” (emphasis added)).

B. The Addendum does not require the County to broadcast electronic adjudication with the level of detail Aguilera desires.

Alternatively, Aguilera argues, the County’s broadcast is not “adequate” because it did not provide a detailed feed of the electronic adjudicator’s computer screen. (*See* O.B. at 15–16). Preliminarily, consistent with Rule 8(a) this Court may affirm the superior court’s dismissal because Aguilera’s complaint did not allege inadequacies with the County’s broadcast—it did not address the broadcast at all. *See also Coronado*, 129 Ariz. at 139. Further, neither Aguilera nor Drobina testified that they would like the “opportunity” to view the electronic adjudication with the level of detail argued by their counsel. (*See* Tr. at 123:22–25, 152:17–20).

In any event, if the Addendum had intended to require a live feed of the adjudicator’s screen and the other details Aguilera desires, it would have done so. *Cf. Padilla v. Industrial Comm’n*, 113 Ariz. 104, 106 (1976) (“Equally fundamental is the presumption that what the Legislature means, it will say.”). For example, the Addendum provides detailed instructions the “paper audit log of the Electronic Vote Adjudication Board’s dispositions as to each ballot/vote electronically adjudicated.” Addendum at 4, §§ D.6.–9. Those details are absent in § D.1.

Similarly, Aguilera's reliance on the recording requirement of A.R.S. § 16-621(D) is inapposite. (*See* O.B. at 16 n.6). This lengthy and detailed statute states, in relevant part:

the county recorder or officer in charge of elections shall provide for a live video recording of the custody of all ballots while the ballots are present in a tabulation room in the counting center. The live video recording shall include date and time indicators and shall be linked to the secretary of state's website. . . . The county recorder or officer in charge of elections shall record the video coverage of the ballots at the counting center and shall retain those recordings as a public record for at least as long as the challenge period for the general election. If the live video feed is disrupted or disabled, the recorder or officer in charge of elections is not liable for the disruption but shall attempt to reinstate video coverage as soon as is practicable. Any disruption in video coverage shall not affect or prevent the continued tabulation of ballots.

A.R.S. § 16-621(D). It does not establish a requirement to mirror or record the electronic adjudication screens for the general public.

A court applying the plain meaning of these laws does not "rewrite" them. (*See* O.B. at 17). Aguilera again creates a mandate that the law does not, and this Court cannot read those terms into § D.1 to justify mandamus.

C. The County did not abuse its discretion under the Addendum.

Because the Addendum did not direct the County to make electronic adjudication "open to public viewing" in a particular manner, the County retained discretion to achieve § D.1's purpose. "[T]he general rule is that if the action of a public officer is discretionary that discretion may not be controlled by mandamus."

Sears, 192 Ariz. at 68, ¶ 11.

This Court, however, has recognized limited “situations where mandamus may be used to compel an officer . . . to take action even though such action is discretionary, but it cannot be used to require that such discretion be exercised in a particular manner.” *Sensing v. Harris*, 217 Ariz. 261, 264, ¶ 11 (App. 2007) (internal quotation marks omitted). And mandamus to compel a discretionary act is available “only if the official abuses that discretion.” *Id.* at 263, ¶ 6.

As a preliminary matter, Aguilera did not argue that the County abused its discretion. This issue is waived. *Boswell v. Fintelmann*, 242 Ariz. 52, 54 n.3 (App. 2017) (claims not supported by legal argument waived); *Kondaur Cap. Corp. v. Pinal Cnty.*, 235 Ariz. 189, 192, n.4 (App. 2014) (“[T]hat issue has been waived as a result of [appellant’s] failure to address it . . .”).

Even if Aguilera’s arguments on appeal could be shoe-horned into this issue, nothing in the record shows that the County abused its discretion. At the hearing, Aguilera did not introduce evidence about the County’s alleged inadequacies, relying instead on “argument of counsel.” (I.R. 57 at 8). For example, Aguilera did not testify about the broadcast or introduce a recording of the broadcast.

On appeal, Aguilera raises the testimony of the County’s Director of Election Day and Emergency Voting to argue that the superior court’s findings of fact are erroneous. (See O.B. at 15–16). But Aguilera invites this Court to reweigh the evidence—something this Court does not do. See *Merkens v. Fed. Ins. Co.*, 237 Ariz.

274, 279, ¶ 24 (App. 2015); *see also State v. Bible*, 175 Ariz. 549, 609 (1993) (superior court “was in the best position to evaluate credibility and accuracy, as well as draw inferences, weigh, and balance”); *Globe Am. Cas. Co.*, 131 Ariz. at 340 (considering “the evidence in the light most favorable to upholding the judgment.”).

Regardless, the testimony shows that the County prudently exercised its discretion to comply with the Addendum. The Director testified that “anyone from the public” can access the broadcast “and then they will have different views to [be] able to look at that room and observe all the activities going on within that room.” (Tr. at 32:24–33:4).

The Director also testified that the political parties appoint members of the public to represent them in the room, so long as appointee is a registered voter. (Tr. at 33:15–18; *see also id.* 35:1–7). The Director testified that the County does not broadcast ballots on the electronic adjudication screens because it would unlawfully report early election results. (*Id.* at 79:16–80:11); *see also* A.R.S. § 16-551(C) (providing that “[i]n no event shall partial or complete tallies” of early ballots be publicly released before all precincts have reported election returns or one hour after polls closing on election day, whichever occurs first) (emphasis added); A.R.S. § 16-622 (providing that unofficial returns may not be released prior to time specified by § 16-551(C), and each release to the public “shall be” transmitted to secretary of state).

And the Director testified that in-person observers in the tabulation room are not permitted to photograph or otherwise record ballots close-up, putting them on the same footing as members of the general public who access the County's website. (See Tr. at 97:23–98:7); cf. A.R.S. § 16-515(G) (prohibiting photography within the seventy-five foot limit of polling locations while voting is occurring and so ballots are present). Relatedly, the superior court expressed concerns with ballot secrecy “to view a ballot in the fine detail [Aguilera] desire[s].” (I.R. 57 at 8).

Balancing these competing concerns does not show that the County abused its discretion. Aguilera “may disagree with how the [County] has chosen to act, but disagreement alone is not a basis for mandamus.” See *Sensing*, 217 Ariz. at 265, ¶ 14. This Court should affirm the superior court's dismissal.

III. Aguilera is not entitled to injunctive relief.

Assuming *arguendo* that Aguilera had established “a distinct and palpable injury” for standing based on a latent desire to view the electronic adjudication of ballots, the trial court did not abuse its discretion when it denied Aguilera's request for an injunction. As a preliminary matter, Aguilera waived this argument. First, by reframing the entire action as a “mandamus type case[],” (O.B. at 18–21), Aguilera has waived any argument that the superior court abused its discretion by refusing to grant an injunction. See *Boswell*, 242 Ariz. at 54 n.3; *Kondaur*, 235 Ariz. at 192, n.4. Second, Aguilera waived any argument that the issue of ballot adjudication is

capable of repetition yet evades review, (*see* O.B. at 21, n.7; *see also* I.R. 57 at 8 (finding relief unavailable because process had concluded))—Aguilera failed to make this argument below and buried it in a footnote on appeal. *See Orfaly v. Tucson Symphony Society*, 209 Ariz. 260, ¶ 15 (App. 2004) (arguments not raised in trial court waived); *MT Builders L.L.C. v. Fisher Roofing Inc.*, 219 Ariz. 297, 304 n. 7 (App. 2008) (arguments only raised in footnote and not explained waived). And if the issue evaded review it is based on Aguilera’s dilatory litigation conduct.

In any event, the County addresses this issue in an abundance of caution. Aguilera cannot meet any of the traditional equitable criteria. *See Shoen*, 167 Ariz. at 63.

1. As discussed in further detail in Section II above, Aguilera is wrong on the “merits.” *See Shoen*, 167 Ariz. at 63. The Addendum does not require the public’s in-person presence at the Elections Department or detailed views of ballots on ballot adjudication screens. And Aguilera did not establish the merits of any alleged deficiencies at the evidentiary hearing because Aguilera did not testify about the broadcast or offer a recording of the broadcast for the trial court’s consideration. Aguilera failed to prove her case.

2. Aguilera did not establish the “possibility of irreparable injury,” *see Shoen*, 167 Ariz. at 63, because Aguilera presented, at most, a hypothetical interest

in the “option” or “opportunity” to view the electronic adjudication of ballots in person. There is no injury—let alone an irreparable one.

3. Aguilera did not demonstrate that the “balance of hardships favors” her. *See Shoen*, 167 Ariz. at 63. Indeed, Aguilera did not testify about any hardships suffered. In contrast, the County presented testimony about the security measures in place to protect the tabulation room. (Tr. at 33:9–18, 35:1–7). The County presented concerns with allowing the public to closely view and record ballot adjudication. (Tr. at 79:16–24). And the trial court expressed concerns with ballot secrecy. (I.R. 57 at 8).

4. Finally, public policy does not favor an injunction. *See Shoen*, 167 Ariz. at 63. In the absence of detailed instructions, (*compare* Addendum at 3, § D.1. with Addendum at 4, §§ D.6–D.9), the County exercised its discretion to strike a balance between these competing concerns. Aguilera can petition the Secretary of State—not the judiciary—to change the Elections Procedures Manual if she disagrees with the County’s choices.

Conclusion

For these reasons, this Court should reject Aguilera's attempt to wield mandamus as a sword and shield and affirm the superior court's decision. Aguilera is not entitled to the relief requested directly from this court or attorneys' fees.

RESPECTFULLY SUBMITTED this 22nd day of March 2021.

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ARIZONA COURT OF APPEALS

DIVISION ONE

LAURIE AGUILERA, et al.,

Plaintiffs-Appellants,

v.

ADRIAN FONTES, et al.,

Defendants-Appellees.

No. 1 CA-CV 20-0688 EL

Maricopa County Superior Court
No. CV2020-014562

**APPENDIX TO
BRIEF OF MARICOPA COUNTY APPELLEES**

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Appendix

Table of Contents

Location in Record	Description	Location in Appendix
	Aguilera's Nov. 4, 2020 Verified Complaint for a Special Action in <i>Aguilera I</i>	App. 29–36
	Aguilera's Nov. 5, 2020 First Amended Verified Complaint for a Special Action in <i>Aguilera I</i>	App. 37–48
I.R. 25, Exh. A	Superior Court (Judge Mahoney) Nov. 6, 2020 Minute Entry setting evidentiary hearing	App. 49–52
	Aguilera's Nov. 7, 2020 Notice of Dismissal	App. 53–54
I.R. 25, Exh. B	Aguilera's Nov. 9, 2020 Motion to Intervene in <i>Trump v. Hobbs</i>	App. 55–66
I.R. 25, Exh. C	Aguilera's Nov. 9, 2020 Proposed Verified Complaint-in-Intervention in <i>Trump v. Hobbs</i>	App. 67–95
I.R. 25, Exh. D	Superior Court (Judge Kiley) Nov. 9, 2020 Minute Entry denying Aguilera Motion to Intervene in <i>Trump v. Hobbs</i>	App. 96–99

JEFF FINE
 Clerk of the Superior Court
 By Clarissa Cruz, Deputy
 Date 11/04/2020 Time 15:40:46

Description	Amount
CASE# CV2020-014083	
ELECTION CONTEST:NEW	333.00
TOTAL AMOUNT	333.00
Receipt# 28009939	

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SUPERIOR COURT OF THE STATE OF ARIZONA

FOR THE COUNTY OF MARICOPA

LAURIE AGUILERA, a registered voter in
 Maricopa County, Arizona; DOES I-X;
Plaintiffs,
 v.

Case no.: CV 2020-014083

ADRIAN FONTES, in his official capacity as
 Maricopa County Recorder; FRAN
 McCARROLL, in her official capacity as
 Clerk of the Maricopa County Board of
 Supervisors; CLINT HICKMAN, JACK
 SELLERS, STEVE CHUCRI, BILL GATES
 AND STEVE GALLARDO, in their official
 capacities as members of the Maricopa
 County Board of Supervisors; MARICOPA
 COUNTY, a political subdivision of the State
 of Arizona;

Defendants.

VERIFIED COMPLAINT FOR A SPECIAL ACTION [EXPEDITED ELECTION MATTER]

(Order to Show Cause Requested)

(Oral Argument Requested)

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SECTION I

PARTIES, JURISDICTION, AND VENUE

1.1. Plaintiff Laurie Aguilera is a natural person registered to vote in Maricopa County.

1.2. Does I-X are other individuals similarly impacted. When identified Plaintiff will seek leave to amend this Complaint to add their true.

1.3. Plaintiff Laurie Aguilera is a resident of Maricopa County, Arizona. She is and was, at all times relevant hereto, a registered voter in Maricopa County not on the early voting list.

1.4. Defendant Adrian Fontes is the Maricopa County Recorder. He is being sued in his official capacity.

1.5. Defendant Fran McCarroll is Clerk of the Maricopa County Board of Supervisors. She is being sued in her official capacity.

1.6. Defendants Clint Hickman, Jack Sellers, Steve Chucuri, Bill Gates, and Steve Gallardo are the members of the Maricopa County Board of Supervisors. They are being sued in their official capacity.

1.7. Maricopa County is a political subdivision of the State of Arizona.

1.8. All or substantially all of the acts and occurrences giving rise to this Verified Complaint occurred in Maricopa County, Arizona.

1.9. Pursuant to A.R.S. § 12-401(16) an action against public officers shall be brought in the county in which the officer, or one of server officers holds office.

1.10. Plaintiffs may proceed by special action where there is no equally "plain, speedy and adequate remedy" available. A.R.S. §§ 12-2001, 12-2021, Rules of Procedure for Special Actions ("RPSA") 1. For the reasons set forth below, there is no equally plain, speedy, and adequate remedy available.

1.11. A special action may be instituted with or without an application for order to show cause why the requested relief should not be granted. RPSA 4(c). Where a show-cause procedure is used, the court must set a speedy return. *Id.* Given the looming election canvassing and certification deadlines, Plaintiffs seek an order to show cause.

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1 1.12. A special action may be brought in the superior court for the county that is the
2 principal place of business for the public officer or body being sued. RPSA 4(b).

3 1.13. This Court has jurisdiction to hear this matter and venue is proper pursuant to
4 A.R.S. §§ 12-2001, 12-2021, 16-672, RPSA 1-4, and other applicable law.

5 SECTION II

6 FACTS

7 2.1. Plaintiffs incorporate by reference the preceding allegations.

8 2.2. Plaintiff Laurie Aguilera voted in person in Maricopa County on election day,
9 November 3, 2020.

10 2.3. She was provided with a sharpie by the poll workers with which to mark her
11 ballot.

12 2.4. Plaintiff completed her ballot with the provided sharpie. While completing it she
13 noticed that the ink was bleeding through.

14 2.5. Plaintiff has been voting in person for several election cycles. However, upon
15 information and belief, she has never before been given a sharpie as a marking device by
16 a poll worker.

17 2.6. Plaintiff fed her ballot into the ballot box.

18 2.7. The ballot box failed to properly register her vote causing a poll-worker to cancel
19 her ballot in the presence of Plaintiff.

20 2.8. Plaintiff requested a new ballot but, upon information and belief, upon
21 consultation with the Maricopa County Reorder's Office, the poll workers refused to
22 provide her with one.

23 2.9. Upon information and belief, many other voters have experienced similar issues.

24 2.10. Upon information and belief not all Arizona counties and polling places provided
25 in-person voters with sharpies for marking devices.

26 2.11. Upon information and belief, November 9, 2020 is the first day to canvas the
27 election results, November 23, 2020 is the last day to canvas the election results, and the
28 deadline to certify election results is November 30, 2020.

SECTION III

CAUSES OF ACTION

3.1. Plaintiffs incorporate by reference the preceding allegations.

(Failure to Maintain Statutorily Compliant Electronic Voting System)

3.2. Maricopa County utilizes an “electronic voting system” within the meaning of A.R.S. § 16-444(A)(4) wherein “votes are recorded on a paper ballot by means of marking, and such votes are subsequently counted and tabulated by vote tabulating equipment at one or more counting centers.”

3.3. “Vote tabulating equipment” means “apparatus necessary to *automatically* examine and count votes as designated on ballots and tabulate the results.” A.R.S. § 16-444(A)(7) (emphasis supplied).

3.4. By statute, the county’s electronic voting system must, “When properly operated, record correctly and count accurately every vote cast.” A.R.S. § 16-446(B)(6).

3.5. In other words, voters have a right to know with certainty that, when they follow the instructions of election officials, their votes will be counted automatically and perfectly. The acts of Defendants have deprived them of that right.

3.6. Plaintiff and those like her properly operated the County’s electronic voting system but, upon information and belief, it failed to automatically record her vote. Upon information and belief, it also failed to record her votes correctly and count them accurately.

(Failure to Ensure Maximum Degree of Correctness, Impartiality, and Uniformity of Election Procedures)

3.7. By statute Arizona elections are to be conducted so as to ensure the maximum degree of correctness, impartiality, and uniformity of procedures for voting and tabulating ballots. *See e.g.* A.R.S. §§ 16-449(B), 16-452(A), *etc.*

3.8. The provision of a sharpie as a marking device fails to satisfy these requirements. It failed to provide for the maximum degree of correctness because at least some voters experienced issues having their ballots read because of the use of the sharpie marking

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1 devices. It failed to provide for the maximum degree of impartiality. Nothing is more
2 impartial than a machine that counts votes with perfect accuracy. Upon information and
3 belief, some ballots marked with sharpie marking devices had to have voter intent
4 adjudicated by humans because the machines were unable to read them due to the use of
5 sharpies. The provision of a sharpie as a marking device failed to provide for the
6 maximum degree of uniformity insofar as not all voters were provided with sharpies by
7 poll workers.

8 *(Failure to Comply with the Election Procedures Manual)*

9 3.9. By statute Arizona elections are to be conducted pursuant to the Election
10 Procedures Manual ("EPM") which has the force of law. A.R.S. § 16-452.

11 3.10. Pursuant to the EPM, the marking devices provided to voters must: "Provide the
12 voter with an opportunity (in a private, secret, and independent manner) to correct any
13 error before the ballot is cast and counted or cast a replacement ballot if the previous
14 ballot is spoiled or unable to be changed or corrected." EPM p 79.

15 3.11. Upon information and belief, because of the provision of sharpies as marking
16 devices, Plaintiff and those like her did not realize that their ballots would not be properly
17 read or would be read as spoiled until their ballots were cast.

18 *(A.R.S. Const. Art. II, § 21)*

19 3.12. Arizonans possess a right to a "free and equal election" under our state
20 constitution. A.R.S. Const. Art. II, § 21. This right is "implicated when votes are not
21 properly counted." *Chavez v. Brewer*, 222 Ariz. 309, 320, 214 P.3d 397, 408 (App. 2009)
22 (citing A.R.S. § 16-446(B)(6)).

23 3.13. Due to the fact set forth above, the votes of Plaintiff and those like her have not
24 been properly counted according to the law.

25 *(A.R.S. Const. Art. II, § 13)*

26 3.14. The Arizona Constitution's Equal Privileges and Immunities Clause provides that
27 "No law shall be enacted granting to any citizen, class of citizens, or corporation other
28

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1 than municipal, privileges or immunities which, upon the same terms, shall not equally
2 belong to all citizens or corporations.” A.R.S. Const. Art. II, § 13.

3 3.15. Through the acts and omissions set forth above, Defendants have made it less
4 likely that the ballots of some, but not all, in-person voters will be counted by a perfect,
5 automated, process.

6 **CAUSE OF ACTION – VIOLATION OF RPSA 3**

7 3.16. A plaintiff may raise the following questions via special action:

8 (a) Whether the defendant has failed to exercise discretion which he has a duty to
9 exercise; or to perform a duty required by law as to which he has no discretion; or

10 (b) Whether the defendant has proceeded or is threatening to proceed without or in excess
11 of jurisdiction or legal authority; or

12 (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

13 3.17. Through the acts and omissions set forth above, Defendants have failed to
14 properly exercise their discretion or perform duties required by law as to which they had
15 no discretion.

16 3.18. Through the acts and omissions set forth above, Defendants have proceeded in
17 excess of their jurisdiction or legal authority.

18 3.19. The determinations of defendants, discussed above are arbitrary, capricious or
19 constitute abuses of discretion for the reasons set forth above.

20
21 **WHEREFORE** Plaintiff prays:

22 A. That this Court accept special action jurisdiction, issue the attached Order to Show
23 Cause, and set a speedy return.

24 B. That all ballots that were uncured or denied as a result of Defendants’ actions be
25 identified and allowed to be cured.

26 C. That this Court permit members of the public who were given sharpie marking
27 devices to mark their ballots to be present in person to observe the counting of ballots and
28 the adjudication of voter intent by election workers for ballots that could not be read by

1 machine.

2 D. For a Declaration that the behavior of defendants deprived voters of their right to
3 have their votes read and tabulated with perfect accuracy by an automated system or,
4 alternatively, that Defendants' behavior was otherwise contrary to law.

5 E. For attorneys' fees and costs pursuant to A.R.S. §§ 12-2030, 12-348, common law
6 doctrine, and other applicable law.

7 F. For such other relief as this Court deems just and proper.

8
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10
11
12 Respectfully submitted this 4th day of November, 2020

13
14 By /s/Alexander Kolodin

15 Alexander Kolodin
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17 Attorneys for Plaintiffs
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VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding.

11/4/2020

DATE

DocuSigned by:



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LAURIE AGUILERA

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

LAURIE AGUILERA, a registered voter in
 Maricopa County, Arizona; DONOVAN
 DROBINA, a registered voter in Maricopa
 County, Arizona ; DOES I-X; ON THEIR
 OWN BEHALF AND ON BEHALF OF ALL
 THOSE SIMILARLY SITUATED;

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as
 Maricopa County Recorder; et al.;

Defendants.

Case no.:

**FIRST AMENDED VERIFIED
 COMPLAINT FOR A SPECIAL
 ACTION
 [EXPEDITED ELECTION MATTER]**

(Order to Show Cause Requested)

(Oral Argument Requested)

1 Plaintiffs hereby submit this amended complaint as a matter of right pursuant to
2 Ariz. R. Civ. P. 15(a)(1).

3 **SECTION I**

4 **PARTIES, JURISDICTION, AND VENUE**

5 1.1. Plaintiff Laurie Aguilera is a natural person registered to vote in Maricopa County.

6 1.2. Does I-X are other individuals similarly impacted. When identified Plaintiff will
7 seek leave to amend this Complaint to add their true.

8 1.3. Plaintiff Laurie Aguilera is a resident of Maricopa County, Arizona. She is and
9 was, at all times relevant hereto, a registered voter in Maricopa County not on the early
10 voting list.

11 1.5. Plaintiff Donovan Drobina is a resident of Maricopa County, Arizona. He is and
12 was, at all times relevant hereto, a registered voter in Maricopa County.

13 1.6. Defendant Adrian Fontes is the Maricopa County Recorder. He is being sued in
14 his official capacity.

15 1.7. Defendant Fran McCarroll is Clerk of the Maricopa County Board of Supervisors.
16 She is being sued in her official capacity.

17 1.8. Defendants Clint Hickman, Jack Sellers, Steve Chucuri, Bill Gates, and Steve
18 Gallardo are the members of the Maricopa County Board of Supervisors. They are being
19 sued in their official capacity.

20 1.9. Maricopa County is a political subdivision of the State of Arizona.

21 1.10. All or substantially all of the acts and occurrences giving rise to this Verified
22 Complaint occurred in Maricopa County, Arizona.

23 1.11. Pursuant to A.R.S. § 12-401(16) an action against public officers shall be brought
24 in the county in which the officer, or one of server officers holds office.

25 1.12. Plaintiffs may proceed by special action where there is no equally “plain, speedy
26 and adequate remedy” available. A.R.S. §§ 12-2001, 12-2021, Rules of Procedure for
27 Special Actions (“**RPSA**”) 1. For the reasons set forth below, there is no equally plain,
28 speedy, and adequate remedy available.

1 1.13. A special action may be instituted with or without an application for order to show
2 cause why the requested relief should not be granted. RPSA 4(c). Where a show-cause
3 procedure is used, the court must set a speedy return. *Id.* Given the looming election
4 canvassing and certification deadlines, Plaintiffs seek an order to show cause.

5 1.14. A special action may be brought in the superior court for the county that is the
6 principal place of business for the public officer or body being sued. RPSA 4(b).

7 1.15. This Court has jurisdiction to hear this matter and venue is proper pursuant to
8 A.R.S. §§ 12-2001, 12-2021, 16-672, RPSA 1-4, and other applicable law.

9 1.16. Under Arizona law, a special action may be litigated as a class action. *See Arnold*
10 *v. Arizona Dep't of Health Servs.*, 160 Ariz. 593, 606, 775 P.2d 521, 534 (1989).

11 1.17. Under Ariz. R. Civ. P. 23(a) there are four prerequisites that must be met for a
12 class action.

13 1.18. Ariz. R. Civ. P. 23(a)(1) states that the class must be so numerous that joinder of
14 all members is impracticable. In this case, one poll worker signed a declaration that at his
15 polling place alone this issue affected 80% of voters. This shows that joinder of all
16 members is impracticable.

17 1.19. Ariz. R. Civ. P. 23(a)(2) requires that there are questions of law or fact common to
18 the class. In this case, all members of the class have been affected by issues with having
19 their ballot read after being provided with sharpies by poll workers. *See e.g., Exhibit A.*

20 1.20. Ariz. R. Civ. P. 23(a)(3) requires that the claims or defenses of the representative
21 parties are typical of the claims or defenses of the class. As discussed above, in this case,
22 all members of the class and the representative parties have similar claims arising from
23 the issue of sharpies being provided at polling places by poll workers with respect to their
24 ballots either not being counted or being improperly subjected to human adjudication.

25 1.21. Ariz. R. Civ. P. 23(a)(4) requires that the representative parties will fairly and
26 adequately protect the interests of the class. In this case, the representative parties and
27 class members have the same interest, that their vote is counted *both* correctly and
28 according to law. Even if a particular Plaintiff's ballot was ultimately counted, Plaintiffs

1 emphasize that their concern owes as much to being deprived of their right under Arizona
2 law to fully automated counting of their ballot as it does to whether their ballot was
3 ultimately counted. Plaintiffs view automated tabulation of their ballot as an inherently
4 superior process. Under Arizona law tabulation machines must be certified to have
5 perfect accuracy. Unlike human adjudicators machines are neither subjective nor subject
6 to error or bias. As such, the fourth prerequisite has also been met.

7 1.22. As Arizona law provides that special actions may be litigated as a class action, and
8 all the requirements of Ariz. R. Civ. P. 23(a) have been met, class action is proper in this
9 case.

10 SECTION II

11 FACTS

12 2.1. Plaintiffs incorporate by reference the preceding allegations.

13 2.2. Joshua D. Banko was working as a clerk for the Maricopa County Elections
14 Department at the polling location located at Paradise Valley Mall in Phoenix, Arizona.

15 2.3. He worked there from approximately 5:30 A.M. to approximately 8:15 P.M.

16 2.4. Starting at the beginning of the day Joshua D. Banko noticed voters experiencing
17 problems feeding their ballots into the tabulation machine which cause significant delays
18 throughout the day.

19 2.5. Joshua D. Banko was notified by the tabulation machine that it was detecting
20 errant or extraneous lines outside of the voting section of the ballot. However, in Joshua
21 D. Banko's presence, voters showed their ballot to the elections marshal and the site
22 inspector to demonstrate that there were no errant marks on their ballot.

23 2.6. Ballots that were rejected by one machine were tried on the other tabulation
24 machine and in different orientations, typically without success.

25 2.7. Based upon the foregoing, Joshua D. Banko believes that the issue was caused by
26 the use of sharpies at the polling location.

27 2.8. Voters who experienced this issue were told by the marshal that they could spoil
28 their ballot but if they did not care about the candidate for the section of the ballot where

1 they were having the issue, they could double vote and spoil just that vote. The marshal
2 and site inspector encouraged voters to do this instead of spoiling their ballot and
3 obtaining a new one.

4 2.9. Joshua D. Banko estimates that approximately 80% of voters at the Paradise
5 Valley Mall polling place experienced this issue.

6 2.10. Named Plaintiffs are two voters who experienced issues similar to those identified
7 by Joshua D. Banko.

8 2.11. **Exhibit B** is a true and correct copy of the declaration by Joshua D. Banko setting
9 out the facts outlined above.

10 2.12. Plaintiff Laurie Aguilera voted in person in Maricopa County on election day,
11 November 3, 2020.

12 2.13. She was provided with a sharpie by the poll workers with which to mark her
13 ballot.

14 2.14. Plaintiff completed her ballot with the provided sharpie. While completing it she
15 noticed that the ink was bleeding through.

16 2.15. Plaintiff has been voting in person for several election cycles. However, upon
17 information and belief, she has never before been given a sharpie as a marking device by
18 a poll worker.

19 2.16. Plaintiff fed her ballot into the ballot box.

20 2.17. The ballot box failed to properly register her vote causing a poll-worker to cancel
21 her ballot in the presence of Plaintiff.

22 2.18. Plaintiff requested a new ballot but, upon information and belief, upon
23 consultation with the Maricopa County Reorder's Office, the poll workers refused to
24 provide her with one.

25 2.19. Plaintiff Donovan Drobina voted in person in Maricopa County on election day,
26 November 3, 2020.

27 2.20. He was provided with a sharpie by the poll workers with which to mark his ballot
28 and was not given the option of using a ballpoint pen.

2.21. He attempted to insert his ballot into the slot at the top of the ballot box and it was rejected.

2.22. The poll worker that assisted him told him that they had been having issues with the sharpies bleeding through which had been causing issues with the scanner.

2.23. The poll worker had him attempt to put the ballot in the slot at the top of the box twice, after it failed to scan both times the poll worker had him put the ballot in a slot lower down on the box.

2.24. **Exhibit C** is a true and correct copy of the declaration by Donovan Drobina setting out the facts outlined above.

2.25. According to Pima County Supervisor Allyson Miller, Pima County's instructions told voters "Do NOT use a sharpie type pen as it will bleed through." Pima County also informed voters that bleed through will "most likely" cause the ballot to "get sent for [manual] duplication" so it can be read by the scanner. *See Exhibit D.* However, Maricopa County no longer manually duplicates ballots but instead tries to have ballots reviewed by human beings to determine "voter intent."

2.26. The Arizona Attorney General has received hundreds of voter complaints regarding the issues described above and is investigating. *See Exhibit E.*

2.27. Upon information and belief, many other voters have experienced similar issues.

2.28. Upon information and belief not all Arizona counties and polling places provided in-person voters with sharpies for marking devices.

2.29. Upon information and belief, November 9, 2020 is the first day to canvas the election results, November 23, 2020 is the last day to canvas the election results, and the deadline to certify election results is November 30, 2020.

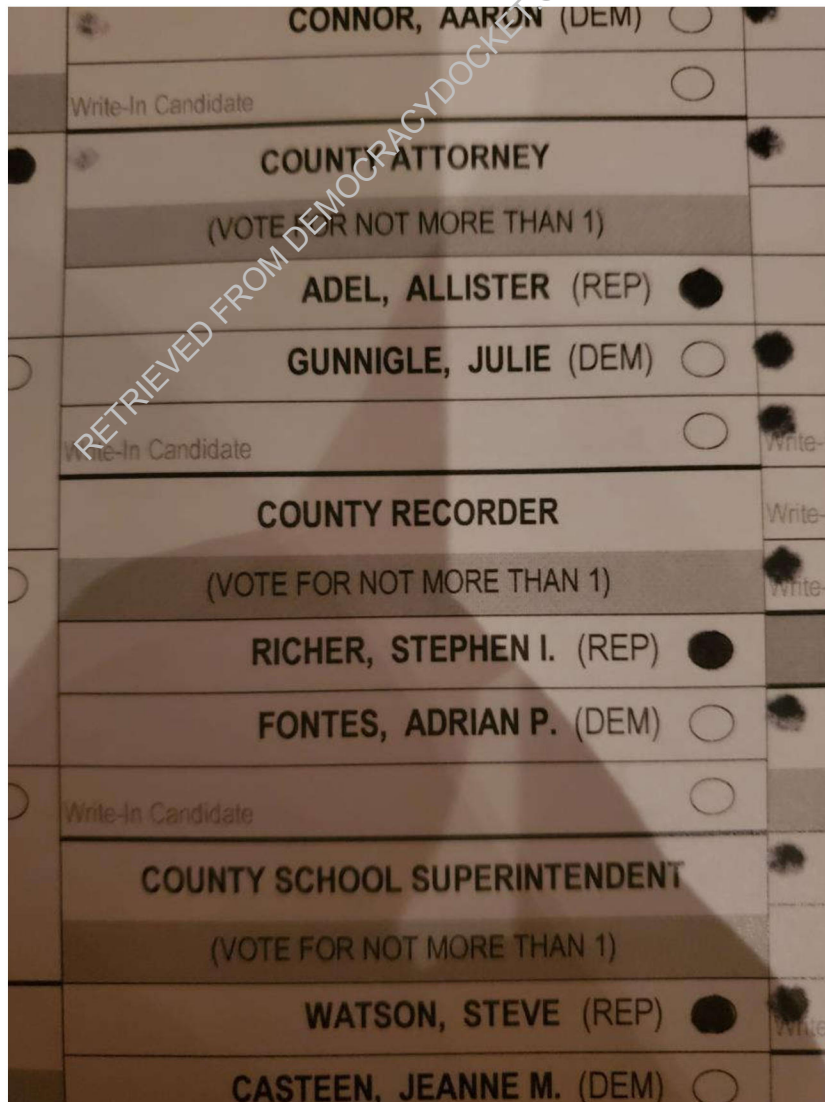
SECTION III**CAUSES OF ACTION**

3.1. Plaintiffs incorporate by reference the preceding allegations.

(Violation of A.R.S. § 16-502)

3.2 Arizona law provides that “[b]allots shall be printed with black ink on white paper of sufficient thickness to prevent the printing thereon from being discernible from the back and the same type shall be used for the names of all candidates.” A.R.S. § 16-502(A).

3.3 Defendants violated A.R.S. § 16-502(A) by failing to provide ballots with sufficient thickness, and providing sharpies to vote on said ballots, to prevent the sharpies from bleeding through.



(Failure to Maintain Statutorily Compliant Electronic Voting System)

3.4. Maricopa County utilizes an “electronic voting system” within the meaning of A.R.S. § 16-444(A)(4) wherein “votes are recorded on a paper ballot by means of marking, and such votes are subsequently counted and tabulated by vote tabulating equipment at one or more counting centers.”

3.5. “Vote tabulating equipment” means “apparatus necessary to *automatically* examine and count votes as designated on ballots and tabulate the results.” A.R.S. § 16-444(A)(7) (emphasis supplied).

3.6. By statute, the county’s electronic voting system must, “When properly operated, record correctly and count accurately every vote cast.” A.R.S. § 16-446(B)(6).

3.7. In other words, voters have a right to know with certainty that, when they follow the instructions of election officials, their votes will be counted automatically and perfectly. The acts of Defendants have deprived them of that right.

3.8. Plaintiff and those like her properly operated the County’s electronic voting system but, upon information and belief, it failed to automatically record her vote. Upon information and belief, it also failed to record her votes correctly and count them accurately.

(Failure to Ensure Maximum Degree of Correctness, Impartiality, and Uniformity of Election Procedures)

3.9. By statute Arizona elections are to be conducted so as to ensure the maximum degree of correctness, impartiality, and uniformity of procedures for voting and tabulating ballots. *See e.g.* A.R.S. §§ 16-449(B), 16-452(A), *etc.*

3.10. The provision of a sharpie as a marking device fails to satisfy these requirements. It failed to provide for the maximum degree of correctness because at least some voters experienced issues having their ballots read because of the use of the sharpie marking devices. It failed to provide for the maximum degree of impartiality. Nothing is more impartial than a machine that counts votes with perfect accuracy. Upon information and belief, some ballots marked with sharpie marking devices had to have voter intent

1 adjudicated by humans because the machines were unable to read them due to the use of
2 sharpies. The provision of a sharpie as a marking device failed to provide for the
3 maximum degree of uniformity insofar as not all voters were provided with sharpies by
4 poll workers.

5 *(Failure to Comply with the Election Procedures Manual)*

6 3.11. By statute Arizona elections are to be conducted pursuant to the Election
7 Procedures Manual (“EPM”) which has the force of law. A.R.S. § 16-452.¹

8 3.12. Pursuant to the EPM, the marking devices provided to voters must: “Provide the
9 voter with an opportunity (in a private, secret, and independent manner) to correct any
10 error before the ballot is cast and counted or cast a replacement ballot if the previous
11 ballot is spoiled or unable to be changed or corrected.” EPM p 79.

12 3.13. Upon information and belief, because of the provision of sharpies as marking
13 devices, Plaintiff and those like her did not realize that their ballots would not be properly
14 read or would be read as spoiled until their ballots were cast.

15 *(A.R.S. Const. Art. II, § 21)*

16 3.14. Arizonans possess a right to a “free and equal election” under our state
17 constitution. A.R.S. Const. Art. II, § 21. This right is “implicated when votes are not
18 properly counted.” *Chavez v. Brewer*, 222 Ariz. 309, 320, 214 P.3d 397, 408 (App. 2009)
19 (citing A.R.S. § 16-446(B)(6)).

20 3.15. Due to the fact set forth above, the votes of Plaintiff and those like her have not
21 been properly counted according to the law.

22 *(A.R.S. Const. Art. II, § 13)*

23 3.16. The Arizona Constitution’s Equal Privileges and Immunities Clause provides that
24 “No law shall be enacted granting to any citizen, class of citizens, or corporation other
25 than municipal, privileges or immunities which, upon the same terms, shall not equally
26 belong to all citizens or corporations.” A.R.S. Const. Art. II, § 13.

27
28 ¹https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf

1 3.17. Upon information and belief the ballots mailed to early voters were thicker than
2 those used on election day.

3 3.18. Through the acts and omissions set forth above, Defendants have made it less
4 likely that the ballots of some, but not all, in-person voters will be counted by a perfect,
5 automated, process.

6 CAUSE OF ACTION – VIOLATION OF RPSA 3

7 3.19. A plaintiff may raise the following questions via special action:

8 (a) Whether the defendant has failed to exercise discretion which he has a duty to
9 exercise; or to perform a duty required by law as to which he has no discretion; or

10 (b) Whether the defendant has proceeded or is threatening to proceed without or in excess
11 of jurisdiction or legal authority; or

12 (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

13 3.20. Through the acts and omissions set forth above, Defendants have failed to
14 properly exercise their discretion or perform duties required by law as to which they had
15 no discretion.

16 3.21. Through the acts and omissions set forth above, Defendants have proceeded in
17 excess of their jurisdiction or legal authority.

18 3.22. The determinations of Defendants, discussed above are arbitrary, capricious or
19 constitute abuses of discretion for the reasons set forth above.

20
21 WHEREFORE Plaintiffs pray:

22 A. That this Court accept special action jurisdiction, issue the attached Order to Show
23 Cause, and set a speedy return.

24 B. That all ballots that were uncured or denied as a result of Defendants' actions be
25 identified and allowed to be cured.

26 C. That this Court permit members of the public who were given sharpie marking
27 devices to mark their ballots to be present in person to observe the counting of ballots and
28 the adjudication of voter intent by election workers for ballots that could not be read by

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1 machine.

2 D. For a Declaration that the behavior of defendants deprived voters of their right to
3 have their votes read and tabulated with perfect accuracy by an automated system or,
4 alternatively, that Defendants' behavior was otherwise contrary to law.

5 E. For a declaration that the Defendants' use of the sharpies with the ballots provided
6 violated A.R.S. § 16-502.

7 F. For attorneys' fees and costs pursuant to A.R.S. §§ 12-2030, 12-348, common law
8 doctrine, and other applicable law.

9 G. For such other relief as this Court deems just and proper.

10
11
12
13
14 Respectfully submitted this 5th day of November, 2020

15
16 By /s/Alexander Kolodin

Alexander Kolodin

17 **Kolodin Law Group PLLC**
18 3443 N. Central Ave. Ste. 1009
19 Phoenix, AZ 85012

20 Attorneys for Plaintiffs

21 I CERTIFY that a copy of the of the forgoing will be served on Defendants in conformity
22 with the applicable rules of procedure with an electronic courtesy copy also sent to the
23 Maricopa County Attorney due to the expedited nature of the action.

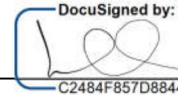
24 By /s/Alexander Kolodin

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. My knowledge of course being limited to the facts of my particular circumstances.

11/5/2020

DATE

DocuSigned by:

C2484F857D8844A...

LAURIE AGUILERA

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014083

11/06/2020

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT

K. Ballard

Deputy

LAURIE AGUILERA, ET AL

ALEXANDER M KOLODIN

v.

ADRIAN FONTES, ET AL

JOSEPH EUGENE LA RUE

THOMAS J. BASILE

ROOPALI HARDIN DESAI

SARAH R GONSKI

ROY HERRERA

BRETT W JOHNSON

COURT ADMIN-CIVIL-ARB DESK

DOCKET-CIVIL-CCC

JUDGE MAHONEY

HEARING SET

The Court has reviewed the parties' Joint Scheduling Statement, filed 11/6/2020. The Court's view is that this matter needs to proceed to resolution more expeditiously than accounted for in the Joint Scheduling Statement, and therefore **IT IS ORDERED** as follows:

1. Dispositive motions shall be filed, and simultaneously emailed to Court staff and opposing counsel, no later than **4:45 p.m. on 11/9/2020**, and shall not exceed 5 pages. No more than one dispositive motion shall be filed per party. To the extent any of the movants have similar interests, they shall endeavor to file a consolidated dispositive motion.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014083

11/06/2020

2. Responses to the dispositive motions shall be filed, and simultaneously emailed to Court staff and opposing counsel, no later than **4:45 p.m. on 11/11/2020**, and shall not exceed 5 pages. To the extent any of the responding parties have similar interests, they shall endeavor to file a consolidated Response.
3. No Reply briefs will be permitted.
4. The parties shall simultaneously exchange any witness and evidence disclosure no later than **midnight on 11/11/2020**.

IT IS FURTHER ORDERED setting a **virtual** Oral Argument on any dispositive motions filed along with an Evidentiary Hearing on Plaintiffs' Special Action for **Friday, 11/13/2020 at 10:00 a.m. (time allotted: 2 hours)** in this Division.

Honorable Margaret R. Mahoney
East Court Building
101 West Jefferson, Courtroom 411
Phoenix, Arizona 85003-2202
Telephone: (602) 506-0387

Counsel are hereby advised that the hearing will be **conducted via GoToMeeting**. Court staff will email an invitation to counsel that contains a link and phone number for purposes of participating in the hearing remotely. **PLEASE NOTE: Counsel are responsible for sharing the GoToMeeting invitation with any clients, client representatives and witnesses who will appear at the hearing.**

IT IS FURTHER ORDERED counsel shall file, no later than **midnight on 11/11/2020**, a Joint Hearing Statement signed by all counsel/parties that includes:

- a) Exhibit List and Final List of Witnesses: The Joint Hearing Statement shall include an Exhibit titled: Exhibit List and Final List of Witnesses. The Exhibit shall contain a list of each party's exhibits and a list of the names of each witness a party actually intends to call at the hearing, and the **estimated time needed for direct, cross and re-direct examination**.
- b) Counsel shall confer with one another to attempt to stipulate to as many exhibits as possible and shall reflect such stipulations in the Exhibit List submitted to the Court and referenced above in "a".

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014083

11/06/2020

IT IS FURTHER ORDERED that counsel shall immediately notify the Court if they reach a settlement of the case or otherwise reach an agreement that the oral argument/evidentiary hearing is no longer necessary.

IT IS FURTHER ORDERED that all hearing Exhibits will need to be submitted **electronically** through the Clerk of Court Exhibit Portal (see website below) **and** to this Division's staff (see email addresses listed later in this Minute Entry) by no later than **noon on 11/12/2020**.

Please visit the following Clerk of Court website for information on submitting Exhibits: <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission>. The webpage will provide instructions and guidance for electronic submission as well as locations for in-person (paper) submission of exhibits. Due to the expedited nature of this hearing, **electronic exhibits are preferred**.

This Division requires Bench copies of all exhibits to be submitted in binders and with numbered, tabbed dividers for the Judge's use.

Accordingly, **IT IS FURTHER ORDERED** no later than **1:00 p.m. on 11/12/2020**, the parties shall deliver their **set of Bench copies of Exhibits** to this Division.

IT IS FURTHER ORDERED the parties are directed to exchange their Exhibits before presenting same to the Clerk. The parties will make sure they do not present the Clerk a set of Exhibits that includes duplicate Exhibits. The parties should not reserve Exhibit numbers for all Defendants' Exhibits, all Plaintiffs' Exhibits, miscellaneous demonstrative Exhibits, and the like.

Exhibits are marked in numerical order per party, making it necessary to mark all of one party's exhibits before marking the other party's. Accordingly, the Defendants' Exhibits numbering shall start at the next number following the last of Plaintiff's Exhibits. (For example, Plaintiff submits 82 exhibits, which are marked Exhibits 1 through 82. Defendants submit 63 exhibits, which are marked 83 through 145). Please do not combine the parties' Exhibits. Each side's Exhibits must be submitted separately and in numerical order, this would include any Exhibits submitted by any Intervenor as well.

NOTICE: Exhibits Marked But Not Offered

Exhibits submitted to the Court for an evidentiary hearing/trial, whether through hard copy or submitted electronically, that are marked as Exhibits but are not offered into evidence at the hearing/trial will be destroyed following the hearing/trial, unless a party requests that the evidence be returned at the conclusion of the hearing. Such requests must be filed with the Court and served on all parties in advance of the hearing/trial or by no later than the conclusion of the hearing/trial.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014083

11/06/2020

NOTE: All Court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

Email addresses for Court staff are as follows:

JA, Jennifer “JJ” Sommerville, Jennifer.Sommerville@jbazmc.maricopa.gov
Courtroom Assistant/Bailiff, Ana Meza, Ana.Meza@jbazmc.maricopa.gov

To ensure public access to the hearing, **members of the public may call** into the Court’s public access number at 1-646-749-3122, and enter the following public access code: 975-769-277. Members of the public will only be able to listen to the proceedings and will not be permitted to participate.

* * * *

PLEASE NOTE: This Division requires that all motions, responses, replies and other Court filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. **No filing will be accepted if filed in combination with another. Additionally, all filings shall be fully self-contained and shall not “incorporate by reference” other separate filings for review and consideration as part of the pending filing.**

ALERT: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a Court facility to wear a mask or face covering at **all times** while they are in the Court facility. With limited exceptions, the Court will not provide masks or face coverings. Therefore, any individual attempting to enter the Court facility must have an appropriate mask or face covering to be allowed entry to the Court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the Court facility or asked to leave. In addition, all individuals entering a Court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the Court facility.

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 Christopher Viskovic (SBN 035860)
 Chris Ford (SBN 029437)
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

LAURIE AGUILERA, a registered voter in
 Maricopa County, Arizona; DONOVAN
 DROBINA, a registered voter in Maricopa
 County, Arizona ; DOES I-X; ON THEIR
 OWN BEHALF AND ON BEHALF OF
 ALL THOSE SIMILARLY SITUATED;

Case No. CV2020-014083

NOTICE OF DISMISSAL

(Assigned Hon. Margaret Mahoney)

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity
 as Maricopa County Recorder; et al.;

Defendants.

Plaintiffs, pursuant to Ariz. R. Civ P. 41(a)(1)(A)(i), voluntarily dismiss without
 prejudice the claims in the above-entitled action against Defendants.

RESPECTFULLY SUBMITTED this 7th day of November, 2020

By /s/Christopher Alfredo Viskovic

Alexander Michael del Rey Kolodin
Christopher Alfredo Viskovic
Chris Ford
Kolodin Law Group PLLC
3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85012
Attorneys for Plaintiffs

I CERTIFY that a copy of this document will be served upon any opposing parties in conformity with the applicable rule of procedure.

DATED this 7th day of November, 2020

Kolodin Law Group PLLC

By /s/Christopher Alfredo Viskovic

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SUPERIOR COURT
FILED
A. PLASCENCIA, DEP

2020 NOV -9 AM 8:47

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sbecker@publicinterestlegal.org
*Pro hac motion forthcoming

*Attorneys for Proposed Intervenors Laurie Aguilera and
Donovan Drobina*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

DONALD J. TRUMP FOR PRESIDENT,
INC.; et al.,

Plaintiffs,

v.

KATIE HOBBS; et al.,

Defendants,

LAURIE AGUILERA, a registered voter in
Maricopa County, Arizona; DONOVAN
DROBINA, a registered voter in Maricopa County,
Arizona; DOES I-X;

Intervenors.

Case no.: CV 2020-014248

MOTION TO INTERVENE

Pursuant to Arizona Rule of Civil Procedure 24, Proposed Intervenors Laurie Aguilera and Donovan Drobina ("Intervenors"), respectfully move to intervene in this

1 action as of right, or alternatively, with the permission of the Court.¹

2 Plaintiffs have informed Intervenorors that they do not oppose intervention and
3 Defendants, to the best of counsel's knowledge, have yet to appear.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Under Rule 24, individuals and entities may intervene in an action either as of right
6 or with permission of the court. Although the two intervention rubrics contemplate
7 different criteria, Arizona courts have long recognized that Rule 24 as a whole "is remedial
8 and should be construed liberally in order to assist parties seeking to obtain justice in
9 protecting their rights." *Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life*
10 *Obstetricians & Gynecologists*, 227 Ariz. 262, 279, ¶ 54 (App. 2011) (internal citations
11 omitted).

12 This case will undoubtedly continue to attract the interest of candidates and groups
13 that have the outcome of a single election as their primary concern. Like Plaintiffs,
14 Intervenorors' concern lies in ensuring that their interests in the lawful, efficient and accurate
15 tabulation of votes are protected. Disposition of this action will certainly affect those
16 interests. However, Intervenorors' interest is also that of citizens of Arizona and Maricopa
17 County voters, who believe that this election has illuminated ongoing issues with our
18 voting system caused by Defendants' failure to follow the law. Intervenorors believe that
19 these issues must be addressed now, while public attention is focused on the process, to
20 restore confidence in the electoral system in which we all place our faith. Therefore,
21 Intervenorors assert various causes of action, primarily for declaratory relief, in the hopes of
22 illuminating violations of the law and improving our voting system both now and in the
23 future. As discussed below, resolution of the majority of these causes of action will likely
24 depend on the resolution of Plaintiffs' factual claims.

25 Alternatively, the Court should grant leave to intervene in light of the Proposed
26 Intervenorors' interest in the proceedings, the procedural posture of the litigation, and the
27 absence of any prejudice to any existing party as a consequence of their intervention.

28 ¹ Pursuant to Rule 24(c), the Proposed Intervenorors have attached a copy of their Proposed Complaint-In-Intervention.

I. The Proposed Intervenors.

Laurie Aguilera and Donovan Drobina are registered voters in Maricopa County, Arizona and voted on November 3, 2020 at polling places located in Maricopa County.

II. The Proposed Intervenors May Intervene as of Right.

“Intervention of right is appropriate when the party applying for intervention meets all four of the following conditions: (1) the motion must be timely; (2) the applicant must assert an interest relating to the property or transaction which is the subject of the action; (3) the applicant must show that disposition of the action may impair or impede its ability to protect its interest; and (4) the applicant must show that the other parties would not adequately represent its interests.” *Woodbridge Structured Funding, LLC v. Arizona Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014) (citing Ariz. R. Civ. P. 24(a)(2)).² Each criterion is met here.

A. The Motion to Intervene is Timely.

The timeliness of this Motion is not subject to reasonable dispute. By moving within one judicial day of the commencement of this action, prior to any hearing or substantive dispositions by the Court, and before Defendants have appeared, the Proposed Intervenors have acted with reasonable, if not extraordinary, celerity in vindicating their protected interests. Courts have routinely found intervention timely when sought much later than Proposed Intervenors have here.³ The result should be no different in this case.

B. The Proposed Intervenors Have a Protected Legal Interest In Ensuring the Proper Tabulation of Their Individual Ballots. As Citizens of Arizona They

² Because Federal Rule of Civil Procedure 24 is “substantively indistinguishable” from its state law analogue, Arizona courts “may look for guidance to federal courts’ interpretations of their rules.” *Heritage Village II Homeowners Ass’n v. Norman*, 246 Ariz. 567, 572, ¶ 19 (App. 2019).

³ See, e.g., *Heritage Vill II*, 246 Ariz. at 571-72, ¶ 17 (motion filed five days after applicants became aware that their interests were at risk was timely); *Winner Enterprises, Ltd. v. Superior Court in & for County of Yavapai*, 159 Ariz. 106, 109 (App. 1988) (finding that motion to intervene in “extremely compressed” special action was timely when it was filed thirty days after initiation of lawsuit and 21 days after court entered preliminary injunction); see also *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003) (“The district court did not abuse its discretion by finding Hoochuli’s motion [to intervene], filed three weeks after the filing of Plaintiffs’ complaint, timely.”); *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (“Applicants filed their motion to intervene in a timely manner, less than three months after the complaint was filed and less than two weeks after the [defendant] filed its answer to the complaint.”).

**Also Have a Protected Legal Interest in Ensuring that Our Elections
Officials Follow the Law.**

The Proposed Intervenor “have a significant protectable interest in the action.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011). This element is satisfied if “the interest is protectable under some law and . . . there is a relationship between the legally protected interest and the claims at issue,” though “[n]o specific legal or equitable interest need be established.” *Id.* “Instead, the ‘interest’ test directs courts to make a ‘practical, threshold inquiry’ and ‘is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.’” *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (internal citations omitted); *see also Planned Parenthood*, 227 Ariz. at 279, ¶ 57 (holding that healthcare providers’ “liberty of conscience rights” were an interest sufficient to support intervention in litigation challenging abortion-related laws).

Though the “interest” sufficient for intervention can be substantially more generalized and diffuse than the concrete “injury” required for standing, *see Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011) (“In general, an applicant for intervention need not establish . . . standing to intervene.”), the Arizona Supreme Court has recognized that Arizona voters, such as Intervenor, have a “beneficial interest” in ensuring that elections officials follow the law sufficient to confer standing. *Ariz. Pub. Integrity All. v. Fontes*, No. CV-20-0253-AP/EL, 2020 Ariz. LEXIS 309, at *6 (Nov. 5, 2020). Intervenor, as properly registered voters who voted in the November 3, 2020 general election, also have a legally protected interest in ensuring that their votes are properly counted and that every vote on each ballot is counted. *Anderson v. United States*, 417 U.S. 211, 226 (1974) (discussing “the right of all voters in a federal election to express their choice of a candidate and to have their expressions of choice given full value and effect, without being diluted or distorted by the casting of fraudulent ballots”); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“The right to vote cannot be . . . diluted by ballot-box stuffing . . . [or] denied by a debasement or dilution of the weight of a citizen’s vote”).

C. A Judgment Could Substantially Impair the Proposed Intervenors' Legal Interest In Ensuring the Accurate, Speedy and Statutorily Compliant Tabulation of Ballots and in Conforming the Behavior of Elections Officials to Arizona Law.

Where a proposed intervenor has a "significant protectable interest" in the case, there is "little difficulty concluding that the disposition of this case may, as a practical matter, affect it." *Calif. ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006). In general, "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Sw. Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (internal citation omitted).

Disposition of this action "may as a practical matter impair or impede Proposed Intervenors ability to protect [their] interest[s]" because this Court's ruling inevitably will affect the course and conduct of this Election. Ariz. R. Civ. P. 24(a)(2). Intervenors' and Plaintiffs' claims both flow, in part, from the assertion that bleed-through on ballots, along with other issues, caused certain ballots to be misread in the 2020 general election. *See e.g.* Verified Complaint ("Complaint") ¶¶ 29, 30; Proposed Verified Complaint-In-Intervention ("CII") ¶¶ 2.14, 2.21. The Court will decide the truth or falsity of that assertion in this suit. Accordingly, this case represents the only real opportunity to litigate the issues set forth in the Complaint-In-Intervention. As a practical matter, Proposed Intervenors will have no other opportunity to protect or assert their rights and interests. This Court's ruling will directly impact the weight of Plaintiffs' votes.

Additionally, Intervenors' fifth cause of action seeks relief declaring that they have a right, as citizens of Arizona, to view, in person, the electronic adjudication of votes (which, name notwithstanding, is performed by human beings). Although the current vote-counting in Arizona is winding down, one of the forms of relief that Plaintiffs seek is to subject un-tabulated ballots to adjudication. Complaint ¶ 81.⁴ Given the speed at which

⁴ Plaintiffs draw a distinction between the "Electronic Vote Adjudication Board", which they claim adjudicates voter

vote-counting moves, it would be extremely difficult for the courts to resolve an action for public access, commenced only after Plaintiffs prevail, in time to allow for public observation of any further adjudication which Plaintiffs obtain.

D. Neither Plaintiffs Nor Defendants Will Adequately Represent the Proposed Intervenor's Interest in Protecting Their Constitutional Rights and Rights Under Arizona Law.

Intervenor's independent interests will not be fully and adequately represented by either the Plaintiffs or the Defendants for two primary reasons.

First, Political candidates may presume to have winning their race as their interest and political parties may be presumed to have partisan interests at heart. *See Hoblock v. Albany County Bd. of Elections*, 233 F.R.D. 95, 99 (N.D.N.Y. 2005) ("Candidates have demonstrated that their interests are 'not adequately protected by the parties to the action . . . the Plaintiff Voters have shown that they are not puppets of the candidates, but rather have separate interests.'). However, in this case, Proposed Intervenor has an interest in helping Arizona's electoral system better conform to the law for the benefit of all Arizona voters, no matter which candidate or party they may back. Accordingly, Intervenor has identified several violations of Arizona law that must be addressed so that future elections may proceed more smoothly. As set forth in the next section, resolution of the majority of Intervenor's causes of action likely depends on the resolution of Plaintiffs' factual assertions.

It also appears that the reasons for the problems Intervenor encountered are similar,

intent for early ballots which cannot be fully read by the tabulator, Complaint ¶ 23, and the "Ballot Duplication Board[.]" *Id.* ¶ 24. Plaintiffs claim, pursuant to A.R.S. 16-621(A), that this later board performs the adjudication function for election day ballots. *Id.* However, both A.R.S. 16-621 and the EPM allow for the substitution of an "electronic adjudication program" in place of a Ballot Duplication Board. A.R.S. 16-621(B), Electronic Adjudication Addendum p 1 https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf. It is unclear to Intervenor the extent to which Defendants substituted their electronic adjudication program for ballot duplication boards with regard to election-day ballots, and Plaintiffs' Complaint indicates that there is a possibility that at least some election-day ballots may have been, or should have been, subjected to electronic adjudication. *See e.g.*, Complaint 16:1-5. Similarly, if this court orders adjudication of un-tabulated ballots as Plaintiffs have requested, it is unclear whether Defendants will elect to perform that task via electronic adjudication, as the law permits. As this case proceeds, many more details about the process can be expected to come to light.

but not fully identical, to those identified by Plaintiffs. *See Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (When a third party attempts to intervene “early on” in a lawsuit, it must make only a “minimal” showing that its interests may differ from those of the named parties.). Like Plaintiffs, Intervenorors allege that problems with bleed through on ballots created a situation where their ballots could not be properly read. However, Intervenorors allege that the actions that poll workers took in response were different from those alleged by Plaintiffs. Plaintiffs have alleged that poll workers responded to misreads caused by the bleed-through by hitting a green button marked “cast” on the tabulators. Complaint ¶ 29. In contrast, Intervenor Aguilera alleges that the poll-worker hit a button marked “cancel” on her own screen, not one marked “cast” on the voting equipment when she experienced difficulties feeding her ballot through the tabulator as a result of the bleed-through. CII ¶ 2.16. Intervenor Drobina, on the other hand, alleges that when he experienced difficulty feeding his ballot through the tabulator as a result of the bleed-through, a poll worker did not push any button at all but instead put his ballot through a separate slot on the tabulator. CII ¶ 2.18-2.22. Thus, Intervenorors’ first cause of action alleges that some ballots were improperly subject to adjudication when voters like Mr. Drobina had a right, having properly followed all instructions for the operation of the County’s electronic voting system, to have the entirety of their ballots read and tabulated with perfect accuracy in a fully automated process. This points to an additional source of error on the part of Defendants distinct from Plaintiffs’ concern about the adjudication process being bypassed entirely. Complaint ¶ 25.

The facts as to why Intervenorors Aguilera and Drobina allege their ballots were improperly counted therefore differ somewhat from the facts identified by Plaintiffs and they accordingly have a right to intervene to develop the facts and argument necessary to protect their own rights to have their votes properly counted and handled.

III. In the Alternative, Permissive Intervention Is Appropriate Because the Proposed Intervenorors’ Arguments Share Common Questions of Law and Fact with the Named Parties’ Claims and Defenses.

If the Court finds that one or more of the prerequisites for intervention as of right remain unsatisfied, Rule 24(b) supplies an independent basis for Proposed Intervenor's permissive intervention.⁵ The Court may allow permissive intervention when the applicant "has a claim or defense that shares with the main action a common question of law or fact." Ariz. R. Civ. P. 24(b)(1)(B). Both the parties' claims and the Proposed Intervenor's arguments embrace the same subject matter-*i.e.*, the existence and prevalence of errors attributable, or partially attributable, to ballot bleed through, the way Maricopa County's new tabulation machines work, the way poll workers dealt with the situation, and the appropriateness of judicial intervention. *See Zenith Elecs. Corp. v. Ballinger*, 220 Ariz. 257, 264, ¶ 25 (App. 2009) (allowing third party nonprofit seeking access to certain records produced in discovery under a protective order to intervene permissively, reasoning that "not only is [applicant's] motion timely, but it presents a common question of law or fact concerning the propriety of the protective order"); *see also Kootenai Tribe of Idaho v. Venveman*, 313 F.3d 1094, 1110 (9th Cir. 2002); *abrogated in part on other grounds by Wilderness Soc. V. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (noting that permissive intervenors "asserted defenses . . . directly responsive to the claims for injunction asserted by plaintiffs. Intervenor satisfied the literal requirements of Rule 24(b)"). Some examples:

Intervenor's first cause of action is for declaratory relief that Defendants violated voters' rights under Arizona law to have their ballots read and tabulated in a fully automated process by a perfectly accurate machine when the Electronic Voting System is operated according to the instructions. Obviously, if, as Plaintiffs claim, the tabulators were sometimes unable to read ballots with perfect accuracy for various reasons (including that some voters, as instructed, used marking devices which bled through the ballot paper), then this right has been violated. This may also depend on the facts concerning how exactly the voting system operates, how poll workers were trained to respond to misreads, and how they in-fact responded to such misreads. *See e.g.*, Complaint ¶¶ 18-21, 24-28. Plaintiffs

⁵ As discussed *infra* Section II(A), this Motion is undisputedly timely, which is a prerequisite to any variant of permissive intervention.

1 have made certain allegations concerning these factual questions and can be expected to
2 develop facts which speak to these issues as the case progresses. *See Anderson v. Martinez*,
3 158 Ariz. 358, 363, 762 P.2d 645, 650 (App. 1988) (intervention is appropriate where it
4 serves the interests of judicial economy).

5 Intervenor's second cause of action is for declaratory relief that Defendants, by
6 requiring some but not all voters to use marking devices whose ink bled through the paper
7 ballots, failed to maintain the maximum degree of correctness, impartiality, and uniformity
8 of procedures for voting and tabulating ballots in violation of A.R.S. §§ 16-449(B), 16-
9 452(A), *etc.* The success of this cause of action may depend, in part, on Plaintiffs
10 establishing the truth of their claim that bleed through on ballots caused issues with the
11 reading and tabulation of ballots. If ballot bleed through caused such issues, the provision
12 of different marking devices could have prevented those issues from occurring, and some
13 voters in Maricopa County did not receive marking devices which bled through their
14 ballots, then Intervenor will prevail on this claim. Intervenor themselves have
15 experienced such bleed through. CII ¶¶ 2.14, 2.21. Again, the facts that Plaintiffs develop
16 concerning how exactly the voting system operates, how poll workers were trained to
17 respond to misreads, and how they in-fact responded to such misreads can also be expected
18 to have a bearing on Intervenor's entitlement to relief on this cause of action.

19 Intervenor's third cause of action is for declaratory relief that Defendants failed to
20 provide voters with ballots of sufficient thickness to prevent ink from bleeding through
21 ballots when voters used the marking devices provided by Defendants, in violation of
22 A.R.S. § 16-502. The success of this cause of action depends, in part, on establishing that
23 bleed through occurred as Plaintiffs claim, and as Intervenor have alleged that they
24 themselves experienced.

25 Intervenor's fourth cause of action is for declaratory relief that Defendants failed to
26 comply with the Elections Procedures Manual ("EPM"). Intervenor allege that Defendants
27 did this by, among other things, failing to provide voters with the opportunity (in a private,
28 secret, and independent manner) to correct any error before their ballots were cast and

counted or cast a replacement ballot if the previous ballot was spoiled or unable to be changed or corrected. Plaintiffs have claimed poll workers frequently and improperly overrode protections in the tabulation equipment, forcing ballots which were wholly or impartially unreadable through the machine in a way that would make them not subject to further review to determine voter intent. Complaint ¶ 19. Plaintiffs have claimed that this sometimes occurred without the voters' knowledge. *Id.* If this is true then, contrary to law, some Arizona voters have been denied the opportunity to correct errors on their ballot or obtain a new ballot before their ballot is cast and counted. Conversely, Plaintiffs have indicated that voters at least sometimes voluntarily pressed the override. Complaint ¶ 27. If, as Defendants are expected to claim, this is what occurred in almost every instance, and it occurred only after voters were properly informed as the consequences, then Defendants will likely prevail on their claim that they have satisfied this legal obligation under the EPM.

Intervenors' fifth cause of action claims that Defendants have failed to meet the EPM's requirement to open the facility where the electronic adjudication process occurs to public inspection and seeks declaratory and injunctive relief. As set forth above, for the reasons discussed by both Plaintiffs and Intervenors (including bleed-through), Intervenor Drobina's ballot was not properly read. However, unlike Plaintiffs, who allege that the adjudication process was bypassed, giving voters no chance to rehabilitate overvotes, Intervenor Drobina is concerned that the misread caused his ballot to be improperly subjected to a human adjudication process. Having followed the procedures set in place by Defendants, Drobina was entitled to have his ballot counted by a fully automated and impartial system that tabulated his ballot with perfect accuracy. As set forth in Plaintiffs' complaint, human adjudication is a default method to be used only when the voter has erroneously completed his ballot such that the electronic system cannot discern the voter's intent—it is a "safeguard[.]" Complaint ¶ 2. Like a seatbelt, it should not be needed unless someone has made a mistake. Having followed the instructions of elections officials and still, contrary to law, seeing his ballot subjected to counting and tabulation by a human

process, Intervenor Drobina seeks to vindicate the public's right to observe the electronic adjudication process. This includes during any recount that Plaintiffs may obtain which utilizes the electronic adjudication process, Complaint ¶ 81, as well as in future elections.

While they reserve the right to invoke any and all legal arguments, claims or cross-claims that may bear on the questions in dispute, the Proposed Intervenor is prepared to adhere to all deadlines and schedules established by the Court, and, given the significant factual overlap between their and Plaintiffs claims, foresee largely being able to use the discovery developed by Plaintiffs. *See Bechtel v. Rose In & For Maricopa Cty.*, 150 Ariz. 68, 72 (1986) (applicant's willingness not to "prolong or unduly delay the litigation" weighs in favor of permissive intervention). In sum, permitting the intervention will not impede or encumber the expeditious disposition of this matter; to the contrary, the Proposed Intervenor's joinder will only ensure that the Court's adjudication of the parties' claims and defenses is informed by the perspective interests of all interested participants.

CONCLUSION

For the foregoing reasons, this Court should find the Proposed Intervenor is entitled to intervene as of right, pursuant to Ariz. R. Civ. P. 24(a). In the alternative, the Court should in its discretion permit Proposed Intervenor to intervene, pursuant to Ariz. R. Civ. P. 24(b).

RESPECTFULLY SUBMITTED this 9th day of November, 2020

By /s/Alexander Kolodin

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Attorneys for Proposed Intervenor

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I CERTIFY that a copy of the forgoing will be served on Defendants when they appear
and on Plaintiffs in accordance with the applicable rules of procedure

By /s/Alexander Kolodin

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

DONALD J. TRUMP FOR PRESIDENT,
INC.; et al.,

Plaintiffs,

v.

KATIE HOBBS; et al.,

Defendants,

LAURIE AGUILERA, a registered voter in
Maricopa County, Arizona; DONOVAN
DROBINA, a registered voter in Maricopa
County, Arizona; DOES I-X;

Intervenors.

Case no.:

CW2020-014248

**PROPOSED VERIFIED
COMPLAINT-IN-INTERVENTION
[EXPEDITED ELECTION MATTER]**

Plaintiffs-In-Intervention Laurie Aguilera and Donovan Drobina ("Intervenors")
join in Plaintiffs' Complaint and additionally assert as follows:

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SECTION I

PARTIES, JURISDICTION, AND VENUE

1.1. Intervenor Laurie Aguilera is a natural person registered to vote in Maricopa County.

1.2. Does I-X are other individuals similarly impacted. When identified Intervenor will seek leave to amend this Complaint to add their true.

1.3. Intervenor Laurie Aguilera is a resident of Maricopa County, Arizona. She is and was, at all times relevant hereto, a registered voter in Maricopa County not on the early voting list.

1.4. Intervenor Donovan Drobina is a resident of Maricopa County, Arizona. He is and was, at all times relevant hereto, a registered voter in Maricopa County.

1.5. Defendant Katie Hobbs is the Secretary of State of Arizona. She is being sued in her official capacity.

1.6. Defendant Adrian Fontes is the Maricopa County Recorder. He is being sued in his official capacity.

1.7. Defendant Fran McCarroll is Clerk of the Maricopa County Board of Supervisors. She is being sued in her official capacity.

1.8. Defendants Clint Hickman, Jack Sellers, Steve Chucuri, Bill Gates, and Steve Gallardo are the members of the Maricopa County Board of Supervisors. They are being sued in their official capacity.

1.9. Maricopa County is a political subdivision of the State of Arizona.

1.10. All or substantially all of the acts and occurrences giving rise to this Verified Complaint-In-Intervention occurred in Maricopa County, Arizona.

1.11. Pursuant to A.R.S. § 12-401(16) an action against public officers shall be brought in the county in which the officer, or one of server officers holds office.

1.12. Given the looming election deadlines, Intervenors seek to have this heard as an expedited election-related-matter.

1 1.13. This Court has jurisdiction to hear this matter and venue is proper pursuant to
2 A.R.S. §§ 12-2001, 12-1831, 12-2021, 16-672, 41-1034, and other applicable law.

3 **SECTION II**

4 **FACTS**

5 2.1. Intervenors incorporate by reference the preceding allegations.

6 2.2. Joshua D. Banko was working as a clerk for the Maricopa County Elections
7 Department at the polling location located at Paradise Valley Mall in Phoenix, Arizona.

8 2.3. He worked there from approximately 5:30 A.M. to approximately 8:15 P.M.

9 2.4. Starting at the beginning of the day Joshua D. Banko noticed voters experiencing
10 problems feeding their ballots into the tabulation machine which cause significant delays
11 throughout the day.

12 2.5. Joshua D. Banko was notified by the tabulation machine that it was detecting
13 errant or extraneous lines outside of the voting section of the ballot. However, in Joshua
14 D. Banko's presence, voters showed their ballot to the elections marshal and the site
15 inspector to demonstrate that there were no errant marks on their ballot.

16 2.6. Ballots that were rejected by one machine were tried on the other tabulation
17 machine and in different orientations, typically without success.

18 2.7. Based upon the foregoing, Joshua D. Banko believes that the issue was caused by
19 ink bleeding through the ballots cast by voters at the polling location.

20 2.8. Voters who experienced this issue were told by the marshal that they could spoil
21 their ballot but if they did not care about the candidate for the section of the ballot where
22 they were having the issue, they could double vote and spoil just that vote. The marshal
23 and site inspector encouraged voters to do this instead of spoiling their ballot and
24 obtaining a new one.

25 2.9. Joshua D. Banko estimates that approximately 80% of voters at the Paradise
26 Valley Mall polling place experienced this issue.

27 2.10. Named Intervenors are two voters who experienced issues similar to those
28 identified by Joshua D. Banko.

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1 2.11. **Exhibit A** is a true and correct copy of the declaration by Joshua D. Banko setting
2 out the facts outlined above.

3 2.12. Intervenor Laurie Aguilera voted in person in Maricopa County on election day,
4 November 3, 2020.

5 2.13. She was provided with a marking device by the poll workers with which to mark
6 her ballot.

7 2.14. Intervenor completed her ballot with the provided marking device. While
8 completing it she noticed that the ink was bleeding through.

9 2.15. Intervenor fed her ballot into the ballot box.

10 2.16. The ballot box failed to properly register her vote causing a poll-worker to cancel
11 her ballot in the presence of Intervenor.

12 2.17. Intervenor requested a new ballot but, upon information and belief, upon
13 consultation with the Maricopa County Recorder's Office, the poll workers refused to
14 provide her with one.

15 2.18. Intervenor Donovan Drobina voted in person in Maricopa County on election day,
16 November 3, 2020.

17 2.19. He was provided with a marking device by the poll workers with which to mark
18 his ballot and was not given the option of using a different marking device.

19 2.20. He attempted to insert his ballot into the slot at the top of the ballot box and it was
20 rejected.

21 2.21. The poll worker that assisted him told him that they had been having issues with
22 ink bleeding through ballots, which had been causing issues with the scanner.

23 2.22. The poll worker had him attempt to put the ballot in the slot at the top of the box
24 twice, after it failed to scan both times the poll worker had him put the ballot in a slot
25 lower down on the box.

26 2.23. **Exhibit B** is a true and correct copy of the declaration by Donovan Drobina setting
27 out the facts outlined above.

28

2.24. According to Pima County Supervisor Allyson Miller, Pima County instructed voters that felt pens may bleed through ballots, causing issues with the scanner. *See Exhibit C.* However, Maricopa County no longer manually duplicates ballots but instead tries to have ballots reviewed by human beings to determine “voter intent.”

2.25. Upon information and belief, many other voters have experienced similar issues. **Exhibit D.** Although Intervenor are not at this time asking for class certification, they feel an acute responsibility to vindicate the voting rights of all Arizonans and the integrity of our elections.

2.26. Upon information and belief not all Arizona counties and polling places provided in-person voters with marking devices that bled through ballots.

2.27. Upon information and belief, November 9, 2020 is the first day to canvass the election results, November 23, 2020 is the last day to canvass the election results, and the deadline to certify election results is November 30, 2020.

SECTION III

CAUSES OF ACTION

3.1. Intervenor incorporate by reference the preceding allegations.

3.2. Intervenor seek to ensure that their votes in this election are properly handled. Therefore, they join with Plaintiffs in asserting their causes of action.

3.3. Intervenor also join this action to further illuminate and fix chronic voting system problems in Maricopa County and elsewhere caused by Defendants’ failure to follow the law. Intervenor believe that these issues must be addressed now, while public attention is focused on the process, to restore confidence in the electoral system in which we all place our faith. Therefore, Intervenor assert the following additional causes of action. The resolution of the majority of these causes of action will likely depend on the resolution of Intervenor’s factual claims.

FIRST CAUSE OF ACTION

(Failure to Maintain Statutorily Compliant Electronic Voting System)

1 3.4. Maricopa County utilizes an “electronic voting system” within the meaning of
 2 A.R.S. § 16-444(A)(4) wherein “votes are recorded on a paper ballot by means of
 3 marking, and such votes are subsequently counted and tabulated by vote tabulating
 4 equipment at one or more counting centers.”

5 3.5. “Vote tabulating equipment” means “apparatus necessary to *automatically*
 6 examine and count votes as designated on ballots and tabulate the results.” A.R.S. § 16-
 7 444(A)(7) (emphasis supplied).

8 3.6. By statute, the county’s electronic voting system must, “When properly operated,
 9 record correctly and count accurately every vote cast.” A.R.S. § 16-446(B)(6).

10 3.7. In other words, voters have a right to know with certainty that, when they follow
 11 the instructions of election officials, their votes will be counted automatically and
 12 perfectly. The acts of Defendants have deprived them of that right.

13 3.8. Intervenors her properly operated the County’s electronic voting system but, upon
 14 information and belief, it failed to automatically record some or all of their votes. Upon
 15 information and belief, it also failed to record some or all their votes correctly and count
 16 them accurately.

17 WHEREFORE Intervenors pray:

18 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
 19 law: That the conduct of Defendants complained of herein and by Plaintiffs
 20 constitutes a violation of Intervenors’ right under Arizona law to have their votes
 21 read and tabulated in a fully automated process by a perfectly accurate machine
 22 when Intervenors operate the Electronic Voting System as instructed.

23 *SECOND CAUSE OF ACTION*

24 *(Failure to Ensure Maximum Degree of Correctness, Impartiality, and Uniformity of*
 25 *Election Procedures)*

26 3.9. By statute Arizona elections are to be conducted so as to ensure the maximum
 27 degree of correctness, impartiality, and uniformity of procedures for voting and
 28 tabulating ballots. *See e.g.* A.R.S. §§ 16-449(B), 16-452(A), *etc.*

1 3.10. The provision of a marking device which bleeds through ballots fails to satisfy
2 these requirements. It failed to provide for the maximum degree of correctness because at
3 least some voters, including Intervenors, experienced issues having their ballots read
4 because of the use of the these marking devices. It failed to provide for the maximum
5 degree of impartiality. Nothing is more impartial than a machine that counts votes with
6 perfect accuracy. Upon information and belief, some ballots had to have voter intent
7 adjudicated by humans because the machines were unable to read them due to the use of
8 the provided marking devices. The provision of marking devices which bled through
9 ballots failed to provide for the maximum degree of uniformity insofar as not all voters
10 were provided with such marking devices by poll workers.

11 WHEREFORE Intervenors pray:

12 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
13 law: That the conduct of Defendants complained of herein and by Plaintiffs
14 constitutes a violation of Defendants' obligation under Arizona law to ensure
15 the maximum degree of correctness, impartiality, and uniformity of procedures
16 for voting and tabulating ballots.

17 *THIRD CAUSE OF ACTION*

18 *(Violation of A.R.S. § 16-502)*

19 3.11. Arizona law provides that "[b]allots shall be printed with black ink on white paper
20 of sufficient thickness to prevent the printing thereon from being discernible from the
21 back and the same type shall be used for the names of all candidates." A.R.S. § 16-
22 502(A).

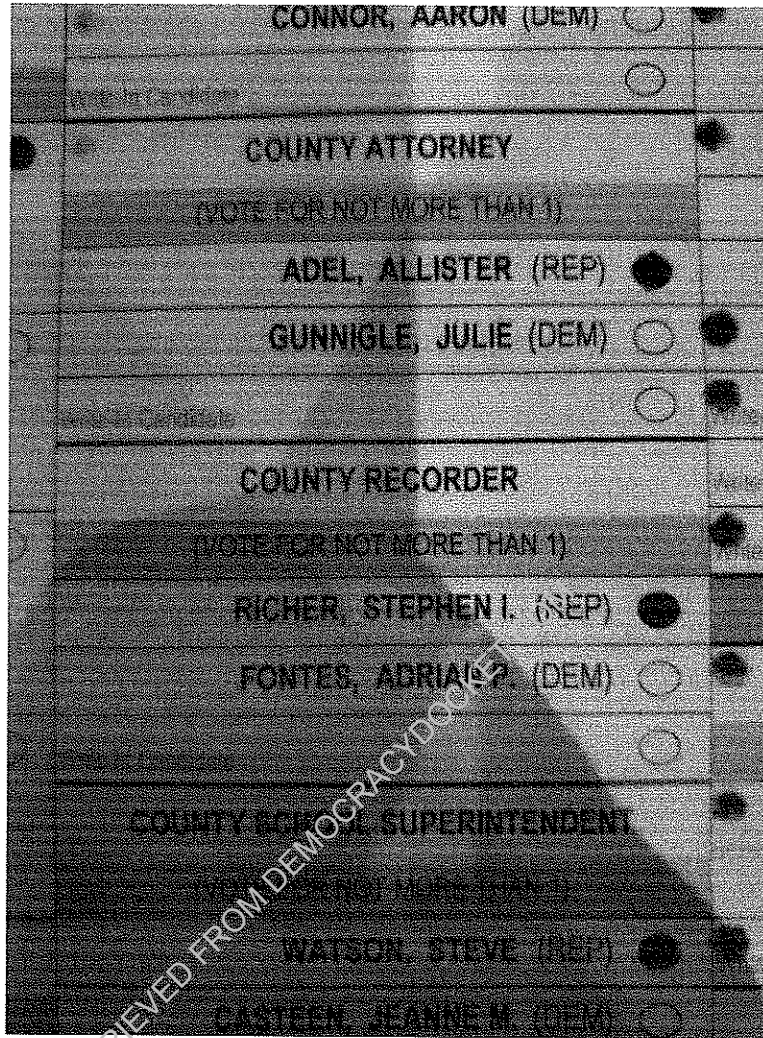
23 3.12. Defendants violated A.R.S. § 16-502(A) by failing to provide ballots with
24 sufficient thickness to prevent the marking devices provided to Intervenors from bleeding
25 through.
26
27
28

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WHEREFORE Intervenor's pray:

- A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable law: That the conduct of Defendants complained of herein and by Plaintiffs constitutes a violation of Intervenor's right under Arizona law to have their votes read and tabulated in a fully automated process by a perfectly accurate machine when Intervenor's operate the Electronic Voting System as instructed.

FOURTH CAUSE OF ACTION

(Failure to Comply with the Election Procedures Manual – Failure to Provide Appropriate Opportunities to Correct Mistakes)

1 3.13. By statute Arizona elections are to be conducted pursuant to the Election
2 Procedures Manual ("EPM") which has the force of law. A.R.S. § 16-452.¹

3 3.14. Pursuant to the EPM, the marking devices provided to voters must: "Provide the
4 voter with an opportunity (in a private, secret, and independent manner) to correct any
5 error before the ballot is cast and counted or cast a replacement ballot if the previous
6 ballot is spoiled or unable to be changed or corrected." EPM p 79.

7 3.15. Upon information and belief, because of the provision of marking devices which
8 bled through ballots, Intervenors did not realize that their ballots would not be properly
9 read or would be read as spoiled until their ballots were cast.

10 WHEREFORE Intervenors pray:

- 11 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
12 law: That the conduct of Defendants complained of herein and by Plaintiffs
13 constitutes a violation of their obligation under Arizona law to provide voters
14 with an opportunity (in a private, secret, and independent manner) to correct
15 any error before the ballot is cast and counted or cast a replacement ballot if
16 the previous ballot is spoiled or unable to be changed or corrected.

17 *FIFTH CAUSE OF ACTION*

18 *(Failure to Comply with the Election Procedures Manual – Failure to Allow for Public*
19 *Access)*

20 3.16. In February of 2019, an Electronic Adjudication Addendum (the "Addendum")
21 was added to the EPM.²

22 3.17. The Addendum provides in pertinent part as follows: "The electronic adjudication
23 of votes must be performed in a secure location, preferably in the same location as the
24 EMS system, but open to public viewing."
25

26
27 ¹[https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_A](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
[PPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)

28 ²[https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_E](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf)
[lections_Procedures_Manual.pdf](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf)

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3.18. Defendants Maricopa County, Maricopa County Board of Supervisors, and Adrian Fontes have failed to open the location where electronic adjudication occurs to public viewing.

WHEREFORE Intervenor prays:

- A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable law: That the conduct of Defendants complained of herein and by Plaintiffs constitutes a violation of their obligation to open the location where the electronic adjudication of votes is occurring to the public.
- B. For injunctive relief opening the location where electronic adjudication is taking place to the public.

ADDITIONALLY, Intervenor prays:

- A. That the relief requested by Plaintiffs be GRANTED.
- B. For their attorneys' fees and costs pursuant to A.R.S. §§ 12-2030, 12-348, common law doctrine, and other applicable law.
- C. For such other relief as this Court deems just and proper.

Respectfully submitted this 8th day of November, 2020

By /s/Alexander Kolodin

Alexander Kolodin
Kolodin Law Group PLLC
3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85012

Attorneys for Intervenor

I CERTIFY that a copy of the of the forgoing will be served on Defendants in conformity with the applicable rules of procedure.

By /s/Alexander Kolodin

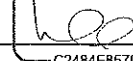
VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. My knowledge of course being limited to the facts of my particular circumstances.

11/8/2020

DATE

DocuSigned by:



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LAURIE AGUILERA

KOLODIN LAW GROUP PLLC

3443 North Central Avenue Suite 1009

Phoenix, Arizona 85012

Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit A

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION

I declare and state as follows:

1. My name is Joshua Banko. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I was working as a clerk for the Maricopa County Elections Department at the polling location located at Paradise Valley Mall in Phoenix, Arizona. I worked there from approximately 5:30 in the morning to approximately 8:15 at night.
4. Starting at the very beginning of the day, voters began experiencing problems feeding their ballots into the tabulation machine. This caused significant delays in voting and lasted throughout the day. The tabulation machine was telling me that it was detecting errant or extraneous lines outside of the voting section of the ballot. However, in my presence many voters showed their ballot to the elections marshal and the site inspector to demonstrate that there were no errant marks on their ballot. Ballots that were rejected by one machine were tried on the other tabulation machine and in different orientations, always without success. For these reasons I believe that the issue was caused by the use of sharpies at the polling location. Voters who experienced this issue were told by the marshal that they could spoil their ballot but if they didn't care about the candidate for the section of the ballot where they were having the issue they could double vote and spoil just that vote. The marshal and site inspector encouraged voters to do this instead of spoiling their ballot and obtaining a new one. I would estimate that approximately 80% of voters at this polling location

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experienced this issue. There was a steady flow of voters through the location all day with long lines all day.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Scottsdale (city), Arizona.

DocuSigned by:

Joshua Banks

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RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION

I declare and state as follows:

1. My name is DONOVAN DROBINA. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at Arrowhead Town Center, Glendale AZ (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen. I attempted to insert my ballot into the slot at the top of the ballot box and it was rejected. The poll worker assisting me told me that they had been having issue with the sharpies bleeding through which had been causing issues with the scanner. The poll worker had me try to put the ballot in the slot of the top of the box twice. It failed to scan both times. Then the poll worker had me put the ballot in a slot lower down on the box.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Peoria (city), Arizona.


DocuSigned by:

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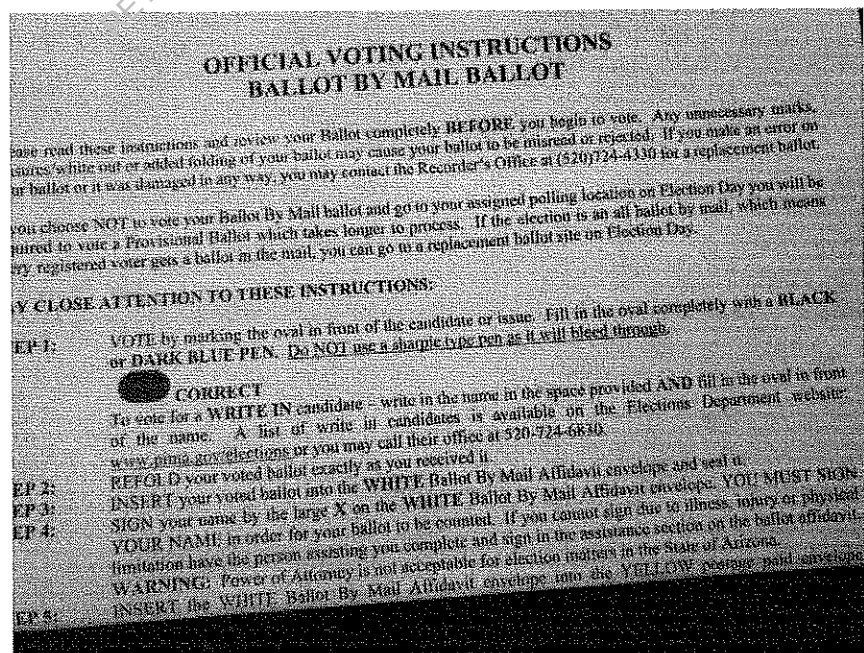
Exhibit C

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DECLARATION

I declare and state as follows:

1. My name is Allyson Miller. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a duly elected member of the Pima County Board of Supervisors.
3. Although the Pima County Recorder has a great deal of responsibility for elections, part of my responsibilities also involve oversight of Pima County elections.
4. In that capacity I am familiar with the instructions that we provide to voters. The below is a true and accurate copy of those instructions for the 2020 general election. The below is a true and accurate copy of the instructions we provided to early voters for that election. We advised voters not to use sharpies because they make ballots harder for our tabulators to read. For the 2020 general election, early voters and election-day voters received identical ballots.



5. In that capacity I am also familiar with our county's communications concerning elections. The below is a true and accurate copy of a communication that Pima County put out on Facebook for the 2020 general election.



The felt-tip pen ballot controversy burning through social media is false. Don't get caught up in it. Arizona ballot tabulating machines can read ballots marked with a felt tip pen. Felt pens are discouraged because the ink can bleed through. If it does bleed through, the ballot will most likely get sent for duplication so it can be read by the scanner. The image with this post is the text from the Arizona Secretary of State's Elections Manual, Chapter 10, Section D, subsection 3.

All ballots in which voter intent can be discerned will be counted. That's also in the manual. No ballots will be discarded because of the method used to color in the ovals.

https://azsos.gov/.../2019_ELECTIONS_PROCEDURES_MANUAL...

3. Procedures for Duplicating a Ballot A damaged or unreadable ballot must be duplicated according to the following procedures: ☐

- Ensure the correct ballot style for the voter's precinct will be used to create the duplicated ballot; ☐
- Mark the proper precinct identification code, if applicable; ☐
- Record an identical serial number on both the original and duplicate ballot (including spoiled duplicates) – this ties the ballots together and creates a paper trail as required by statute, A.R.S. § 16-621(A); ☐
- Conspicuously mark the original ballot as "DUPLICATED," ☐
- Conspicuously mark the duplicate ballot as "DUPLICATE," A.R.S. § 16-621(A); ☐
- Using the damaged or unreadable ballot as a guide, mark a blank ballot with votes identical to those on the original ballot; ☐
- Do not duplicate write-in names that are not on the authorized write-in list ("blank" or "unofficial" may be typed in if using a ballot marking device to duplicate and the name/line cannot be left blank). However, mark the arrow or fill in the oval to indicate the vote cast; ☐
- After marking the duplicate ballot, check to make sure it is identical to the original, including over-votes if voter intent cannot be determined and any under-votes; ☐
- If the Ballot Duplication Board makes any errors, mark the duplicate ballot "SPOILED" in a conspicuous

Dated this 11/5/2020. Executed at Tucson, AZ (city).

I DECLARE under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

DocuSigned by:

Allyson Miller

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Exhibit D

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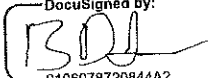
DECLARATION

I declare and state as follows:

1. My name is Brian Zeman. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in person in at Biltmore Fashion Park: 2502 E. Camelback Rd.
4. I was given a sharpie by the poll workers.
5. I filled out my ballot. The tabulation machine rejected it three times before finally accepting the ballot.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/5/2020, in Phoenix (city), Arizona.

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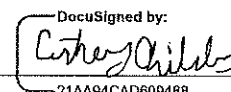
DECLARATION

I declare and state as follows:

1. My name is Courtney Childers. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at Queen creek library 21802 south Ellsworth rd queen creek (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
Option 1: ☒ My ballot was rejected and was placed into a special pile.
Option 2: ☐ My ballot was rejected and I was given the option of filling out a new ballot.
Option 3: ☐ My ballot was rejected and I was not given the option of filling out a new ballot.
Option 4: ☐ My ballot was rejected one or more times but was eventually accepted.
Option 5: ☐ My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Queen creek (city), Arizona.

DocuSigned by:

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DECLARATION

I declare and state as follows:

1. My name is Jennifer Cline. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at Precinct 73 Pinal County- Santa Rosa School (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
Option 1: [☒] My ballot was rejected and was placed into a special pile.
Option 2: [☐] My ballot was rejected and I was given the option of filling out a new ballot.
Option 3: [☐] My ballot was rejected and I was not given the option of filling out a new ballot.
Option 4: [☐] My ballot was rejected one or more times but was eventually accepted.
Option 5: [☐] My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Maricopa (city), Arizona.

DocuSigned by:

Jennifer Cline

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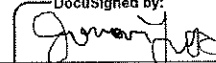
DECLARATION

I declare and state as follows:

1. My name is Jennifer Flores. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at Anthem Outlets, Anthem AZ (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
Option 1: [☐] My ballot was rejected and was placed into a special pile.
Option 2: [☐] My ballot was rejected and I was given the option of filling out a new ballot.
Option 3: [☐] My ballot was rejected and I was not given the option of filling out a new ballot.
Option 4: [☒] My ballot was rejected one or more times but was eventually accepted.
Option 5: [☐] My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Phienix (city), Arizona.

DocuSigned by:

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DECLARATION


I declare and state as follows:

1. My name is Lora Wuollet. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at 4250 W Anthem Way 110, Phoenix, AZ 85086 (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
Option 1: [☒] My ballot was rejected and was placed into a special pile.
Option 2: [☐] My ballot was rejected and I was given the option of filling out a new ballot.
Option 3: [☐] My ballot was rejected and I was not given the option of filling out a new ballot.
Option 4: [☐] My ballot was rejected one or more times but was eventually accepted.
Option 5: [☐] My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Phoenix (city), Arizona.

DocuSigned by:



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DECLARATION

I declare and state as follows:

1. My name is Michael Long. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at 21802 S Ellsworth Rd, Queen Creek, AZ 85142 (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
 Option 1: ☒ My ballot was rejected and was placed into a special pile.
 Option 2: ☐ My ballot was rejected and I was given the option of filling out a new ballot.
 Option 3: ☐ My ballot was rejected and I was not given the option of filling out a new ballot.
 Option 4: ☐ My ballot was rejected one or more times but was eventually accepted.
 Option 5: ☐ My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Queen Creek (city), Arizona.

DocuSigned by:
Michael Long
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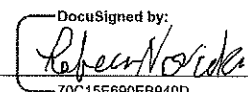
DECLARATION

I declare and state as follows:

1. My name is Rebecca Novicki. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at 4250 W Anthem Way, Anthem, AZ (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
Option 1: [] My ballot was rejected and was placed into a special pile.
Option 2: [] My ballot was rejected and I was given the option of filling out a new ballot.
Option 3: [x] My ballot was rejected and I was not given the option of filling out a new ballot.
Option 4: [] My ballot was rejected one or more times but was eventually accepted.
Option 5: [] My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Anthem (city), Arizona.

DocuSigned by:

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DECLARATION

I declare and state as follows:

1. My name is Yanive Masjedi. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at 7700 E McCormick Pkwy Scottsdale, AZ 85258 (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
Option 1: ☒ My ballot was rejected and was placed into a special pile.
Option 2: ☐ My ballot was rejected and I was given the option of filling out a new ballot.
Option 3: ☐ My ballot was rejected and I was not given the option of filling out a new ballot.
Option 4: ☐ My ballot was rejected one or more times but was eventually accepted.
Option 5: ☐ My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/5/2020, in Scottsdale, Arizona (city), Arizona.

DocuSigned by:

Yanive Masjedi

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DECLARATION

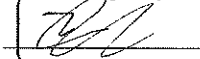
I declare and state as follows:

1. My name is Zachery Knudsen. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in person in Scottsdale, Arizona.
4. I was given a sharpie by the poll workers.
5. I filled out my ballot. The tabulation machine rejected it three times before finally accepting the ballot.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/5/2020, in Tempe (city), Arizona.

DocuSigned by:


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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014248

11/09/2020

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
P. McKinley
Deputy

DONALD J TRUMP FOR PRESIDENT INC, et
al.

THOMAS J. BASILE

v.

KATIE HOBBS, et al.

ROOPALI HARDIN DESAI

SARAH R GONSKI
ALEXANDER M KOLODIN
KORY A LANGHOFER
CHRISTOPHER A VISKOVIC
CHRISTOPHER B FORD
SUE BECKER
JOSEPH I VIGIL
JOSEPH EUGENE LA RUE
DANIEL A ARELLANO
EMILY M CRAIGER
THOMAS PURCELL LIDDY
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE KILEY

MINUTE ENTRY

East Court Building – Courtroom 911

3:01 p.m. This is the time set for virtual Order to Show Cause Return Hearing. Plaintiffs Donald J. Trump for President, Inc., Republican National Committee and Arizona Democratic

Docket Code 056

Form V000A

Page 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014248

11/09/2020

Party are represented by counsel, Kory Langhofer for attorney of record Thomas Basile. Defendant Katie Hobbs (in her official capacity as the Arizona Secretary of State) is represented by counsel, Roopali Hardin Desai. Defendant Adrian Fontes (in his official capacity as the Maricopa County Recorder) and Defendants Jack Sellers; Steve Chucuri; Clint Hickman; Bill Gates and Steve Gallardo (in their official capacities as members of the Board of Supervisors for Maricopa County) (collectively, the "Maricopa County Defendants") are represented by counsel, Thomas P. Liddy and Joseph LaRue. Proposed Intervener Arizona Democratic Party is represented by counsel, Sarah R. Gonski. Proposed Interveners Laurie Aguilera and Donovan Drobina are represented by counsel, Alexander Kolodin, Christopher Viskovic and Sue Becker. All appearances are virtual via the GoToMeeting platform.

A record of the proceedings is made digitally in lieu of a court reporter.

The Maricopa County Defendants object to proceeding with today's Order to Show Cause hearing on the grounds of lack of service.

Discussion is held regarding the Court's disclosure contained in the Order to Show Cause filed November 9, 2020.

Following discussion, the Court will recess to provide counsel the opportunity to review the Order to Show Cause in detail.

3:11 p.m. Court stands at recess.

3:31 p.m. Court reconvenes with counsel present.

A record of the proceedings is made digitally in lieu of a court reporter.

Further discussion is held regarding the Court's disclosure contained in the Order to Show Cause filed November 9, 2020.

The parties find no conflict of interest exists and have no objection to the Court proceeding.

Discussion is held regarding the Proposed Intervenor Arizona Democratic Party's Motion to Intervene filed November 9, 2020.

Following discussion and there being no objections,

IT IS ORDERED granting Arizona Democratic Party's Motion to Intervene.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014248

11/09/2020

Argument is presented regarding the Proposed Intervenors Laurie Aguilera and Donovan Drobina's Motion to Intervene filed November 9, 2020.

For the reasons stated on the record,

IT IS ORDERED denying Proposed Intervenors Laurie Aguilera and Donovan Drobina's Motion to Intervene.

Discussion is held regarding how this matter should proceed.

Following discussion, and for the reasons stated on the record,

IT IS ORDERED setting a combined Evidentiary Hearing and Oral Argument on the legal issues on **November 12, 2020 at 9:30 a.m. (time allotted: 5 hours)** in this division via the GoToMeeting platform.

<https://www.gotomeet.me/Rolena>

Parties can access the hearing by using a telephone by calling:

Telephone Number: [+1 \(786\) 535-3211](tel:+17865353211)
Access Code: [346-956-893](tel:+17865353211)

The audience line is:

Telephone Number: **1-877-309-2073**
Access Code: **697-460-909**

If you have trouble accessing the hearing, contact Judge Kiley's judicial staff at 602-372-3839.

Time allocation for the hearing shall be as follows:

Plaintiffs: 2.5 hours
Government Defendants: 1.5 hours
Intervenor: 1.0 hours

IT IS FURTHER ORDERED the parties shall file and exchange simultaneous pre-hearing briefs **no later than November 10, 2020 at 8:00 p.m.** The parties shall exchange their

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014248

11/09/2020

briefing by email and also to this division. Plaintiff's prehearing brief shall not exceed a combined page count of 50 pages. The Defendants and intervenor's briefs shall not exceed 17 pages each.

IT IS FURTHER ORDERED each party shall file and exchange lists of witnesses and exhibits by no later than **November 10, 2020 at 3:00 p.m.**

IT IS FURTHER ORDERED by no later than **3:00 p.m. November 10, 2020**, the parties shall submit their exhibits through the exhibit submission portal at this link <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission> or deliver them to this division for marking.

For electronic and in-person exhibit submission, please visit, <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission>. The webpage will provide instructions and guidance for electronic submission as well as locations for in-person submission of exhibits.

NOTICE: Exhibits Marked But Not Offered

Exhibits submitted to the court for an evidentiary hearing/trial, whether through hard copy or submitted electronically, that are marked as exhibits but are not offered into evidence at the evidentiary hearing will be destroyed following the hearing/trial, unless a party requests that the evidence be returned at the conclusion of the hearing. Such requests must be filed with the Court and served on all parties in advance of the hearing or by no later than the conclusion of the hearing.

4:36 p.m. Matter concludes.

Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a court facility to wear a mask or face covering at all times they are in the court facility. With limited exceptions, the court will not provide masks or face coverings. Therefore, any individual attempting to enter the court facility must have an appropriate mask or face covering to be allowed entry to the court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the court facility or asked to leave. In addition, all individuals entering a court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the court facility.