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20 **SUPERIOR COURT OF THE STATE OF ARIZONA**

21 **FOR THE COUNTY OF MARICOPA**

22 LAURIE AGUILERA, a registered voter in
23 Maricopa County, Arizona; DOES I-X;
24 *Plaintiffs,*
25 v.

26 ADRIAN FONTES, in his official capacity as
27 Maricopa County Recorder; FRAN
28 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.

COPY

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CLERK OF THE SUPERIOR COURT
C. CRUZ
DEPUTY CLERK

Case no.: CV 2020-014083

**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 Seilers, Steve Chucri, 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.

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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

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

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machine.

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

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

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

Respectfully submitted this 4th day of November, 2020

By /s/Alexander Kolodin

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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

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