1 Alexis E. Danneman (Bar No. 030478)
   Sarah R. Gonski (Bar No. 032567)
2 **PERKINS COIE LLP**
   2901 North Central Avenue, Suite 2000
3 Phoenix, Arizona 85012-2788
   Telephone: (602) 351-8000
4 Facsimile: (602) 648-7000
   ADanneman@perkinscoie.com
5 SGonski@perkinscoie.com

6 Marc E. Elias*
   Bruce V. Spiva*
7 John Devaney*
   John M. Geise**
8 **PERKINS COIE LLP**
   700 Thirteenth Street NW, Suite 600
9 Washington, D.C. 20005-3960
   Telephone: (202) 654-6200
10 Facsimile: (202) 654-6211
   MElias@perkinscoie.com
11 BSpiva@perkinscoie.com
   JDevaney@perkinscoie.com
12 JGeise@perkinscoie.com
   *Admitted Pro Hac Vice
13 **Pro Hac Vice Application Pending
   Additional Counsel Listed on Signature Page
14
   Attorneys for Proposed-Intervenor Defendant
15

16   **UNITED STATES DISTRICT COURT**
17   **DISTRICT OF ARIZONA**

18 Bowyer, et al.,

19   Plaintiffs,   No. 2:20-cv-02321-DJH

20   v.   **PROPOSED INTERVENOR-
                                        DEFENDANT'S RESPONSE TO
21 Ducey, et al.,   PLAINTIFFS' MOTION FOR A
                                        TEMPORARY RESTRAINING
22   Defendants.   ORDER AND PRELIMINARY
                                        INJUNCTION AND MOTION TO
23   DISMISS**

24   Expedited Election Matter

25   Hon. Diane J. Humetewa

26

27

28

I. INTRODUCTION

This is the fourth complaint filed nationwide in the last nine days by attorneys Sidney Powell and L. Lin Wood and others in which they seek to baselessly undermine the legitimacy of the presidential election by fanning the flames of debunked conspiracies, relying on the same discredited or unnamed "experts." *See* Compl., *Feehan v. Wis. Elections Comm'n*, No. 2:20-cv-1771 (E.D. Wis. Dec. 1, 2020); Compl., *King v. Benson*, No. 2:20-cv-13134-LVP-RSW, ECF No. 1 (E.D. Mich. Nov. 25, 2020); Compl., *Pearson v. Kemp*, No. 1:20-cv-4809, ECF No. 1 (N.D. Ga. Nov. 25, 2020).[1] But Plaintiffs' counsel's willingness to propagate their fantastical allegations across multiple jurisdictions does not make their claims actionable or meritorious. To the contrary, there are multiple bases to dismiss this case outright, including lack of standing, laches, black letter Eleventh Amendment jurisprudence, and a total failure to state a cognizable claim for relief. In addition, basic principles of federalism and comity counsel abstention. But even if the Court were to reach Plaintiffs' claims, they can satisfy none of the factors that would justify the injunctive relief that they seek: they are not likely to succeed on their claims, they have failed to establish that they will suffer irreparable harm, and both the public interest and the equities weigh heavily against them. The Arizona Democratic Party ("ADP") respectfully requests that the Court deny Plaintiffs' request for temporary relief and dismiss this suit.[2]

II. BACKGROUND

More than 3.4 million Arizonans cast ballots in the November presidential election. The election is now over. President-elect Biden has won by more than 10,400 votes, the results have been certified, and the Certificate of Ascertainment has been sent to the Archivist of the United States. *See* Compl. ¶ 3. This case is only one in what has become a

---

[1] The Court need look no further than Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction here to see the cookie-cutter nature of this action. Dkt No. 2 at 6 (claiming entitlement to relief because Arizona officials failed to administer the election "in compliance with the manner prescribed by the Georgia legislature").

[2] The ADP's motion to intervene is pending before this court. Consistent with discussion at the scheduling conference (Doc. 28), ADP submits a joint response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, within the combined limits of the briefs were they to have been filed individually.

1   constant drumbeat of baseless attempts to use the judiciary to overturn the clearly expressed

2   will of the people. Since Election Day, the Trump Campaign and its supporters have filed a

3   series of lawsuits raising legally deficient and credulous challenges across at least seven

4   different states. In fact, this is the *seventh* such suit in Arizona alone, including a new case

5   filed just today. One by one, these cases have been thoroughly rejected. This suit should

6   promptly suffer the same fate.

7   Not only is this case meritless, it is far too late. Plaintiffs inexplicably waited until

8   December 2nd to file—two days after Arizona officials certified the results of the election,

9   and nearly a full month after the election itself. As evidenced by the Complaint, Plaintiffs'

10   claims did not get better with age. Instead, the Complaint relies on wild conspiracy theories,

11   the gist of which are that Arizona election officials "and their collaborators" are alleged to

12   have engaged in an elaborate international conspiracy to "illegally and fraudulently

13   manipulat[e] the vote" in President-elect Biden's favor, purportedly resulting in "hundreds

14   of thousands" of invalid or illegal ballots being cast in Arizona. Compl. ¶¶ 2-3. As support,

15   Plaintiffs attach an unexecuted "declaration" from an unidentified witness and an

16   unexecuted expert witness report (Compl. Exs. 1, 14); reports from supposed experts who

17   have refused to disclose their identities, making it impossible for Plaintiffs to carry their

18   burden of proving admissibility (Compl. Exs. 4, 12, 13); a declaration from a witness who

19   complains, among other things, that she was made to "f[eel] very unwelcome" at a polling

20   location on October 23 because poll watchers were told they could not talk and who was

21   "concerned" because poll workers "correctly" advised voters about their options if they

22   over-voted (and voters generally chose an option the witness did not like) (Compl. Ex. 5);

23   a document from the Maricopa County Republican Committee Chairwoman that Plaintiffs

24   label a "declaration," but which is not signed under penalty of perjury and that appears to

25   be a transcript from statements she made at a meeting with Republican State Representative

26   Mark Finchem and other officials (Compl. Ex. 23); exhibits that have nothing to do with

27   the 2020 presidential election in Arizona (*e.g*., Compl. Exs. 6-8, 10-11B, 15-16, 18); and

28   other documents that similarly lend no credence to Plaintiffs' claims of fraud and

1   irregularity (*e.g.*, Compl. Exs. 3, 20-22).

2   Plaintiffs also rely on other expert witness reports that, aside than being signed, have

3   no indicia of reliability whatsoever (*e.g.*, Compl. Exs. 2, 9, 17, 19). For the reasons set forth

4   in the ADP's experts' rebuttal reports, these expert reports are unreliable and based on

5   flawed methodology. [*See* Stephen Ansolabehere, Response to Report of Dr. William

6   Briggs ("Exhibit 1"); Jonathan Rodden, Expert Report ("Exhibit 2"); Michael C. Herron,

7   Expert Report ("Exhibit 3")]]

8   On these bases, Plaintiffs claim violations of the Elections and Electors Clauses,

9   Compl. ¶¶ 103-11, the Equal Protection Clause, *id.* ¶¶ 112-23, the Due Process Clause, *id.*

10   ¶¶ 124-34, and generalized "wide-spread ballot fraud," *id.* ¶¶ 135-41, and demand that the

11   Court order Defendants to (1) "de-certify" the election, (2) "disqualif[y]" Arizona's electors

12   "from counting toward the 2020 election," and (3) "direct[]" Arizona electors to "vote for

13   President Donald Trump." *Id.* ¶¶ 142-45. Plaintiffs have also moved for a temporary

14   restraining order and preliminary injunction on the same grounds. *See* Dkt. 2 at 2.

15   Plaintiffs recognize that Arizona law provides for an election contest to raise

16   assertions of fraud and misconduct, but fail to explain why, instead, they have turned to this

17   federal court. *See* Compl. ¶ 15 (citing A.R.S. § 16-672 in noting that "the factual basis of

18   this Complaint would also support an election contest under Arizona law"); A.R.S. § 16-

19   672 (providing for election contest for, e.g., "misconduct on the part of election board . . .

20   or on the part of any officer making or participating in a canvass for a state election" or

21   "[o]n account of illegal votes). Such a contest was separately brought by Plaintiff Kelli

22   Ward in Arizona State Superior Count in Maricopa County on November 24, 2020. *See*

23   *Ward v. Jackson*, No. CV2020-015285 (Maricopa Cty. Sup. Ct. Nov. 24, 2020). That

24   contest petition was denied by that court by a decision issued earlier today after a two-day

25   trial, in which the court found that found that the plaintiffs sorely failed to carry the burden

26   of proof. The Court addressed many of the same issues Plaintiffs raise here. As to claims

27   regarding insufficient opportunities to observe ballot counting, the Court held that those

28   claims were untimely given that "[t]he observation procedures for the November general

1   election were materially the same as for the August primary election, and any objection to

2   them should have been brought at a time when any legal deficiencies could have been

3   cured." *Ward v. Jackson*, No. CV2020-015285 (Maricopa Cty. Sup. Ct. Dec. 4. 2020)

4   ("Exhibit 4"). After a thorough review of the evidence regarding signature matching

5   presented by both sides and testimony by forensic document examiners, the Court found

6   that there was "no evidence that the manner in which signatures were reviewed was

7   designed to benefit one candidate or another, or that there was any misconduct, impropriety,

8   or violation of Arizona law with respect to the review of mail-in ballots. *Id*. at 7. Finally, as

9   to illegal votes, the Court concluded that "the evidence did not prove illegal votes, much

10   less enough to affect the outcome of the election." *Id.* at 8. The Arizona Supreme Court has

11   advised that briefs in the matter will be due Monday before noon.

12   **III.   LEGAL STANDARD**

13   **Motion to Dismiss**. In deciding a motion to dismiss, the Court presumes the veracity

14   of all well-pleaded material allegations in the Complaint, *Arizona Students' Ass'n v.*

15   *Arizona Bd. of Regents*, 824 F.3d 858, 864 (9th Cir. 2016), but "a plaintiff's obligation to

16   provide the 'grounds' of his entitle[ment] to relief' requires more than labels and

17   conclusions, and a formulaic recitation of the elements of a cause of action will not do."

18   *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Fed.

19   R. Civ. P. 8(a)). "[C]onclusory allegations of law and unwarranted inferences are

20   insufficient to defeat a motion to dismiss for failure to state a claim." *Epstein v. Wash.*

21   *Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996).

22   **Motion for Preliminary Injunction**. Plaintiffs bear the burden of showing they (1)

23   are "likely to succeed on the merits," (2) are "likely to suffer irreparable harm in the absence

24   of preliminary relief," (3) "the balance of equities tips in" their "favor," (4) and "an

25   injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20

26   (2008). This is a demanding standard in any case but, where, as here, Plaintiffs seek a

27   mandatory injunction, it is heightened. *See, e.g*., *Garcia v. Google, Inc.*, 786 F.3d 733, 740

28   (9th Cir. 2015) (holding relief is not warranted "unless the facts and law clearly favor the

1   moving party." (quoting *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994)).

2   **IV.   ARGUMENT**

3   **A.   The Court should dismiss this case because Plaintiffs lack standing.**

4   To avoid dismissal on Article III grounds, a "plaintiff must have (1) suffered an

5   injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3)

6   that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136

7   S. Ct. 1540, 1547 (2016). Plaintiffs fail all three prongs.

8   **No cognizable injury-in-fact**. Plaintiffs have failed to establish that they have

9   suffered an injury fact sufficient to maintain any of their claims. As to their due process and

10 equal protection claims in Counts II and III (as well as their freestanding fraud claim in

11 Count IV, for which they cite neither a constitutional nor statutory basis), Plaintiffs do not

12 allege that they were deprived of the right to vote; instead, they allege they are harmed by

13 purported violations of Arizona law which "diluted" their votes. Compl. ¶¶ 117, 129, 140.

14 But this theory of vote-dilution-through-unlawful-voting has been thoroughly and

15 repeatedly rejected by federal courts as a viable basis for standing (including several in the

16 last few weeks alone). *See, e.g., Bognet v. Sec'y of Commonwealth*, No. 20-3214, 2020 WL

17 6686120, at *11-14 (3d Cir. Nov. 13, 2020) (rejecting identical theory and explaining "[t]his

18 conceptualization of vote dilution—state actors counting ballots in violation of state

19 election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth

20 Amendment"); *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM

21 (VCF), 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) (similar).

22   Thus, in *Donald J. Trump for President v. Boockvar*, the court rejected a challenge

23 to Pennsylvania's restrictions on poll watchers and ballot challenges under the theory, like

24 here, that the state's practices would lead to fraud and thus dilution of lawfully submitted

25 votes. The court found that the fears of voter fraud that animated the claims were "based on

26 a series of speculative events—which falls short of the requirement to establish a concrete

27 injury." 2020 WL 5997680, at *33. Other cases have reached similar results. *See, e.g.*,

28 *Martel v Condos*, No. 5:20-cv-131, 2020 WL 5755289, at *3-5 (D. Vt. Sept. 16, 2020)

                                            -6-

1   (holding voters challenging a directive expanding vote-by-mail lacked concrete and

2   particularized injury necessary for standing); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 925-

3   26 (D. Nev. 2020) (same); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779,

4   789 (W.D. Tex. 2015) ("[T]he risk of vote dilution" as a result of allegedly inaccurate voter

5   rolls "[is] speculative and, as such, [is] more akin to a generalized grievance about the

6   government than an injury in fact."). Plaintiffs' claims are similarly insufficient.

7   Plaintiffs also claim they have suffered harm as a result of alleged violations of the

8   Elections and Electors Clauses, but that injury, too, has been repeatedly rejected as

9   "precisely the kind of undifferentiated, generalized grievance about the conduct of

10   government" insufficient to constitute an injury for Article III standing. *Lance v. Coffman*,

11   549 U.S. 437, 442 (2007) (per curiam); *accord Wood v. Raffensperger*, No. 1:20-cv-04561-

12   SDG, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020).

13   Plaintiffs' reliance on *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir. 2020), in

14   which the Eighth Circuit held that "[a]n inaccurate vote tally is a concrete and particularized

15   injury" to electors under the theory that Minnesota electors are candidates for office under

16   Minnesota law, is misplaced. *See* Compl. ¶ 32. *Carson* is neither binding on this Court nor

17   in the legal mainstream; federal courts have *repeatedly* held that even candidates for office

18   lack Article III standing to challenge alleged violations of state law under the Elections

19   Clause. *See Bognet*, 2020 WL 6686120, at *6-7 (voters and candidate lacked standing to

20   bring claims under Elections and Electors Clauses); *id.* at *8 n.6 (rejecting *Carson* as being

21   based on an incorrect reading of *Bond v. U.S.*, 564 U.S. 211 (2011)); *Hotze v. Hollins*, No.

22   4:20-cv-03709, 2020 WL 6437668, at *2 (S.D. Tex. Nov. 2, 2020) (holding candidate

23   lacked standing under Elections Clause and concluding that Supreme Court's cases "stand

24   for the proposition that only the state legislature (or a majority of the members thereof) have

25   standing to assert a violation of the Elections Clause," but not individuals such as Plaintiffs

26

27

28

1 here).[3] Neither of the additional cases Plaintiffs cite in their TRO motion fix this

2 fundamental flaw because they do not mention or address Article III standing to bring

3 claims under either Clause whatsoever, and Plaintiffs provides no explanation regarding

4 either case's significance. *See* Dkt. 2 at 5 (citing *McPherson v. Blacker*, 146 U.S. 1, 27

5 (1892); *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (per curiam)).

6   **No traceability**. Plaintiffs have also failed to allege facts sufficient to established

7 that their injuries are traceable to Defendants. Taking Plaintiffs' claims at face value, they

8 appear to involve two things. First, a widespread conspiracy plot by both foreign and state

9 nefarious actors to cast tens of thousands of "illegal" votes in Arizona. *See generally* Compl.

10 And, second, actions by local officials which Plaintiffs purport did not follow state law. *Id*.

11 ¶¶ 46-53. Neither conduct is traceable to Governor Ducey or Secretary Hobbs. As to

12 Plaintiffs' outlandish claims of purported voter fraud by tens of thousands of persons

13 unknown, any purported injuries here would be the result of the actions of unidentified

14 criminal actors not before this Court. And, similarly, purported violations of state law by

15 local elections officials are not traceable to the Governor or the Secretary. This lack of

16 traceability dooms Plaintiffs' standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–

17 61 (1992) (requiring causal connection between injury and defendant's conduct).

18   **No redressability**. Finally, Plaintiffs' injuries are also not redressable by these

19 Defendants.

20   *First*, Plaintiffs cite no authority for the proposition that a federal court has the power

21 to order Arizona state officials to "de-certify" an election they have already certified. This

22 claim relies entirely on provisions of Arizona law allowing a state court, following an

23 election contest duly filed in state court and in compliance with state law, to "se[t] aside the

24 election" or hold that a certificate of election "is of no further legal force or effect." A.R.S.

25

---

26   [3] Although separate constitutional provisions, the Electors and Elections Clauses
27 share "considerable similarity" and should be interpreted in the same manner. *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 839 (2015) (Roberts, C.J., dissenting); *see also Bognet*, 2020 WL 6686120, at *7 (applying same test for standing
28 under both Elections and Electors Clauses).

1   § 16-676; *see* Compl. ¶ 16 (stating "the relief sought is in accord with Arizona law" and

2   citing to A.R.S. § 16-676). But the fact that Arizona's legislature has given *Arizona* courts

3   this power following an election contest does not mean that either the Secretary or

4   Governor—or a *federal* court for that matter—possess that power. To the contrary, as

5   required by the U.S. Supreme Court's decision in *Pennhurst State Sch. & Hosp. v.*

6   *Halderman*, 465 U.S. 89, 106 (1984), the Eleventh Amendment prohibits a federal court

7   from issuing an injunction ordering a state official to comply with state law. Federal courts

8   also are prohibited from ordering state officials to take an action that they *lack* the ability

9   to do under state law. *See, e.g.*, *Okpalobi v. Foster*, 244 F.3d 405, 427 (5th Cir. 2001) ("[A]

10 state official cannot be enjoined to act in any way that is beyond his authority to act in the

11 first place.").

12   *Second*, Plaintiffs' similar request that this Court order an injunction to prevent

13 Governor Ducey "from transmitting the currently certified electoral results [to] the Electoral

14 College" is a factual impossibility. Compl. ¶ 145. The Certificate of Ascertainment has

15 already been transmitted. *See* Nat'l Archives, *2020 Electoral College Results*,

16 https://www.archives.gov/electoral-college/2020 (linking to Arizona's Certificate of

17 Ascertainment, indicating it has already been sent to and received by the Archivist of the

18 United States). Thus, one consequence of Plaintiffs' delay in bringing suit is it has rendered

19 this Court unable to issue the relief they seek.

20   In sum, Plaintiffs meet none of the three requirements for Article III standing and

21 this Court should dismiss their Complaint on that basis alone.

22 **B.   The doctrine of laches bars Plaintiffs' claims.**

23   Even if Plaintiffs were able to establish that they have standing to pursue their claims

24 (and, for the reasons discussed above, they do not), the doctrine of laches independently

25 requires the dismissal of their Complaint. Laches bars a claim when plaintiff engaged in

26 unreasonable delay that prejudiced the defendant. *See Danjaq LLC v. Sony Corp.*, 263 F.3d

27 942, 951 (9th Cir. 2001). Federal and state courts alike routinely apply laches to bar

28 untimely claims for injunctive relief in election cases. *See, e.g.*, *Soules v. Kauaians for*

1   *Nukolii Campaign Comm.*, 849 F.2d 1176, 1181 (9th Cir. 1988) (upholding district court

2   decision barring equal protection claim in elections case on basis of laches because

3   "appellants knew the basis for their alleged equal protection challenge well in advance of

4   the proposed special election" and "appellants [] failed to explain adequately their failure

5   to press this claim before the election"); *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d

6   920, 922–23 (D. Ariz. 2016) (Campbell, J.) ("In the context of election matters, the laches

7   doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable

8   delay prejudices the opposing party or the administration of justice." (citation omitted)); *see*

9   *also Kistner v. Simon*, No. A20-1486, slip op. at 3-4 (Minn. Dec. 4, 2020) ("Exhibit 5")

10   (dismissing two counts of post-election challenge on basis of laches because procedures

11   plaintiffs complained of were publicly known well before election). Under this doctrine,

12   Plaintiffs' extraordinary delay in bringing this case warrants outright dismissal of the

13   Complaint. But at the very least, it bars their request for preliminary injunctive relief.

14   Each element of laches is satisfied here. First, Plaintiffs "unreasonabl[y] delay[ed],"

15   in asserting these claims. *Ariz. Libertarian Party*, 189 F. Supp. 3d at 922. The general

16   election occurred on November 3, and much of Plaintiffs' "evidence" relates to events that

17   purportedly occurred weeks, months, or even years before then. *See, e.g.*, Compl. ¶ 7

18   (referencing events which occurred in 2009); *id.* ¶ 72 (relying on an 11th Circuit case from

19   2018)*; see also Kistner*, No. A20-1486, slip op. at 3-4. Yet Plaintiffs waited nearly a month

20   after the election—and until after Arizona had certified its presidential election results—to

21   seek relief. Plaintiffs concede that if they are granted relief, there would now "certainly not

22   be time to hold a new election." Compl. ¶ 17. Plaintiffs can offer no credible reason why

23   this Court should not find that they "could have, and should have," brought this lawsuit

24   much earlier. *Id.*; *see also Ariz. Pub. Integrity All. Inc. v. Bennett*, No. CV-14-01044-PHX-

25   NVW, 2014 WL 3715130, at *2 (D. Ariz. June 23, 2014) ("Had Plaintiffs filed suit

26   promptly, a motion for preliminary injunction could have been briefed and decided without

27   unreasonable burden on the Defendant, the Court, and the election process.").

28   Second, the other parties, the public, and the administration of justice would be

1   prejudiced if the Court excused Plaintiffs' delay in bring this suit. *See Ariz. Libertarian*

2   *Party*, 189 F. Supp. 3d at 922–23. Plaintiffs' requested relief would disenfranchise some,

3   or all, of Arizona's voters *after* voting has concluded and "erode [] confidence in the

4   electoral process." *Wood*, 2020 WL 6817513, at *8. "Interference with impending elections

5   is extraordinary, and interference with an election after voting has begun is unprecedented."

6   *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) (citing

7   *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)). Indeed, such relief would at a bare minimum

8   "cast an unacceptable degree of uncertainty over the election." *Kistner*, No. A20-1486, slip

9   op. at 4 The doctrine of laches bars Plaintiff's claims.

10   **C.   The Eleventh Amendment bars Plaintiffs' claims.**

11   In addition to the hurdles described above, the Eleventh Amendment also separately

12   and independently bars Plaintiffs' claims. As noted *supra*, the Eleventh Amendment

13   prohibits federal courts from granting "relief against state officials on the basis of state law,

14   whether prospective or retroactive." *Penhurst*, 465 U.S. at 106; *see also Students of Cal.*

15   *Sch. for the Blind v. Honig*, 745 F.2d 582, 586 (9th Cir. 1984) ("The Supreme Court decided

16   in *Pennhurst*" that the Eleventh Amendment "stands as an absolute bar to actions in federal

17   court alleging that state officials have violated state law"). This is true even when state law

18   claims are styled as federal causes of action. *See, e.g.*, *Massey v. Coon*, No. 87-3768, 1989

19   WL 884, at *2 (9th Cir. Jan. 3, 1989) (affirming dismissal where "on its face the complaint

20   states a claim under the due process and equal protection clauses of the Constitution, [but]

21   these constitutional claims are entirely based on the failure of defendants to conform to state

22   law"); *Balsam v. Sec'y of State*, 607 F. App'x 177, 183–84 (3d Cir. 2015) (finding Eleventh

23   Amendment bars state law claims even when "premised on violations of the federal

24   Constitution").

25   None of Plaintiffs' claims can reasonably be found to escape this bar. It most clearly

26   prohibits Plaintiffs' free-standing fraud claim in Count IV, in which Plaintiffs' assert that

27   the fraud alleged in the Complaint should result in the invalidation of ballots based on

28   binding Arizona law. Compl. ¶ 138. But it is also true of Plaintiffs' other claims, each of

-11-

1   which, although ostensibly cloaked in the garb of a federal cause of action, ultimately ask

2   the Court to determine that state officials violated state law and compel state officials to do

3   what Plaintiffs believe *Arizona* law requires. This is evidenced by even a cursory review of

4   Plaintiffs' other three purported federal claims. Count I, Plaintiffs' purported Elections and

5   Electors Clause claim, asserts (without stating exactly how) that Plaintiffs violated the U.S.

6   Constitution by exercising powers that are the province of the Arizona Legislature. Compl.

7   ¶ 106. To the extent this is a claim at all (or one that Plaintiffs could assert), it is one about

8   a violation of state separation of powers and is not a federal claim. Count II, Plaintiffs'

9   purported equal protection clause claim, relies on the assertion that Defendants should not

10   be allowed to count any ballots that a poll watcher (or challenger) was unable to observe.

11   *See id*. ¶ 120. But there is no constitutional right to poll watching or observation; any "right"

12   to do so is purely a creature of state law. *See, e.g., Donald J. Trump for President, Inc. v.*

13   *Boockvar*, No. 20-cv-966, 2020 WL 5997680, at *67 (W.D. Pa., Oct. 10, 2020) ("[T]here

14   is no individual constitutional right to serve as a poll watcher." (quoting *Pa. Democratic*

15   *Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *30 (Pa. Sept. 17, 2020)));

16   *Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 413-414 (E.D. Pa. 2016) (similar).

17   This claim, too, is accordingly premised solely on state law. Next, Count III, Plaintiffs'

18   purported due process claim, relies on alleged violations of Arizona law regarding data

19   retention for electronic voting systems. *See* Compl. ¶¶ 132, 133 (citing to A.R.S. §§ 16-602,

20   16-608 regarding electronic voting system data retention and asserting that Dominion

21   voting systems violate these rights). The Constitution is not concerned with the minutiae of

22   state electronic voting process data retention requirements. *See, e.g.*, *Shipley v. Chi. Bd. of*

23   *Election Comm'rs*, 947 F.3d 1056, 1062 (7th Cir. 2020) ("A violation of state law does not

24   . . . transgress against the Constitution."); *Martinez v. Colon*, 54 F.3d 980, 989 (1st Cir.

25   1995) ("[T]he Constitution is not an empty ledger awaiting the entry of an aggrieved

26   litigant's recitation of alleged state law violations….").

27   Plaintiffs' TRO motion only serves to underscore that their issues are truly state law

28   claims masquerading as a federal action. While the motion yet again contains accusations

1   of unverified and illusory fraud, the only actual concrete violations of anything it alleges

2   are purported violations of *Arizona* law. *See* Dkt. 2 at 2-3. This Court cannot order

3   Defendants to de-certify the election or withhold transmission of certification to the

4   Electoral College based on alleged violations of Arizona law without running afoul of the

5   Eleventh Amendment. *See, e.g.*, *Ohio Republican Party v. Brunner*, 543 F.3d 357, 360-61

6   (6th Cir. 2008) (holding *Pennhurst* bars claim that Secretary of State violated state election

7   law); *Vulliet v. Oregon*, No. 6:12-CV-492-AA, 2012 WL 4863710, at *6 (D. Or. Oct. 10,

8   2012), *aff'd*, 701 F. App'x 579 (9th Cir. 2017) (dismissing claims against Oregon Secretary

9   of State and Director of Elections for purported violations of Oregon Constitution under

10   *Pennhurst*).

11   **D.   Principles of federalism and comity strongly favor abstention.**

12   Even if the Court were to conclude that each of the above hurdles did not

13   conclusively bar it from exercising jurisdiction, principles of federalism and comity

14   strongly favor that the Court decline to do so. The relief Plaintiffs seek calls for an

15   extraordinary intrusion on state sovereignty by a federal court. Under the *Pullman*

16   abstention doctrine, the claims Plaintiffs raise should be addressed in state court. *See R.*

17   *Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941). *Pullman* recognizes that "federal courts

18   should abstain from decisions when difficult and unsettled questions of state law must be

19   resolved before a substantial federal constitutional question," and that abstention in such

20   circumstances "avoid[s] both unnecessary adjudication of federal questions and 'needless

21   friction with state policies . . . .'" *Columbia Basin Apartment Ass'n v. City of Pasco*, 268

22   F.3d 791, 802 (9th Cir. 2001) (quoting *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 236

23   (1984)). The Ninth Circuit looks to three factors to determine whether *Pullman* abstention

24   is appropriate, including (1) whether the case "touch[es] on a sensitive area of social policy

25   upon which federal courts ought not to enter unless no alternative to its adjudication is

26   open," (2) whether it is "plain that the constitutional adjudication can be avoided if a definite

27   ruling on the state issue would terminate the controversy," and (3) whether issue of state

28   law is "uncertain." *Id*. Each factor weighs in favor of abstention here.

1   *First*, the conduct of elections is a responsibility uniquely constitutionally entrusted

2   to the states. *See* U.S. Const. art. I ¶ 4. There are few areas where a federal court should

3   tread more lightly. And, as Plaintiffs themselves readily note, the factual claims they raise

4   here could just as readily "support an election contest under Arizona law," Compl. ¶ 15

5   (citing A.R.S. § 16-672). Moreover, as noted above, the election contest brought by Plaintiff

6   Kelli Ward raises many of the same concerns addressed by Plaintiffs. *See supra* Section II.

7   So it can hardly be claimed that there is no alternative to federal court adjudication.

8   *Second*, adjudication of the state law issues could avoid constitutional adjudication.

9   Plaintiffs' claims are premised, in part, on local officials violating Arizona election law

10   through (what Plaintiffs claim to be) inadequate signature comparison and subpar electronic

11   data retention. Compl. ¶¶ 46-53. Their TRO motion echoes these state law concerns. Dkt. 2

12   at 2-3. Plaintiffs also bring a freestanding fraud count, in which they contend that the fraud

13   alleged in their Complaint should lead to the invalidation of ballots under Arizona

14   precedent. *See id.* ¶ 138 (citing *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz.

15   178, 180, 877 P.2d 277, 279 (1994)). If Plaintiffs' own statements regarding Arizona law

16   are to be believed, then the adjudication of the state law issues they raise could avoid federal

17   adjudication here.

18   *Third*, the issues of state law are "uncertain." It is unclear that the signature matching

19   and data retention practices Plaintiffs complain of violate Arizona law, and it is also

20   uncertain whether Plaintiffs' factual assertions could successfully support an election

21   contest in Arizona. These are questions best suited for a state court, making *Pullman*

22   abstention appropriate here.

23   **E.   Plaintiffs fail to state a claim on which relief can be granted.**

24   There is yet another basis upon which the Complaint must be dismissed: it fails to

25   state a claim on which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Under the Federal

26   Rules, plaintiffs must allege "enough facts to state a claim to relief that is plausible on its

27   face." *Twombly*, 550 U.S. at 570. While Rule 8 "does not require 'detailed factual

28   allegations,' [] it demands more than an unadorned, the-defendant-unlawfully-harmed-me

-14-

1   accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at

2   555). The shortcomings in the Complaint are particularly stark considering Rule 9(b), which

3   applies to fraud allegations. "In alleging fraud or mistake, a party must state with

4   particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b).

5   Plaintiffs fail to meet the standards of Rule 8, much less Rule 9(b). Plaintiffs' theory

6   is that Arizona election officials—including the state's Republican governor and "the State

7   of Arizona" as a whole—conspired with domestic and international actors to manipulate

8   election results throughout the state. Compl. ¶ 57. Local elections officials allegedly helped

9   advance a "massive election fraud," *id*. ¶ 1, because they used voting machines made by

10   Dominion, *id.* ¶ 2, which is a company created exclusively to ensure election-rigging so that

11   "Venezuelan dictator Hugo Chavez never lost another election," *id*. ¶ 6, which thereby

12   allowed Iran and China to manipulate the general election to ensure President-elect Biden's

13   victory, *id*. ¶ 13, apparently in cahoots with Arizona elections officials who also supposedly

14   enabled mass voter fraud among mail-in voters, *id.* ¶¶ 54, 57.

15   The Supreme Court has instructed that "[d]etermining whether a complaint states a

16   plausible claim for relief" is "a context-specific task that requires the reviewing court to

17   draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. It would defy

18   experience and common sense to accept Plaintiffs' overarching theory that widespread

19   fraud occurred during the most scrutinized election in modern history, particularly based on

20   the allegations they make in the Complaint. Under federal pleading standards, this Court

21   need not credit Plaintiffs' specious inferences and conclusory allegations. They are, quite

22   simply, not remotely plausible.

23   For these reasons alone, the Complaint should be dismissed. But, in addition to

24   relying on entirely implausible facts, Plaintiffs have failed to state cognizable legal claims.

25   Let us begin with Count II, which Plaintiffs have characterized as a claim brought under the

26   Equal Protection Clause of the U.S. Constitution. Plaintiffs allege that "Defendants[']

27   fail[ure] to comply with the requirements of Arizona law . . . diluted the lawful ballots of

28   Plaintiffs and other Arizona voters . . . ." Compl. ¶ 117. This is not a cognizable equal

1   protection injury. Vote dilution is a viable basis for federal claims only in certain contexts,

2   such as when laws structurally devalue one community's votes over another's. *See, e.g.*,

3   *Bognet*, 2020 WL 6686120, at *11 ("[V]ote dilution under the Equal Protection Clause is

4   concerned with votes being weighed differently."). Courts have repeatedly found the

5   "conceptualization of vote dilution" that Plaintiffs urge here—that is, "state actors counting

6   ballots in violation of state election law," is not a cognizable equal protection violation. *Id.*

7   For good reason: "if dilution of lawfully cast ballots by the 'unlawful' counting of invalidly

8   cast ballots 'were a true equal-protection problem, then it would transform every violation

9   of state election law . . . into a potential federal equal-protection claim.'" *Bognet*, 2020 WL

10 6686120, at *11 (quoting *Boockvar*, 2020 WL 5997680 at *45-46).[4]

11   Plaintiffs have also failed to plead a due process claim. In Count III, Plaintiffs appear

12 to allege that violations of law diluted their votes in violation of the Due Process Clause.

13 *See* Am. Compl. ¶¶ 131–33. But vote dilution is a context-specific theory of constitutional

14 harm premised on the Equal Protection Clause, not the Due Process Clause. And, as set

15 forth above, Plaintiffs have failed to plead a cognizable vote-dilution claim. Even were this

16 Court construed Plaintiffs' allegations as attempting to state a substantive due process

17 claim, the Complaint would still fall short. This is because, "[i]n general, garden variety

18 election irregularities do not violate the Due Process Clause . . . ." *Bennett v. Yoshina*, 140

19 F.3d 1218, 1226 (9th Cir. 1998). Instead, to "strike down an election on substantive due

20 process grounds," two elements must be met: "(1) likely reliance by voters on an established

21 election procedure and/or official pronouncements about what the procedure will be in the

22 coming election; and (2) significant disenfranchisement that results from a change in the

23 election procedures." *Bennett*, 140 F.3d at 1226–27; *see also Curry v. Baker*, 802 F.2d 1302,

24 1315 (11th Cir. 1986) (for the due process clause to be implicated problems must "go well

25

26   [4] Plaintiffs also claim an equal protection violation because Defendants "violate[d]
    Plaintiffs' right to be present and have actual observation and access to the electoral

27 process." [Compl. ¶ 118] Plaintiffs, however, do little to explain this theory and are
    incorrect. "[T]here is no individual constitutional right to serve as a poll watcher."

28 *Boockvar*, 2020 WL 5997680, at *7 (quoting *Pa. Democratic Party v. Boockvar*, 238 A.3d
    345, 385 (Pa. 2020)).

1   beyond the ordinary dispute over the counting and marking of ballots"). In this case,

2   Plaintiffs' complaints fall far short of a constitutional violation. Plaintiffs do not allege

3   disenfranchisement at all. To the contrary, it is Plaintiffs who seek to negate the votes cast

4   by millions of eligible Arizona voters. Count III therefore does not state a due process claim

5   and must be dismissed.

6   Plaintiffs' Elections and Electors claims as alleged in Count I of the Complaint are

7   similarly unavailing. The Elections and Electors Clauses vest authority in "the Legislature"

8   of each state to regulate "[t]he Times, Places, and Manner of holding Elections for Senators

9   and Representatives", U.S. Const. art. I, § 4, cl. 1, and to direct the selection of presidential

10   electors, U.S. Const. art. II, § 1, cl. 2, respectively. While far from a model of clarity,

11   Plaintiffs' claim appears to be that Defendants' failure to follow state law resulted in the

12   miscounting of various ballots violated the Elections and Electors Clauses. Compl. ¶¶ 106–

13   09. Plaintiffs, however, fail to tie these allegations to the Electors and Elections Clauses.

14   Indeed, Plaintiffs have not explained how any deviation from election procedures, or

15   anything else, automatically constitutes a violation of these Clauses. Nowhere do they

16   allege that Defendants, or any state law, violates the authority of the Legislature to direct

17   selection of the presidential elections, U.S. Const. art. II, § 1, cl. 2, or regulate elections,

18   U.S. Const. art. I, § 4, cl. 1; *See, e.g.*, *Ariz. State Legislature*, 576 U.S. at 824 (evaluating

19   state law considering the meaning of "the Legislature" as used in the Elections Clause).

20   **F.   Plaintiffs are not entitled to a temporary or preliminary injunction.**

21   For the reasons discussed above, Plaintiffs have failed to (and cannot establish) that

22   they are likely to succeed on their claims. As discussed further below, they also have failed

23   to carry their burden on any of the factors necessary to entitle them to preliminary relief,

24   much less the extraordinary, unprecedented, and mandatory relief that they seek. Rather

25   than remedying a constitutional violation, Plaintiffs' requested relief would create one. No

26   court has ever done what Plaintiffs ask this Court to do—throw out the election results,

27   discard more than 3.4 million votes, and ordain the losing candidate the victor by judicial

28   proclamation. As another federal court put it last month when the Trump Campaign sought

1   an order prohibiting Pennsylvania's officials from certifying election results, "[t]his Court

2   has been unable to find any case in which a plaintiff has sought such a drastic remedy in the

3   contest of an election, in terms of the sheer volume of votes asked to be invalidated."

4   *Boockvar*, 2020 WL 6821992, at *1. America is a democracy. "Voters, not lawyers, choose

5   the President. Ballots, not briefs, decide elections." *Id.* at *9.

6   **1.   Plaintiffs have a remedy at law and cannot establish irreparable harm.**

7   As a threshold matter, Plaintiffs concede that they have an adequate remedy at law,

8   *see* Compl. at ¶ 15, and hence are not likely to suffer "irreparable harm in the absence of

9   preliminary relief." *Winter*, 555 U.S. at 20; *see also Younger v. Harris*, 401 U.S. 37, 43–44

10   (1971) (noting the "basic doctrine of equity jurisprudence [provides] that courts of equity

11   should not act . . . when the moving party has an adequate remedy at law and will not suffer

12   irreparable injury if denied equitable relief"). Plaintiffs have an adequate remedy at law

13   here which makes it impossible for them to establish irreparable harm.

14   As Plaintiffs acknowledge, "the factual basis of this Complaint would also support

15   an election contest under Arizona law since A.R.S. § 16-672 allows for contests on the

16   grounds of misconduct, offenses against the elective franchise, on account of illegal votes,

17   and by reason of erroneous count of votes." Compl. ¶ 15. The availability of this remedy

18   makes their harm, by definition, not irreparable and precludes them from being entitled to

19   injunctive relief. *See*, *e.g.*, *Daniels Health Scis., LLC v. Vascular Health Scis., LLC*, 710

20   F.3d 579, 585 (5th Cir. 2013) (stating that, "[t]o satisfy [the irreparable harm] prong of the

21   preliminary injunction test, [the moving party] must show that it is 'likely to suffer

22   irreparable harm,' that is, harm for which there is no adequate remedy at law").

23   Further, because Plaintiffs have not shown a likelihood of success of the merits of

24   their constitutional claims, Plaintiffs' assertion (Mot. at 9) that they will suffer irreparable

25   harm based on those violations are unfounded. There has been no "deprivation of

26   constitutional rights" and no irreparable injury. *Melendres v. Arpaio*, 695 F.3d 990, 1002

27   (9th Cir. 2012). Additionally, "Plaintiff's long delay before seeking a preliminary injunction

28   implies a lack of urgency and irreparable harm." *Oakland Tribune, Inc. v. Chronicle Pub.*

1   *Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985); *see also* Wright & Miller, 11A *Federal Practice*

2   *and Procedure*, § 2948.1 (3d ed., Apr. 2017 update) ("A long delay by plaintiff after

3   learning of the threatened harm also may be taken as an indication that the harm would not

4   be serious enough to justify a preliminary injunction."). As discussed above, Plaintiffs'

5   alleged injuries occurred (if they occurred at all), on or before election day. Yet Plaintiffs

6   waited until December 2—nearly four weeks after election day—to file this motion. This

7   Court should consider Plaintiffs' inexcusable delay in determining whether they are now

8   entitled to the "emergency" injunctive relief they seek.

9   **2.   The balance of equities and public interest weigh against the issuance of
                       restraining order.**

10

11 The balance of equities and public interest cut sharply against granting injunctive

    relief. Plaintiffs' request that this Court "enjoin Governor Ducey from transmitting the

12

    currently certified election results to the Electoral College," Mot. at 11, would wreak havoc

13

    on Arizona's elections processes and violate the constitutional rights of millions of

14

    Arizonans, all while undermining public confidence and trust in the election's results.

15

16 For these reasons, in the past several weeks, courts have rightly refused to issue

    similar injunctions. *See Boockvar*, 2020 WL 6821992, at *1 (construing Trump Campaign's

17

    request to enjoin Pennsylvania's certification of results as a request "to disenfranchise

18

    almost seven million voters," and refusing to do so); *Wood v. Raffensperger*, No. 1:20-cv-

19

    04561-SDG, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020) (denying request to enjoin

20

    Georgia from certifying its election results, concluding that "interfer[ing] with the result of

21

    an election that has already concluded would be unprecedented and harm the public in

22

    countless ways"). This Court should find the same.

23

                              V.   CONCLUSION

24

    For the foregoing reasons, Proposed Intervenor-Defendant respectfully requests that

25

    the Court deny Plaintiffs' request for injunctive relief and dismiss Plaintiffs' Complaint.

26

27

28

-19-

1   Dated: December 4, 2020   /s   Alexis E. Danneman

2   Alexis E. Danneman (Bar No. 030478)
                                        Sarah R. Gonski (Bar No. 032567)
3   **PERKINS COIE LLP**
                                        2901 North Central Avenue, Suite 2000
4   Phoenix, Arizona 85012-2788
                                        Telephone: (602) 351-8000
5   Facsimile: (602) 648-7000
                                        ADanneman@perkinscoie.com
6   SGonski@perkinscoie.com

7   Marc E. Elias*
                                        Bruce V. Spiva*
8   John Devaney*
                                        John M. Geise**
9   **PERKINS COIE LLP**
                                        700 Thirteenth Street NW, Suite 600
10   Washington, D.C. 20005-3960
11   Telephone: (202) 654-6200
                                        Facsimile: (202) 654-6211
12   MElias@perkinscoie.com
                                        BSpiva@perkinscoie.com
13   JDevaney@perkinscoie.com
14   JGeise@perkinscoie.com

15
                                        Laura Hill*
16   **PERKINS COIE LLP**
                                        1201 Third Avenue, Suite 4900
17   Seattle, WA 98101-3099
18   Telephone: (206) 359-3349
                                        Facsimile: (206) 359-4349
19   LHill@perkinscoie.com

20
                                        Roy Herrera (Bar No. 032901)
21   Daniel A. Arellano (Bar No. 032304)
                                        BALLARD SPAHR LLP
22   1 East Washington Street, Suite 2300
23   Phoenix, Arizona 85004-2555
                                        Telephone: 602.798.5400
24   Facsimile: 602.798.5595
                                        HerreraR@ballardspahr.com
25   ArellanoD@ballardspahr.com

26
                                        Attorneys for ADP
27

28

1

L.R.CIV. 12.1(c) CERTIFICATION

2   As required by Local Rule 12.1(c), undersigned counsel certifies that before filing

3   this motion, counsel for ADP discussed the issues asserted in this motion with Plaintiffs'

4   counsel, and the parties were unable to agree that Plaintiffs' Complaint was curable in any

5   part by a permissible amendment.

6

7   */s Alexis E. Danneman*

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

-21-

1

2   **CERTIFICATE OF SERVICE**

3   I hereby certify that on December 4, 2020, I electronically transmitted the attached

4   document to the Clerk's Office using the ECF System for filing and transmittal of a Notice

5   of Electronic Filing to the ECF registrants.

6

7   */s Indy Fitzgerald*

8

9   150408008.1

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

-22-

Exhibit 1

Response to Report of Dr. William Briggs

Stephen Ansolabehere

December 4, 2020

Statement of Inquiry

1. I have been asked to evaluate the report of Dr. William Briggs. I am compensated at the rate of $550 an hour.

2. A brief summary of my high-level opinions and conclusions is below; however, overall, based on my review, I find the estimates and analyses in Dr. Briggs' report to be unreliable and the analysis not up to scientific standards of survey research, data science, or election analysis. There are substantial errors in the design of the survey and errors and inconsistencies in the data used in the analysis that are of sufficient magnitude to invalidate any calculations or estimates based on these data. The extremely low response rate, the high break off rate, and the inconsistencies in data spreadsheets lead me to conclude that the survey should not be assumed to be representative of the population studied, and the data should not be assumed to be accurate. The interpretation of the data does not account for obvious and important features of absentee voting, including permanent absentee voters who do not need to request ballots to receive them, as well as late, rejected, invalid, and spoiled absentee ballots. The errors in design, analysis, and interpretation of the data are so massive that there is no foundation for drawing any conclusions or inferences from Dr. Briggs' report.

Summary Assessment

3.   In his report, Dr. Briggs evaluates survey data that was provided to him by a third party and assumes that "the respondents [to the survey] are representative and the data are accurate."[1] There is no indication in his report that he conducted any analysis of the data or that those who provided the data to him did anything to verify its correctness and integrity. Nor is

---

[1] William M. Briggs, "An Analysis of Surveys Regarding Absentee Ballots Across Several States," November 23, 2020, page 1.

1

there any showing that he or anyone else analyzed the quality of the survey or the

representativeness of the sample on which he based his analysis. It is standard scientific practice

in the field of survey research to give careful scrutiny to data before conducting any statistical

analyses, including understanding the structure and wording of the survey questions, the

sampling method and response rate, and the characteristics of the sample, such as demographic

and behavioral indicators.

4. In his report, Dr. Briggs defines two types of purported errors. The first is that people

received an absentee ballot even though, according to the survey, they did not request one

(Alleged Error #1). The second is that people allegedly returned absentee ballots that election

offices did not record (Alleged Error #2). These two alleged errors, Dr. Briggs asserts, combine

to create a category of "troublesome ballots." The estimates of Alleged Error #1 and Alleged

Error #2 that he presents are deeply flawed because of defects in the design of the survey, fatal

data errors evident in the survey toplines, calculation errors, and errors in the interpretation of the

data. It is my professional judgment that none of the estimates and projections in his report are

valid.

5. The design of the survey contaminates the data and any estimates, rendering them

invalid. Specifically, in Question 1 of the survey the surveyor asks to speak to a specific person.

Some of the respondents are flagged as "Reached Target," while others are flagged as

"Uncertain" or "What is this about?" Both groups of people (Reached Target and Uncertain) are

then asked Question 2, "Did you request an absentee ballot?" This is a serious survey design

error, because some or perhaps all of the people flagged as "Uncertain" are not the target of the

interview. As a result, the structure of the very beginning of the survey allows people who were

2

not the target to be treated as if they were in the remaining questions. This leads to the

contamination of all estimates.

6.   The survey also suffers from ambiguously worded questions, which introduces

measurement errors in any estimates. Question 2 asks respondents whether they <u>requested</u> an

absentee ballot. The question does not follow up and clarify different ways that people obtain

absentee ballots, especially, whether the voter did not need to request a ballot in order to receive

one because they are permanent absentee voters. According to data reported by county election

offices in the State of Arizona to the U.S. Election Assistance Commission, there were 2,545,198

million permanent absentee or early voters (PEVs) in the state out of 2,672,384 absentee voters

in the 2018 election. The data are from 2018 because the 2020 data have not yet been reported.

In other words, 95 percent of all absentee voters in the state were automatically sent an

absentee ballot without needing to request one for a specific election. Dr. Briggs is

apparently unaware of this critical fact, which completely undermines his analysis.

7.   The wording of Question 3 also is very problematic. First, the survey does not

ascertain whether a ballot was in fact received. According to figures from the U.S. Election

Assistance Commission, there were 102,896 undeliverable absentee ballots. Neither Question 2

nor Question 3 screens out people who did not receive a ballot. Second, Question 3 does not

ascertain whether the ballot was mailed back in a timely manner so as to be included in the

record of ballots cast. Third, Question 3 asks whether someone voted. As is well known among

political scientists and survey researchers, survey questions asking whether someone voted are

subject to substantial social desirability biases that lead to inflation in the estimated number of

voters.

8. There are also errors and inconsistencies in the survey data. Appended to Dr. Briggs'
report is a series of tables, called Topline Tables ("toplines"), for the State of Arizona. Toplines
for other states are not disclosed. The toplines provide the basic statistics about the survey
reported for each question, as well as the questions themselves and the response categories for
each question. There are errors in the spreadsheet of toplines indicating data inconsistencies. For
example, in Arizona, there are more respondents to Question 2 than the survey instructions
indicate should have been asked Question 2. Generally, such errors indicate fundamental
problems with the management of the survey and the databases generated by the survey. It is
standard practice in survey research and analysis of survey data to conduct integrity checks to
ensure that there are not mistakes in the data. The presence of substantial discrepancies in these
topline tables, such as shown here, indicates flaws in the data. Dr. Briggs' report makes no
mention of these inconsistencies and errors and assumes that the underlying data are accurate.
These errors and inconsistencies reveal that the data are not accurate.

9. In addition, the survey has extremely low response rates. Of the 518,560 absentee
voters who were the target of the study, 2,489 were asked and 2,129 people (one-half of one
percent) ultimately provided answers to Question 2. High non-response rates generally create
biases in survey because the samples are rarely representative of the population under study.
Surveys with such a low response rate are not accepted in scientific publications, except on rare
occasions and with proper analyses that ensure that the respondents are in fact representative.
When researchers have low response rates, they must offer affirmative proof of
representativeness or attempt to correct for biases. Neither is done here.

11. The interpretation of the data as evidence of "errors" and "troublesome ballots" fails
to account for the rules and realities of absentee voting. First, Dr. Briggs calls Alleged Error #1

4

absentee ballots that were received by voters but were not "requested." This interpretation fails

to consider that 95 percent of absentee ballots sent by election offices are sent to permanent

absentee voters, who receive ballots without requesting them. All five states in his report allow

for permanent absentee voting for some or all registrants. Second, Dr. Briggs calls Alleged Error

#2 ballots that were sent by voters but not recorded at the county election offices. This

interpretation fails to account for late, undeliverable, rejected, and spoiled ballots. Most

jurisdictions, for example, do not record late ballots in the tally of returned absentee ballots. The

results in his analysis, if they are real, are likely the consequence of the normal practice of

absentee voting.

II. Qualifications

12. I am the Frank G. Thompson Professor of Government in the Department of

Government at Harvard University in Cambridge, MA. Formerly, I was an Assistant Professor

at the University of California, Los Angeles, and I was Professor of Political Science at the

Massachusetts Institute of Technology, where I held the Elting Morison Chair and served as

Associate Head of the Department of Political Science. I am the Principal Investigator of the

Cooperative Congressional Election Study (CCES), a survey research consortium of over 250

faculty and student researchers at more than 50 universities, directed the Caltech/MIT Voting

Technology Project from its inception in 2000 through 2004, and served on the Board of

Overseers of the American National Election Study from 1999 to 2013. I am an election analyst

for and consultant to CBS News' Election Night Decision Desk. I am a member of the American

Academy of Arts and Sciences (inducted in 2007).   My curriculum vitae is attached to this

report as Appendix B.

13. I have worked as a consultant to the Brennan Center in the case of *McConnell v. FEC*, 540 U.S. 93 (2003). I have testified before the U.S. Senate Committee on Rules, the U.S. Senate Committee on Commerce, the U.S. House Committee on Science, Space, and Technology, the U.S. House Committee on House Administration, and the Congressional Black Caucus on matters of election administration in the United States. I filed an amicus brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U.S. Supreme Court in the case of *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009) and an amicus brief with Professor Nathaniel Persily and others in the case of *Evenwel v. Abbott*, 138 S. Ct. 1120 (2015). I have served as a testifying expert for the Gonzales intervenors in *State of Texas v. United States* before the U.S. District Court in the District of Columbia (No. 1:11-cv-01303); the Rodriguez plaintiffs in *Perez v. Perry*, before the U.S. District Court in the Western District of Texas (No. 5:11-cv-00360); for the San Antonio Water District intervenor in *LULAC v. Edwards Aquifer Authority* in the U.S. District Court for the Western District of Texas, San Antonio Division (No. 5:12cv620-OLG); for the Department of Justice in *State of Texas v. Holder*, before the U.S. District Court in the District of Columbia (No. 1:12-cv-00128); for the Guy plaintiffs in *Guy v. Miller* in the U.S. District Court for Nevada (No. 11-OC-00042-1B); for the Florida Democratic Party in *In re Senate Joint Resolution of Legislative Apportionment* in the Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490); for the Romo plaintiffs in *Romo v. Detzner* in the Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412); for the Department of Justice in *Veasey v. Perry*, before the U.S. District Court for the Southern District of Texas, Corpus Christi Division (No. 2:13cv00193); for the Harris plaintiffs in *Harris v. McCrory* in the U.S. District Court for the Middle District of North Carolina (No. 1:2013cv00949); for the Bethune-Hill plaintiffs in *Bethune-Hill v. Virginia*

State Board of Elections in the U.S. District Court for the Eastern District of Virginia (No. 3: 2014cv00852); for the Fish plaintiffs in *Fish v. Kobach* in the U.S. District Court for the District of Kansas (No. 2:16-cv-02105-JAR); and for intervenors in *Voto Latino, et al. v. Hobbs*, in the U.S. District Court for the District of Arizona (No. 2:19-cv-05685-DWL). I served as an expert witness and filed an affidavit in the North Carolina State Board of Elections hearings regarding absentee ballot fraud in the 2018 election for Congressional District 9 in North Carolina.

14. My areas of expertise include American government, with particular expertise in electoral politics, representation, and public opinion, as well as statistical methods in social sciences and survey research methods. I have authored numerous scholarly works on voting behavior and elections, the application of statistical methods in social sciences, legislative politics and representation, and distributive politics. This scholarship includes articles in such academic journals as the <u>Journal of the Royal Statistical Society</u>, <u>American Political Science Review</u>, <u>American Economic Review</u>, the <u>American Journal of Political Science</u>, <u>Legislative Studies Quarterly</u>, <u>Quarterly Journal of Political Science</u>, <u>Electoral Studies</u>, and <u>Political Analysis</u>. I have published articles on issues of election law in the <u>Harvard Law Review</u>, <u>Texas Law Review</u>, <u>Columbia Law Review</u>, <u>New York University Annual Survey of Law</u>, and <u>Election Law Journal</u>, for which I am a member of the editorial board. I am associate editor of the <u>Harvard Data Science Review</u>, and have served as associate editor of the <u>Public Opinion Quarterly</u>. I have coauthored three scholarly books on electoral politics in the United States, <u>The End of Inequality: Baker v. Carr and the Transformation of American Politics</u>, <u>Going Negative: How Political Advertising Shrinks and Polarizes the Electorate</u>, and <u>The Media Game: American Politics in the Media Age</u>. I am coauthor with Benjamin Ginsberg and Ken Shepsle of <u>American Government: Power and Purpose</u>.

7

III. Sources

15. I have relied on the report of Dr. William Briggs in this case.

16. I have relied on the Election Assistance Commission, "Election Administration and Voting Survey (EAVS)" for 2018: https://www.eac.gov/research-and-data/studies-and-reports. I present data from 2018 because it is the most recent federal election for which data on absentee and permanent absentee voting is available. The 2018 data are instructive about the magnitude of permanent absentee voters and the magnitude of unreturned, late, rejected, and spoiled absentee ballots. The 2020 data are not yet reported.

17. I have relied on the report of Mr. Matthew Braynard in a pending lawsuit in Fulton County, Georgia, Superior Court, *Wood v. Raffensperger*, 2020CV342959.

18. I have relied on the report of Dr. William Briggs in *King v. Whitmer* in the District Court in the Eastern District of Michigan (No. 2:20-cv-13134).

IV. Findings

19. In my professional judgment, there are fundamental flaws in the design of the survey design and the survey data on which Dr. Briggs relied. These flaws created biases in the estimates and analyses that are sufficiently large to completely explain the results that Dr. Briggs presents as nothing more than errors in the data collection process. Perhaps most troubling, the survey is likely highly unrepresentative because it has a response rate less than 1 percent; the survey data are contaminated by respondents who should not have been included in the survey, and the basic data in the Topline summaries of the data do not add up, indicating fatal flaws in the implementation of the survey.

20. The interpretations of the estimates in the survey as errors and troublesome ballots fail to take into account the realities of absentee voting in the State of Arizona. Almost all absentee voters in the State receive absentee ballots for each election without having to request ballots for that election because they are Permanent Absentee and Early Voters (PEVs). In addition, there are large numbers of undeliverable and late absentee ballots, which are typically not recorded as received by the election offices.

A. Critique of Interpretation

i. The survey data and its interpretation do not account for PEVs.

21. The analysis of Question 2 is used to estimate the number of people who received but did not request an absentee ballot. Dr. Briggs calls this Alleged Error #1.

22. The interpretation of these data as an error in balloting does not account for the presence of a large number of Permanent Absentee and Early Voters (PEVs) in Arizona, Michigan, Pennsylvania, and Wisconsin. Georgia automatically mails ballots for voters who qualify for "rollover" ballots – people over 65, disabled, or in the military who sign up annually to have ballots automatically sent to them. I consider rollover ballots to be a form of PEV, but the voter does need to sign up each year.

23. PEVs are automatically sent their absentee ballots. They do not need to request that a ballot be sent for a particular election.

24. In the State of Arizona, nearly all absentee ballots sent are sent to PEVs. In 2018, PEVs were 95 percent of absentee ballots sent by election offices to registered voters.   In other words, nearly all voters who received absentee ballots in the State did so without having to request that one be sent to them.

25. In the other states covered in Dr. Briggs' report, there are substantial numbers of PEVs. Table 1 presents data from the number of absentee ballots sent in 2018 and the number of permanent absentee ballots sent to voters in Arizona, Georgia (rollover absentee voters), Michigan, Pennsylvania, and Wisconsin. The number of permanent absentee ballots sent in Arizona, Michigan, and Wisconsin far exceeds the estimated Alleged Error #1 in the first table in Dr. Briggs' report. The EAC reports no data on permanent absentee ballots for Georgia in 2018. Those data cover 2018 and are presented to indicate the likely magnitude of PEVs in the states in 2020. Preliminary reports from some of these states show very high numbers of PEVs and rollover absentee voters. There were at least 582,000 "rollover" ballots in Georgia in 2020.[2]

26. Based on the toplines, Mr. Braynard's survey does not identify PEVS or distinguish them from other absentee voters.

Table 1. Permanent Absentee Voters in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin in 2018			
	Total Absentee Ballots Sent	Permanent Absentee Ballots Sent (i.e., ballots sent automatically without a specific ballot request)	Permanent Absentee Ballots as a Percent of Total
Arizona	2,672,384	2,545,198	95.2%
Georgia	281,490	*	*
Michigan	1,123,415	549,894	48.9%
Pennsylvania	216,575	6,340	2.9%
Wisconsin	168,788	54,113	32.1%
Source: U.S. Election Assistance Commission, Election Administration and Voting Survey, 2018. Note: * no data reported.			

---

[2] Stephen Fowler, "Nearly 800,000 Georgians Have Already Requested Absentee Ballots for November" GA Today gpb.org, September 2, 2020. https://www.gpb.org/news/2020/09/02/nearly-800000-georgians-have-already-requested-absentee-ballots-for-november

ii. The interpretation of Question 3 fails to account for the proper handling of late, invalid, and spoiled absentee ballots by Local Election Offices.

27. The analysis of Question 3 of Mr. Braynard's survey is used to estimate the number of people who stated that they returned an absentee ballot but for whom no vote was recorded. Dr. Briggs calls this Alleged Error #2.

28. The interpretation of such cases as errors does not account for absentee ballots that are in fact not received or counted by election officers because the ballots are not returned by the postal system, are returned late by the voter, are spoiled by the voter, or are rejected. Such ballots are the obvious explanation for the data observed. No effort in the survey or the analysis is made to ascertain the likelihood that a voter cast a late or invalid absentee ballot.

29. The number of absentee ballots that are not received or valid is substantial. Table 2 presents counts of rejected, late, undelivered, and voided absentee ballots in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin for 2018, the most recent federal election for which systematic data on absentee voting are available. An undeliverable absentee ballot is one that was returned to the election office as not being deliverable to the address on the voter registration lists. The final column presents the number of sent absentee ballots for which the status of a ballot sent by the election office to a voter was not received and its status is not known. These are likely ballots that simply were not returned by voters or were lost or delayed in the US Postal System. Delays in the postal system were a particular concern in 2020, as there were widespread reports of staffing problems during COVID for USPS, delays in mail delivery, and declines in the rate of on-time delivery.[3] Late, undelivered, rejected, and spoiled ballots are not counted

---

[3] Hailey Fuchs, "Some Regions Still Experience Slow Delivery of Mail Ballots," New York Times, November 3, 2020, Section A, Page 23. https://www.nytimes.com/2020/11/02/us/politics/mail-ballot-usps.html.

under law, and they are comparable in magnitude to the estimates of the Alleged Error #2 reported by Dr. Briggs for each state.

30. Arizona election officials reported to EAC a total of 2,515 late absentee ballots, 27,804 void or spoiled ballots, 8,567 rejected ballots, and 102,896 ballots that were undeliverable in the 2018 election. These figures are not definitive of the numbers for the 2020 election, which have not yet been reported. Rather, they are demonstrative of the fact that there are sound, documented administrative reasons that returned absentee ballots are not recorded as having been voted, especially tardiness, spoilage, and rejection for lack of signatures, valid envelopes, and the like.

Table 2. Rejected, Undelivered, Voided, and Late Absentees in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin in 2018					
	Rejected Absentee Ballots	Undeliverable Absentee Ballots	Spoiled/Voided Absentee Ballots	Late Absentee Ballots	Status Unknown
Arizona	8,567	102,896	27,804	2,515	642,210
Georgia	7,512	2,322	252	3,525	36,255
Michigan	6,013	791	19,679	2,207	41,120
Pennsylvania	8,714	*	*	8,162	20,622
Wisconsin	2,517	1,718	2,794	1,445	12,407
Source: EAC, EAVS 2018. Note: * no data reported.					

B. Critique of Survey Design

31. Dr. Briggs offers no assessment of the design of the survey that generated the data that he presents. Rather, he assumes that the data are accurate.

32. It is my understanding that Matthew Braynard designed and conducted these surveys. There is no report of the survey design, questionnaire, or response rates, beyond the information embedded in the topline table appended to Dr. Briggs' report.

i. The survey has an unacceptably high non-response rate.

33. The response rate to the survey is measured as the number of people who answered the first substantive question (Q2) in the survey divided by the number of people who the surveyor sought to contact. The response rate to the survey conducted by Mr. Braynard in the State of Arizona is one-half of one percent. That is, of the 518,560 people who the survey research project set out to interview, 99.5 percent of them could not be contacted or refused to participate. That is an extremely low response rate, and it creates substantial doubt about drawing any reliable inferences from the data.

34. Dr. Briggs offered no calculation of a response rate to the surveys in his report.

35. My calculation of the response rate is offered in Table 1. For each phase of the survey, I calculate the percent of people originally sought to be studied who remain in the survey or are asked a given question. The initial phase of the survey consists of matching phone numbers to the registration list and contacting those numbers. The number of cases for which an interview could commence was 5,604, of the original 518,560 registration records (or 1 percent). These 5,604 cases consist of all records for which a message was left, there was an early hang up or refusal at some point during the survey (2,975), and cases that made it to the end of the survey (684).

36. Once the survey commences, there is first a screener question to determine whether the person interviewed should continue with the interview. That is Question 1. Question 2 is the first question of interest in Dr. Briggs' analysis. It asks, "Did you request an Absentee Ballot in the State of <state name>?" People could answer "Yes", "No", some other answer, Refuse to answer, or Hang up.

13

37. The response rate to the survey items of interest is the percent of people who were asked Question 2. 2,489 of the original 518,560 were asked Question 2, and 2,129 provided an answer to the question. That is a response rate of 0.4 percent.

38. This is an extremely low response rate. In most disciplines of study that I am familiar with, these would not be scientifically acceptable or reliable samples. For example, I am associate editor of the *Harvard Data Sciences Review*, which broadly covers fields of statistics and data sciences, and specialty fields such as political science, public opinion, survey methodology, and economics. Papers with such high non-responses are rejected on their face for this publication as not plausibly valid studies.

39. In my work as an expert witness for the Department of Justice, courts in which I have testified exclude as evidence phone surveys based on registration lists because they have response rates of 2 percent. Specifically, in *Texas v. Holder*, Professor Daron Shaw offered evidence based on phone surveys of registration lists. These surveys had response rates of 2 percent, and the court rejected the data because of serious questions about the representativeness of samples in which 98 percent of respondents could not be contacted or would not respond, and the effects of very low response rates on accuracy and reliability of estimates using surveys with very low response rates. See *Texas v. Holder* in the United States District Court for the District of Columbia No. 12-cv-128 (see pages 30 and 31). In evaluating the surveys conducted by Mr. Maynard and reported by Dr. Briggs, I use the 2 percent threshold as a standard for an unacceptably low response rate.

40. Dr. Briggs' assumption that those who responded to the question are representative of the relevant population under study (i.e., the other 99 percent of people who could not or would not participate in the survey) is highly unlikely to be correct. When surveys have high non-

14

response rates, it is standard practice to analyze information about the sample and the target

population, such as demographic characteristics or behavioral and attitudinal statistics, to

confirm that the assumption of representativeness of a sample can be maintained. When the

response rates are very low, such an analysis is a necessity in order to determine whether there is

any scientific value to the survey. No such analysis is offered here.

Table 3. Phone Survey Targets, Attempts and Completes in Mr. Braynard's survey of Arizona registered voters for whom records show no returned ballots		
	Number of Cases	Percent of Targets for Survey Remaining in the Survey Process
People the Survey Sought to Reach (all Unreturned Ballots) [Targets for Survey]	518,560	100%
Data Loads (Phone Numbers Loaded into the Survey System)	81,780	15.77%
"Completes"		
No Answer	74,437	
Numbers/Language	1,663	
VM Message Left	1,945	
Early Hang Up/Refused	2,975	
Q4 = 01*	684	
Subtotal: "Completes"	5,604	1.08%
Completes Eligible for Survey (Q5 or Early Hang Up/Refused)	3,695	0.71%
Asked Q1	4,525	0.87%
Asked Q2	2,489	0.41%
Asked Q3	2,129	0.41%
Completed Entire Survey (Q5)	684	0.13%
Source: William Briggs' report *Note: This number is as reported. In table for Q4, 678 cases are Q4 = 01, and 684 is the Sum of All Responses for Q5.		

ii. The screening question improperly allows people to take the survey who should not.

41.   A second substantial flaw in the survey is that the design of the questionnaire allows people who are not affirmatively determined to be the correct person to take the survey.

42.   Past research has documented that phone surveys using registered voter lists are often answered by someone other than the person who was listed on the registered voter file. The two most common problems are that the wrong number was matched to the voter list and that someone other than the person the research sought to speak with answered the phone. The latter occurs most often with landlines.[4]

43.   Question 1 (Q1) of the survey asks, "May I please speak to <lead on screen>?" "Lead on screen" is the name from the voter registration list that is linked to the phone number that the survey has dialed. Responses to Q1 are listed as reached target, other/uncertain, refused, and hang up. In the survey toplines for Arizona, the response categories for Question 1 do not specifically describe the branching. I examined the toplines for other states as reported in the appendix to Dr. Briggs' report in *King v. Whitmer*. The other states show that the second response category for Question 1 is assigned to Question 2. For example, in the first table (Georgia), the responses are "Reached Target [Go to Q2]" and "[Go to Q2]," without further explanation. Importantly, both those respondents classified as "Reached Target" and as "Uncertain" in Question 1 are instructed to "Go to Q2."

44. This is an error in the branching design of the survey. People who are not affirmatively identified as the correct person for the interview are allowed to answer the remaining questions in the survey. For example, Reponses to Questions 2 and 3 show evidence

---

[4] Pew Research Center, "Comparing Survey Sampling Strategies: Random-Digit Dialing vs. Voter Files," 2018. https://www.pewresearch.org/methods/2018/10/09/comparing-survey-sampling-strategies-random-digit-dial-vs-voter-files/, see pages 25-26.

that spouses and other family members are asked Questions 2 and 3, even though they were not the person whose absentee voting records are in question.

45. A significant percent and number of respondents who are listed as not giving an affirmative answer to Question 1 are in fact kept in the survey and asked Question 2. In the Arizona survey, 335 respondents answered Uncertain, but were then asked Question 2. These 335 cases are 15.6 percent of cases who answered Question 1 and were then assigned to Question 2 (i.e., 335/(335+1,812)). These respondents enter the pool for Questions 2 and 3 and contaminate all estimates using these data.

46. Questions 2 and 3 exhibit evidence of these cases. The response categories labeled "Member" correspond to family members. Again, there is no codebook for deciphering the response categories. I relied on the toplines for other states in Dr. Briggs' report in *King v. Whitmer* to clarify these categories. Family members answering on behalf of someone indicates that the survey interviewers did not always speak with the specific person listed on the registration list. The number of family members listed is a small percentage of all of the cases with "Uncertainty" in the sample.

47. I inspected the toplines for other states and discovered similar errors in the branching in all of the states. People whose identity was not clearly identified in Question 1 are asked Question 2. At this point in the branching protocol, my conclusion is that the data are not an accurate reflection of the Target group (i.e., those people who are affirmatively identified as the person whose name appears on the registration list).

17

iii.   Question 3 is subject to memory errors and social desirability bias.

48. Question 3 asks people whether they voted. Specifically, it asks people who said that they requested an absentee ballot whether they returned an absentee ballot; that is, whether they voted that ballot.

49. It has long been understood in political science that respondents to surveys over-report voting in elections. Typically, the overstatement is approximately 10 to 20 percentage points. That is, if 65 percent of people in a sample actually voted, the reported vote rates in surveys are usually around 75 to 85 percent. The most commonly identified sorts of biases are memory errors and social desirability bias in questions asking people whether they voted.[5] When asked whether they voted or cast a ballot, people say "yes" either because they feel that is the socially acceptable answer or because they forgot whether they actually voted in a given election. Questions that ask people whether they voted or cast a ballot will overstate voting and should not be taken on face value as ground truth. The particular form of Question 3 is likely to lead to people saying that they voted a ballot when in fact they had not.

50. There are alternative ways to ask about voting in order to reduce social desirability bias.[6] Those other ways of asking the question are in line with social science practice in research in order to avoid social desirability biases. Question 3 should have been asked a different way so as to avoid over-reporting of voting. As it is, it is of the form of survey question regarding voting that is well known to lead to over-reporting.

---

[5] See for example, Allyson L. Holbrook and Jon A. Krosnick, "Social Desirability Bias in Voter Turnout Reports: Test Using the Item Count Technique," *Public Opinion Quarterly* 74 (2010): 37-67. See also Stephen Ansolabehere and Eitan Hersh, "Validation: What Big Data Reveal About Survey Misreporting and the Real Electorate," *Political Analysis* 20 (2012): 437-459

[6] See, for example, Holbrook and Krosnick, op cit., and Michael J. Hanmer, Antoine J. Banks, and Ismail K. White, "Experiments to Reduce the Over-Reporting of Voting: A Pipeline to the Truth," *Political Analysis* 22 (2014): 130-141.

18

C. Critique of the Survey Databases and Data Analyses

51. There are obvious data errors and inconsistencies revealed in the toplines that are appended to Dr. Briggs' report. Dr. Briggs states that he assumes that "the data is accurate." A routine analysis to check the consistency and integrity of data reported in the toplines is standard practice in the survey research field. Such checks allow researchers to determine whether the survey data and spreadsheet program are producing sensible numbers and, thus, working correctly. Failures in even a small number of integrity checks indicate problems with the survey systems and software, and raise deep concerns about data accuracy generally. I routinely perform such checks on surveys that I conduct and supervise. I have performed such a check, and it reveals that the data lack integrity. They should not be assumed to be accurate.

52. The data integrity checks that I implemented were of two sorts. First, I added up the number of cases in each response category to verify that they sum to the number of cases reported for each question in the row labeled "Sum of Responses." Second, I added up the number of cases at each phase of the survey that are indicated as cases to be asked the next question. For example, I add up the cases in Question 1 that have the flag [Go to Q2] and then check whether that number equals the number of cases for Question 2 in "Sum of Responses." I performed these integrity checks for the Arizona survey toplines appended to Dr. Briggs' report in this case and to the toplines for the surveys that Mr. Braynard conducted in other states and that are appended to Dr. Briggs' report in *King v. Whitmer*.

53. The toplines for one of the surveys (Wisconsin) failed the first integrity check. The response categories for Question 1 in that survey had 2,261 people listed as "A-Reached Target + B-What Is This About?/Uncertain" and 1,677 cases listed as "X=Refused." These numbers sum to 3,938. However, the number of cases that the survey system reported under "Sum of All

Responses" to Question 1 is 3,495. There is a discrepancy of 443 cases that are unaccounted for at the outset of that survey. This indicates to me an error in the program that generated the survey data. This finding means none of the Wisconsin data should be assumed to be reliable and accurate.

54. The integrity checks failed for the Arizona data when I performed the second sort of integrity check. The accounting for the second sort of integrity check is presented in Table 4. The first panel of Table 4 (marked with lower case numerals) reproduces the accounting for "Completes" shown in the toplines appended to Dr. Briggs' report. The second panel reports the number of cases in the Completes, including people who hung up or refused, that should have been asked Question 1 (denoted "A") and the number of cases who were asked Question 1 (denoted "B"). The third set of rows is the number of cases in Question 1 who were assigned to Question 2 (denoted "C") and the number of cases who were asked Question 2 (denoted "D"). The fourth set of rows is the number of cases in Question 2 who were assigned to Question 3 (denoted "E") and the number of cases who were asked Question 3 (denoted "F").

55. The first integrity check in this table is whether the subtotal of Completes equals the number of cases in which calls reached a response (even if an answering machine or refusal). That is, do rows (i), (ii), and (iii) sum to row (iv)? They do. The difference between rows (i)+(ii)+(iii) and row (iv) is zero.

56. The second integrity check in this table is whether the subtotal of Completes eligible for Question 1 equals the number of people asked Question 1. That is, does Row A equal Row B? They are not equal. Row A minus Row B is -866, meaning there are 866 more respondents who were asked Question 2 than were indicated to be calls commenced in the survey. I attempted to resolve this discrepancy by removing various categories, such as Refusals to

20

Question or Hang ups at the Complete stage. I found no way to account for the excess number of cases who were asked Question 1 but were not accounted for in the Completes portion of the toplines. These respondents mysteriously show up in the interviews and are not accounted for.

57. The third integrity check in this table is whether the number of people who were assigned in Question 1 to [Go to Q2] equals the number of people who answered Question 2. That is, does Row C equal Row D? They are not equal. Row C minus Row D is -342, meaning there are 342 more respondents in Question 2 than were assigned to Question 2 at the Question 1 stage. This is a second failure of the integrity checks.

58. The fourth integrity check in this table is whether the number of people who were assigned in Question 2 to [Go to Q3] equals the number of people who answered Question 3. That is, does Row E equal Row F? They are equal. Row E and Row F equal 2,129 each.

59. Inspection of the toplines for Arizona exposes failures of the integrity checks. The number of cases affected by these failures is substantial: 1,208 (866+342). To put these spreadsheet failures into perspective, the total number of cases in the survey that are listed as either Error #1 or Error #2 is 1,229 (i.e., 885 Question 2 = No and 344 Question 3 = Yes). The presence of integrity check failures leads me to conclude that there are errors in either the program that generated the survey data or the spreadsheets and analysis used to analyze the data. The number of errors is of a sufficiently large magnitude that there can be no confidence in any estimates made using these data.

60. I performed integrity checks for the other states using the toplines appended to Dr. Briggs' report in *King v. Whitmer*. I found similar sorts of spreadsheet inconsistencies and failures in integrity checks in other states.

61. In my experience running, designing, and analyzing large scale surveys through the Cooperative Congressional Election Study and serving on the board of the American National Election Study, errors such as these usually have two sources. They are indicative of either: (i) errors in the program that that assigns questions to people, or (ii) errors in the program that generates the spreadsheet. Either sort of error is catastrophic for this analysis, and they render the estimates, projections, and inferences in Dr. Briggs' report entirely unreliable.

Table 4. Data Integrity Checks for Mr. Braynard's survey of Arizona registered voters		
	Number of Cases	Integrity Checks
"Completes"		
(i) VM Message Left	1,945	
(ii) Early Hang Up/Refused	2,975	
(iii) Q4 = 01*	684	
(iv) Subtotal: "Completes"	5,604	(iv) – ((i) + (ii) + (iii)) = 0
A: Completes Eligible for Survey (Q5 or Early Hang Up/Refused)	3,659	
B: Asked Q1 (Sum of All Responses)	4,525	A – B = -866
C: Completed Q1 [Go to Q2]*	2,147	
D: Asked Q2 (Sum of All Responses)	2,489	C – D = -342
E: Offered a Response to Q2 (without hanging up or refusing) [Go to Q3]	2,129	
F: Asked Q3 (Sum of All Resonses)	2,129	E – F = 0
Source: William Briggs' report * Based on Dr. Briggs' report in *Wood v. Raffensperger*, the survey branching in other states asks Question 2 of respondents who are identified as "Reached Target" or "Uncertain" in Question 1. I assume that the branching is the same in the Arizona survey.		

D. Conclusion

62. The estimates and projections presented by Dr. Briggs are based on survey data

collected in Arizona and four other states (Georgia, Michigan, Pennsylvania, and Wisconsin).

My overall assessment of these surveys is that they were not properly designed. Specifically,

they have unacceptably low response rates, poorly designed questions that are known to over-

report voting, and errors in assigning cases to questions that allow people who should not have

been included in the survey to nonetheless answer the questions. These survey design and

implementation failures mean that, in hundreds of cases, the wrong people are allowed to answer

the surveys, and that the statistician must make implausible assumptions about the

representativeness of a sample with a .4 percent response rate in order to extrapolate to a half

million people. These survey design and implementation flaws are of sufficient magnitude and

severity as to make the estimates completely unreliable and uninformative.

63. The data are not accurate. The Topline summaries of the survey data appended to Dr.

Briggs' report reveal fatal accounting errors in the data. No sound estimates or inferences can be

drawn based on these data. Dr. Briggs assumed at the outset that the respondents to the surveys

are representative and the data are accurate. Neither assumption is correct.

64. The interpretation of the survey responses ignores the realities of absentee voting in

the State of Arizona. In Arizona, 95 percent of people are permanent absentee and early voters

and are sent a ballot automatically without requesting one for a given election. Dr. Briggs

considers as errors all instances in which a voter who was sent an absentee ballot did not request

one. These occurrences are not errors, but instead are the normal workings of Arizona's

absentee voting system. Also, ballots that voters say they returned but are not recorded are not

definitive evidence of "errors." Arizona also has a substantial number of absentee ballots that

23

are late, undeliverable, spoiled, or invalid. The evidence presented is not evidence of errors in

the election but of errors in the survey data presented by Dr. Briggs.

24

Signed at Boston, Massachusetts, on the date below.
Date: December 3, 2020

_____

Stephen Ansolabehere

STEPHEN DANIEL ANSOLABEHERE

Department of Government
Harvard University
1737 Cambridge Street
Cambridge, MA 02138
sda@gov.harvard.edu

EDUCATION

Harvard University	Ph.D., Political Science	1989
University of Minnesota	B.A., Political Science	1984
	B.S., Economics	

PROFESSIONAL EXPERIENCE

ACADEMIC POSITIONS

2016-present	Frank G. Thompson Professor of Government, Harvard University
2008-present	Professor, Department of Government, Harvard University
2015-present	Director, Center for American Politics, Harvard University
1998-2009	Elting Morison Professor, Department of Political Science, MIT (Associate Head, 2001-2005)
1995-1998	Associate Professor, Department of Political Science, MIT
1993-1994	National Fellow, The Hoover Institution
1989-1993	Assistant Professor, Department of Political Science, University of California, Los Angeles

FELLOWSHIPS AND HONORS

American Academy of Arts and Sciences	2007
Carnegie Scholar	2000-02
National Fellow, The Hoover Institution	1993-94
Harry S. Truman Fellowship	1982-86

1

PUBLICATIONS

Books

2019   *American Government*, 15th edition. With Ted Lowi, Benjamin Ginsberg
                and Kenneth Shepsle. W.W. Norton.

2014   *Cheap and Clean: How Americans Think About Energy in the Age of Global
                Warming*. With David Konisky. MIT Press.
                Recipient of the Donald K. Price book award.

2008   *The End of Inequality: One Person, One Vote and the Transformation of
                American Politics*. With James M. Snyder, Jr., W. W. Norton.

1996   *Going Negative: How Political Advertising Divides and Shrinks the American
                Electorate*.   With Shanto Iyengar. The Free Press. Recipient of the Goldsmith
                book award.

1993   *Media Game: American Politics in the Television Age*. With Roy Behr and
                Shanto Iyengar. Macmillan.

Journal Articles

2021   "The CPS Voting and Registration Supplement Overstates Turnout" *Journal of
                Politics* Forthcoming (with Bernard Fraga and Brian Schaffner)

2021   "Congressional Representation: Accountability from the Constituent's Perspective,"
                American Journal of Political Science forthcoming (with Shiro Kuriwaki)

2020   "Proximity, NIMBYism, and Public Support for Energy Infrastructure"
                Public Opinion Quarterly (with David Konisky and Sanya Carley)
                https://doi.org/10.1093/poq/nfaa025

2020   "Understanding Exponential Growth Amid a Pandemic: An Internal Perspective,"
                Harvard Data Science Review 2 (October) (with Ray Duch, Kevin DeLuca,
                Alexander Podkul, Liberty Vittert)

2020   "Unilateral Action and Presidential Accountability," *Presidential Studies Quarterly*
                50 (March): 129-145. (with Jon Rogowski)

2019   "Backyard Voices: How Sense of Place Shapes Views of Large-Scale Energy

2

Transmission Infrastructure" *Energy Research & Social Science* forthcoming(with Parrish Bergquist, Carley Sanya, and David Konisky)

2019 "Are All Electrons the Same? Evaluating support for local transmission lines through an experiment" *PLOS ONE* 14 (7): e0219066 (with Carley Sanya and David Konisky) https://doi.org/10.1371/journal.pone.0219066

2018 "Learning from Recounts" Election Law Journal 17: 100-116 (with Barry C. Burden, Kenneth R. Mayer, and Charles Stewart III) https://doi.org/10.1089/elj.2017.0440

2018 "Policy, Politics, and Public Attitudes Toward the Supreme Court" *American Politics Research* (with Ariel White and Nathaniel Persily). https://doi.org/10.1177/1532673X18765189

2018 "Measuring Issue-Salience in Voters' Preferences" *Electoral Studies* (with Maria Socorro Puy) 51 (February): 103-114.

2018 "Divided Government and Significant Legislation: A History of Congress," *Social Science History* (with Maxwell Palmer and Benjamin Schneer).42 (1).

2017 "ADGN: An Algorithm for Record Linkage Using Address, Date of Birth Gender and Name," *Statistics and Public Policy* (with Eitan Hersh)

2017 "Identity Politics" (with Socorro Puy) *Public Choice*. 168: 1-19. DOI 10.1007/s11127-016-0371-2

2016 "A 200-Year Statistical History of the Gerrymander" (with Maxwell Palmer) *The Ohio State University Law Journal*

2016 "Do Americans Prefer Co-Ethnic Representation? The Impact of Race on House Incumbent Evaluations" (with Bernard Fraga) *Stanford University Law Review* 68: 1553-1594

2016 Revisiting Public Opinion on Voter Identification and Voter Fraud in an Era of Increasing Partisan Polarization" (with Nathaniel Persily) *Stanford Law Review* 68: 1455-1489

2015 "The Perils of Cherry Picking Low Frequency Events in Large Sample Surveys" (with Brian Schaffner and Samantha Luks) *Electoral Studies* 40 (December): 409-410.

2015 "Testing *Shaw v. Reno*: Do Majority-Minority Districts Cause Expressive Harms?" (with Nathaniel Persily) *New York University Law Review* 90

3

2015   "A Brief Yet Practical Guide to Reforming U.S. Voter Registration, *Election Law Journa*l, (with Daron Shaw and Charles Stewart) 14: 26-31.

2015   "Waiting to Vote," *Election Law Journa*l, (with Charles Stewart) 14: 47-53.

2014   "Mecro-economic Voting: Local Information and Micro-Perceptions of the Macro-Economy" (With Marc Meredith and Erik Snowberg), *Economics and Politics* 26 (November): 380-410.

2014   "Does Survey Mode Still Matter?" *Political Analysis* (with Brian Schaffner) 22: 285-303

2013   "Race, Gender, Age, and Voting" *Politics and Governance*, vol. 1, issue 2. (with Eitan Hersh)
        http://www.librelloph.com/politicsandgovernance/article/view/PaG-1.2.132

2013   "Regional Differences in Racially Polarized Voting: Implications for the Constitutionality of Section 5 of the Voting Rights Act" (with Nathaniel Persily and Charles Stewart) 126 *Harvard Law Review* F 205 (2013)
        http://www.harvardlawreview.org/issues/126/april13/forum_1005.php

2013   "Cooperative Survey Research" *Annual Review of Political Science* (with Douglas Rivers)

2013   "Social Sciences and the Alternative Energy Future" *Daedalus* (with Bob Fri)

2013   "The Effects of Redistricting on Incumbents," *Election Law Journal* (with James Snyder)

2012   "Asking About Numbers: How and Why" *Political Analysis* (with Erik Snowberg and Marc Meredith). doi:10.1093/pan/mps031

2012   "Movers, Stayers, and Registration" *Quarterly Journal of Political Science* (with Eitan Hersh and Ken Shepsle)

2012   "Validation: What Big Data Reveals About Survey Misreporting and the Real Electorate" *Political Analysis* (with Eitan Hersh)

2012   "Arizona Free Enterprise v. Bennett and the Problem of Campaign Finance" *Supreme Court Review* 2011(1):39-79

2012   "The American Public's Energy Choice" *Daedalus* (with David Konisky)

2012   "Challenges for Technology Change" *Daedalus* (with Robert Fri)

4

2011   "When Parties Are Not Teams: Party positions in single-member district and proportional representation systems" *Economic Theory* 49 (March) DOI: 10.1007/s00199-011-0610-1 (with James M. Snyder Jr. and William Leblanc)

2011   "Profiling Originalism" *Columbia Law Review* (with Jamal Greene and Nathaniel Persily).

2010   "Partisanship, Public Opinion, and Redistricting" *Election Law Journal* (with Joshua Fougere and Nathaniel Persily).

2010   "Primary Elections and Party Polarization" *Quarterly Journal of Political Science* (with Shigeo Hirano, James Snyder, and Mark Hansen)

2010   "Constituents' Responses to Congressional Roll Call Voting," *American Journal of Political Science* (with Phil Jones)

2010   "Race, Region, and Vote Choice in the 2008 Election: Implications for the Future of the Voting Rights Act" *Harvard Law Review* April, 2010. (with Nathaniel Persily, and Charles H. Stewart III)

2010   "Residential Mobility and the Cell Only Population," *Public Opinion Quarterly* (with Brian Schaffner)

2009   "Explaining Attitudes Toward Power Plant Location," *Public Opinion Quarterly* (with David Konisky)

2009   "Public risk perspectives on the geologic storage of carbon dioxide," *International Journal of Greenhouse Gas Control* (with Gregory Singleton and Howard Herzog) 3(1):   100-107.

2008   "A Spatial Model of the Relationship Between Seats and Votes" (with William Leblanc) *Mathematical and Computer Modeling* (November).

2008   "The Strength of Issues: Using Multiple Measures to Gauge Preference Stability, Ideological Constraint, and Issue Voting" (with Jonathan Rodden and James M. Snyder, Jr.) *American Political Science Review* (May).

2008   "Access versus Integrity in Voter Identification Requirements." *New York University Annual Survey of American Law,* vol 63.

2008   "Voter Fraud in the Eye of the Beholder" (with Nathaniel Persily) *Harvard Law Review* (May)

2007   "Incumbency Advantages in U. S. Primary Elections," (with John Mark Hansen, Shigeo Hirano, and James M. Snyder, Jr.) *Electoral Studies* (September)

2007   "Television and the Incumbency Advantage" (with Erik C. Snowberg and
            James M. Snyder, Jr). *Legislative Studies Quarterly*.

2006   "The Political Orientation of Newspaper Endorsements" (with Rebecca
            Lessem and James M. Snyder, Jr.). *Quarterly Journal of Political Science* vol. 1,
            issue 3.

2006   "Voting Cues and the Incumbency Advantage: A Critical Test" (with Shigeo
            Hirano, James M. Snyder, Jr., and Michiko Ueda) *Quarterly Journal of
            Political Science* vol. 1, issue 2.

2006   "American Exceptionalism? Similarities and Differences in National Attitudes
            Toward Energy Policies and Global Warming" (with David Reiner, Howard
            Herzog, K. Itaoka, M. Odenberger, and Fillip Johanssen) *Environmental Science
            and Technology* (February 22, 2006),
            http://pubs3.acs.org/acs/journals/doilookup?in_doi=10.1021/es052010b

2006   "Purple America" (with Jonathan Rodden and James M. Snyder, Jr.) *Journal
            of Economic Perspectives* (Winter).

2005   "Did the Introduction of Voter Registration Decrease Turnout?" (with David
            Konisky). *Political Analysis*.

2005   "Statistical Bias in Newspaper Reporting: The Case of Campaign Finance"
            Public Opinion Quarterly (with James M. Snyder, Jr., and Erik Snowberg).

2005   "Studying Elections" *Policy Studies Journal* (with Charles H. Stewart III and R.
            Michael Alvarez).

2005   "Legislative Bargaining under Weighted Voting" *American Economic Review*
            (with James M. Snyder, Jr., and Michael Ting)

2005   "Voting Weights and Formateur Advantages in Coalition Formation: Evidence
            from Parliamentary Coalitions, 1946 to 2002" (with James M. Snyder, Jr., Aaron
            B. Strauss, and Michael M. Ting) *American Journal of Political Science*.

2005   "Reapportionment and Party Realignment in the American States" *Pennsylvania
            Law Review* (with James M. Snyder, Jr.)

2004   "Residual Votes Attributable to Voting Technologies" (with Charles Stewart)
            Journal of Politics

2004   "Using Term Limits to Estimate Incumbency Advantages When Office Holders
            Retire Strategically" (with James M. Snyder, Jr.). *Legislative Studies Quarterly*
            vol. 29, November 2004, pages 487-516.

2004   "Did Firms Profit From Soft Money?" (with James M. Snyder, Jr., and Michiko Ueda) *Election Law Journal* vol. 3, April 2004.

2003   "Bargaining in Bicameral Legislatures" (with James M. Snyder, Jr. and Mike Ting) *American Political Science Review,* August, 2003.

2003   "Why Is There So Little Money in U.S. Politics?" (with James M. Snyder, Jr.) *Journal of Economic Perspectives*, Winter, 2003.

2002   "Equal Votes, Equal Money: Court-Ordered Redistricting and the Public Spending in the American States" (with Alan Gerber and James M. Snyder, Jr.) *American Political Science Review*, December, 2002.
Paper awarded the Heinz Eulau award for the best paper in the American Political Science Review.

2002   "Are PAC Contributions and Lobbying Linked?" (with James M. Snyder, Jr. and Micky Tripathi) *Business and Politics* 4, no. 2.

2002   "The Incumbency Advantage in U.S. Elections: An Analysis of State and Federal Offices, 1942-2000" (with James Snyder) *Election Law Journal,* 1, no. 3.

2001   "Voting Machines, Race, and Equal Protection." *Election Law Journal*, vol. 1, no. 1

2001   "Models, assumptions, and model checking in ecological regressions" (with Andrew Gelman, David Park, Phillip Price, and Larraine Minnite) *Journal of the Royal Statistical Society,* series A, 164: 101-118.

2001   "The Effects of Party and Preferences on Congressional Roll Call Voting." (with James Snyder and Charles Stewart) *Legislative Studies Quarterly* (forthcoming).
Paper awarded the *Jewell-Lowenberg Award* for the best paper published on legislative politics in 2001. Paper awarded the *Jack Walker Award* for the best paper published on party politics in 2001.

2001   "Candidate Positions in Congressional Elections," (with James Snyder and Charles Stewart). *American Journal of Political Science* 45 (November).

2000   "Old Voters, New Voters, and the Personal Vote," (with James Snyder and Charles Stewart) *American Journal of Political Science* 44 (February).

2000   "Soft Money, Hard Money, Strong Parties," (with James Snyder) *Columbia Law Review* 100 (April):598 - 619.

2000   "Campaign War Chests and Congressional Elections," (with James Snyder)

Business and Politics. 2 (April): 9-34.

1999 "Replicating Experiments Using Surveys and Aggregate Data: The Case of Negative Advertising." (with Shanto Iyengar and Adam Simon) *American Political Science Review* 93 (December).

1999 "Valence Politics and Equilibrium in Spatial Models," (with James Snyder), *Public Choice.*

1999 "Money and Institutional Power," (with James Snyder), *Texas Law Review* 77 (June, 1999): 1673-1704.

1997 "Incumbency Advantage and the Persistence of Legislative Majorities," (with Alan Gerber), *Legislative Studies Quarterly* 22 (May 1997).

1996 "The Effects of Ballot Access Rules on U.S. House Elections," (with Alan Gerber), *Legislative Studies Quarterly* 21 (May 1996).

1994 "Riding the Wave and Issue Ownership: The Importance of Issues in Political Advertising and News," (with Shanto Iyengar) *Public Opinion Quarterly* 58: 335-357.

1994 "Horseshoes and Horseraces: Experimental Evidence of the Effects of Polls on Campaigns," (with Shanto Iyengar) *Political Communications* 11/4 (October-December): 413-429.

1994 "Does Attack Advertising Demobilize the Electorate?" (with Shanto Iyengar), *American Political Science Review* 89 (December).

1994 "The Mismeasure of Campaign Spending: Evidence from the 1990 U.S. House Elections," (with Alan Gerber) *Journal of Politics* 56 (September).

1993 "Poll Faulting," (with Thomas R. Belin) *Chance* 6 (Winter): 22-28.

1991 "The Vanishing Marginals and Electoral Responsiveness," (with David Brady and Morris Fiorina) *British Journal of Political Science* 22 (November): 21-38.

1991 "Mass Media and Elections: An Overview," (with Roy Behr and Shanto Iyengar) *American Politics Quarterly* 19/1 (January): 109-139.

1990 "The Limits of Unraveling in Interest Groups," *Rationality and Society* 2: 394-400.

1990 "Measuring the Consequences of Delegate Selection Rules in Presidential Nominations," (with Gary King) *Journal of Politics* 52: 609-621.

8

1989   "The Nature of Utility Functions in Mass Publics," (with Henry Brady) *American Political Science Review* 83: 143-164.

Special Reports and Policy Studies

2010   *The Future of Nuclear Power*, Revised.

2006   *The Future of Coal.* MIT Press. Continued reliance on coal as a primary power source will lead to very high concentrations of carbon dioxide in the atmosphere, resulting in global warming. This cross-disciplinary study – drawing on faculty from Physics, Economics, Chemistry, Nuclear Engineering, and Political Science – develop a road map for technology research and development policy in order to address the challenges of carbon emissions from expanding use of coal for electricity and heating throughout the world.

2003   *The Future of Nuclear Power.* MIT Press. This cross-disciplinary study – drawing on faculty from Physics, Economics, Chemistry, Nuclear Engineering, and Political Science – examines the what contribution nuclear power can make to meet growing electricity demand, especially in a world with increasing carbon dioxide emissions from fossil fuel power plants.

2002   "Election Day Registration." A report prepared for DEMOS. This report analyzes the possible effects of Proposition 52 in California based on the experiences of 6 states with election day registration.

2001   *Voting: What Is, What Could Be.* A report of the Caltech/MIT Voting Technology Project. This report examines the voting system, especially technologies for casting and counting votes, registration systems, and polling place operations in the United States. It was widely used by state and national governments in formulating election reforms following the 2000 election.

2001   "An Assessment of the Reliability of Voting Technologies." A report of the Caltech/MIT Voting Technology Project. This report provided the first nationwide assessment of voting equipment performance in the United States. It was prepared for the Governor's Select Task Force on Election Reform in Florida.

Chapters in Edited Volumes

2016   "Taking the Study of Public Opinion Online" (with Brian Schaffner) *Oxford Handbook of Public Opinion*, R. Michael Alvarez, ed. Oxford University Press: New York, NY.

2014   "Voter Registration: The Process and Quality of Lists*" The Measure of*

American Elections, Barry Burden, ed..

2012   "Using Recounts to Measure the Accuracy of Vote Tabulations: Evidence from New Hampshire Elections, 1946-2002" in Confirming Elections, R. Michael Alvarez, Lonna Atkeson, and Thad Hall, eds. New York: Palgrave, Macmillan.

2010   "Dyadic Representation" in Oxford Handbook on Congress, Eric Schickler, ed., Oxford University Press.

2008   "Voting Technology and Election Law" in *America Votes!,* Benjamin Griffith, editor, Washington, DC: American Bar Association.

2007   "What Did the Direct Primary Do to Party Loyalty in Congress" (with Shigeo Hirano and James M. Snyder Jr.) in *Process, Party and Policy Making: Further New Perspectives on the History of Congress*, David Brady and Matthew D. McCubbins (eds.), Stanford University Press, 2007.

2007   "Election Administration and Voting Rights" in *Renewal of the Voting Rights Act*, David Epstein and Sharyn O'Hallaran, eds. Russell Sage Foundation.

2006   "The Decline of Competition in Primary Elections," (with John Mark Hansen, Shigeo Hirano, and James M. Snyder, Jr.) *The Marketplace of Democracy*, Michael P. McDonald and John Samples, eds. Washington, DC: Brookings.

2005   "Voters, Candidates and Parties" in *Handbook of Political Economy*, Barry Weingast and Donald Wittman, eds. New York: Oxford University Press.

2003   "Baker v. Carr in Context, 1946 – 1964" (with Samuel Isaacharoff) in *Constitutional Cases in Contex*t, Michael Dorf, editor. New York: Foundation Press.

2002   "Corruption and the Growth of Campaign Spending"(with Alan Gerber and James Snyder). *A User's Guide to Campaign Finance*, Jerry Lubenow, editor. Rowman and Littlefield.

2001   "The Paradox of Minimal Effects," in Henry Brady and Richard Johnston, eds., *Do Campaigns Matter*? University of Michigan Press.

2001   "Campaigns as Experiments," in Henry Brady and Richard Johnson, eds., Do *Campaigns Matter*? University of Michigan Press.

2000   "Money and Office," (with James Snyder) in David Brady and John Cogan, eds., *Congressional Elections: Continuity and Change*. Stanford University Press.

1996   "The Science of Political Advertising," (with Shanto Iyengar) in *Political Persuasion and Attitude Change*, Richard Brody, Diana Mutz, and Paul

10

Sniderman, eds. Ann Arbor, MI: University of Michigan Press.

1995   "Evolving Perspectives on the Effects of Campaign Communication," in Philo
         Warburn, ed., *Research in Political Sociology*, vol. 7, JAI.

1995   "The Effectiveness of Campaign Advertising: It's All in the Context," (with
         Shanto Iyengar) in *Campaigns and Elections American Style*, Candice Nelson and
         James A. Thurber, eds. Westview Press.

1993   "Information and Electoral Attitudes: A Case of Judgment Under Uncertainty,"
         (with Shanto Iyengar), in *Explorations in Political Psychology*, Shanto Iyengar
         and William McGuire, eds. Durham: Duke University Press.

Working Papers

2009   "Sociotropic Voting and the Media" (with Marc Meredith and Erik Snowberg),
         American National Election Study Pilot Study Reports, John Aldrich editor.

2007   "Public Attitudes Toward America's Energy Options: Report of the 2007 MIT
         Energy Survey" CEEPR Working Paper 07-002 and CANES working paper.

2006   "Constituents' Policy Perceptions and Approval of Members' of Congress" CCES
         Working Paper 06-01 (with Phil Jones).

2004   "Using Recounts to Measure the Accuracy of Vote Tabulations: Evidence from
         New Hampshire Elections, 1946 to 2002" (with Andrew Reeves).

2002   "Evidence of Virtual Representation: Reapportionment in California," (with
         Ruimin He and James M. Snyder).

1999   "Why did a majority of Californians vote to lower their own power?" (with James
         Snyder and Jonathan Woon). Paper presented at the annual meeting of the
         American Political Science Association, Atlanta, GA, September, 1999.
         Paper received the award for the best paper on Representation at the 1999 Annual
         Meeting of the APSA.

1999   "Has Television Increased the Cost of Campaigns?" (with Alan Gerber and James
         Snyder).

1996   "Money, Elections, and Candidate Quality," (with James Snyder).

1996   "Party Platform Choice - Single- Member District and Party-List Systems,"(with
         James Snyder).

1995   "Messages Forgotten" (with Shanto Iyengar).

11

1994   "Consumer Contributors and the Returns to Fundraising: A Microeconomic Analysis," (with Alan Gerber), presented at the Annual Meeting of the American Political Science Association, September.

1992   "Biases in Ecological Regression," (with R. Douglas Rivers) August, (revised February 1994). Presented at the Midwest Political Science Association Meetings, April 1994, Chicago, IL.

1992   "Using Aggregate Data to Correct Nonresponse and Misreporting in Surveys" (with R. Douglas Rivers). Presented at the annual meeting of the Political Methodology Group, Cambridge, Massachusetts, July.

1991   "The Electoral Effects of Issues and Attacks in Campaign Advertising" (with Shanto Iyengar). Presented at the Annual Meeting of the American Political Science Association, Washington, DC.

1991   "Television Advertising as Campaign Strategy: Some Experimental Evidence" (with Shanto Iyengar). Presented at the Annual Meeting of the American Association for Public Opinion Research, Phoenix.

1991   "Why Candidates Attack: Effects of Televised Advertising in the 1990 California Gubernatorial Campaign," (with Shanto Iyengar). Presented at the Annual Meeting of the Western Political Science Association, Seattle, March.

1990   "Winning is Easy, But It Sure Ain't Cheap." Working Paper #90-4, Center for the American Politics and Public Policy, UCLA. Presented at the Political Science Departments at Rochester University and the University of Chicago.

Research Grants

1989-1990   Markle Foundation. "A Study of the Effects of Advertising in the 1990 California Gubernatorial Campaign." Amount: $50,000

1991-1993   Markle Foundation. "An Experimental Study of the Effects of Campaign Advertising." Amount: $150,000

1991-1993   NSF. "An Experimental Study of the Effects of Advertising in the 1992 California Senate Electoral." Amount: $100,000

1994-1995   MIT Provost Fund. "Money in Elections: A Study of the Effects of Money on Electoral Competition." Amount: $40,000

1996-1997   National Science Foundation. "Campaign Finance and Political Representation." Amount: $50,000

1997   National Science Foundation. "Party Platforms: A Theoretical Investigation of Party Competition Through Platform Choice." Amount: $40,000

1997-1998   National Science Foundation. "The Legislative Connection in Congressional Campaign Finance.   Amount: $150,000

1999-2000   MIT Provost Fund. "Districting and Representation." Amount: $20,000.

1999-2002   Sloan Foundation. "Congressional Staff Seminar." Amount: $156,000.

2000-2001   Carnegie Corporation. "The Caltech/MIT Voting Technology Project." Amount: $253,000.

2001-2002   Carnegie Corporation. "Dissemination of Voting Technology Information." Amount: $200,000.

2003-2005   National Science Foundation. "State Elections Data Project." Amount: $256,000.

2003-2004   Carnegie Corporation. "Internet Voting." Amount: $279,000.

2003-2005   Knight Foundation. "Accessibility and Security of Voting Systems." Amount: $450,000.

2006-2008   National Science Foundation, "Primary Election Data Project," $186,000

2008-2009   Pew/JEHT. "Measuring Voting Problems in Primary Elections, A National Survey." Amount: $300,000

2008-2009   Pew/JEHT. "Comprehensive Assessment of the Quality of Voter Registration Lists in the United States: A pilot study proposal" (with Alan Gerber). Amount: $100,000.

2010-2011   National Science Foundation, "Cooperative Congressional Election Study," $360,000

2010-2012   Sloan Foundation, "Precinct-Level U. S. Election Data," $240,000.

2012-2014   National Science Foundation, "Cooperative Congressional Election Study, 2010-2012 Panel Study" $425,000

2012-2014   National Science Foundation, "2012 Cooperative Congressional Election Study," $475,000

2014-2016   National Science Foundation, "Cooperative Congressional Election Study,

13

2010-2014 Panel Study" $510,000

2014-2016   National Science Foundation, "2014 Cooperative Congressional Election Study," $400,000

2016-2018   National Science Foundation, "2016 Cooperative Congressional Election Study," $485,000

2018-2020   National Science Foundation, "2018 Cooperative Congressional Election Study," $844,784.

2019-2022   National Science Foundation, RIDIR: "Collaborative Research: Analytic Tool for Poststratification and small-area estimation for survey data." $942,607

Professional Boards

Editor, Cambridge University Press Book Series, Political Economy of Institutions and Decisions, 2006-2016

Member, Board of the Reuters International School of Journalism, Oxford University, 2007 to present.

Member, Academic Advisory Board, Electoral Integrity Project, 2012 to present.

Contributing Editor, *Boston Review*, The State of the Nation.

Member, Board of Overseers, American National Election Studies, 1999 - 2013.

Associate Editor, Public Opinion Quarterly, 2012 to 2013.

Editorial Board of Harvard Data Science Review, 2018 to present.
Editorial Board of American Journal of Political Science, 2005 to 2009.
Editorial Board of Legislative Studies Quarterly, 2005 to 2010.
Editorial Board of Public Opinion Quarterly, 2006 to present.
Editorial Board of the Election Law Journal, 2002 to present.
Editorial Board of the Harvard International Journal of Press/Politics, 1996 to 2008.
Editorial Board of Business and Politics, 2002 to 2008.
Scientific Advisory Board, Polimetrix, 2004 to 2006.

Special Projects and Task Forces

Principal Investigator, Cooperative Congressional Election Study, 2005 – present.

CBS News Election Decision Desk, 2006-present

Co-Director, Caltech/MIT Voting Technology Project, 2000-2004.

Co-Organizer, MIT Seminar for Senior Congressional and Executive Staff, 1996-2007.

MIT Energy Innovation Study, 2009-2010.
MIT Energy Initiative, Steering Council, 2007-2008
MIT Coal Study, 2004-2006.
MIT Energy Research Council, 2005-2006.
MIT Nuclear Study, 2002-2004.
Harvard University Center on the Environment, Council, 2009-present

Expert Witness, Consultation, and Testimony

2001	Testimony on Election Administration, U. S. Senate Committee on Commerce.
2001	Testimony on Voting Equipment, U.S. House Committee on Science, Space, and Technology
2001	Testimony on Voting Equipment, U.S. House Committee on House Administration
2001	Testimony on Voting Equipment, Congressional Black Caucus
2002-2003	*McConnell v. FEC*, 540 U.S. 93 (2003), consultant to the Brennan Center.
2009	Amicus curiae brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U.S. Supreme Court in the case of *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009).
2009	Testimony on Voter Registration, U. S. Senate Committee on Rules.
2011-2015	*Perez v. Perry*, U. S. District Court in the Western District of Texas (No. 5:11-cv-00360). Exert witness on behalf of Rodriguez intervenors.
2011-2013	*State of Texas v. United States,* the U.S. District Court in the District of Columbia (No. 1:11-cv-01303), expert witness on behalf of the Gonzales intervenors.
2012-2013	*State of Texas v. Holder*, U.S. District Court in the District of Columbia (No. 1:12-cv-00128), expert witness on behalf of the United States.
2011-2012	*Guy v. Miller* in U.S. District Court for Nevada (No. 11-OC-00042-1B), expert witness on behalf of the Guy plaintiffs.
2012	*In re Senate Joint Resolution of Legislative Apportionment*, Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490), consultant for the Florida Democratic Party.
2012-2014	*Romo v. Detzner*, Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412), expert witness on behalf of Romo plaintiffs.
2013-2014	*LULAC v. Edwards Aquifer Authority*, U.S. District Court for the Western District of Texas, San Antonio Division (No. 5:12cv620-OLG,), consultant and expert witness on behalf of the City of San Antonio and San Antonio Water District
2013-2014	*Veasey v. Perry*, U. S. District Court for the Southern District of Texas, Corpus

	Christi Division (No. 2:13-cv-00193), consultant and expert witness on behalf of the United States Department of Justice.
2013-2015	*Harris v. McCrory,* U. S. District Court for the Middle District of North Carolina (No. 1:2013cv00949), consultant and expert witness on behalf of the Harris plaintiffs. (later named *Cooper v. Harris*)
2014	Amicus curiae brief, on behalf of neither party, Supreme Court of the United States, *Alabama Democratic Conference v. State of Alabama*.
2014- 2016	*Bethune-Hill v. Virginia State Board of Elections*, U. S. District Court for the Eastern District of Virginia (No. 3:2014cv00852), consultant and expert on behalf of the Bethune-Hill plaintiffs.
2015	Amicus curiae brief in support of Appellees, Supreme Court of the United States, *Evenwell v. Abbott*
2016-2017	*Perez v. Abbott*, U. S. District Court in the Western District of Texas (No. 5:11-cv-00360). Exert witness on behalf of Rodriguez intervenors.
2017-2018	Fish v. Kobach, U. S. District Court in the District of Kansas (No. 2:16-cv-02105-JAR). Expert witness of behalf of the Fish plaintiffs.

16

Exhibit 2

December 4, 2020

Bowyer v. Ducey, **Case No. 2:20-cv-02321-DJH**

United States District Court for the District of Arizona

Expert Report of Jonathan Rodden, PhD

**737 Mayfield Avenue
Stanford, CA 94305**

_____

Jonathan Rodden, PhD

1

I.   INTRODUCTION AND SUMMARY

Yesterday evening, December 3, 2020, I received three declarations, each of which makes rather strong claims to have demonstrated "anomalies" or "irregularities" in the results of the presidential election in Arizona on November 3, 2020. I have been asked by Counsel to assess the validity of their claims. Unfortunately, these reports do not meet basic standards for scientific inquiry. For the most part, they are not based on discernable logical arguments, and they are completely divorced from any existing social science literature. Without any citations to relevant scientific literature about statistics or elections, the authors identify common and easily explained patterns in the 2020 election results, and without explanation, assert that they are somehow "anomalous." Each of these reports lacks even a basic level of clarity or transparency about research methods that would be expected in a scientific communication. As detailed below, each of these reports is based on puzzling but serious mistakes and misunderstandings about how to analyze election data.

II. QUALIFICATIONS

I am currently a tenured Professor of Political Science at Stanford University and the founder and director of the Stanford Spatial Social Science Lab ("the Lab")—a center for research and teaching with a focus on the analysis of geo-spatial

data in the social sciences. In my affiliation with the Lab, I am engaged in a variety of research projects involving large, fine-grained geo-spatial data sets including ballots and election results at the level of polling places, individual records of registered voters, census data, and survey responses. I am also a senior fellow at the Stanford Institute for Economic Policy Research and the Hoover Institution. Prior to my employment at Stanford, I was the Ford Professor of Political Science at the Massachusetts Institute of Technology. I received my Ph.D. from Yale University and my B.A. from the University of Michigan, Ann Arbor, both in political science. A copy of my current C.V. is included as an Appendix to this report.

In my current academic work, I conduct research on the relationship between the patterns of political representation, geographic location of demographic and partisan groups, and the drawing of electoral districts. I have published papers using statistical methods to assess political geography, balloting, and representation in a variety of academic journals including *Statistics and Public Policy*, *Proceedings of the National Academy of Science*, *American Economic Review Papers and Proceedings*, the *Journal of Economic Perspectives*, the *Virginia Law Review*, the *American Journal of Political Science*, the *British Journal of Political Science*, the *Annual Review of Political Science*, and the *Journal of Politics*. One of these papers was recently selected by the American Political Science Association as the winner of the Michael Wallerstein Award for the best paper on political economy published

3

in the last year, and another received an award from the American Political Science Association section on social networks.

I have recently written a series of papers, along with my co-authors, using automated redistricting algorithms to assess partisan gerrymandering. This work has been published in the *Quarterly Journal of Political Science*, *Election Law Journal*, and *Political Analysis*, and it has been featured in more popular publications like the *Wall Street Journal*, the *New York Times*, and *Boston Review*. I have recently completed a book, published by *Basic Books* in June of 2019, on the relationship between political districts, the residential geography of social groups, and their political representation in the United States and other countries that use winner-take-all electoral districts. The book was reviewed in *The New York Times*, *The New York Review of Books*, *Wall Street Journal*, *The Economist*, and *The Atlantic*, among others.

I have expertise in the use of large data sets and geographic information systems (GIS), and conduct research and teaching in the area of applied statistics related to elections. My PhD students frequently take academic and private sector jobs as statisticians and data scientists. I frequently work with geo-coded voter files and other large administrative data sets, including in recent papers published in the *Annals of Internal Medicine* and *The New England Journal of Medicine*. I have developed a national data set of geo-coded precinct-level election results that has

4

been used extensively in policy-oriented research related to redistricting and representation.[1]

I have been accepted and testified as an expert witness in six recent election law cases: *Romo v. Detzner*, No. 2012-CA-000412 (Fla. Cir. Ct. 2012); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, No. 4:2014-CV-02077 (E.D. Mo. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-CV-00357 (E.D. Va. 2015); *Democratic Nat'l Committee et al. v. Hobbs et al.*, No. 16-1065-PHX-DLR (D. Ariz. 2016); *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2014); and *Jacobson et al. v. Lee*, No. 4:18-cv-00262 (N.D. Fla. 2018). I also worked with a coalition of academics to file Amicus Briefs in the Supreme Court in *Gill v. Whitford*, No. 16-1161, and *Rucho v. Common Cause*, No. 18-422. Much of the testimony in these cases had to do with geography, voting, ballots, and election administration. I am being compensated at the rate of $500/hour for my work in this case. My compensation is not dependent upon my conclusions in any way.

III.   DATA SOURCES

I have collected county-level data on presidential elections for each year from 1974 to 2020 from the Arizona Secretary of State, along with yearly county-level data on registration by party in Arizona. I also consulted precinct-level election

---

[1] The dataset can be downloaded at http://projects.iq.harvard.edu/eda/home.

results from Maricopa and Pima counties. I created a national county-level dataset on election results using information assembled from county election administrators by the New York Times and Associated Press, along with demographic data from the 2014-2018 American Community Survey (ACS), as well as the September 2020 county-level unemployment rate from the Bureau of Labor Statistics, and as described in detail below, data on voting technologies used in each U.S. jurisdiction collected by Verified Voting. I have also collected yearly county-level population estimates for Arizona from the U.S. Census Department.

IV.   DO "DOMINION" COUNTIES PRODUCE ANOMALOUS ELECTION RESULTS?

I received a report without a named author that purports to provide empirical analysis suggesting that Joseph Biden received higher vote shares in counties that use voting machines made by the manufacturer Dominion. The language of the report indicates that the author posits a *causal* relationship, whereby certain types of machines are responsible for boosting the Democratic vote share. The data, research design, and analysis are not adequately explained. To the extent the research is explained at all, the design and analyses are flawed in several crucial respects. First, the author relies on idiosyncratic, non-standard statistical techniques that are not suited for the analysis the author wishes to accomplish, and more importantly, the

author appears to rely on a correlation that is driven primarily by cross-state variation, and makes no effort to address a serious causal inference problem.

To demonstrate these problems and conduct a more appropriate analysis, I have created my own dataset of county-level votes from 2008 to 2020, merged with county demographic data from the 2014-2018 American Community Survey (ACS),[2] September 2020 county-level unemployment rate from the Bureau of Labor Statistics, and data on voting technologies used in each jurisdiction collected by Verified Voting.[3] Verified Voting is a "non-partisan organization focused exclusively on the critical role technology plays in election administration" that has developed "the most comprehensive publicly-accessible database of voting systems used around the country."[4] I accessed a dataset showing the various voting systems that were in place for each jurisdiction in 2012, 2016, and 2020.

The report mentions a Chi-Squared Automatic Interaction Detection approach, but provides no details about the analysis or the dataset, and provides no output. This is not a standard technique used in the analysis of election data, and the author provides no explanation of why this unusual approach was selected. The

---

[2] Demographic variables from the ACS include: the age distribution, sex distribution, percent Black, percent Latino, the percent of renters, median household income, percent of the county with a college degree, and percent under the poverty line.

[3] In preparing this this data set and conducting the analysis set forth in this section of the report, I received assitance from William Marble—a advanced PhD candidate in political science at Stanford University. Mr. Marble has worked with me in a similar capacity in the past and it is standard to utilize such assistants in my field of expertise.

[4] https://verifiedvoting.org/about/

7

author presents a scatterplot that seems to be based on a prediction from some kind of statistical model, but the author does not explain anything about the model. The author goes on to mention, in a single sentence, some type of matching analysis. The author provides no details about how the matching analysis was set up, which variables were used, whether the analysis relied on within-state or cross-state variation, and crucially, whether or not it was possible to achieve adequate balance on all of the selected matching variables.

For each of these approaches, the author breezily mentions having conducted some analysis without providing even the slightest details. The normal approach in a scientific communication would be to provide readers with details on what type of empirical model had been chosen and why, which variables were included, how the model performed, and so on. The author also typically provides output for readers to assess, and discusses a variety of robustness checks and sensitivity analyses, so that readers can form judgments about whether the results are sensible, credible, and meaningful.

Since the author provides very few hints about research design, analysis, or data, it is not possible to reconstruct the analysis. Nevertheless, since the relevant data are available, it is worthwhile to assess the author's claim that the introduction of certain types of voting technology, via some unspecified form of fraud, actually has a causal impact on vote shares. We would like to answer the following question:

8

if there are two counties that are otherwise identical in every respect, including their initial type of voting technology, and one switches from some other voting technology to Dominion and the other stays the same, does the switching county exhibit a change in voting behavior relative to the "control" county that stayed the same? In the ideal world, we would conduct an experiment, much like a drug trial, randomly assigning some counties but not others to either the "treatment condition"—the use of Dominion software—or the control condition—the maintenance of the existing system. By randomizing a sufficiently large number of counties to the treatment and control condition, a researcher would be able to anticipate that there are no systematic differences between the treatment and control counties. Above all, we would hope that this randomization would achieve a balance between the two groups, such that prior Democratic or Republican voting would be similar in the two groups, as would other correlates of voting behavior, such as income, race, and education. We would then be able to isolate any possible impact of voting equipment.

Unfortunately, this type of experiment is unavailable to us. Counties and states have adopted voting technology in a way that is far from random. Counties that adopted Dominion systems between 2016 and 2020 are quite different from those that did not. Counties that switched to Dominion systems between 2016 and 2020 have larger shares of female residents, Latino residents, and college-educated

residents, and have lower median incomes. All of these variables are correlated with political attitudes. Moreover, they are likely correlated with *unobservable* variables that also correlate with political attitudes and partisanship.

Even worse, it is clearly the case that Democratic counties have been more likely to adopt Dominion machines than Republican counties. This is demonstrated in Figure 1. The left-hand panel considers all counties in the country, and shows that counties won by Clinton in 2016 were far more likely than counties won by Trump to make use of Dominion technology in 2020. The right-hand panel focuses on counties that were not yet using Dominion technology in 2016, and shows that counties won by Clinton were significantly more likely than counties won by Trump to adopt Dominion technology.

Figure 1: Voting Technology Use in 2020 by County Partisanship

Democratic Counties Are More Likely To Use Dominion
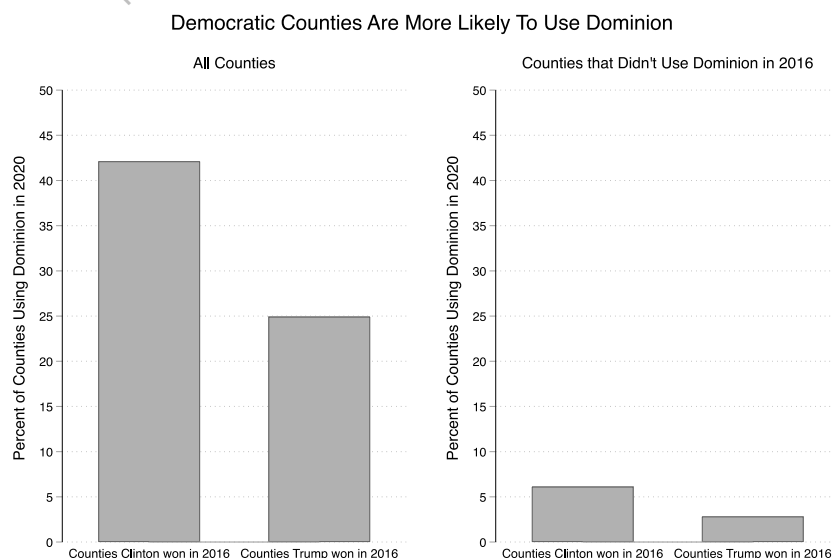
Seven states have adopted Dominion technology across all of their counties, and 20 states have not adopted Dominion technology in any of their counties. The former counties are predominately Democratic, and the latter lean Republican. This can be seen in Figure 2, which plots Hillary Clinton's 2016 statewide vote share on the horizontal axis, and the share of counties using Dominion software in 2020 on the vertical axis. It shows that Dominion software was mostly prominently in use in 2020 in states that were already relatively Democratic in 2016.

Figure 2: Clinton 2016 Vote Share and 2020 Voting Technology
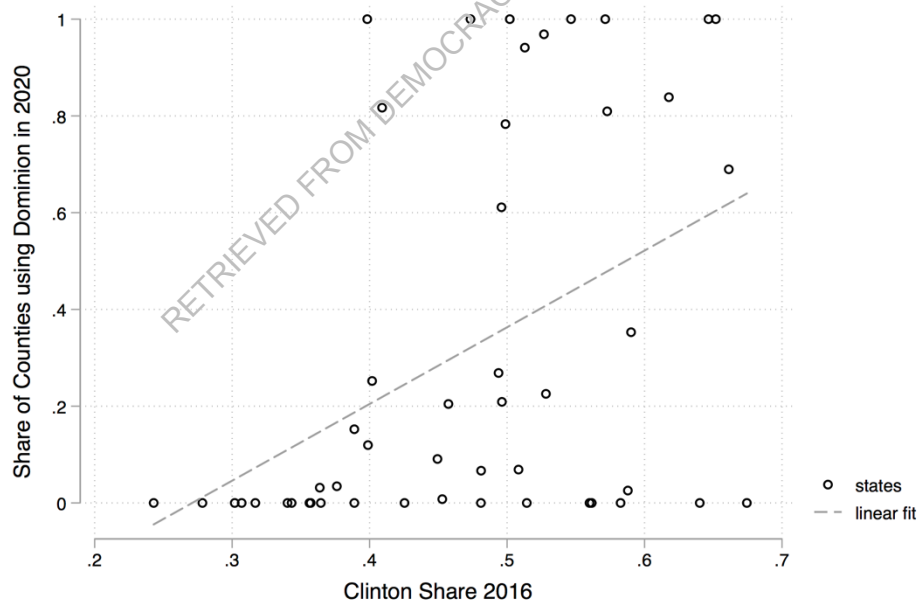
By now it should be clear why the author of the report on Dominion software faces a vexing causal inference problem. If extremely Democratic counties in states like those in New England adopted a certain software in the past, and one examined

11

a contemporary correlation between voting behavior and the use of that technology, that correlation could not plausibly be interpreted as evidence that the technology *caused* the voting outcomes, even if one attempted to control for potential observable confounders like race and income. It is simply not plausible that Connecticut is more Democratic than Wyoming because of its voting technology.

State Fixed Effects Model

The author ignores these complexities altogether, but unfortunately, there is no easy solution to this causal inference problem. At a minimum, we can try to draw inferences from *within* the states where there is variation across counties in voting technology, attempting to control for observable county-level confounders. This can be achieved by estimating a model with "fixed effects" for states. Inclusion of state-level fixed effects allows us to control for a variety of common factors within states that cause there to be a correlation in counties' outcomes within the same state. This does not "solve" the causal inference problem, but at least it allows for more valid comparisons. For this reason, inclusion of fixed effects is standard practice in social science research for this type of study.[5]

---

[5] For example, see Angrist, J., and Pischke, S., *Mostly Harmless Econometrics*. 2009. Princeton, NJ: Princeton University Press.

I estimate a county-level model in which the dependent variable is the 2020 Democratic vote share, and the main independent variable of interest is a binary variable indicating whether the state used Dominion technology in 2020. The model includes a set of demographic control variables, past election results, and state-level fixed effects. The full results are presented in Appendix Table A1. The coefficient capturing the impact of the use of Dominion technology is statistically indistinguishable from zero.

Placebo Test Using Bordering Counties

In sum, when we rely on comparisons of counties within states, there is no evidence that election technology has an impact on vote shares. As mentioned, the author provides no regression output or details about the analysis, but he or she seems to have estimated some sort of regression model. The author makes no mention of having included fixed effects. As one can see in Figure 2 above, it is clear that a naïve empirical model without fixed effects for states would generate the illusion of a relationship between voting technology and election outcomes, simply because Democratic states have been somewhat more likely to purchase Dominion equipment.

A good way to see this is to conduct a "placebo" test in which we examine Biden's vote share in counties that *did not* use Dominion systems, but border a

13

county that *did* use Dominion. If there is an impact of voting software on election outcomes via fraud, it should most certainly not be detected in counties that border the Dominion counties but use some other election technology system. If we see that those counties have elevated Democratic vote shares mimicking the supposed "effect" of Dominion software—what is known as a "placebo" effect—we should be very skeptical about claims that use of the software is associated with increased Democratic voting. Rather, we would understand that the correlation reported by the report's author is driven by some features of the types of regions where Dominion software has been adopted—not the software itself.

The result of this analysis is shown in Appendix Table A2. It shows results of a linear regression of Biden vote share on an indicator variable for whether a county borders a Dominion county. This regression is estimated among counties that did not use Dominion systems, and includes a set of demographic control variables. It shows that Biden received a higher vote share, of about .86 of a percentage point, in counties that border a Dominion county than in those that do not. It would be implausible to claim that voting technology in bordering counties has a causal impact on Biden's vote share. A more plausible interpretation is that there are some common features of politics in the regions that have adopted the software, and the type of research design that appears to have been used in the report is likely to turn up spurious results.

14

Placebo Test Using Prior Election Results

A research strategy designed to estimate the effect of one variable on another variable can be evaluated by its tendency to detect an effect when an effect *does* exist, and its tendency *not* to detect an effect when an effect *does not* exist. When a research design detects an effect when none exists, we say it returned a *false positive.* Designs with a high false positive rate are not very informative: an effect could be detected by the research design due to the existence of a real effect, or it could be a false positive.

We can make a further evaluation of the propensity of the research design the author appears to have used in his or her report to return false positives by seeing whether it detects that *future* events have an "effect" on *past* outcomes. Of course, this is logically impossible -- we know that events happening in the future cannot affect past outcomes. Thus, any effect detected on past outcomes is necessarily a false positive.

In Appendix Table A3, I replicate the basic research design that I believe lies behind the claims in the report. It uses linear regression models, without state fixed effects, to predict Democratic vote share as a function of whether a county used Dominion voting technology in 2020, along with county-level demographic and economic control variables. Except, instead of predicting *2020* vote share, I predict

15

2012 and *2016* vote share. I exclude counties that used Dominion systems at the time of the election being analyzed.

The results indicate that in 2012, in counties that did not use Dominion in 2012 but did use them in 2020, Obama received about 5 to 6 percentage points higher vote share, compared to counties that did not use Dominion machines in either 2012 or 2020. The next column shows a similar pattern for 2016. Future use of Dominion predicts higher Clinton vote share in 2016, even in counties that did not use Dominion in 2016.

These results are false positives: there is no logical way that future use of Dominion voting machines could have affected past outcomes. Instead, these results are due to the fact that counties that used Dominion voting systems in 2020 are politically different than counties that did not, even after controlling for demographic and economic variables. This test shows that the simple type of research design that was breezily described in the report is ill-equipped to detect differences in vote shares that are *caused* by use of particular voting systems. As such, the statistical analysis mentioned in the report provides no evidence of fraud due to use of Dominion voting machines.

V. RAMSLAND REPORT

This report begins with some unsubstantiated claims about Antrim County, Michigan and Dallas County, Texas. These claims are difficult to understand, and

16

they do not seem to include any type of evidence. Next, Mr. Ramsland contends that turnout figures in Pima County and Maricopa County, Arizona are a "red flag," evidently because Mr. Ramsland believes they are too high. Without explanation or citations from the academic literature, he contends that any turnout number above 80 percent is suspicious.

Quite simply, high turnout is not a "red flag" indicating fraud. Turnout was high around the United States in the 2020 election. It was especially high in suburbs and rural areas. The numbers in Arizona are not atypical. In Figure 3 below, I present data on turnout in each presidential election over the last decade in Arizona as a whole, as well as in Maricopa and Pima counties.

Figure 3: Turnout in Arizona as a Whole, and in Maricopa and Pima Counties

17
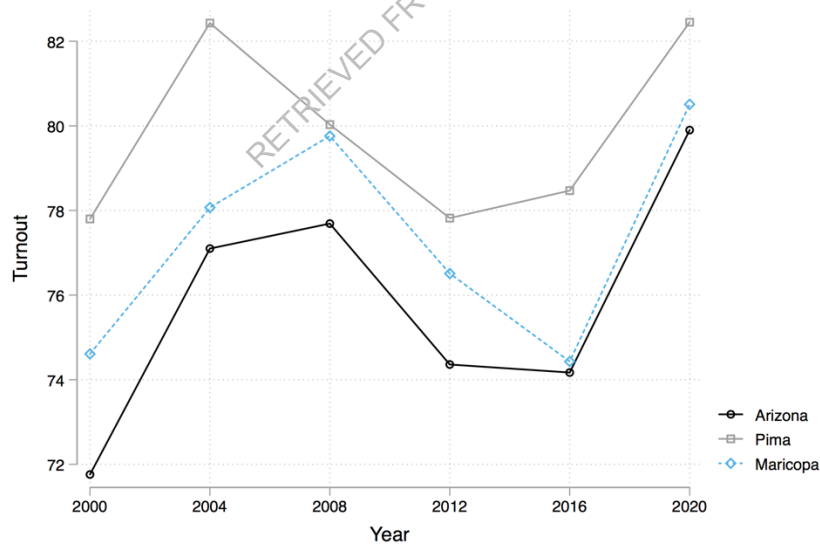
Turnout was indeed higher in Arizona as a whole in 2020, reaching 79.9 percent. This was driven, of course, by Maricopa County, which accounts for the lion's share of the Arizona electorate. As can be seen in Figure 3, Pima County typically has higher turnout than Maricopa, or Arizona as a whole. Turnout in Pima County in 2020 was comparable to that in 2004. In short, there is nothing anomalous or suspicious about turnout in Arizona in 2020, or in the two counties mentioned by Mr. Ramsland.

He goes on to list a series of high-turnout suburban and rural precincts. Many of the rural precincts listed by Mr. Ramsland provided strong support to President Trump, while the suburban precincts were, for the most part, hotly contested but leaned toward Joseph Biden. A similar group of rural and suburban precincts with very high turnout can be found in every state around the United States. It is not clear what this might possibly have to do with election fraud.

Mr. Ramsland then goes on to claim that instead of counting votes in the traditional way, code was activated to use ranked choice voting to tally votes in Arizona's 2020 presidential election. From this discussion, it seems likely that Mr. Ramsland is not familiar with ranked choice voting. It involves a different type of ballot, in which voters rank their preferences among candidates. This type of ballot was not used in Arizona. Even if all of the ballots in Arizona were somehow counted or processed using ranked choice voting, but using ballots that only allowed voters

18

to select one candidate, the result would be the same. Ranked choice voting is a system where in the first round of counting, if one candidate has a majority, the process is over, and no votes are redistributed. If there were multiple candidates and voters' choices were ranked, there would then be a second round, where the lowest-ranked candidate would be dropped, and those voters who ranked that candidate first would then have their second-choice votes tallied. But clearly, nothing of the sort happened in Arizona. Jo Jorgensen, the Libertarian candidate, received a significant number of votes, as did candidates from other parties and write-in candidates.

Finally, Mr. Ramsland concludes with some ideas about votes being "injected" at various times during the counting process. It appears that while watching election returns as they were released by a polling firm called Edison Research, Mr. Ramsland became concerned that votes were reported in bunches throughout the evening. It is not clear how the timing of data releases by Edison Research might be related to election fraud.

VI.   KESHEL REPORT

Like Mr. Ramsland, Mr. Keshel also takes issue with Arizona's election result. He characterizes the result as a "substantial deviance from statistical norms and results regarding voting patterns in Arizona" (paragraph 4). He does not explain what "statistical norms" he considers, and cites no literature about how one might

19

go about identifying such a thing. Mr. Keshel's concern, evidently, is that Mr. Biden's gains were too high. To the extent that he identifies a method of analysis, he appears to claim that if a party has won frequently in a geographic place in the past, as the Republican Party has in Maricopa County, it is suspicious if that party loses support. Evidently Mr. Keshel would be suspicious about a number of outcomes in U.S. election, including the increase in support for the Republican Party in the industrial Midwest in 2016, or the rather striking increase in votes for President Trump in several Hispanic counties in Florida and Texas in 2020. Especially in the presence of a controversial incumbent, changing political fortunes for a party in a particular geographic area are quite normal, and are not viewed by election analysts as evidence of fraud.

Another claim made by Mr. Keshel is that a party should show "proper progression in keeping with historic party registration trends" (paragraph 15). He does not explain his method for empirically measuring this "proper progression," but in Arizona, party registration numbers are not remotely useful for this purpose. Figure 4 helps explain why. It plots Democrats as a share of total registrants (in blue), as well as Republicans as a share of total registrants (in red).

20

Figure 4: Party Registration Over Time in Maricopa County, AZ
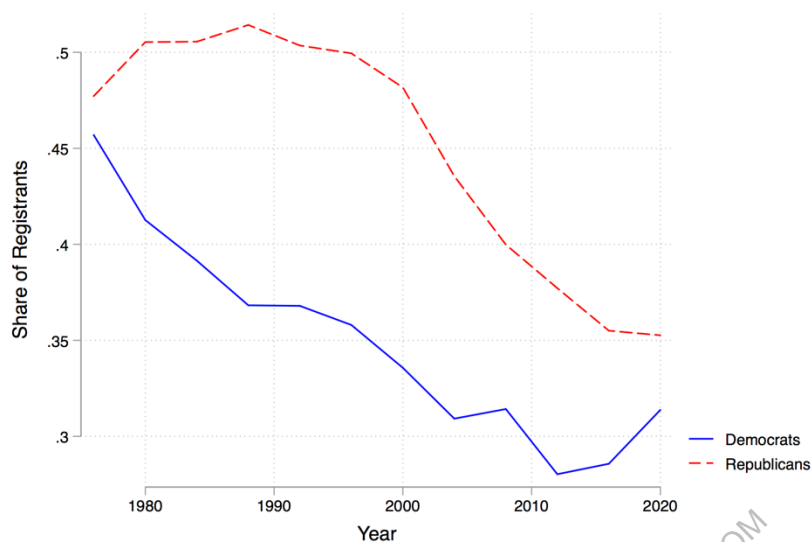
Democrats and Republicans are both falling dramatically as a share of total registrants, as increasing numbers of voters decline to register with one of the two major parties. But the two major parties continue to virtually monopolize votes for president and other offices. In other words, neither party is "in keeping with historic party registration trends." Much of the battle in Maricopa County is over the large number of voters who are not registered with either party.

In any case, as with turnout, it is difficult to characterize Arizona's 2020 election result, or that of Maricopa County in particular, as anomalous. Figure 5 simply plots Democratic and Republican votes over time in Maricopa County.

**Figure 5: Votes for Democratic and Republican Presidential Candidates Over Time, Maricopa County, AZ**
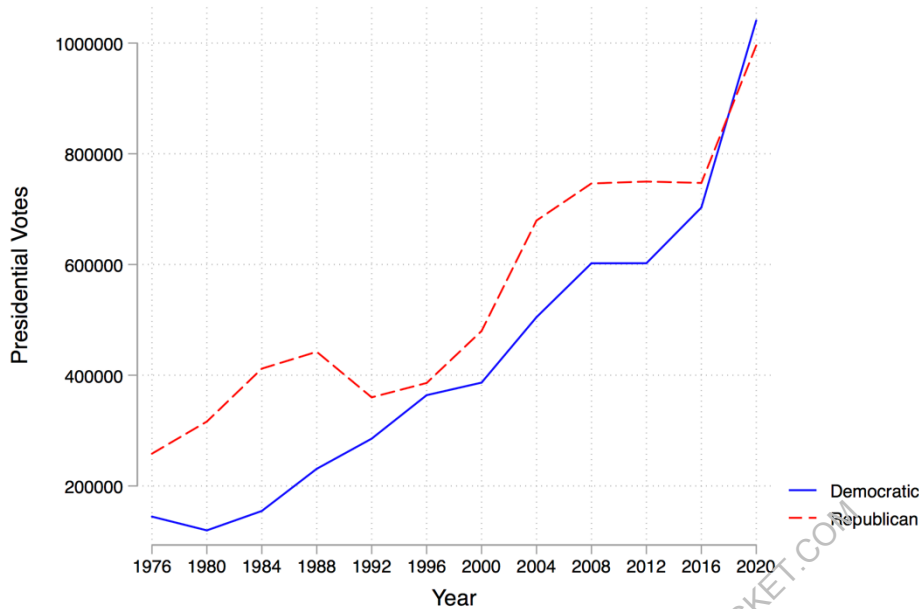
The rapid growth in votes cast for both parties is a function of Maricopa County's rapid growth, fueled by in-migration from other states. Cross-state migrants to places like Maricopa County are typically college-educated young people—a group that has in recent years become a core constituency of the Democratic Party. As a result, the most rapidly growing counties in the United States are also quickly becoming more Democratic.[6] As Maricopa County has become more educated and diverse, the growth in the blue line has caught up with the growth of the red line in Figure 5. Much of the gap had already been closed by 2016, and it is not surprising that, through the continuation of the trend of in-migration and strong turnout, the blue line finally surpassed the red line in 2020.

---

[6] Jonathan Rodden, 2019, *Why Cities Lose: The Deep Roots of the Urban-Rural Divide*. New York: Basic Books.

Finally, Mr. Keshel believes that Maricopa County is an outlier in the extent to which it has experienced the above-mentioned combination of increased population and increased Democratic voting. This is not the case. Let us examine other states where in-migration of educated young people to sprawling suburbs is changing the political complexion of the state: Texas, Georgia, and North Carolina.

In Figure 6, I plot the change in Trump vote margin from 2016 to 2020 on the vertical axis, so that a positive number indicates that Trump's performance *improved*, and a negative number indicates that it *declined*. On the horizontal axis is average yearly net in-migration, calculated by the census department, from the years 2010 to 2019. The observations are counties. I include identical graphs for Arizona, Texas, Georgia, and North Carolina—all states that have thriving, growing metro areas with strong labor markets and affordable suburbs that are attracting migrants from around the United States. Note that the only thing different about the graphs for each state is the horizontal axis. It goes all the way beyond 40,000 for Arizona. For Texas, the scale stops at 20,0000, and the other states at even lower values. If I did not allow the horizontal axis to vary for Arizona, it would be literally off the charts. This graph clarifies that the population growth of Maricopa County, driven by in-migration, is very unique. According to census estimates, Maricopa County gained 63,000 residents in 2019 alone.

23

Figure 6: Net Migration and Change in Presidential Voting Behavior, 2016 to 2020, Counties of Arizona, Texas, Georgia, and North Carolina
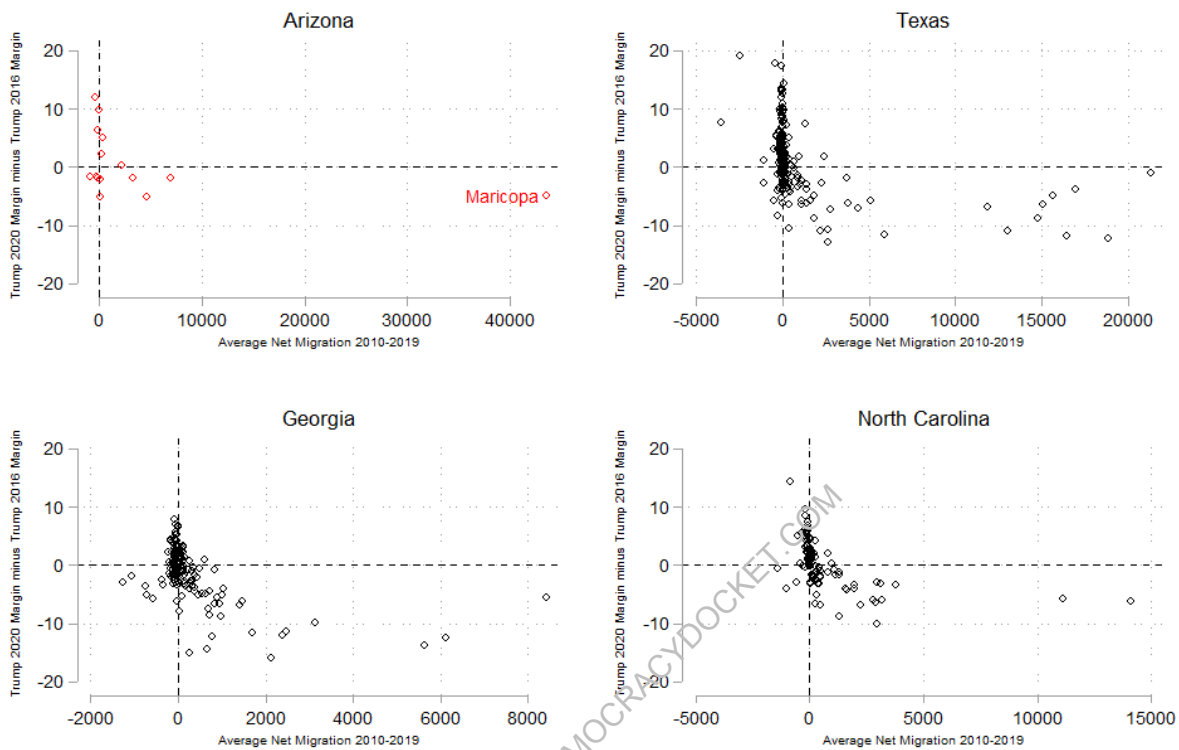
As we can see on the graph, in every one of these states, rapidly growing counties like Maricopa moved toward the Democratic presidential candidate from 2016 to 2020. Every single county that experienced substantial growth can be found in the lower right-hand corner of the graph for its state, where Biden out-performed Clinton—often by a wide margin. In fact, given its extreme level of growth, Maricopa is something of an outlier in that it did not swing *further* toward the Democratic presidential candidate. Note that most of the high-growth counties in Texas and Georgia moved further in a Democratic direction than did Maricopa.

24

It is also useful to note that Trump experienced large increases in vote share in many of the counties where population growth is either stagnant or where out-migration is occurring (on the left side of the graph). In some cases, these vote shifts are substantial. In fact, in order to make the data fit on the graphs, some of the declining, majority-Latino counties in Texas where Trump made extremely large gains had to be left off. If one adopts Mr. Keshel's faulty logic—whereby large vote gains are indicative of fraud—one would need to look at some of these declining rural counties, where in several states, the shift in voting was more dramatic than in the growing suburban counties. But to be clear, this argument is flawed: voting can and does shift among social groups in response to policies and behavior or incumbents as well as platforms of candidates.

In sum, Mr. Keshel has provided no evidence whatsoever that would be indicative, or even suggestive, of fraud in Arizona.

VII.   CONCLUSION

In conclusion, these reports do not take a scientific approach to the questions they address. They are completely disconnected from the wealth of knowledge about elections and statistics that has been accumulated in the scholarly literature. They feature vague and illogical stories about "anomalies" that, upon basic confrontation with context, logic, and data, turn out not to be anomalies at all, but mere descriptions

of patterns of historical and contemporary election results that are already well known to scholars and pundits alike. They contain no evidence of fraud or irregularities in the election results of 2020 in Arizona or anywhere else.

Appendix

Table A1: Fixed Effects Model, County-Level Democratic Vote Share in 2020

	Dem vote share, 2020
Dominion 2020	0.031
	(0.25)
Hart 2020	-0.014
	(0.08)
female	-0.003
	(0.18)
Black	0.022
	(2.57)*
Latino	-0.078
	(9.43)**
College	0.086
	(7.31)**
Age 25-34	0.014
	(0.52)
Age 35-44	0.074
	(2.56)*
Age 45-54	-0.028
	(0.85)
Age 55-64	0.123
	(4.16)**
Age 65 and over	-0.030
	(1.63)
Median income	-0.016
	(1.79)
Poverty rate	-0.003
	(0.16)
Unemployment rate	-0.140
	(3.73)**
Renter share	-0.011
	(0.88)
Share urban	0.019
	(7.81)**
Log population density	0.240
	(3.54)**
Dem. vote share 2016	1.047
	(51.38)**
Dem. vote share 2012	-0.093
	(3.76)**
Dem. vote share 2008	-0.026
	(1.43)
Constant	0.465
	(0.26)
R^2	0.99

27

28

N	3,110

$* \ p{<}0.05; ** \ p{<}0.01$

Table A2: Border Placebo Analysis

	Dem vote share, 2020
Dominion 2020	0.855*
	(1.96)
Hart 2020	-3.860
	(6.97)**
female	0.067
	(0.60)
Black	0.389
	(16.44)**
Latino	0.148
	(5.00)**
College	0.746
	(13.81)**
Age 25-34	-0.238
	(1.53)
Age 35-44	-0.504
	(3.03)**
Age 45-54	0.060
	(0.33)
Age 55-64	0.738
	(3.70)**
Age 65 and over	-0.231
	(2.43)*
Median income	0.156
	(3.05)**
Poverty rate	0.564
	(5.58)**
Unemployment rate	0.901
	(6.10)**
Renter share	0.274
	(4.56)**
Share urban	0.014
	(1.04)
Log population density	1.812
	(7.04)**
Constant	-25.082
	(2.43)*
R^2	0.68
N	1,846

* $p<0.05$; ** $p<0.01$

Table A3: Previous Election Placebo Analysis

	2012 Dem vote share	2016 Dem vote share
2020 Dominion	5.605	3.310
	(1.241)**	(1.358)*
female	0.400	0.198
	(0.131)**	(0.113)
Black	0.352	0.466
	(0.024)**	(0.021)**
Latino	0.143	0.258
	(0.034)**	(0.031)**
College	0.331	0.660
	(0.061)**	(0.054)**
Age 25-34	-0.411	-0.254
	(0.177)*	(0.153)
Age 35-44	-0.799	-0.576
	(0.194)**	(0.168)**
Age 45-54	0.272	0.269
	(0.225)	(0.198)
Age 55-64	0.842	0.850
	(0.235)**	(0.206)**
Age 65 and over	-0.117	-0.033
	(0.120)	(0.100)
Median income	0.152	0.150
	(0.061)*	(0.050)**
Poverty rate	0.656	0.671
	(0.108)**	(0.098)**
Renter share	0.325	0.337
	(0.077)**	(0.068)**
Share urban	0.008	0.006
	(0.016)	(0.013)
Log population density	2.444	2.387
	(0.276)**	(0.246)**
Constant	-29.495	-41.937
	(12.358)*	(10.381)**
R^2	0.39	0.61
N	1,946	2,097

*p<0.05; ** p<0.01*

30

Jonathan Rodden

Stanford University
Department of Political Science   Phone: (650) 723-5219
Encina Hall Central   Fax: (650) 723-1808
616 Serra Street   Email: jrodden@stanford.edu
Stanford, CA 94305

Personal

Born on August 18. 1971, St. Louis, MO.

United States Citizen.

Education

Ph.D. Political Science, Yale University, 2000.

Fulbright Scholar, University of Leipzig, Germany, 1993–1994.

B.A., Political Science, University of Michigan, 1993.

Academic Positions

Professor, Department of Political Science, Stanford University, 2012–present.

Senior Fellow, Hoover Institution, Stanford University, 2012–present.

Senior Fellow, Stanford Institute for Economic Policy Research, 2020–present.

Director, Spatial Social Science Lab, Stanford University, 2012–present.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, 2010–2012.

Associate Professor, Department of Political Science, Stanford University, 2007–2012.

Fellow, Center for Advanced Study in the Behavioral Sciences, Palo Alto, CA, 2006–2007.

Ford Career Development Associate Professor of Political Science, MIT, 2003–2006.

Visiting Scholar, Center for Basic Research in the Social Sciences, Harvard University, 2004.

Assistant Professor of Political Science, MIT, 1999–2003.

Instructor, Department of Political Science and School of Management, Yale University, 1997–1999.

Publications

Books

Why Cities Lose: The Deep Roots of the Urban-Rural Divide. Basic Books, 2019.

Decentralized Governance and Accountability: Academic Research and the Future of Donor Programming. Co-edited with Erik Wibbels, Cambridge University Press, 2019.

Hamilton's Paradox: The Promise and Peril of Fiscal Federalism, Cambridge University Press, 2006. Winner, Gregory Luebbert Award for Best Book in Comparative Politics, 2007.

Fiscal Decentralization and the Challenge of Hard Budget Constraints, MIT Press, 2003. Co-edited with Gunnar Eskeland and Jennie Litvack.

Peer Reviewed Journal Articles

Partisan Dislocation: A Precinct-Level Measure of Representation and Gerrymandering, 2020, *Political Analysis* forthcoming (with Daryl DeFord Nick Eubank).

Who is my Neighbor? The Spatial Efficiency of Partisanship, 2020, *Statistics and Public Policy* (with Nick Eubank).

Handgun Ownership and Suicide in California, 2020, *New England Journal of Medicine* 382:2220-2229 (with David M. Studdert, Yifan Zhang, Sonja A. Swanson, Lea Prince, Erin E. Holsinger, Matthew J. Spittal, Garen J. Wintemute, and Matthew Miller).

Viral Voting: Social Networks and Political Participation, 2020, *Quarterly Journal of Political Science* (with Nick Eubank, Guy Grossman, and Melina Platas).

It Takes a Village: Peer Effects and Externalities in Technology Adoption, 2020, *American Journal of Political Science* (with Romain Ferrali, Guy Grossman, and Melina Platas). Winner, 2020 Best Conference Paper Award, American Political Science Association Network Section.

Assembly of the LongSHOT Cohort: Public Record Linkage on a Grand Scale, 2019, *Injury Prevention* (with Yifan Zhang, Erin Holsinger, Lea Prince, Sonja Swanson, Matthew Miller, Garen Wintemute, and David Studdert).

Crowdsourcing Accountability: ICT for Service Delivery, 2018, *World Development* 112: 74-87 (with Guy Grossman and Melina Platas).

Geography, Uncertainty, and Polarization, 2018, *Political Science Research and Methods* doi:10.1017/psrm.2018.12 (with Nolan McCarty, Boris Shor, Chris Tausanovitch, and Chris Warshaw).

Handgun Acquisitions in California after Two Mass Shootings, 2017, *Annals of Internal Medicine* 166(10):698-706. (with David Studdert, Yifan Zhang, Rob Hyndman, and Garen Wintemute).

Cutting Through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders, 2015, *Election Law Journal* 14,4:1-15 (with Jowei Chen).

The Achilles Heel of Plurality Systems: Geography and Representation in Multi-Party Democracies, 2015, *American Journal of Political Science* 59,4: 789-805 (with Ernesto Calvo). Winner, Michael Wallerstein Award for best paper in political economy, American Political Science Association.

Why has U.S. Policy Uncertainty Risen Since 1960?, 2014, *American Economic Review: Papers and Proceedings* May 2014 (with Nicholas Bloom, Brandice Canes-Wrone, Scott Baker, and Steven Davis).

Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures, 2013, *Quarterly Journal of Political Science* 8: 239-269 (with Jowei Chen).

How Should We Measure District-Level Public Opinion on Individual Issues?, 2012, *Journal of Politics* 74, 1: 203-219 (with Chris Warshaw).

Representation and Redistribution in Federations, 2011, *Proceedings of the National Academy of Sciences* 108, 21:8601-8604 (with Tiberiu Dragu).

Dual Accountability and the Nationalization of Party Competition: Evidence from Four Federatons, 2011, *Party Politics* 17, 5: 629-653 (with Erik Wibbels).

The Geographic Distribution of Political Preferences, 2010, *Annual Review of Political Science* 13: 297–340.

Fiscal Decentralization and the Business Cycle: An Empirical Study of Seven Federations, 2009, *Economics and Politics* 22,1: 37–67 (with Erik Wibbels).

Getting into the Game: Legislative Bargaining, Distributive Politics, and EU Enlargement, 2009, *Public Finance and Management* 9, 4 (with Deniz Aksoy).

The Strength of Issues: Using Multiple Measures to Gauge Preference Stability, Ideological Constraint, and Issue Voting, 2008. *American Political Science Review* 102, 2: 215–232 (with Stephen Ansolabehere and James Snyder).

Does Religion Distract the Poor? Income and Issue Voting Around the World, 2008, *Comparative Political Studies* 41, 4: 437–476 (with Ana Lorena De La O).

Purple America, 2006, *Journal of Economic Perspectives* 20,2 (Spring): 97–118 (with Stephen Ansolabehere and James Snyder).

Economic Geography and Economic Voting: Evidence from the U.S. States, 2006, *British Journal of Political Science* 36, 3: 527–47 (with Michael Ebeid).

Distributive Politics in a Federation: Electoral Strategies, Legislative Bargaining, and Government Coalitions, 2004, *Dados* 47, 3 (with Marta Arretche, in Portuguese).

Comparative Federalism and Decentralization: On Meaning and Measurement, 2004, *Comparative Politics* 36, 4: 481-500. (Portuguese version, 2005, in *Revista de Sociologia e Politica* 25).

Reviving Leviathan: Fiscal Federalism and the Growth of Government, 2003, *International Organization* 57 (Fall), 695–729.

Beyond the Fiction of Federalism: Macroeconomic Management in Multi-tiered Systems, 2003, *World Politics* 54, 4 (July): 494–531 (with Erik Wibbels).

The Dilemma of Fiscal Federalism: Grants and Fiscal Performance around the World, 2002, *American Journal of Political Science* 46(3): 670–687.

Strength in Numbers: Representation and Redistribution in the European Union, 2002, *European Union Politics* 3, 2: 151–175.

Does Federalism Preserve Markets? *Virginia Law Review* 83, 7 (with Susan Rose-Ackerman). Spanish version, 1999, in *Quorum* 68.

Working Papers

Federalism and Inter-regional Redistribution, Working Paper 2009/3, Institut d'Economia de Barcelona.

Representation and Regional Redistribution in Federations, Working Paper 2010/16, Institut d'Economia de Barcelona (with Tiberiu Dragu).

Chapters in Books

Political Geography and Representation: A Case Study of Districting in Pennsylvania (with Thomas Weighill), forthcoming 2021.

Decentralized Rule and Revenue, 2019, in Jonathan Rodden and Erik Wibbels, eds., *Decentralized Governance and Accountability*, Cambridge University Press.

Geography and Gridlock in the United States, 2014, in Nathaniel Persily, ed. *Solutions to Political Polarization in America*, Cambridge University Press.

Can Market Discipline Survive in the U.S. Federation?, 2013, in Daniel Nadler and Paul Peterson, eds, *The Global Debt Crisis: Haunting U.S. and European Federalism*, Brookings Press.

Market Discipline and U.S. Federalism, 2012, in Peter Conti-Brown and David A. Skeel, Jr., eds, *When States Go Broke: The Origins, Context, and Solutions for the American States in Fiscal Crisis*, Cambridge University Press.

Federalism and Inter-Regional Redistribution, 2010, in Nuria Bosch, Marta Espasa, and Albert Sole Olle, eds., *The Political Economy of Inter-Regional Fiscal Flows*, Edward Elgar.

Back to the Future: Endogenous Institutions and Comparative Politics, 2009, in Mark Lichbach and Alan Zuckerman, eds., *Comparative Politics: Rationality, Culture, and Structure* (Second Edition), Cambridge University Press.

The Political Economy of Federalism, 2006, in Barry Weingast and Donald Wittman, eds., *Oxford Handbook of Political Economy*, Oxford University Press.

Fiscal Discipline in Federations: Germany and the EMU, 2006, in Peter Wierts, Servaas Deroose, Elena Flores and Alessandro Turrini, eds., *Fiscal Policy Surveillance in Europe*, Palgrave MacMillan.

The Political Economy of Pro-cyclical Decentralised Finance (with Erik Wibbels), 2006, in Peter Wierts, Servaas Deroose, Elena Flores and Alessandro Turrini, eds., *Fiscal Policy Surveillance in Europe*, Palgrave MacMillan.

Globalization and Fiscal Decentralization, (with Geoffrey Garrett), 2003, in Miles Kahler and David Lake, eds., *Governance in a Global Economy: Political Authority in Transition*, Princeton University Press: 87-109. (Updated version, 2007, in David Cameron, Gustav Ranis, and Annalisa Zinn, eds., *Globalization and Self-Determination: Is the Nation-State under Siege?* Routledge.)

Introduction and Overview (Chapter 1), 2003, in Rodden et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Soft Budget Constraints and German Federalism (Chapter 5), 2003, in Rodden, et al, *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Federalism and Bailouts in Brazil (Chapter 7), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Lessons and Conclusions (Chapter 13), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Online Interactive Visualization

Stanford Election Atlas, 2012 (collaboration with Stephen Ansolabehere at Harvard and Jim Herries at ESRI)

Other Publications

How America's Urban-Rural Divide has Shaped the Pandemic, 2020, *Foreign Affairs*, April 20, 2020.

An Evolutionary Path for the European Monetary Fund? A Comparative Perspective, 2017, Briefing paper for the Economic and Financial Affairs Committee of the European Parliament.

Representation and Regional Redistribution in Federations: A Research Report, 2009, in *World Report on Fiscal Federalism*, Institut d'Economia de Barcelona.

On the Migration of Fiscal Sovereignty, 2004, *PS: Political Science and Politics* July, 2004: 427–431.

Decentralization and the Challenge of Hard Budget Constraints, *PREM Note* 41, Poverty Reduction and Economic Management Unit, World Bank, Washington, D.C. (July).

Decentralization and Hard Budget Constraints, *APSA-CP* (Newsletter of the Organized Section in Comparative Politics, American Political Science Association) 11.1 (with Jennie Litvack).

Book Review of *The Government of Money* by Peter Johnson, *Comparative Political Studies* 32,7: 897-900.

Fellowships and Honors

Fund for a Safer Future, Longitudinal Study of Handgun Ownership and Transfer (LongSHOT), GA004696, 2017-2018.

Stanford Institute for Innovation in Developing Economies, Innovation and Entrepreneurship research grant, 2015.

Michael Wallerstein Award for best paper in political economy, American Political Science Association, 2016.

Common Cause Gerrymandering Standard Writing Competition, 2015.

General support grant from the Hewlett Foundation for Spatial Social Science Lab, 2014.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2012.

Sloan Foundation, grant for assembly of geo-referenced precinct-level electoral data set (with Stephen Ansolabehere and James Snyder), 2009-2011.

Hoagland Award Fund for Innovations in Undergraduate Teaching, Stanford University, 2009.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, beginning Fall 2010.

Research Grant on Fiscal Federalism, Institut d'Economia de Barcelona, 2009.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2008.

United Postal Service Foundation grant for study of the spatial distribution of income in cities, 2008.

Gregory Luebbert Award for Best Book in Comparative Politics, 2007.

Fellow, Center for Advanced Study in the Behavioral Sciences, 2006-2007.

National Science Foundation grant for assembly of cross-national provincial-level dataset on elections, public finance, and government composition, 2003-2004 (with Erik Wibbels).

MIT Dean's Fund and School of Humanities, Arts, and Social Sciences Research Funds.

Funding from DAAD (German Academic Exchange Service), MIT, and Harvard EU Center to organize the conference, "European Fiscal Federalism in Comparative Perspective," held at Harvard University, November 4, 2000.

Canadian Studies Fellowship (Canadian Federal Government), 1996-1997.

Prize Teaching Fellowship, Yale University, 1998-1999.

Fulbright Grant, University of Leipzig, Germany, 1993-1994.

Michigan Association of Governing Boards Award, one of two top graduating students at the University of Michigan, 1993.

W. J. Bryan Prize, top graduating senior in political science department at the University of Michigan, 1993.

Other Professional Activities

International Advisory Committee, Center for Metropolitan Studies, Sao Paulo, Brazil, 2006–2010.

Selection committee, Mancur Olson Prize awarded by the American Political Science Association Political Economy Section for the best dissertation in the field of political economy.

Selection committee, Gregory Luebbert Best Book Award.

Selection committee, William Anderson Prize, awarded by the American Political Science Association for the best dissertation in the field of federalism and intergovernmental relations.

Courses

Undergraduate

Politics, Economics, and Democracy

Introduction to Comparative Politics

Introduction to Political Science

Political Science Scope and Methods

Institutional Economics

Spatial Approaches to Social Science

Graduate

Political Economy of Institutions

Federalism and Fiscal Decentralization

Politics and Geography

Consulting

2017. Economic and Financial Affairs Committee of the European Parliament.

2016. Briefing paper for the World Bank on fiscal federalism in Brazil.

2013-2018: Principal Investigator, SMS for Better Governance (a collaborative project involving USAID, Social Impact, and UNICEF in Arua, Uganda).

2019: Written expert testimony in *McLemore, Holmes, Robinson, and Woullard v. Hosemann*, United States District Court, Mississippi.

2019: Expert witness in *Nancy Corola Jacobson v. Detzner*, United States District Court, Florida.

2018: Written expert testimony in *League of Women Voters of Florida v. Detzner* No. 4:18-cv-002510, United States District Court, Florida.

2018: Written expert testimony in *College Democrats of the University of Michigan, et al. v. Johnson, et al.*, United States District Court for the Eastern District of Michigan.

2017: Expert witness in *Bethune-Hill v. Virginia Board of Elections*, No. 3:14-CV-00852, United States District Court for the Eastern District of Virginia.

2017: Expert witness in *Arizona Democratic Party, et al. v. Reagan, et al.*, No. 2:16-CV-01065, United States District Court for Arizona.

2016: Expert witness in *Lee v. Virginia Board of Elections*, 3:15-cv-357, United States District Court for the Eastern District of Virginia, Richmond Division.

2016: Expert witness in *Missouri NAACP v. Ferguson-Florissant School District*, United States District Court for the Eastern District of Missouri, Eastern Division.

2014-2015: Written expert testimony in *League of Women Voters of Florida et al. v. Detzner, et al.*, 2012-CA-002842 in Florida Circuit Court, Leon County (Florida Senate redistricting case).

2013-2014: Expert witness in *Romo v Detzner*, 2012-CA-000412 in Florida Curcuit Court, Leon County (Florida Congressional redistricting case).

2011-2014: Consultation with investment groups and hedge funds on European debt crisis.

2011-2014: Lead Outcome Expert, Democracy and Governance, USAID and Social Impact.

2010: USAID, Review of USAID analysis of decentralization in Africa.

2006–2009: World Bank, Independent Evaluations Group. Undertook evaluations of World Bank decentralization and safety net programs.

2008–2011: International Monetary Fund Institute. Designed and taught course on fiscal federalism.

1998–2003: World Bank, Poverty Reduction and Economic Management Unit. Consultant for *World Development Report*, lecturer for training courses, participant in working group for assembly of decentralization data, director of multi-country study of fiscal discipline in decentralized countries, collaborator on review of subnational adjustment lending.

Last updated: October 19, 2020

Exhibit 3

A   Overview

1   I have been engaged by Defendant-Intervenors' Counsel *Perkins Coie LLP* to write an expert report in the matter of *Bowyer et al. v. Ducey et al.* Counsel requested that I evaluate the contention in "Declaration of Matthew Bromberg Ph.D" (hereinafter, the Bromberg Declaration, dated December 1, 2020 and filed on December 2, 2020) that there was "vote switching" in Maricopa County, Arizona, in the 2020 presidential election that favored Democratic candidate for president Joe Biden at the expense of Republican candidate Donald Trump. Counsel requested as well that I offer a brief evaluation of the claims in the Bromberg Declaration about fraudulent votes cast in the 2020 presidential election beyond Arizona, namely, in Georgia, Pennsylvania, and Milwaukee, Wisconsin.

2   The 2020 General Election took place on November 3, 2020. In the race in Arizona for the office of President of the United States, the Arizona Secretary of State has certified that Democratic candidate Joe Biden received 1,672,143 votes and Republican candidate Donald Trump, 1,661,686 votes. This constitutes a margin of 10,457 votes.[1]

3   As of the writing of this expert report, Matthew Bromberg, the author of the Bromberg Declaration, has to the best of my knowledge disclosed neither the data not the computer code he used in the process of producing his declaration. I accordingly reserve the right to supplement this report in light of any disclosures that he puts forward in the future.

B   Summary of conclusions

I.   The Bromberg Declaration offers no evidence of voter fraud—and in particular vote switching from Donald Trump to Joe Biden—in Maricopa County, Arizona during the 2020 presidential election.

---

[1]See "President of the United States," *Arizona Secretary of State*, available at `https://results.arizona.vote/#/featured/18/0` (last accessed December 4, 2020).

1

II.   There is no basis for the key theory in the Bromberg Declaration that voting precincts in Maricopa County with relatively few voters were more susceptible to voter fraud than precincts with greater numbers of voters. This theory does not appear in the literature on voter fraud and there is no evidence presented in the Bromberg Declaration in support of it. Lacking this theory, the Bromberg Declaration cannot say anything about voter fraud in Maricopa County in the 2020 election.

III.   The Bromberg Declaration misunderstands how in-person voters in Maricopa County cast their ballots in the 2020 election. In this election, the county used voting centers on Election Day. Each eligible voter in Maricopa County could use any of the county's 175 centers to cast an in-person ballot. Maricopa County's in-person voters in this election, that is, were *not* restricted to voting in the polling places associated with their precincts, of which there were 744. The total number of presidential votes cast by the voters who belong to any given precinct in Maricopa County thus has no implication for how many ballots were physically cast in it on November 3, 2020. Therefore, the theory putatively offered in the Bromberg Declaration about the susceptibility to voter fraud of Maricopa County precincts with relatively few voters is of absolutely no relevance to the 2020 presidential race in the county and in fact to any races contested in the 2020 election.

IV.   When voters in Maricopa County are aggregated at the precinct level (which ignores the matter of *where* these individuals cast their ballots in the 2020 election), the results of the presidential race bear strong similarity to the results of the race for a seat in the United States Senate. The precincts in which Joe Biden did well are also precincts in which Mark Kelly, Democratic candidate for Senate, did well, and vice versa. This implies that the pattern in Maricopa County precincts that was noted in the Bromberg Declaration—whereby precincts with smaller numbers of voters tended to have more Biden votes than Trump votes—reflects established political preferences in Maricopa County, not illegal vote switching.

V.   Voter fraud is rare in the United States. Nonetheless, the Bromberg Declaration presents

2

a model that purports to discover significant voter in Georgia, Pennsylvania, and Milwaukee, Wisconsin. The model assumes that when a ballot is counted is uncorrelated with the presidential vote on it. This is known not to be the case. Thus, the claims in the Bromberg Declaration about voter fraud beyond Arizona do not follow from the arguments made in it.

C   Organization of this report

4   In the next section of this report, I present my qualifications.

5   I then summarize literature on voter fraud in American elections.

6   Next, I evaluate the analysis of Maricopa County presented in the Bromberg Declaration.

7   Finally, I briefly discuss claims about voter fraud made in the Bromberg Declaration that extend beyond Arizona.

D   Qualifications

8   I am the William Clinton Story Remsen 1943 Professor of Government at Dartmouth College in Hanover, New Hampshire and from 2015 to 2020 was Chair of the Program in Quantitative Social Science. I have taught at Dartmouth since 2003 and previously was on the faculty of Northwestern University. I have served as a visiting professor at Harvard University (July 2008–January 2009), the University of Rochester (September 2006–December 2006), and the Hertie School of Governance in Berlin (August 2011–August 2012). I have also served as a visiting scholar at the Hertie School of Governance (August 2016–July 2017).

9   In January 1998, I received a doctorate in the field of Political Economy from the Graduate School of Business at Stanford University. I also have a master's degree in statistics from

3

Stanford University (June 1995), a master's degree in political science from the University of Dayton (August 1992), and a bachelor's degree in mathematics and economics from Carnegie-Mellon University (May 1989).

10   I have published many scholarly articles on election administration and American elections, three such articles in 2019 and two in 2018. Among other subjects, I have written on the effects of ballot formats, patterns in invalid votes, the availability of early voting, and polling place congestion. My articles rely on statistical analyses, and my ongoing research agenda focuses heavily on issues in election administration.

11   I have published over 20 articles in peer-reviewed political science journals, including in the field's top general journals (*American Political Science Review*, *American Journal of Political Science*, and *Journal of Politics*). I have published in specialty journals as well (*Election Law Journal*, *American Politics Research*, and *Legislative Studies Quarterly*).

12   I have published two articles on voter fraud in American elections. Cottrell, Herron and Westwood (2018) is a statistical study of the allegations made by Donald Trump about voter fraud in the period surrounding the 2016 General Election. It concludes that there is no evidence in support of these allegations. Herron (2019) is an analysis of allegations made after a 2018 election in North Carolina's 9th Congressional District. It concludes that patterns in absentee votes cast in this district were consistent with allegations of absentee ballot fraud.

13   I was a testifying expert for defendants in *Law et al. v. Whitmer et al.* (Case No.: 20 OC 00163 1B) and in *Jennings v. Elections Canvassing Commission of the state of Florida* (2006 WL 4404531 (Fla.Cir.Ct.)) and a testifying expert for plaintiffs in *Alliance for Retired American et al. v. Matthew Dunlap et al.* (DKT NO. CV-20-95), *Michigan Alliance for Retired Americans et al. v. Jocelyn Benson et al.* (Civil Action No. 2020-000108-MM), *League of Women Voters of New Hampshire et al. v. William M. Gardner et al.* (226-2017-CV-433), and *Veasey et al. v. Abbott et al.*

(265 F. Supp. 3d 684 (S.D. Tex. 2017)). In addition, I have written expert reports in approximately 12 other cases relating to aspects of election law and election administration.

14   My written and oral testimony was credited by courts in their written opinions in *Law et al. v. Whitmer et al.*, *Donald J. Trump for President, Inc. v. Stephen Bullock et al.* (Case No.: 6:20-cv-00066-DLC), *League of Women Voters of New Hampshire et al. v. William M. Gardner et al.*, and in *Veasey et al. v. Abbott et al.*. My opinions and testimony have never been found by a court to be unreliable.

15   At the request of counsel working on the litigation "Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District," I submitted a draft of a working paper on North Carolina's 9th Congressional District to the North Carolina State Board of Elections. As to the paper's comparison of absentee ballot candidate support rates in Bladen County, North Carolina, in 2018 to absentee ballot candidate support rates in other counties in North Carolina, in three other states, and in elections that dated back to 2012, the Board wrote, "We find this informa-tion credible."[2] My paper on North Carolina's 9th Congressional District appears in *Election Law Journal*, a peer-reviewed publication (Herron, 2019).

16   My *curriculum vitae* is attached as Appendix A.

17   I am being paid at a rate of $550/hour for work in this litigation. My compensation is contingent neither on the results of the analyses described herein nor on the contents of this report.

E   Voter fraud in the United States

18   To provide context for the breadth of the Bromberg Declaration's claims about fraud, I offer a definition of voter fraud and then review the extensive academic literature on this subject, which

---

[2]The Board's decision, which invalidated the 2018 election in the 9th Congressional District, can be found at `https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/Order_03132019.pdf` (last accessed November 13, 2020).

the Contest ignores.

E.1   Defining voter fraud

19   The study of voter fraud in the United States is part of the field of election administration.

20   For the purposes of this report, I define an instance of voter fraud as *an intentional act of deception aimed at subverting electoral processes*.[3] Instances of voter fraud can include, but are not necessarily limited to, the following behaviors:

Absentee or mail ballot fraud: improperly acquiring and then submitting an absentee or mail ballot or ballots.

Double voting: voting more than once in an election in which this is not permitted.

Election official fraud: improper actions taken by election officials, actions intended to change validly cast votes, or actions taken to affect voter registration records.

Non-citizen voting: participating in a federal election when one is not a citizen of the United States.

Voter impersonation: voting in-person (as opposed to via mail) on an election day in someone else's name, either in the name of a properly registered voter or using the registration records of a fictional individual.

---

[3]The North Carolina State Board of Elections (NCSBE) is responsible for managing elections in North Carolina. Since 2015, it has published a breakdown of voting irregularities that raise questions about election integrity. Referring to instances of potential voter fraud in the 2016 General Election, the NCSBE wrote that, "[Voter] [f]raud, in most cases, is an intent crime that requires prosecutors to show that the voter knowingly committed a crime." See p. 7 of "Post-Election Audit Report," *North Carolina State Board of Elections*, April 21, 2017, available at `https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_ 2016%20General%20Election/Post-Election_Audit_Report.pdf` (last accessed November 15, 2020).

6

21   The above types of voter fraud can in principle be combined. A non-citizen of the United States could during the course of participating in a federal election impersonate a properly registered voter. Or, an individual could vote twice in an election, once using the individual's own (and proper) registration and the second time using a fictional registration.

22   Moreover, each entry in the above list of behaviors should be understood as encompassing a broad range of behaviors. An individual could, hypothetically, execute a double voting fraud by voting twice in one state. Or, such an individual could, hypothetically, vote in more than one state.

23   This list above is neither exclusive nor exhaustive.

24   I list the above types of behaviors because they describe the sorts of actions that, based on my experience with academic literature on the subject, could in principle be characterized as voter fraud. What a court in any state determines is illegal depends, however, on that state's particular laws.

25   It is my general understanding that, for an action to be denoted fraud, it must involve an intent to deceive. In this report, I treat allegations of voter fraud as actual fraud even where I cannot determine if there was an intent to deceive. To that extent that I do this, my report is over-inclusive with respect to instances of voter fraud and thus conservative.[4]

26   Elections are regulated affairs subject to state laws and potentially local laws as well. A voter can behave in a way that is illegal in his or her state but not intentionally deceptive and thus not fraudulent.

---

[4]Fraudulent actions of voters or intended voters are similar to what the United States Election Assistance Commission (EAC) might call "acts of deception." The EAC, a federal body established in the aftermath of the contested 2000 presidential election, published a report, "Election Crimes: An Initial Review and Recommendations for Future Study," in December 2006, that categorizes in detail a variety of election-related crimes. The report is available at `https://www.eac.gov/sites/default/files/eac_assets/1/6/Initial_Review_and_Recommendations_for_Further_Study.pdf` (last accessed November 22, 2020).

27   The examples of voter fraud I have offered above are hypothetical. Later in this report I describe research that seeks to estimate the rates at which various forms of voter fraud have occurred in recent American elections.

28   In my experience, most scholars of American election administration broadly consider voter fraud to consist of fraudulent actions taken by voters themselves and not by the individuals who supervise elections. Henceforth, when I refer to voter fraud, I mean actions involving voters or intended voters themselves. In contrast, when in this report a particular example of fraud is associated with an election official or a poll worker, I am explicit about this so that there is no confusion over the type of person, official or voter, who perpetrated an alleged fraud.

E.2   Evidence of voter fraud in the United States

29   The literature on the prevalence of voter fraud in American elections incorporates a variety of research methodologies. This exemplifies triangulation, wherein multiple research approaches are brought to bear on a single problem. If voter fraud in the United States is widespread, one would expect at least one of the methodologies in the literature to have detected evidence of it.

30   One methodology used in the study of voter fraud systematically tracks cases of alleged voter fraud in media reports and in official government documents. Examples of this methodology are Minnite and Callahan (2003), Minnite (2007), Levitt (2007), Minnite (2010), and Levitt (2014).

31   These studies conclude that rates of voter fraud in American elections are very low.

32   An illustrative example from Levitt (2014) is as follows. Between the years 2000 and 2014, during which Levitt estimates that over one billion ballots were cast across general and primary elections in the United States, there were approximately 31 documented "incidents" involving voter fraud.[5] The ratio of 31 to one billion is minuscule.

---

[5]Levitt defines "incident" very broadly, and thus conservatively. A voter fraud incident is not necessarily a conviction for voter fraud. Levitt writes: "Some of these 31 incidents have been thoroughly investigated (including some

33   Minnite (2010) is likewise instructive in its coverage of voter fraud cases at the federal level (Chapter 3) and its analyses (Chapter 4) of fraud in four states (California, Minnesota, New Hampshire, and Oregon), among other things. As noted above, Oregon's elections are effectively all-mail operations.

34   Using data from the United States Department of Justice (DOJ), Minnite finds very little evidence of voter fraud. A September 2014 report published by the United States Government Accountability Office similarly concluded that, "[T]here were no apparent cases of in-person voter impersonation charged by DOJ's Criminal Division or by U.S. Attorney's offices anywhere in the United States, from 2004 through July 3, 2014" (p. 70).[6]

35   With respect to California, which is the most populous state in the country, Minnite draws a variety of conclusions. One is that state officials investigate claims of voter fraud when they present themselves. While perhaps not surprising, this conclusion implies that findings of a lack of fraud across California elections are meaningful and do not simply reflect state elections officials' lack of interest in voter fraud.

36   Minnite concludes as well that approximately one-third of fraud allegations in California in her period of study did not lead to charges because they lacked evidence or suspects could not be identified; a second third of these allegations were dropped because no legal violation was found or a suspect was determined to lack criminal intent; and, of allegations that produced legal violations, the majority did not lead to criminal penalties, and only one-third of individuals determined to have committed a violation were actually found guilty of a crime. The modal voter fraud Minnite identified in California was fraudulent registration—as opposed to fraudulent voting of any type, either in-person voting or absentee voting.

---

prosecutions). But many have not. Based on how other claims have turned out, I'd bet that some of the 31 will end up debunked: a problem with matching people from one big computer list to another, or a data entry error, or confusion between two different people with the same name, or someone signing in on the wrong line of a pollbook."

  [6]See "Issues Related to State Voter Identification Laws," *United States Government Accountability Office*, September 2014, available at `https://www.gao.gov/assets/670/665966.pdf` (last accessed November 15, 2020).

37   Minnite studied Oregon as well, which is notable insofar as this state relies heavily on mail-in ballots. Based on her analysis, Minnite concludes that, "The evidence of voter fraud since Oregon adopted vote-by-mail, however, is practically non existent."

38   Another methodology in the study of fraud involves surveying election officials. In the aftermath of the 2016 General Election, Famighetti, Keith and Pérez (2017) "interviewed a total of 44 administrators representing 42 jurisdictions in 12 states" (p. 1), inquiring about the prevalence of non-citizen voting. Famighetti, Keith and Pérez write that 40 jurisdictions reported "no known incidents of noncitizen voting in 2016" (p. 1). Moreover, they state that,

> "In the jurisdictions we studied, very few noncitizens voted in the 2016 election. Across 42 jurisdictions, election officials who oversaw the tabulation of 23.5 million votes in the 2016 general election referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution. In other words, improper noncitizen votes accounted for 0.0001 percent of the 2016 votes in those jurisdictions" (p. 1).

39   The "30 incidents" noted above represent an upper bound on the number of times that noncitizen voter fraud was committed in the jurisdictions studied by Famighetti, Keith and Pérez. These incidents, according to the researchers, do not represent voter fraud convictions. They represent only referrals.

40   Famighetti, Keith and Pérez write as well that, "In California, Virginia and New Hampshire – the states where [United States President Donald] Trump claimed the problem of noncitizen voting was especially acute – no official we spoke with identified an incident of noncitizen voting in 2016" (p. 2).

41   The study of voter fraud by Famighetti, Keith and Pérez is notable because it focused solely on the 2016 General Election. Compared to preceding elections, it is well known that

the 2016 election and its aftermath were awash in fraud allegations. By focusing on such an election, Famighetti, Keith and Pérez's study biases itself toward finding evidence of voter fraud. Scientifically speaking, this is not what one would call a conservative bias; rather, the bias in Famighetti, Keith and Pérez's work pushes the study in the direction of finding evidence of a phenomenon of interest, here, voter fraud. Despite this bias, the rate of potential voter fraud described by Famighetti, Keith and Pérez is very small.

42   Huefner et al. (2007) constitutes another example of a study that involved efforts to reach out to election officials. This wide-ranging study details the electoral environments of five states (Illinois, Michigan, Minnesota, Ohio, and Wisconsin), and the authors write as follows:

> "On the whole, voting fraud is exceedingly rare. Although allegations of voting fraud have been widely publicized in the media, most all of these have evaporated upon closer investigation" (p. 120).

43   Still another approach in the voter fraud literature uses statistical tools in efforts to determine if patterns in election returns and voting records are consistent with public claims about the prevalence of voter fraud (Christensen and Schultz, 2014; Goel et al., 2020). Goel et al. is a study of double voting, and their analysis relies on an extensive database that contains approximately 104 million vote records. The particular question of interest to Goel et al. is whether the records show evidence of duplicates, i.e., of people who voted more than once in the 2012 General Election. This question is complicated because, when one has a database of millions of individuals, there will with virtual certainty be many cases of people with the same names and birthdates.[7]

44   Goel et al. conclude that, "[D]ouble voting is not currently carried out in such a systematic way that it presents a threat to the integrity of American elections" (p. 467). Goel et al. conclude

---

[7]Such a duplicate name problem arose in the 2016 General Election in North Carolina. Four individuals in the state were accused of having voted illegally, only to be exonerated when it was discovered that they had the same names as incarcerated felons. This example illustrates how innocuous coincidences can present themselves as voter fraud. See "Republicans claim 43 voters are ineligible felons. Many of them aren't," *The News & Observer*, November 23, 2016, available at `http://www.newsobserver.com/news/politics-government/election/article116789083.html` (last accessed November 15, 2020).

as well that measurement error in official election data could explain "a significant portion, if not all" of the cases of double voting that they identify.

45   By "measurement error," Goel et al. are referring to inaccuracies in turnout records. These inaccuracies can be the result of human recording errors, for example, in which a voting jurisdiction's record of one individual is mistakenly associated with the record of another.

46   With two academics, I published an article on voter fraud in the 2016 General Election. This article—Cottrell, Herron and Westwood (2018)—appears in *Electoral Studies*, a peer-reviewed, academic journal that focuses on elections. The article assesses the voter fraud allegations promulgated by Donald Trump and individuals associated with him.

47   My co-authors and I twice described some of our results in *The Washington Post*.[8] The first time was on December 2, 2016, and the second, on February 28, 2017.

48   In our article, my colleagues and I used statistical techniques to search for evidence of three types of fraud. In particular, we looked for:

I.   Evidence of widespread non-citizen voter fraud across counties in the United States.

II.   Evidence that election officials in the United States conspired against Donald Trump.

III.   Evidence that the 2016 General Election in New Hampshire was contaminated by residents of Massachusetts who, allegedly, traveled north on November 8, 2016, in order to cast illegal votes.

---

[8]Our short articles in *The Washington Post* are available at `https://www.washingtonpost.com/news/monkey-cage/wp/2016/12/02/we-checked-trumps-allegations-of-voter-fraud-we-found-no-evidence-at-all` and at `https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/28/we-cant-find-any-evidence-of-voting-fraud-in-new-hampshire` (last accessed November 15, 2020).

49   With respect to the first two points above, my co-authors and I uncovered no evidence of widespread non-citizen voter fraud and no evidence that election officials in the United States conspired against Trump. Our county-level consideration of three states mentioned post-election by Donald Trump—California, New Hampshire, and Virginia—also did not turn up evidence of widespread fraud (these states were also examined by the aforementioned Famighetti, Keith and Pérez (2017)). With respect to the third point above, my co-authors and I found no evidence of illegal voting in New Hampshire.

50   My research project on voter fraud was initiated during the summer of 2016, months before the presidential election. My co-authors and I are cognizant of the fact that establishing a negative is challenging, and we do not argue that our failure to uncover evidence of fraud surrounding the 2016 General Election conclusively proves that there was not voter fraud in that election. Rather, what one can infer from my co-authored study on voter fraud is that its attempts to uncover evidence of widespread and systematic fraud were not successful.

51   The literature on voter fraud reviewed here is peer-reviewed, in most cases in publicly accessible journals and books, and in some cases is available online. It incorporates a variety of different research designs and data sources. Despite these differences, the contributions to the literature share a common finding: voter fraud in American elections is rare.[9] While election scholars do not assert that the fraud rate in American elections is literally zero, no credible scholars working in this literature have concluded that voter fraud poses a threat to election integrity in the United States.

---

[9]One exception to the scholarly consensus about a lack of widespread voter fraud in the United States is Richman, Chattha and Earnest (2014), who derive estimates of non-citizen voting rates from the 2008 and 2010 waves of the Internet-based survey known as the Cooperative Congressional Election Study (CCES). Some CCES survey respondents indicated that, although they were non-citizens, they had voted in the 2008 General Election or in the 2010 Midterm Election.

   Richman, Chattha and Earnest's (2014) claims about non-citizen voting would be dramatic if valid, and they would contradict effectively all of the studies on voter fraud discussed in this report. However, Ansolabehere, Luks and Schaffner (2015) show that it is virtually certain that Richman, Chattha and Earnest's results on non-citizen voting reflect survey measurement error, in particular, the incorrect classification of citizen CCES respondents as non-citizen respondents.

52   No evidence contradicting this finding was produced by a presidential commission on voter fraud established in the aftermath of the 2016 General Election and shut down on January 3, 2018. No official reports of widespread and systematic voter fraud have come to light based on the commission's work.[10] Recently, Benjamin Ginsberg, a co-chair of the 2013 Presidential Commission on Election Administration, commented on the work of this commission, noting that, "[A]fter decades of looking for illegal voting, there's no proof of widespread fraud. At most, there are isolated incidents – by both Democrats and Republicans."[11]

E.3   Voter fraud and mail voting

53   There is no evidence that voter fraud rates associated with mail-in voting are systematically higher than voter fraud rates associated with other forms of voting and with other aspects of election administration.

54   Drawing on recent entries in a database of potential election irregularities developed by *The Heritage Foundation*, a study released by *The Brookings Institution* considers the prevalence of voter fraud specifically in the country's five all-mail states.[12] The authors of this report identify 29 "fraudulent votes attempted by mail" out of 49,917,586 general election votes cast in the period under review. The number 29 is approximately 0.000058 percent of 49,917,586.[13]

---

[10]On the origins and end of the presidential voter fraud commission, which offered no evidence that widespread fraud affected the 2016 General Election, see "Trump Closes Voter Fraud Panel That Bickered More Than It Revealed," *The New York Times*, January 4, 2018, available at https://www.nytimes.com/2018/01/04/us/voting-fraud-commission.html (last accessed November 15, 2020).

[11]For Mr. Ginsburg's comments on the lack of evidence about voter fraud in the United States, see "Republicans have insufficient evidence to call elections 'rigged' and 'fraudulent'," *The Washington Post*, September 8, 2020, available at https://www.washingtonpost.com/opinions/2020/09/08/republicans-have-insufficient-evidence-call-elections-rigged-fraudulent/ (last accessed November 15, 2020). The 2013 Presidential Commission on Election Administration, on which Mr. Ginsburg served, is described at https://bipartisanpolicy.org/the-presidential-commission-on-election-administration/ (last accessed November 15, 2020).

[12]For the Heritage Foundation's database, see https://www.heritage.org/voterfraud (last accessed November 14, 2020). My referencing this database should be not considered an endorsement of it. I note it here because the database is the source for the cited *Brookings Institution* report.

[13]"Low rates of fraud in vote-by-mail states show the benefits outweigh the risks," *The Brookings Institution*, June 2, 2020, available at https://www.brookings.edu/blog/fixgov/2020/06/02/low-rates-of-fraud-in-vote-by-mail-states-show-the-benefits-outweigh-the-risks/ (last accessed November 12, 2020).

F   Allegations in the Bromberg Declaration of voter fraud in Maricopa County

55   The allegations in the Bromberg Declaration about Maricopa County appear on pp. 14-15, in the Declaration's section titled "Maricopa Precinct Analysis."

F.1   Precinct size and support for Joe Biden

56   In its analysis of Maricopa County, the Bromberg Declaration contains two figures, both of which plot candidate vote shares (in percentages) against precinct size. These figures constitute the entirety of the Declaration's evidence of fraud in Maricopa County. In particular, Figure 18 in the Bromberg Declaration plots the vote percentages of Joe Biden, Donald Trump, and third party presidential candidates against precinct size, and Figure 19 is similar except it focuses only on aggregate third party presidential candidates.

57   Based on its Figure 18, the Bromberg Declaration asserts that, "The Biden percentage is higher in the smaller precincts, primarily at the expense of Trump..." (p. 14). As shown below, I do not dispute this rough characterization.

58   The Bromberg Declaration goes on to posit that the existence of this relationship "suggest[s] vote switching" (p. 14) and refers to the relationship between precinct size and Biden support as "an anomaly." By "vote switching," the Bromberg Declaration appears to mean a process in which legal votes for Donald Trump were switched to Joe Biden. The Bromberg Declaration implicitly claims that this happened in Maricopa County precincts with relatively few voters.

F.2   The Bromberg Declaration's theory about precinct size

59   The basis in the Bromberg Declaration for the claim that a relationship between precinct size and Biden support is evidence of vote switching can be found on p. 8: "But one could also

15

theorize the opportunity for cheaters to cheat in small precincts, where there may be less oversight." In other words, the Bromberg Declaration offers the theory that small precincts "may" have less oversight and that "cheaters" take advantage of this.

60   There is no evidence in Bromberg Declaration that Maricopa County precincts with fewer voters do in fact have less oversight; no evidence that election official staffing levels per voter are lower in smaller precincts than they are in larger precincts; no evidence that the physical layout of small precincts is different than the physical layout of large precincts; and in fact no evidence that small precincts in Maricopa County differ in any way whatsoever from the county's large precincts except for the fact that the former have fewer voters.

61   There is no evidence in the academic literature on voter fraud reviewed earlier in favor of the Bromberg Declaration's "theory" that small precincts are susceptible to voter fraud. Moreover, there are no citations in the Bromberg Declaration to peer-reviewed studies of the relationship between precinct size and voter fraud.

62   It is well known that the political affiliations of voters are not uniformly distributed across jurisdictions like counties. Some areas of counties (in particular, urban areas) have more Democratic voters, and other areas (those less urban), more Republican voters (e.g., Rodden, 2019). If precinct size measured by numbers of voters is correlated geographically with political preferences, this will induce a *spurious* relationship between precinct size and candidate vote shares within precincts. Spurious relationships are not evidence of voter fraud.

63   In its discussion of precinct size and the "theory" that small precincts are relatively prone to fraud, the Bromberg Declaration cites "An Electoral System in Crisis," a webpage dating to 2016 that claims to be an analysis of the Wisconsin recount that took place four years ago. The authors of this webpage argue that a relationship between precinct size and candidate vote totals indicates the presence of "irregularities" but provide no evidence at all in favor of this assertion outside of an

16

offhand comment that such a relationship is a "complete violation of the Law of Large Numbers."

64   This assertion is nonsensical. The Law of Large Numbers in its standard form is a result in probability theory which states that independent samples from a common population converge to true population parameters as the number of observations increases. It is not clear in the Wisconsin recount webpage what units are being sampled and whether these units are drawn from the same population. The webpage's invocation of the Law of Large Numbers does not make any sense. The webpage does not provide any calculation that support its "complete violation" allegation – just rhetoric.

65   In short, Bromberg Declaration asserts that a relationship between precinct size and Biden vote share is indicative of fraud, but there is no reason whatsoever to believe this and no evidence to support such a "theory."

F.3   Whether small precincts are fraud-prone is irrelevant because Maricopa County used voting centers in the 2020 election

66   Regardless of whether there is any evidence behind it, the "theory" in the Bromberg Declaration about precinct size and voter fraud is applicable to the study of Maricopa County in the 2020 election only to the extent that in-person voters in the county actually voted in their precincts. In fact, they did not do this.

67   In the 2020 election, Maricopa County offered in-person voting at what are known as *voting centers*. A voting center is a location at which any eligible voter in the county may cast an in-person ballot. In particular, there were 175 voting centers in Maricopa County for the purposes of in-person voting during the 2020 General Election.[14]

---

[14]I downloaded the set of Maricopa County voting centers from `http://web.archive.` `org/web/20201104002036/https://recorder.maricopa.gov/pollingplacefiles/` `VotingSitesSchedule.xlsx` (last accessed December 4, 2020).

17

68   The Maricopa County elections department informed the county's voters that, "There are **no** assigned locations" (bold in original) for voting in the 2020 election. See Appendix B, which displays text from the Maricopa County elections office webpage.

69   Consequently, the author of the Bromberg Declaration has literally no idea where any of the ballots attributed to the county's precincts were actually cast. To make matters worse, the author appears not even to distinguish between in-person votes and ballots mailed in or submitted via drop boxes (and this distinction is in principle important insofar as the "theory" of voter fraud in the Bromberg Declaration that connects precinct size and fraud does not make sense when applied to votes not cast in-person).[15] In short, the number of votes associated with any given precinct in Maricopa County—and this is what is displayed in Figures 18 and 19 in the Bromberg Declaration—has no implications for how many ballots were actually cast in said precinct and thus, per the "theory" in the Bromberg Declaration, were ostensibly vulnerable to fraud.

70   I downloaded precinct returns for the 2020 General Election from the Maricopa County elections department webpage.[16] There were 744 unique precinct names used in the 2020 election. Insofar as there were in this election 175 voting centers in Maricopa County, I know for certain that there is not a one-to-one match between the precincts and voting centers (not to mention the fact that the county's webpage was explicit that voters could cast in-person ballots in any voting center that they wished).

## F.4   Precinct size and support for Democratic candidates

71   Figure 1 displays the relationship between precinct size (horizontal axis) and support for Democratic candidates (vertical axis). Each point in the figure denotes a single precinct in Maricopa County. The figure's left panel is for the United States presidential contest, and in this panel

---

[15]Because the author of Bromberg Declaration has not, to the best of my knowledge, disclosed his computer code, I cannot be entirely what he did to produce his Figures 18 and 19. However, the text of Bromberg Declaration refers generically to precinct "size," which I take to mean, the number of votes cast in the precinct.

[16]These returns are available at `https://recorder.maricopa.gov/media/ArizonaExportByPrecinct_110320.txt` (last accessed December 3, 2020).

Democratic vote share means, Joe Biden's vote share. In Figure 1's right panel, Democratic vote share for the United State Senate race means, Mark Kelly's vote share.

Figure 1: Democratic candidate support and turnout by precinct
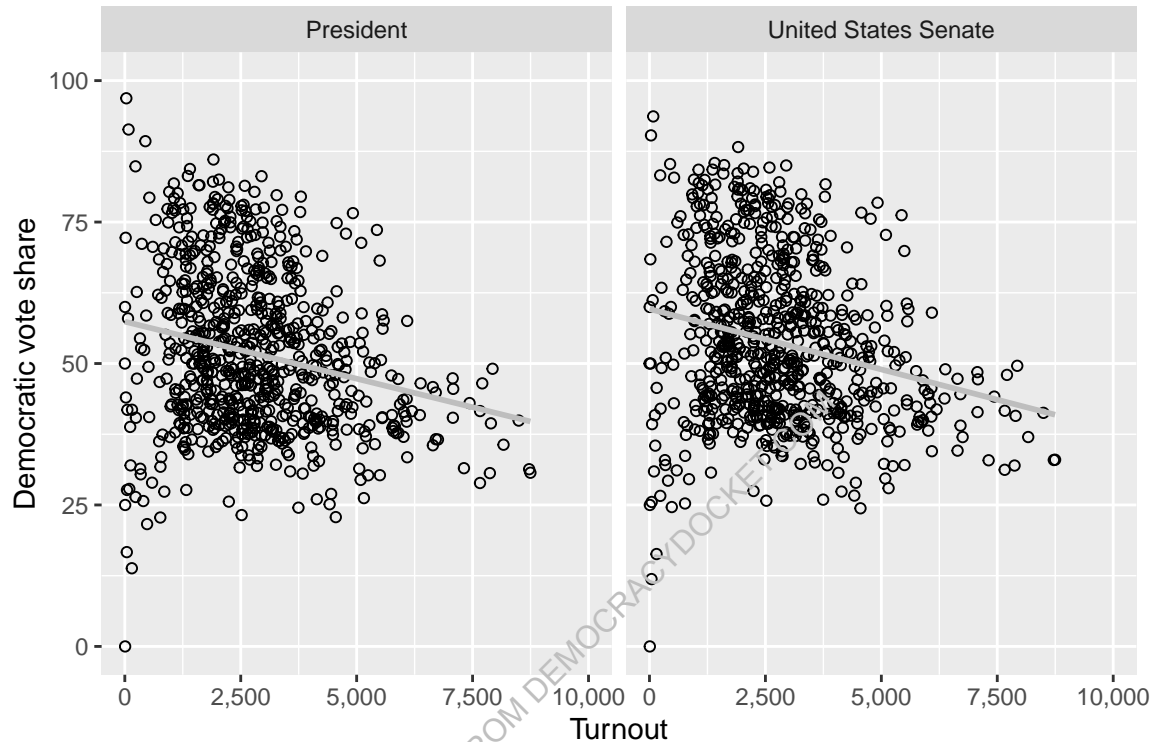
72   Both panels of Figure 1 have superimposed linear regression lines to ease interpretation. These lines are sloped down, indicating that precincts in Maricopa County with greater voter turnout had lower Biden vote share (left panel) and lower Kelly vote share (right panel).

73   The key implication of Figure 1 is the similarly between its two panels. They are, evidently, virtually identical. This suggests that the relationship between turnout and Democratic vote share across Maricopa County precincts reflects established political preference in the county—not vote switching that affected the 2020 presidential contest.

74   More evidence to this effect is apparent in Figure 2, which plots Joe Biden and Mark Kelly vote shares against each other. Each point in the figure is again a precinct where the size of each

point is proportional to overall precinct turnout.

Figure 2: Joe Biden and Mark Kelly support rates by precinct
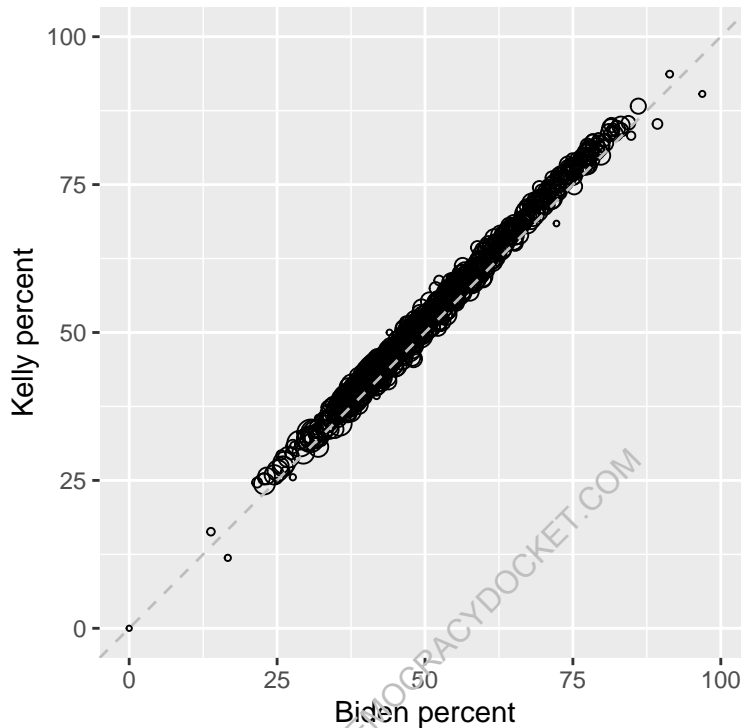
75   Figure 2 has a dashed 45-degree line superimposed on it. Points *above* the line connote precincts where Mark Kelly's vote share was greater than Joe Biden's; points *below* the line connote precincts where Joe Biden's vote share was greater than Mark Kelly's; and, points on the line connote precincts where Joe Biden's vote share was equal to Mark Kelly's.

76   The points in Figure 2 show that precincts in Maricopa County where Joe Biden did well (upper right of the figure) are also precincts where Mark Kelly did well. And, precincts in Maricopa County where Joe Biden did less well (lower left) are similarly precincts where Mark Kelly did not do well. This clear regularity suggests that the relationship noted in the Bromberg Declaration between precinct turnout and Biden vote share is spurious and has nothing to do with voter fraud. Rather, the distribution of precincts across the county is such that smaller ones (namely, those with lower turnout in the 2020 election) tended to be consistently Democratic. There is noth-

20

ing anomalous about this correlation between political preferences and geography and nothing irregular.

G   Allegations in the Bromberg Declaration of voter fraud beyond Arizona

77   Most of claims in the Bromberg Declaration do not directly concern Arizona, instead speaking to alleged voter fraud in Georgia (pp. 4-5), Pennsylvania (pp. 5-6) and Milwaukee, Wisconsin (pp. 6-8).

78   The number of fraudulent votes claimed in Bromberg Declaration is extensive. For example, the Declaration claims "that 105,639 fraudulent Biden ballots were added between Wednesday and Thursday of 11/05/2020 in Milwaukee alone" (p. 8). Total turnout in Milwaukee was 315,483 voters,[17] meaning that the Bromberg Declaration asserts that roughly one-third of Milwaukee's ballots were contaminated by fraud. There is nothing remotely close to a result like this in the literature on voter fraud that I have surveyed above.

79   None of what follows bears directly on the Bromberg Declaration's discussion of Maricopa County. However, the material below is nonetheless notable insofar as it shows that literally all of the claims in the Declaration about voter fraud—and not simply those concerning Arizona—do not follow from the analysis in the Declaration.

G.1   A model of voting and voter fraud

80   The Bromberg Declaration offers what its author calls two models of candidate vote share. One model assumes that there is no voter fraud (see equation (2) in the Declaration) and the second

---

[17]"SUMMARY REPORT," *City of Milwaukee Election Commission*, December 6, 2020, `https://city.milwaukee.gov/election/ElectionInformation/ElectionResults` (last accessed December 4, 2020).

that there is a form of voter fraud in which a some votes are switched from one candidate to another (see equation (3)). Henceforth I refer to a singular model in the Bromberg Declaration, by which I mean both the no-fraud and fraud-based models mentioned in this paragraph.

81   Two key assumptions render the model in the Bromberg Declaration of no use in the study of voter fraud.

G.2   An arbitrary assumption for the prior probability of fraud

82   Key to the technical exposition of the model in Bromberg Declaration is a parameter called p_F that denotes what is called the "prior probability of fraud." Intuitively, this prior probability of fraud is the probability of fraud in a jurisdiction that one would have assumed before (i.e., *prior* to) an election.

83   The Bromberg Declaration assumes that $p_F = 0.01$, meaning that there is a one percent chance of vote switching in a jurisdiction (p. 3).

84   The Bromberg Declaration provides no explanation, no justification, and no citations for its assumption about the likelihood of fraud. The number 0.01 is simply invented.

85   Sometimes scholars must make assumptions in their research. However, it is incumbent on such researchers to explore the consequences of their assumptions and to see if their results depend on a particular assumption or are robust to alternative assumptions. No such robustness checks appear in the Bromberg Declaration. I cannot conduct any robustness checks because, to the best of my knowledge, no computer code associated with the Declaration has been disclosed. Thus, the arbitrariness of the prior fraud parameter in Bromberg Declaration undermines any value that the model could have had.

G.3   Changes in candidate support among absentee ballots do not constitute

86   Underlying the model in Bromberg Declaration is the implicit assumption that there is no correlation between the timing of when a set of ballots was counted in November 2020 and the presidential votes on these ballots. The model, when it encounters temporal changes in a jurisdiction's presidential candidate support (i.e., ten hours after polls closed on November 3, Joe Biden's support changes from 42 percent to 44 percent) attributes these changes to fraud.

87   Intuitively speaking, this is because the model does not allow for the possibility that ballot counting is not completed uniformly across a jurisdiction, like a state. For example, the model rules out (with the exception of fraud) the possibility that ballots counted in the immediate aftermath of an election are different than those counted 24 hours later.

88   This assumption is contrary to what is known about contemporary American elections. In particular, Foley (2013) and Foley and Stewart III (2020) document what they call a "blue shift" in which a state's presidential results shift in the days after an election in a Democratic direction. The Bromberg Declaration is written as if the blue shift phenomenon simply does not exist.

89   The 2020 election was historic in its heavy use of mail-in ballots. However, Democrats were more likely to vote via mail than Republicans, and this was known well before November 3.[18] Give that some states counted absentee ballots in the days after November 3 (in particular Pennsylvania), this feature of the 2020 election certainly exaggerated the blue shift compared to what one would have expected had ballots been case in 2020 like they were in 2016.[19]

90   Ignoring the issue regarding the technical assumption about the prior fraud parameter noted above, the results in the Bromberg Declaration about Georgia, Pennsylvania, and Milwaukee, Wis-

---

[18]See "Huge Absentee Vote in Key States Favors Democrats So Far," *The New York Times*, October 10, 2020, available at https://www.nytimes.com/2020/10/10/us/politics/early-voting-swing-states.html (last accessed December 4, 2020).

[19]On Pennsylvania, see "Why Pennsylvania is still counting votes after Election Day," *ABCNews*, November 3, 2020, available at https://abcnews.go.com/Politics/pennsylvania-counting-votes-election-day/story?id=73993649 (last accessed December 4, 2020).

consin are not examples of fraud. They can be easily rationalized by the blue shift.

G.4   Concluding thoughts about analyses beyond Arizona

91   Earlier I noted that the part of Bromberg Declaration that engages states other than Arizona does not bear directly on the claims made in this litigation. Nonetheless, I have now explained that all the Declaration's claims about voter fraud rest on false assumptions, either an assumption about a "theory" relating precinct size and presidential vote share (no such theory exists) or an assumption that when a ballot is counted is orthogonal to the presidential vote on it (which is known not to be the case).

92   None of the claims in Bromberg Declaration about voter fraud—and not simply those concerning Arizona—follow from the arguments made in the Declaration.

H   Conclusion

93   This report evaluates the contention in the Bromberg Declaration that there was voter fraud in Maricopa County, Arizona in the 2020 presidential election.

94   The contention relies on a "theory" that does not exist and a misunderstanding of how in-person voting proceeded in Maricopa County county this past November. Namely, the Bromberg Declaration assumes that voters in the county cast in-person ballots in their precincts (of which there were 744), but in reality they did not, voting in-person in voting centers (of which there were 175). This misunderstanding of how Maricopa County voters cast ballots is a fatal flaw to the Declaration's analysis of the county, which was already flawed based on its reliance on a non-existent theory. In short, Bromberg Declaration contains no evidence whatsoever that there were any fraudulent ballots cast in Maricopa County in the 2020 General Election.

95   The Bromberg Declaration also contains no evidence whatsoever that there were any fraud-ulent ballots cast in Georgia, Pennsylvania, and the Milwaukee, Wisconsin. Its claims of voter fraud in these locales rest on a faulty assumption that when a ballot is counted has no bearing on the presidential candidate supported on it. In fact, it is known that ballots counted later in presiden-tial elections tend to be Democratic, and this fact undermines the Bromberg Declaration's analysis of Georgia, Pennsylvania, and Milwaukee, Wisconsin.

25

References

Ansolabehere, Stephen, Samantha Luks and Brian F. Schaffner. 2015. "The perils of cherry picking low frequency events in large sample surveys." *Electoral Studies* 40:409–410.

Christensen, Ray and Thomas J. Schultz. 2014. "Identifying Election Fraud Using Orphan and Low Propensity Voters." *American Politics Research* 42(2):311–337.

Cottrell, David, Michael C. Herron and Sean J. Westwood. 2018. "An Exploration of Donald Trump's Allegations of Massive Voter Fraud in the 2016 General Election." *Electoral Studies* 51(1):123–142.

Famighetti, Christopher, Douglas Keith and Myrna Pérez. 2017. "NONCITIZEN VOTING: THE MISSING MILLIONS." Report published by the Brennan Center for Justice at *New York University School of Law*.

Foley, Edward B. 2013. "A big blue shift: Measuring an asymmetrically increasing margin of litigation." *Journal of Law and Politics* 24:501–544.

Foley, Edward B. and Charles Stewart III. 2020. "Explaining the Blue Shift in Election Canvassing." Unpublished working paper.
URL: *https://ssrn.com/abstract=3547734*

Goel, Sharad, Marc Meredith, Michael Morse and David Rothschild. 2020. "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections." *American Political Science Review* 114(2):456–469.

Herron, Michael C. 2019. "Mail-In Absentee Ballot Anomalies in North Carolina's 9th Congressional District." *Election Law Journal* 18(3):191–213.

Huefner, Steven F., Daniel P. Tokaji, Edward B. Foley and Nathan A. Cemenska. 2007. "From Registration to Recounts: The Election Ecosystems of Five Midwestern States." Report published by *Election Law@Moritz*, The Ohio State University, Moritz College of Law.

Levitt, Justin. 2007. "The truth about voter fraud." Report published by the Brennan Center for
Justice at *New York University School of Law*.

Levitt, Justin. 2014. "A comprehensive investigation of voter impersonation finds 31 credible
incidents out of one billion ballots cast." *Washington Post*, August 6.
URL:
*https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-
voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast*

Minnite, Lori and David Callahan. 2003. "Securing the Vote: An Analysis of Election Fraud."
Report published by Demos.

Minnite, Lorraine. 2007. "Election Day Registration: A Study of Voter Fraud Allegations and
Findings on Voter Roll Security." Report published by Demos.
URL: *http://www.demos.org/sites/default/files/publications/edr_fraud.pdf*

Minnite, Lorraine C. 2010. *The Myth of Voter Fraud*. Ithaca, NY: Cornell University.

Richman, Jesse T., Gulshan A. Chattha and David C. Earnest. 2014. "Do non-citizens vote in
U.S. elections?" *Electoral Studies* 36:149–157.

Rodden, Jonathan. 2019. *Why Cities Lose: The Deep Roots of the Urban-Rural Political Divide*.
New York, NY: Basic Books.

A   *curriculum vitae* of Michael C. Herron

Michael C. Herron

Dartmouth College
Department of Government
6108 Silsby Hall
Hanover, NH 03755-3547

Phone: +1 (603) 646-2693
Mobile: +1 (603) 359-9731
Email: michael.c.herron@dartmouth.edu
Homepage: http://www.dartmouth.edu/˜herron

Academic appointments

William Clinton Story Remsen 1943 Professor, Department of Government, Dartmouth College. July 2013–present.

Chair, Program in Quantitative Social Science, Dartmouth College. July 2015–June 2020.

Visiting Scholar, Hertie School of Governance, Berlin, Germany. August 2016–July 2017.

Chair, Program in Mathematics and Social Sciences, Dartmouth College. July 2014– June 2015.

Professor, Department of Government, Dartmouth College. July 2009–June 2013.

Visiting Professor of Applied Methods, Hertie School of Governance, Berlin, Germany. August 2011–August 2012.

Associate Professor, Department of Government, Dartmouth College. July 2004–June 2009.

Visiting Associate Professor, Department of Government, Harvard University. July 2008–January 2009.

Visiting Associate Professor, Wallis Institute of Political Economy, University of Rochester. September 2006–December 2006.

Visiting Assistant Professor, Department of Government, Dartmouth College. July 2003–June 2004.

Assistant Professor, Department of Political Science, Northwestern University. September 1997–June 2004.

Faculty Associate, Institute for Policy Research, Northwestern University. September 2002–June 2004.

Education

PhD Business (Political Economics), Stanford University, January 1998.
Dissertation: Political Uncertainty and the Prices of Financial Assets
Committee: David Baron, Darrell Duffie, Douglas Rivers, and Barry Weingast

MS Statistics, Stanford University, June 1995.

MA Political Science, University of Dayton, August 1992.

BS Mathematics and Economics, with University Honors, Carnegie Mellon University, May 1989.

Michael C. Herron   2

Fellowships

Elizabeth R. and Robert A. Jeffe 1972 Fellowship, Dartmouth College. September 2010–June 2011.

Fulbright Scholar Program fellowship for research and teaching at the Heidelberg Center for American Studies, Heidelberg University, September 2009 - February 2010 (declined).

Post–doctoral Research Fellow, Center for Basic Research in the Social Sciences, Harvard University. September 2000–August 2001.

Publications

Journal articles

"Postal Delivery Disruptions and the Fragility of Voting by Mail: Lessons from Maine" (with Daniel A. Smith). Forthcoming, *Research & Politics*.

"Voting lines, equal treatment, and early voting check-in times in Florida" (with David Cottrell and Daniel A. Smith). Forthcoming, *State Politics & Policy Quarterly*, and available at https://journals. sagepub.com/doi/10.1177/1532440020943884.

"Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus" (with Anna Baringer and Daniel A. Smith). *Election Law Journal* 19(3): 289-320. 2020.

"Early voting changes and voter turnout: North Carolina in the 2016 General Election" (with Hannah L. Walker and Daniel A. Smith). *Political Behavior* 41(4): 841-869. 2019.

"Mail-in absentee ballot anomalies in North Carolina's 9th Congressional District." *Election Law Journal* 18(3): 191-213. 2019.

"Relative age effects in American professional football" (with Jack F. Heneghan). *Journal of Quantitative Analysis in Sports* 15(3): 185-202. 2019.

"Mortality, Incarceration, and African-American Disenfranchisement in the Contemporary United States" (with David Cottrell, Javier M. Rodriguez, and Daniel A. Smith). *American Politics Research* 47(2): 195-237. 2019.

"Pedagogical Value of Polling Place Observation By Students" (with 31 co-authors). *PS: Political Science & Politics* 51(4): 831-847. 2018.

"All in the family: German twin finishing times in the 2016 women's Olympic marathon" (with David Cottrell). CHANCE 31(3): 20-28. 2018.

"An Exploration of Donald Trump's Allegations of Massive Voter Fraud in the 2016 General Election" (with David Cottrell and Sean J. Westwood). *Electoral Studies* 51(1): 123-142. 2018.

"Student Sorting and Implications for Grade Inflation (with Zachary D. Markovich). *Rationality and Society* 29(3): 355-386. 2017.

"Race, *Shelby County*, and the Voter Information Verification Act in North Carolina" (with Daniel A. Smith). *Florida State University Law Review* 43: 465-506. 2016.

"Precinct Resources and Voter Wait Times" (with Daniel A. Smith). *Electoral Studies* 42(2): 249-263. 2016.

"A Careful Look at Modern Case Selection Methods" (with Kevin M. Quinn). *Sociological Methods & Research* 45(3): 458-492. 2016.

"Precinct Closing and Wait Times in Florida during the 2012 General Election" (with Daniel A. Smith). *Election Law Journal* 14(3): 220-238. 2015.

"Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election" (with Daniel A. Smith). *Political Research Quarterly* 67(3): 646-665. 2014.

"The Effects of House Bill 1355 on Voter Registration in Florida" (with Daniel A. Smith). *State Politics & Policy Quarterly* 13(3): 279-305. 2013.

"Blacks, Hispanics, and Whites: A Study of Race-based Residual Vote Rates in Chicago." *American Politics Research* 41(2): 203-243. 2013.

"Alvin Greene? Who? How did he win the United States Senate nomination in South Carolina?" (with Joseph Bafumi, Seth J. Hill, and Jeffrey B. Lewis). *Election Law Journal* 11(4): 358-379. 2012.

"Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355" (with Daniel A. Smith). *Election Law Journal* 11(3): 331-347. 2012.

"Leapfrog Representation and Extremism: A Study of American Voters and their Members in Congress" (with Joseph Bafumi). *American Political Science Review* 104(3): 519-542. 2010.

"Economic Crisis, Iraq, and Race: A Study of the 2008 Presidential Election" (with Seth J. Hill and Jeffrey B. Lewis). *Election Law Journal* 9(1): 41-62. 2010.

"Prejudice, Black Threat, and the Racist Voter in the 2008 Presidential Election" (with Joseph Bafumi). *Journal of Political Marketing* 8(4): 334-348. 2009.

"Voting Technology and the 2008 New Hampshire Primary" (with Walter R. Mebane, Jr., and Jonathan N. Wand). *William & Mary Bill of Rights Journal* 17(2): 351-374. 2008.

"Ballot Formats, Touchscreens, and Undervotes: A Study of the 2006 Midterm Elections in Florida" (with Laurin Frisina, James Honaker, and Jeffrey B. Lewis). *Election Law Journal* 7(1): 25-47. 2008.

"Gerrymanders and Theories of Lawmaking: A Study of Legislative Redistricting in Illinois" (with Alan E. Wiseman). *Journal of Politics* 70(1): 151-167. 2008.

"Estimating the Effect of Redistricting on Minority Substantive Representation" (with David Epstein, Sharyn O'Halloran, and David Park). *Journal of Law, Economics, and Organization* 23(2): 499-518. 2007.

"Did Ralph Nader Spoil Al Gore's Presidential Bid? A Ballot-Level Study of Green and Reform Party Voters in the 2000 Presidential Election" (with Jeffrey B. Lewis). *Quarterly Journal of Political Science* 2(3): 205-226. 2007.

"Assessing Partisan Bias in Voting Technology: The Case of the 2004 New Hampshire Recount" (with Jonathan N. Wand). *Electoral Studies* 26(2): 247-261. 2007.

"Term Limits and Pork" (with Kenneth W. Shotts). *Legislative Studies Quarterly* 31(3): 383-404. 2006.

"Black Candidates and Black Voters: Assessing the Impact of Candidate Race on Uncounted Vote Rates" (with Jasjeet S. Sekhon). *Journal of Politics* 67(1): 154–177. 2005.

"Government Redistribution in the Shadow of Legislative Elections: A Study of the Illinois Member Initiatives Grant Program" (with Brett A. Theodos). *Legislative Studies Quarterly* 24(2): 287–312. 2004.

"Studying Dynamics in Legislator Ideal Points: Scale Matters." *Political Analysis* 12(2): 182–190. 2004.

"Logical Inconsistency in EI-based Second Stage Regressions" (with Kenneth W. Shotts). *American Journal of Political Science* 48(1): 172–183. 2004.

"Overvoting and Representation: An examination of overvoted presidential ballots in Broward and Miami-Dade Counties" (with Jasjeet S. Sekhon). *Electoral Studies* 22: 21–47. 2003.

"Using Ecological Inference Point Estimates as Dependent Variables in Second Stage Linear Regressions" (with Kenneth W. Shotts). *Political Analysis* 11(1): 44–64. 2003.

"Cross-contamination in EI-R" (with Kenneth W. Shotts). *Political Analysis* 11(1): 77–85. 2003.

"A Consensus on Second Stage Analyses in Ecological Inference Models" (with Christopher Adolph, Gary King, and Kenneth W. Shotts). *Political Analysis* 11(1): 86–94. 2003.

"The Butterfly Did It: The Aberrant Vote for Buchanan in Palm Beach County, Florida" (with Jonathan N. Wand, Kenneth W. Shotts, Jasjeet S. Sekhon, Walter R. Mebane, Jr., and Henry E. Brady). *American Political Science Review* 95(4): 793–810. 2001.

"Interest Group Ratings and Regression Inconsistency." *Political Analysis* 9(3): 260–274. 2001.

"Leadership and Pandering: A Theory of Executive Policymaking" (with Brandice Canes–Wrone and Kenneth W. Shotts). *American Journal of Political Science* 45(3): 532–550. 2001.

"Law and Data: The Butterfly Ballot Episode" (with Henry E. Brady, Walter R. Mebane, Jr., Jasjeet S. Sekhon, Kenneth W. Shotts, and Jonathan N. Wand). *PS: Political Science & Politics* 34(1): 59–69. 2001.

"Cutpoint–Adjusted Interest Group Ratings." *Political Analysis* 8(4): 346–366. 2000.

"Estimating the Economic Impact of Political Party Competition in the 1992 British Election." *American Journal of Political Science* 44(2): 326–337. 2000.

"Artificial Extremism in Interest Group Ratings and the Preferences versus Party Debate." *Legislative Studies Quarterly* 24(4): 525–542. 1999.

"Post–Estimation Uncertainty in Limited Dependent Variable Models." *Political Analysis* 8(1): 83–98. 1999.

"Measurement of Political Effects in the United States Economy: A Study of the 1992 Presidential Election" (with James Lavin, Donald Cram, and Jay Silver). *Economics & Politics* 11(1): 51–81. 1999.

"The Influence of Family Regulation, Connection, and Psychological Autonomy on Six Measures of Adolescent Functions" (with Melissa R. Herman, Sanford M. Dornbusch, and Jerald R. Herting). *Journal of Adolescent Research* 12(1): 34–67. 1997.

Book chapters

"Wait Times and Voter Confidence: A Study of the 2014 General Election in Miami-Dade County" (with Daniel A. Smith, Wendy Serra, and Joseph Bafumi). In *Races, Reforms, & Policy: Implications of the 2014 Midterm Elections*, Christopher J. Galdieri, Tauna S. Sisco, and Jennifer C. Lucas, eds. Akron, OH: University of Akron Press. 2017.

"A Dynamic Model of Multidimensional Collective Choice" (with David P. Baron). In *Computational Models in Political Economy*, Ken Kollman, John H. Miller, and Scott E. Page, eds. Cambridge, MA: The MIT Press. 2003.

"Law and Data: The Butterfly Ballot Episode" (with Henry E. Brady, Walter R. Mebane Jr., Jasjeet Singh Sekhon, Kenneth W. Shotts, and Jonathan Wand). In *The Longest Night: Polemics and Perspectives on Election 2000*, Arthur J. Jacobson and Michel Rosenfeld, eds. Berkeley: University of California Press. 2002.

Book reviews

The Timeline of Presidential Elections: How Campaigns Do (and Do Not) Matter, Robert S. Erikson and Christopher Wlezien. *Political Science Quarterly* 128(3): 552-553. 2013.

Voting Technology: The Not-So-Simple Act of Casting a Ballot, Paul S. Herrnson, Richard G. Niemi, Michael J. Hanmer, Benjamin B. Bederson, and Frederick C. Conrad. *Review of Policy Research* 25(4): 379-380. 2008.

Other publications

"In two political battlegrounds, thousands of mail-in ballots are on the verge of being rejected" (with Daniel A. Smith). *The Conversation*, October 23, 2020. Available at `https://theconversation.com/in-two-political-battlegrounds-thousands-of-mail-in-ballots-are-on-the-verge-of-being-rejected-148616`.

"Rejected mail ballots pile up in Florida" (with Daniel A. Smith). *Tampa Bay Times*, October 16, 2020. Available at `https://www.tampabay.com/opinion/2020/10/16/rejected-mail-ballots-pile-up-in-florida-column`.

"Minor postal delays could disenfranchise thousands of Florida vote-by-mail voters" (with Daniel A. Smith). *Tampa Bay Times*, August 14, 2020. Available at `https://www.tampabay.com/opinion/2020/08/14/minor-postal-delays-could-disenfranchise-thousands-of-florida-vote-by-mail-voters-column`.

"Want to know how many people have the coronavirus? Test randomly" (with Daniel N. Rockmore). *The Conversation*, April 13, 2020. Available at `https://theconversation.com/want-to-know-how-many-people-have-the-coronavirus-test-randomly-135784`.

"If more states start using Ohio's system, how many voters will be purged?" (with Daniel A. Smith). *The Washington Post*, Monkey Cage, June 17, 2018.

"Do we have a right not to vote? The Supreme Court suggests we don't" (with Daniel A. Smith). *New York Daily News*, June 12, 2018.

"Nearly 4 million black voters are missing. This is why" (with David Cottrell, Javier M. Rodriguez, and Daniel A. Smith). *The Washington Post*, Monkey Cage, April 11, 2018.

"We can't find any evidence of voting fraud in New Hampshire" (with David Cottrell and Sean Westwood). *The Washington Post*, Monkey Cage, February 28, 2017.

"We checked Trump's allegations of voter fraud. We found no evidence at all" (with David Cottrell and Sean Westwood). *The Washington Post*, Monkey Cage, December 2, 2016.

"High ballot rejection rates should worry Florida voters" (with Daniel A. Smith). *Tampa Bay Times*, October 28, 2012.

"Logistic Regression." *The Encyclopedia of Political Science*, George Thomas Kurian, James E. Alt, Simone Chambers, Geoffrey Garrett, Margaret Levi, and Paula D. McClain, eds., Washington, D.C.: CQ Press. 2010.

"Using XEmacs Macros to Process ASCII Data Files." *The Political Methodologist* 13(2): 13–18. 2005.

"Ohio 2004 Election: Turnout, Residual Votes and Votes in Precincts and Wards" (with Walter R. Mebane, Jr.), in "Democracy At Risk: The 2004 Election in Ohio," report published by the Democratic National Committee. 2005.

"Poisson Regression." *The Encyclopedia of Social Science Research Methods*, Alan Bryman, Michael Lewis-Beck, and Tim Futing Liao, eds. Thousand Oaks, CA: Sage Publications, 2003.

"Pork barrel race to the bottom" (with Brett A. Theodos). *Illinois Issues* 29(2): 22–23. 2003.

"Teaching Introductory Probability Theory." *The Political Methodologist* 10(2): 2–4. 2002.

"Ballot cost Gore thousands of votes" (with Henry E. Brady and Jonathan N. Wand). *The San Diego Union–Tribune*, p. G3, November 19, 2000.

Work in progress

"Residual votes in the 2020 election in Georgia" (with David Cottrell, Felix E. Herron, and Daniel A. Smith).

"Vote-by-mail ballot rejection and experience with mail-in voting" (with David Cottrell and Daniel A. Smith).

"Did ballot design oust an incumbent senator? A study of the 2018 midterm election in Florida" (with Michael D. Martinez and Daniel A. Smith).

Awards

Best Paper Award, State Politics and Policy Section, 2013 Annual Meeting of the American Political Science Association. *Getting Your Souls to the Polls: The Racial Impact of Reducing Early In-Person Voting in Florida* (with Daniel A. Smith).

Grants

Committee for Scholarly Innovation and Advancement Awards, Dartmouth College, February, 2014. Project title: "The Dynamics of Voting Lines in Miami-Dade County." Financial support: $32,000.

The Rockefeller Center for Public Policy and the Social Sciences, Dartmouth College, May, 2006. Project title: "Large Scale Survey of Americans in Multiple Congressional Districts." Financial support: $8,500.

National Science Foundation, SES-041849, July, 2004. Project title: "A Ballot-Level Study of Intentional and Unintentional Abstention in Presidential Election Voting." Financial support: $65,749.

Nelson A. Rockefeller Center for the Social Sciences, Dartmouth College, January, 2004. Project title: "Intentional Invalid Votes in Leon County, Florida." Financial support: $1,115.

American Enterprise Institute, August, 1999. Project title: "Tenure in Office and Congressional Voting" (with Kenneth W. Shotts). Financial support: $182,500.

University Research Grants Committee, Northwestern University, February, 1999. Project Title: "Representation, Policy Uncertainty, and Divided Government." Financial support: $4,087.

Stanford University Graduate School of Business, 1997–1998 Academic Year. Dissertation Research Grant.

Michael C. Herron   7

Recent conference presentations

"Ballot design, voter intentions, and representation: A study of the 2018 midterm election in Florida," 2019 Annual Meeting of the American Political Science Association, Washington, DC.

"Ballot design, voter intentions, and representation: A study of the 2018 midterm election in Florida," Election Sciences, Reform, and Administration conference, 2019, University of Pennsylvania.

"Did ballot design oust an incumbent senator? A study of the 2018 midterm election in Florida," Congressional Elections & the Presidency: Politics in 2018, March 30, 2019, Saint Anselm College, Manchester NH.

"Estimating the Differential Effects of Purging Inactive Registered Voters," 2018 Annual Meeting of the American Political Science Association, Boston MA.

"Estimating the Differential Effects of Purging Inactive Registered Voters," Election Sciences, Reform, and Administration conference, 2018, University of Wisconsin-Madison.

Keynote address, "Mortality, Incarceration, and African-American Disenfranchisement," *Balancing the Scales: The United States in an Age of Inequality*, November 11, 2016, John F. Kennedy Institute, Freie Universität Berlin.

"Missing Black Men and Representation in American Political Institutions," 2016 Annual Meeting of the Midwest Political Science Association, Chicago, IL.

34

Invited seminars

University of Iowa, 1999	University of Mannheim, 2011
Boston University, 2000	University of Heidelberg, 2011
Dartmouth College, 2000	University of Passau, 2012
Harvard University, 2000	University of Göttingen, 2012
University of Minnesota, 2000	Freie Universität Berlin, 2012
University of Rochester, 2000	Laval University, 2012
University of Wisconsin, Madison, 2000	University of Montreal, 2012
Yale University, 2000	Middlebury College, 2013
Columbia University, 2001	University of Illinois, Champaign, 2013
University of California, Berkeley, 2002	University of Illinois, Chicago, 2013
University of Illinois, 2002	University of Wisconsin, Madison, 2013
Brown University, 2003	Yale University, 2014
Temple University, 2003	University of Virginia, 2015
University of Chicago, 2003	University of California, San Diego, 2015
New York University, 2004	American University, 2015
Princeton University, 2004	Massachusetts Institute of Technology, 2015
University of Michigan, 2005	Princeton University, 2015
George Washington University, 2006	University of California, Los Angeles, 2016
Emory University, 2006	The Ohio State University, 2016
Harvard University, 2007	Freie Universität Berlin, 2016
Loyola Law School, 2007	Deutsch-Amerikanisches Institut, Nürnberg, 2017
Columbia University, 2007	Universität Bonn, 2018
University of Chicago, 2007	Freie Universität Berlin, 2018
Yale University, 2007	Northwestern University, 2018
Stanford University, 2008	University of Pittsburgh, 2019
Columbia University, 2008	University of Salzburg, 2019
Northwestern University, 2008	Universität Bonn, 2019
Princeton University, 2008	Freie Universität Berlin, 2019
Duke University, 2009	Humboldt University, 2019
Hertie School of Governance, 2010	University of North Carolina, Charlotte, 2019
Emory University, 2010	

Professional activities

Division Chair, Representation and Electoral Systems, 2017 Annual Meeting of the Midwest Political Science Association.

Associate Editor, *Research & Politics*. November, 2016–present.

Editorial Board, *American Politics Research*, September, 2015–present.

Editorial Board, *Political Analysis*, January, 2010–present.

Editorial Board, *USENIX Journal of Election Technology and Systems*, March 2013–June 2016.

Editorial Board, *American Political Science Review*, 2010–2012.

Editorial Board, *American Journal of Political Science*, 2006–2009.

"Race, Voting Procedures, and New Developments in Voting Rights," panel organized for the 2013 Annual Meeting of the Midwest Political Science Association.

Division Chair, Formal Theory, 2007 Annual Meeting of the American Political Science Association.

Co-editor, *The Political Methodologist*, Fall 2004–Spring 2006.

Publications Committee, Society for Political Methodology, 2005–2006, 2015–present.

Dartmouth College activities

Chair, American Politics Search Committee, Department of Government, August 2018–March 2019.

Chair, Committee on Priorities, July 2015–June 2016.

Committee on Priorities, July 2013–June 2015, Fall 2019–present.

American politics search committee, Department of Government, August 2014–December 2014.

Research Computing Director search committee, October 2013–October 2014.

Senior Search Committee, Department of Government, 2013.

Research Computing Advisory Committee, Spring 2013.

Chair, American Politics Search Committee, Department of Government, 2012-2013.

Recruitment Planning Committee, Department of Government, 2010 and 2012-2013.

Committee on Standards, 2008-2010.

Task Force on Collaboration and Social Software, 2007-2008.

Biostatistics search committee, Dartmouth Medical School, 2006-2007.

Research Computing Oversight Committee, 2006.

Council on Computing, 2005-2007.

Clement Chair search committee, Department of Government, 2005-2006.

Northwestern University activities

Program Committee, Mathematical Methods in the Social Sciences, 2001-2002.

American Politics Search Committee, Department of Political Science, 2000–2001, 2001-2002.

Formal Theory Search Committee, Department of Political Science, 1997–1998.

Teaching interests

Statistical methods: introductory and applied statistics, research design, computing in R.

American politics: representation, election irregularities, election administration.

Political economy: game theory.

Michael C. Herron   10

Reviewer for

American Journal of Political Science
American Political Science Review
American Politics Quarterly
American Politics Review
British Journal of Political Science
Cambridge University Press
Chapman & Hall
Congress & the Presidency
Du Bois Review
Economics & Politics
Election Law Journal
Electoral Studies
Emerging Markets Finance & Trade
Interest Groups & Advocacy
Int'l Journal of Environmental Research and Public Health
John Wiley & Sons, Inc.
Journal of Legal Studies
Journal of Money, Credit and Banking
Journal of Politics
Journal of Public Economics
Journal of Race, Ethnicity, and Politics
Journal of Theoretical Politics
Journal of Women, Politics & Policy
Legislative Studies Quarterly
The National Science Foundation
Nonprofit Policy Forum
Perspectives on Politics
Policy Studies Journal
Political Analysis

Political Behavior
Political Research Quarterly
Political Science Quarterly
Political Science Research and Methods
Political Studies
Politics & Gender
Politics, Groups, and Identities
Polity
Prentice Hall Higher Education Group
Proceedings of the National Academy of Sciences
Public Administration
Public Choice
Public Opinion Quarterly
PS: Political Science and Politics
Quarterly Journal of Economics
Quarterly Journal of Political Science
Race and Social Problems
Science Advances
The Social Science Journal
Social Science Quarterly
Sociological Methods & Research
The Sociological Quarterly
Springer
State Politics & Policy Quarterly
Time-Sharing Experiments for the Social Sciences
The University of Michigan Press
W. W. Norton & Company
World Politics

Foreign language

German: C1 (telc Prüfung, Ausstellung July 27, 2017).

Other employment

Intelligence Analyst and Military Officer, United States Air Force, Foreign Technology Division, Wright–Patterson Air Force Base, 1989–1992.

B   Maricopa County description of voting center

96   This appendix displays part of the Maricopa County elections department page that explains to eligible voters that they can vote in any voting center in the county. The source of this image is `http://web.archive.org/web/20201104002036/https:` `//recorder.maricopa.gov/pollingplace/` (last accessed December 4, 2020).

*** The remainder of this page intentionally left blank ***

MARICOPA COUNTY
Elections Department

MENU

English Content (default.aspx)
Contenido Español (default_es.aspx)

Where Do I Vote?

Election Day is Tuesday, November 3. There are **no** assigned locations. Maricopa County voters can drop off an early ballot or vote in person at any Vote Center. Visit BeBallotReady.Vote (http://web.archive.org/web/20201104002036/http://beballotready.vote/) to find out if you're registered, what's on your ballot and more. All Vote Centers in the list below are open from 6 a.m. – 7 p.m. on Election Day. If you have any questions please call us at (602) 506-1511.

Exhibit 4

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

                                          CLERK OF THE COURT
HONORABLE RANDALL H. WARNER   C. Ladden
                                                Deputy

KELLI WARD   DENNIS I WILENCHIK

v.

CONSTANCE JACKSON, et al.   SARAH R GONSKI

                                          ROOPALI HARDIN DESAI
                                          JOSEPH EUGENE LA RUE
                                          DAVID SPILSBURY
                                          ROY HERRERA
                                          DANIEL A ARELLANO
                                          COURT ADMIN-CIVIL-ARB DESK
                                          DOCKET-CIVIL-CCC
                                          JUDGE WARNER
                                          BRUCE SPIVA
                                          PERKINS COIE LLP
                                          700 THIRTEENTH STREET NW
                                          SUITE 600
                                          WASHINGTON DC 20005

                        MINUTE ENTRY

        East Court Building – Courtroom 414

        9:15 a.m. This is the time set for a continued Evidentiary Hearing on Plaintiff's
anticipated election contest petition via GoToMeeting.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

The following parties/counsel are present virtually through GoToMeeting and/or telephonically:

- Plaintiff Kelli Ward is represented by counsel, John D. Wilenchik.

- Defendants Constance Jackson, Felicia Rotellini, Fred Yamashita, James McLaughlin, Jonathan Nez, Luis Alberto Heredia, Ned Norris, Regina Romero, Sandra D. Kennedy, Stephen Roe Lewis, and Steve Gallardo (collectively, the "Biden Elector Defendants") are represented by counsel, Sarah Gonski, Bruce Spiva (*pro hac vice*), Daniel Arellano, and Roy Herrera.

- Intervenors Adrian Fontes (in his official capacity as Maricopa County Recorder) and Maricopa County Board of Supervisors (collectively, "County Intervenors") and are represented by counsel, Thomas Liddy, Emily Craiger, and Joseph La Rue.

- Intervenor Katie Hobbs (in her official capacity as the Arizona Secretary of State) is represented by counsel, Rooplai Desai and Kristen Yost. State Election Director Sambo "Bo" Dul is also present.

Counsel for Biden Elector Defendants addresses the court as to the court's ruling denying any Rule 50 motion practice after the conclusion of Plaintiff's case. Discussion is held thereon and counsel for Biden Elector Defendants states his position on the record. The court affirms its prior ruling denying the request for any Rule 50 motion practice.

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

Biden Elector Defendants' Case:

Linton Mohammed is sworn and testifies.

Biden Elector Defendants' exhibit 16 is received in evidence.

Linton Mohammed is excused.

Biden Elector Defendants rest.

Intervenor Secretary of State's Case:

Sambo "Bo" Dul is sworn and testifies.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

Intervenor Secretary of State's exhibit 32 is received in evidence.

Sambo "Bo" Dul is excused.

Intervenor Secretary of State rests.

LET THE RECORD REFLECT that the court notes its prior acquaintance with County Intervenors' witness, Reynaldo Valenzuela, due to election matters while serving previously as the civil presiding judge.

County Intervenors' Case:

Reynaldo Valenzuela is sworn and testifies.

County Intervenors' exhibit 29 is received in evidence.

10:31 a.m. The court stands at recess.

10:41 a.m. Court reconvenes with the parties and respective counsel present.

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

Reynaldo Valenzuela continues to testify.

County Intervenors' exhibit 30 is received on evidence.

Reynaldo Venezuela is excused.

Scott Jarrett is recalled and testifies further.

Scott Jarrett is excused.

County Intervenors rest.

Plaintiff's Rebuttal:

Liesl Emerson is sworn and testifies.

Liesl Emerson is excused.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

Plaintiff rests.

11:30 a.m. The court stands at recess.

11:36 a.m. Court reconvenes with the parties and respective counsel present.

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

Closing arguments are presented.

Based on the testimony and evidence presented,

IT IS ORDERED taking this matter under advisement with a written ruling to be issued as a "**LATER**:" to this minute entry.

Pursuant to the orders entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of Court,

LET THE RECORD FURTHER REFLECT counsel indicate on the record that the courtroom clerk may dispose of Plaintiff's exhibits 2 through 13 and 15; County Intervenors' exhibit 21; and Intervenor Secretary of State's exhibits 33 and 34 not offered or received in evidence.

12:22 p.m. Matter concludes.

LATER:

Based on the evidence presented, the Court makes the following findings, conclusions, and orders. For reasons that follow, the relief requested in the Petition is denied.

1.   **Background.**

On November 30, 2020, Governor Ducey certified the results of Arizona's 2020 general election, and the Biden/Harris ticket was declared the winner of Arizona's 11 electoral votes. The same day, Plaintiff filed this election challenge under A.R.S. § 16-672. In order to permit this matter to be heard and appealed (if necessary) to the Arizona Supreme Court before the Electoral College meets on December 14, 2020, the Court held an accelerated evidentiary hearing on December 3 and 4, 2020.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

2.   <u>The Burden Of Proof In An Election Contest</u>.

A.R.S. § 16-672 specifies five grounds on which an election may be contested, three of which are alleged here:

> A. Any elector of the state may contest the election of any person declared elected to a state office, or declared nominated to a state office at a primary election, or the declared result of an initiated or referred measure, or a proposal to amend the Constitution of Arizona, or other question or proposal submitted to vote of the people, upon any of the following grounds:
>
> 1. For misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election.
>
> . . .
>
> 4. On account of illegal votes.
>
> 5. That by reason of erroneous count of votes the person declared elected or the initiative or referred measure, or proposal to amend the constitution, or other question or proposal submitted, which has been declared carried, did not in fact receive the highest number of votes for the office or a sufficient number of votes to carry the measure, amendment, question or proposal.

A.R.S. § 16-672(A)(1). Arizona law provides two remedies for a successful election contest. One is setting aside the election. A.R.S. § 16-676(B). The other is to declare the other candidate the winner if "it appears that a person other than the contestee has the highest number of legal votes." A.R.S. § 16-676(C).

The Plaintiff in an election contest has a high burden of proof and the actions of election officials are presumed to be free from fraud and misconduct. *See Hunt v. Campbell*, 19 Ariz. 254, 268, 169 P. 596, 602 (1917) ("the returns of the election officers are prima facie correct and free from the imputation of fraud"); *Moore v. City of Page*, 148 Ariz. 151, 156, 713 P.2d 813, 818 (App. 1986) ("One who contests an election has the burden of proving that if illegal votes were cast the illegal votes were sufficient to change the outcome of the election."). A plaintiff alleging misconduct must prove that the misconduct rose to the level of fraud, or that the result would have been different had proper procedures been used. *Moore*, 148 Ariz. at 159, 713 P.2d

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

at 821. "[H]onest mistakes or mere omissions on the part of the election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain." *Findley v. Sorenson*, 35 Ariz. 265, 269, 276 P. 843, 844 (1929).

These standards derive, in large part, from Arizona's constitutional commitment to separation of powers. Ariz. Const. Art. 3. The State Legislature enacts the statutes that set the rules for conducting elections. The Executive Branch, including the Secretary of State and county election officials, determine how to implement those legislative directives. These decisions are made by balancing policy considerations, including the need to protect against fraud and illegal voting, the need to preserve citizens' legitimate right to vote, public resource considerations, and—in 2020—the need to protect election workers' health. It is not the Court's role to second-guess these decisions. And for the Court to nullify an election that State election officials have declared valid is an extraordinary act to be undertaken only in extraordinary circumstances.

3.   The Evidence Does Not Show Fraud Or Misconduct.

A.R.S. § 16-672(A)(1) permits an election contest "[f]or misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election." Plaintiff alleges misconduct in three respects. First is that insufficient opportunity was given to observe the actions of election officials. The Court previously dismissed that claim as untimely. *See Lubin v. Thomas*, 213 Ariz. 496, 497, 144 P.3d 510, 511 (2006) ("In the context of election matters, the laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice."). The observation procedures for the November general election were materially the same as for the August primary election, and any objection to them should have been brought at a time when any legal deficiencies could have been cured.

Second, Plaintiff alleges that election officials overcounted mail-in ballots by not being sufficiently skeptical in their comparison of signatures on the mail-in envelope/affidavits with signatures on file. Under Arizona law, voters who vote by mail submit their ballot inside an envelope that is also an affidavit signed by the voter. Election officials review all mail-in envelope/affidavits to compare the signature on them with the signature in voter registration records. If the official is "satisfied that the signatures correspond," the unopened envelope is held until the time for counting votes. If not, officials attempt to contact the voter to validate the ballot. A.R.S. § 16-550(A).

This legislatively-prescribed process is elaborated on in the Secretary of State's Election Procedures Manual. The signature comparison is just one part of the verification process. Other

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

safeguards include the fact that mail-in ballots are mailed to the voter's address as listed in voter registration records, and that voters can put their phone number on the envelope/affidavit, which allows election officials to compare that number to the phone number on file from voter registration records or prior ballots.

Maricopa County election officials followed this process faithfully in 2020. Approximately 1.9 million mail-in ballots were cast and, of these, approximately 20,000 were identified that required contacting the voter. Of those, only 587 ultimately could not be validated.

The Court ordered that counsel and their forensic document examiners could review 100 randomly selected envelope/affidavits to do a signature comparison. These were envelope/affidavits as to which election officials had found a signature match, so the ballots were long ago removed and tabulated. Because voter names are on the envelope/affidavits, the Court ordered them sealed. But because the ballots were separated from the envelope/affidavits, there is no way to know how any particular voter voted. The secrecy of their votes was preserved.

Two forensic document examiners testified, one for Plaintiff and one for Defendants. The process forensic document examiners use to testify in court for purposes of criminal guilt or civil liability is much different from the review Arizona election law requires. A document examiner might take hours on a single signature to be able to provide a professional opinion to the required degree of certainty.

Of the 100 envelope/affidavits reviewed, Plaintiff's forensic document examiner found 6 signatures to be "inconclusive," meaning she could not testify that the signature on the envelope/affidavit matched the signature on file. She found no sign of forgery or simulation as to any of these ballots.

Defendants' expert testified that 11 of the 100 envelopes were inconclusive, mostly because there were insufficient specimens to which to compare them. He too found no sign of forgery or simulation, and found no basis for rejecting any of the signatures.

These ballots were admitted at trial and the Court heard testimony about them and reviewed them. None of them shows an abuse of discretion on the part of the reviewer. Every one of them listed a phone number that matched a phone number already on file, either through voter registration records or from a prior ballot. The evidence does not show that these affidavits are fraudulent, or that someone other than the voter signed them. There is no evidence that the manner in which signatures were reviewed was designed to benefit one candidate or another, or that there was any misconduct, impropriety, or violation of Arizona law with respect to the review of mail-in ballots.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

Third, Plaintiff alleges errors in the duplication of ballots. Arizona law requires election officials to duplicate a ballot under a number of circumstances. One is where the voter is overseas and submits a ballot under UOCAVA, the Uniformed And Overseas Citizens Absentee Voting Act. Another is where the ballot is damaged or otherwise cannot be machine-tabulated. When a duplicate is necessary, a bipartisan board creates a duplicate ballot based on the original. A.R.S. § 16-621(A). In 2020, Maricopa County had 27,869 duplicate ballots out of more than 2 million total ballots. The vast majority of these were either mail-in ballots or UOCAVA ballots. 999 of them came from polling places.

The Court ordered that counsel could review 100 duplicate ballots. Maricopa County voluntarily made another 1,526 duplicate ballots available for review. These ballots do not identify the voter so, again, there is no way to know how any individual voter voted. Of the 1,626 ballots reviewed, 9 had an error in the duplication of the vote for president.

Plaintiff called a number of witnesses who observed the duplication process as credentialed election observers. There was credible testimony that they saw errors in which the duplicated ballot did not accurately reflect the voter's apparent intent as reflected on the original ballot. This testimony is corroborated by the review of the 1,626 duplicate ballots in this case, and it confirms both that there were mistakes in the duplication process, and that the mistakes were few. When mistakes were brought to the attention of election workers, they were fixed.

The duplication process prescribed by the Legislature necessarily requires manual action and human judgment, which entail a risk of human error. Despite that, the duplication process for the presidential election was 99.45% accurate. And there is no evidence that the inaccuracies were intentional or part of a fraudulent scheme. They were mistakes. And given both the small number of duplicate ballots and the low error rate, the evidence does not show any impact on the outcome.

The Court finds no misconduct, no fraud, and no effect on the outcome of the election.

4.   The Evidence Does Not Show Illegal Votes.

A.R.S. § 16-672(A)(2) permits an election contest "[o]n account of illegal votes." Based on the facts found above, the evidence did not prove illegal votes, much less enough to affect the outcome of the election. As a matter of law, mistakes in the duplication of ballots that do not affect the outcome of the election do not satisfy the burden of proof under Section 16-672(A)(2).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285   12/04/2020

5.   The Evidence Does Not Show An Erroneous Vote Count.

A.R.S. § 16-672(A)(5) permits an election contest on the ground that, "by reason of erroneous count of votes" the candidate certified as the winner "did not in fact receive the highest number of votes." Plaintiff has not proven that the Biden/Harris ticket did not receive the highest number of votes.

6.   Orders.

Based on the foregoing,

IT IS ORDERED denying the relief requested in the Petition.

IT IS FURTHER ORDERED denying the request to continue the hearing and permit additional inspection of ballots.

IT IS FURTHER ORDERED, as required by A.R.S. § 16-676(B), confirming the election.

IT IS FURTHER ORDERED that any request for costs and/or attorneys' fees be filed, and a form of final judgment be lodged, no later than January 5, 2020. If none of these is filed or lodged, the Court will issue a minute entry with Rule 54(c) language dismissing all remaining claims.

The Court finds no just reason for delay and enters this partial final judgment under Ariz. R. Civ. P. 54(b). The Court makes this finding for purposes of permitting an immediate appeal to the Arizona Supreme Court.

/ s / RANDALL H. WARNER

_____
JUDGE OF THE SUPERIOR COURT

Exhibit 5

STATE OF MINNESOTA

IN SUPREME COURT

A20-1486

Tyler Kistner, et al.,

          Petitioners,

vs.

Steve Simon, in his official capacity as the
Minnesota Secretary of State and as a member of the
State Canvassing Board, Margaret H. Chutich,
Gordon L. Moore, III, Regina Chu, and Christian Sande,
in their official capacity as members of the
State Canvassing Board,

          Respondents.

O R D E R

On November 24, 2020, petitioners Tyler Kistner, et al., filed a petition under Minn.

Stat. § 204B.44 (2018), asking this court to temporarily restrain the State Canvassing Board

from certifying the results of the general election held in Minnesota on November 3, 2020,

and to require a full recount of the federal and state offices on the ballot for the 2020 general

election, conducted with adequate public access and in compliance with Minnesota law.

That same day, we ordered the petitioners to file proof showing that the petition was served

on the named respondents and that they had complied with the service requirements set forth

in Minnesota Statutes § 204B.44(b). We also directed the parties to file briefs addressing

the issues of laches, mootness, and finality. On November 30, 2020, we granted the motion

of the Minnesota Democratic-Farmer-Labor Party (Minnesota DFL) to intervene in this

proceeding.

1

A petition may be filed to correct certain "errors, omissions, or wrongful acts which have occurred or are about to occur," including "any wrongful act, omission, or error of any election judge . . . or any other individual charged with any duty concerning an election." Minn. Stat. § 204B.44(a)(4). The petitioners have the burden to show by a preponderance of the evidence that relief under section 204B.44 is required. *Weiler v. Ritchie*, 788 N.W.2d 879, 882–83 (Minn. 2010).

Petitioners assert three claims: (1) under the First and Fourteenth Amendments to the United States Constitution and Article I of the Minnesota Constitution, (2) under Article III of the Minnesota Constitution, the Separation of Powers Clause; and (3) under the Due Process Clauses of the United States and Minnesota Constitutions, U.S. Const. amend. XIV, Minn. Const., art. I, § 7. Counts I and II rest on challenges to consent decrees entered by the district court that suspended the witness requirement for absentee and mail ballots for the 2020 general election. *See LaRose v. Simon*, No. 62-CV-20-3149, Order (Ramsey Cty. Dist. Ct. filed Aug. 3, 2020); *NAACP-Minn. v. Simon*, No. 62-CV-20-3625, Order (Ramsey Cty. Dist. Ct. filed Aug. 3, 2020); *see also* Minn. Stat. § 203B.07, subd. 3 (2018) (explaining the process for completing the ballot in the presence of another individual). Count III challenges the processes used in some counties for conducting the postelection review. *See* Minn. Stat. § 206.89 (2018).

Respondents—the Secretary of State and the members of the State Canvassing Board—contend that petitioners' claims are barred by laches because they could have sued or asserted these claims earlier in the election process. Similarly, the Minnesota DFL argues that petitioners' delay is inexcusable because their challenges to the procedures that

2

governed the 2020 general election in Minnesota, including the postelection reviews, should have been asserted earlier.

Petitioners disagree. They assert that they did not "slumber" in their rights, but instead filed their petition within a matter of days after the last postelection review was completed, on November 20, 2020.

Laches is an equitable doctrine applied to " 'prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.' " *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2012) (quoting *Aronovitch v. Levy*, 56 N.W.2d 570, 574 (Minn. 1953)). "The first step in a laches analysis is to determine if petitioner unreasonably delayed asserting a known right." *Monaghen v. Simon*, 888 N.W.2d 324, 329 (Minn. 2016). We have insisted that petitioners move expeditiously under section 204B.44 because the time constraints associated with elections demand diligence in asserting known rights. *See, e.g., Trooien v. Simon*, 918 N.W.2d 560, 561 (Minn. 2018) ("The orderly administration of elections does not wait for convenience.").

Although petitioners assert that the petition was filed shortly after the postelection reviews were completed, their first two claims focus on events that pre-date those reviews, including the suspension of the witness requirement for absentee ballots in the general election or other events that occurred at early voting locations before November 3, 2020. The suspension of the witness requirement was publicly announced in Minnesota well before voting began on September 18, 2020. It was the subject of two proceedings in Ramsey County District Court, followed by consolidated appeals in this court. *LaRose & NAACP-Minn. v. Simon*, Nos. 62-CV-20-3149, 62-CV-20-3265, *appeals filed*, Nos. A20-

3

1040, A20-1041 (Aug. 10, 2020).   Given the undisputed public record regarding the

suspension of the witness requirement for absentee and mail ballots, petitioners had a duty

to act well before November 3, 2020, to assert claims that challenged that procedure;

asserting these claims 2 months after voting started, 3 weeks after voting ended, and less

than 24 hours before the State Canvassing Board met to certify the election results is

unreasonable.   We also must consider the impact of petitioners' requested relief on election

officials, candidates, and voters who participated in the 2020 general election knowing that

the witness requirement was suspended. *Clark v. Pawlenty*, 755 N.W.2d 293, 301 (Minn.

2008).   Petitioners' proposed recount of the entirety of the 2020 general election results

would cast an unacceptable degree of uncertainty over the election, potentially leaving

Minnesotans   without   adequate   elected   representation.   The   proposed   full   recount,

regardless of the vote difference between candidates, *see* Minn. Stat. § 204C.35, subd. 1(b)

(2018) (mandating a recount only with certain margins of difference), would impose

unacceptable burdens on voters and election officials alike. Counts I and II must therefore

be dismissed.

Count III of the petition focuses almost exclusively on the postelection reviews that

were conducted after November 3, 2020. *See* Minn. Stat. § 206.89, subd. 2 (prohibiting

the start of these reviews "before the 11th day after the state general election"). The facts

available to us do not clearly establish that petitioners could have asserted this claim

sooner. Laches therefore may not be applicable to this claim.

Count III must nonetheless be dismissed. Minnesota Statutes § 204B.44(b) requires

the petitioner to serve the petition on the election official charged with a wrongful act. It

is the duty of county auditors or other county or local officials to conduct postelection

4

reviews. *See* Minn. Stat. § 206.89, subds. 1–2, 3. Consistent with this statutory duty, petitioners alleged in connection with their challenges to these reviews that wrongful acts and errors were committed by "county officials." Thus, by their own allegations and under the plain language of section 204B.44(b), petitioners were required to serve *county* election officials with a copy of the petition. Serving the Secretary of State, alone, does not suffice. At the very least, petitioners should have served the petition on the specific county officials named in their petition and supporting affidavits. These election officials, not the Secretary of State, have direct knowledge of the facts regarding the postelection reviews conducted after the November 3 election and, thus, are in the best position to respond to the allegations in the petition.

We directed petitioners to ensure that the petition was served in compliance with Minn. Stat. § 204B.44. They did not file proof that shows any county election officials were served with the petition. Thus, Count III must be dismissed.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition filed on November 24, 2020, be and the same is, dismissed.

Dated: December 4, 2020   BY THE COURT:

                                           Lorie S. Gildea
                                           Chief Justice

CHUTICH, THISSEN, and MOORE, III, JJ., took no part in the consideration or decision of this matter.

DIETZEN, Acting Justice, appointed pursuant to Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2 (2018).