

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Kari Lake, *et al.*,
10 Plaintiffs,

11 v.

12 Katie Hobbs, *et al.*,
13 Defendants.
14

No. CV-22-00677-PHX-JJT

ORDER

15 At issue are the following motions:

- 16 1) Defendants Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and
17 Steve Gallardo’s (hereinafter referred to collectively as “Maricopa County
18 Defendants”) Motion to Dismiss (Doc. 27), joined by Sharon Bronson, Steve
19 Christy, Adelita Grijalva, Matt Heinx, and Rex Scott (hereinafter referred to
20 collectively as “Pima County Defendants”) (Doc. 31) and Arizona Secretary
21 of State, Katie Hobbs (“the Secretary”) (Doc. 45), to which Plaintiffs Kari
22 Lake and Mark Finchem responded (Doc. 56), and the Maricopa County
23 Defendants replied (Doc. 61);
- 24 2) The Maricopa County Defendants’ Motion for Judicial Notice of Exhibits 1
25 through 17 (Doc. 29), joined by the Pima County Defendants (Doc. 31), to
26 which Plaintiffs responded (Doc. 55);
- 27 3) The Secretary’s Motion to Dismiss (Doc. 45), to which Plaintiffs responded
28 (Doc. 58), and the Secretary replied (Doc. 62);

- 1 4) Plaintiffs’ Motion for Preliminary Injunction (Doc. 50), to which the
2 Maricopa County Defendants and the Secretary responded (Docs. 57, 59,
3 respectively), joined by the Pima County Defendants (Doc. 60), and
4 Plaintiffs replied (Docs. 64, 63, respectively);
- 5 5) The Secretary’s Motion to Strike and Motion in Limine (Doc. 74), joined by
6 the Maricopa County Defendants (Doc. 75), to which Plaintiffs responded
7 (Doc. 91); and
- 8 6) Plaintiffs’ Expedited Request for Permission to Supplement Record
9 (Doc. 93), to which Defendant Maricopa County responded (Doc. 95), joined
10 by the Secretary (Doc. 96).

11 On July 21, 2022, the Court heard the parties’ arguments on Defendants’ Motions to
12 Dismiss and Plaintiffs’ Motion for Preliminary Injunction. (*See* Doc. 79; Doc. 98, Tr.) For
13 the reasons set forth below, the Court grants Defendants’ Motions to Dismiss, and therefore
14 does not reach Plaintiffs’ Motion for Preliminary Injunction.¹ The Court also denies
15 Plaintiffs’ Expedited Request for Permission to Supplement Record.

16 **I. BACKGROUND**

17 **A. Plaintiffs’ Allegations**

18 Plaintiffs allege that the United States’ transition to electronic systems and computer
19 technology for voting has “created unjustified new risks of hacking, election tampering,
20 and electronic voting fraud.” (Doc. 3, First Amended Complaint (“FAC”) ¶ 71.) According

21 ¹ To obtain a preliminary injunction, a plaintiff must show that “(1) [it] is likely to succeed
22 on the merits, (2) [it] is likely to suffer irreparable harm in the absence of preliminary relief,
23 (3) the balance of equities tips in [its] favor, and (4) an injunction is in the public interest.”
24 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Winter v. Nat. Res. Def.*
25 *Council, Inc.*, 555 U.S. 7, 20 (2008)). Plaintiffs cannot meet any of the factors. Further,
26 even if Plaintiffs could satisfy the first, second, and third *Winter* factors, which they cannot,
27 their Motion for Preliminary Injunction would undoubtedly fail on the fourth factor—such
28 an injunction is not in the public interest. Not only do Plaintiffs fail to produce any evidence
 that a full hand count would be more accurate, but a hand count would also require
 Maricopa County to hire 25,000 temporary staff and find two million square feet of space.
 (Tr. 196:6-198:8.) Further, there is no question that the results of the election would be
 delayed. (Tr. 198:9-21; 199:22-201:14.) In fact, with the County’s current employees it
 would be “an impossibility” to have the ballots counted in order to perform the canvass by
 the 20th day after the election, as required by law. (Tr. 194:16-23.) Thus, the injunctive
 relief Plaintiffs seek is not in the public interest.

1 to Plaintiffs, electronic ballot marking devices certified by Arizona are “potentially
2 insecure, lack adequate audit capacity, fail to meet minimum statutory requirements, and
3 deprive voters of the right to have their votes counted and reported in an accurate, auditable,
4 legal, and transparent process.” (FAC ¶ 23.) It follows, Plaintiffs say, that the use of these
5 devices in the upcoming 2022 midterm election, “without objective validation, violates the
6 voting rights of every Arizonan.” (FAC ¶ 23.)

7 Plaintiffs assert that the electronic voting systems used in Arizona counties are
8 “rife” with cybersecurity vulnerabilities and provide a means for unauthorized persons to
9 manipulate the reported vote counts in an election and potentially change the winner. (FAC
10 ¶¶ 12, 139.) Some of the vulnerabilities Plaintiffs identify include: operating systems and
11 antivirus software that lack necessary updates; open ports on the election management
12 server, which allow for possible remote access; shared accounts and common passwords;
13 unauthorized user internet or cellular access through election servers and devices; and
14 secret content not subject to objective and public analysis. (FAC ¶ 12.)

15 Plaintiffs contend that credible allegations of electronic voting machine glitches that
16 materially impacted specific races began to emerge in 2002. (FAC ¶ 73.) Plaintiffs cite
17 cyber experts and computer scientists who claim that they have created programs and
18 software that can change votes without detection. (FAC ¶¶ 74-75.) Plaintiffs also note that
19 electronic voting machine manufacturers “source and assemble their components in hostile
20 nations,” specifically naming China, Taiwan, and the Philippines. (FAC ¶¶ 90-92.)

21 According to Plaintiffs, both Republican and Democratic lawmakers have been
22 aware of the problems with electronic voting systems for years but have failed to act. (FAC
23 ¶¶ 93-107.) Further, Plaintiffs claim that electronic voting machine companies have not
24 been transparent about their systems, specifically noting that the Department of Homeland
25 Security’s Cybersecurity and Infrastructure Agency (“CISA”) revealed that “malicious
26 hackers had compromised and exploited SolarWinds Orion network management software
27 products.” (FAC ¶¶ 108-112 (citing CISA, *CISA Issues Emergency Directive to Mitigate*
28 *the Compromise of SolarWinds Orion Network Management Products* (Dec. 13, 2020))

1 ([https://www.cisa.gov/news/2020/12/13/cisa-issues-emergency-directive-mitigate-](https://www.cisa.gov/news/2020/12/13/cisa-issues-emergency-directive-mitigate-compromise-solarwinds-orion-network)
 2 [compromise-solarwinds-orion-network](https://www.cisa.gov/news/2020/12/13/cisa-issues-emergency-directive-mitigate-compromise-solarwinds-orion-network).) Plaintiffs claim that open-source technology
 3 would mitigate some of these problems and promote both security and transparency, but
 4 Defendants have failed to institute such technologies. (FAC ¶¶ 117-118.) Instead,
 5 according to Plaintiffs, the lack of transparency has created a “black box” system of voting
 6 that lacks credibility and integrity. (FAC ¶ 124.)

7 Plaintiffs also allege that they have found evidence of illegal vote manipulation during
 8 the 2020 general election. (FAC ¶ 125.) Plaintiffs cite a report compiled by the Cyber Ninjas,
 9 which they claim found that: (1) “None of the various systems related to elections had
 10 numbers that would balance and agree with each other. In some cases, these differences were
 11 significant”; (2) “Files were missing from the Election Management System (EMS) Server”;
 12 (3) “Logs appeared to be intentionally rolled over, and all the data in the database related to
 13 the 2020 General Election had been fully cleared”; (4) “Software and patch protocols were
 14 not followed”; and (5) basic cyber security best practices and guidelines from the CISA were
 15 not followed. *Maricopa County Forensic Election Audit, Volume I* at 1-3 (Sept. 24, 2021),
 16 [https://c692f527-da75-4c86-b5d1-](https://c692f527-da75-4c86-b5d1-8b3d5d4d5b43.filesusr.com/ugd/2f3470_a91b5cd3655445b498f9acc63db35afd.pdf)
 17 [8b3d5d4d5b43.filesusr.com/ugd/2f3470_a91b5cd3655445b498f9acc63db35afd.pdf](https://c692f527-da75-4c86-b5d1-8b3d5d4d5b43.filesusr.com/ugd/2f3470_a91b5cd3655445b498f9acc63db35afd.pdf)).²

18 Next, Plaintiffs contend that Arizona’s voting systems do not meet state or federal
 19 standards. (FAC ¶ 135 (citing 2002 Voting Systems Standards (“VSS”); A.R.S. § 16-
 20 442(B)).) The Secretary has statutory duties to test, certify, and qualify the software used
 21 on county election systems, and Plaintiffs allege she certified Dominion’s DVS 5.5-B
 22 voting system despite the fact that it includes Dominion ImageCast Precent2 (“ICP2”), a
 23

24 ² Plaintiffs fail to mention that the report also states:

25 [T]here were no substantial differences between the hand count of the ballots
 26 provided and the official election canvass results for Maricopa County. This
 27 is an important finding because the paper ballots are the best evidence of
 voter intent and there is no reliable evidence that the paper ballots were
 altered to any material degree.

28 *Maricopa County Forensic Election Audit, Volume I* at 1-3.

1 component program, which does not meet 2002 VSS standards or Arizona’s statutory
2 requirements. (FAC ¶ 137.) By seeking to use the DVS 5.5-B system, Plaintiffs assert that
3 the Secretary intends to facilitate violations of Arizona and federal law, and that such a
4 system cannot ensure that elections are “free and equal” as required by Article 2, Section
5 21 of the Arizona Constitution. (FAC ¶¶ 142-143.)

6 Plaintiffs also claim that Arizona’s post-election audit process is insufficient to
7 remediate the security problems inherent in the use of electronic voting machines, because
8 they can be defeated by sophisticated manipulation of the voting machines. (FAC ¶¶ 144-
9 145.) According to Plaintiffs, the only way to overcome the security issues they identify is
10 for the Court to Order that the upcoming midterm election must be conducted by paper
11 ballot. (FAC ¶ 153.) Plaintiffs summarize the procedures they ask the Court to implement
12 as follows:

- 13 • Ballots are cast by voters filling out paper ballots, by hand. The ballots
14 are then placed in a sealed ballot box. Each ballot bears a discrete,
15 unique identification number, which is made known by election
16 officials only to the voter, so that the voter can later verify whether
17 his or her ballot was counted properly. All ballots will be printed on
18 specialized paper to confirm their authenticity.
- 19 • Th[r]ough a uniform chain of custody, ballot boxes are conveyed to a
20 precinct level counting location while still sealed.
- 21 • With party representatives, ballot boxes are unsealed, one at a time,
22 and ballots are removed and counted in batches of 100, then returned
23 to the ballot box. When all ballots in a ballot box have been counted,
24 the box is resealed, with a copy of the batch tally sheets left inside the
25 box, and the batch tally sheets carried to the tally center with a uniform
26 chain of custody.
- 27 • Ballots are counted, one at a time, by three independent counters, who
28 each produce a tally sheet that is compared to the other tally sheets at
the completion of each batch.
- At the tally center, two independent talliers add the counts from the
batch sheets, and their results are compared to ensure accuracy.
- Vote counting from paper ballots is conducted in full view of multiple,
recording, streaming cameras that ensure a) no ballot is ever touched
or accessible to anyone off-camera or removed from view between
acceptance of a cast ballot and completion of counting, b) all ballots,
while being counted are in full view of a camera and are readable on
the video, and c) batch tally sheets and precinct tally sheets are in full
view of a camera while being filled out and are readable on the video.
- Each cast ballot, from the time of receipt by a sworn official from a
verified, eligible elector, remains on video through the completion of
precinct counting and reporting.

- 1 • The video be live-streamed for public access and archived for use as
2 an auditable record, with public access to replay a copy of that
3 auditable record.
- 4 • Anonymity will be maintained however, any elector will be able to
5 identify their own ballot by the discrete, serial ballot number known
6 only to themselves, and to see that their own ballot is accurately
7 counted.

8 (FAC ¶ 153.) Plaintiffs maintain that the Cyber Ninjas’ hand count “offers Defendant
9 Hobbs a proof-of-concept and a superior alternative to relying on corruptible voting
10 systems,” and that voting jurisdictions outside the U.S., including France and Taiwan, have
11 shown that “hand-count voting can deliver swift, secure, and accurate election results.”³

12 (FAC ¶ 155.)

13 **B. Elections in Arizona**

14 Before discussing the legal merits of Plaintiffs’ claims, the Court provides a brief
15 overview of Arizona’s current practices surrounding elections. Arizona authorized the use
16 of electronic voting systems in 1966 and has been using them to tabulate votes for decades.
17 H.B. 204, 27th Leg., 2d. Reg. Sess. (Ariz. 1966).

18 Before a single vote is cast, Arizona’s election equipment undergoes thorough
19 testing by independent, neutral experts. Electronic voting equipment must be tested by both
20 the Secretary’s Certification Committee and an Election Assistance Commission (“EAC”)⁴
21 accredited testing laboratory before it may be used in an Arizona election. A.R.S. § 16-
22 442(A), (B). Before the 2020 election, for example, Maricopa County’s Dominion Voting
23 Systems Democracy Suite 5.5-B equipment underwent testing by Pro V&V, an EAC-
24 accredited testing laboratory, and received a Certificate of Conformance from the EAC.

25 ³ When asked how long the Cyber Ninjas’ hand count took to complete, Douglas Logan,
26 one of Plaintiffs’ witnesses, testified that “there was more than just hand counting, but we
27 started hand counting in the middle of April and we finished with the delivery of the report
28 . . . September 22.” (Tr. 79:1-9.) “[T]he majority of [the hand count] was done in about
two and a half or three months, but there was a lot of quality control work we did to make
sure those numbers were accurate.” (Tr. 73:21-24.) During the hand count, roughly 2,000
individuals worked to hand count only two races. (Tr. 72:12-22.)

⁴ The EAC was established by the Help America Vote Act of 2002, which charged the
Commission with providing “for the testing, certification, decertification, and
recertification of voting system hardware and software by accredited laboratories.” 52
U.S.C. § 20971(a)(1).

1 (Doc. 29, Exs. 2, 3, 4⁵.) In October 2019, the Arizona Secretary of State’s Equipment
2 Certification Committee also conducted a demonstration of the equipment in a public
3 meeting, which the equipment also passed. (Doc. 29, Ex. 5.)

4 In addition to the equipment certification process, Arizona’s vote tabulation results
5 are subject to four independent audits—two audits occur before the election, and two audits
6 after. The first of these audits is a logic and accuracy test, which is performed by the
7 Arizona Secretary of State on a sample of the tabulation equipment. A.R.S. § 16-449(A),
8 (B). As Scott Jarrett (“Mr. Jarrett”), Maricopa County’s Director of Elections, explained
9 during the July 21, 2022 hearing, even before the Secretary of State performs her logic and
10 accuracy testing, the County tests the equipment.⁶ During Maricopa County’s logic and
11 accuracy tests for the 2020 general election, over 8,100 ballots were tested to ensure that
12 every candidate, every rotational position, and every ballot style would be counted
13 accurately. (Tr. 188:12-16.) The Secretary’s logic and accuracy tests are blind to the
14 County, and are observed by representatives from the political parties, who sign off on the
15 results. (Tr. 188:19-189:4.) On October 6, 2020, prior to the 2020 election, the Secretary
16 of State performed the logic and accuracy testing on Maricopa County’s tabulation
17 equipment, and the ballots were tabulated with 100% accuracy. (Doc. 29, Ex. 9; *see also*
18 *Maricopa Cnty., Maricopa County Election Facts / Voting Equipment & Accuracy* (last
19

20 ⁵ The County Defendants filed a Motion for Judicial Notice of Exhibits 1 -17 to their
21 Motion to Dismiss. (Doc. 29.) The Court grants the Motion only as to the government
22 documents referenced in this Order. The remainder of the Motion is denied. The Court also
23 acknowledges that in their memorandum in opposition to Defendants’ Motion, Plaintiffs
24 argue that judicial notice is inappropriate where Defendants seek to use government
25 documents “willy-nilly to ‘prove’ disputed facts.” (Doc. 55 at 1.) The Court disagrees with
26 Plaintiffs’ argument. The facts contained in the documents cited by the Court in this Order
27 are not subject to reasonable dispute. Fed. R. Evid. 201(b)(2). For the same reasons, the
28 Court takes judicial notice of the portions of government websites cited by both parties.
Further, the Court notes that it only refers to these facts for the purpose of providing
background for its later analysis, not to establish the truth of any disputed fact.

⁶ Mr. Jarrett also explained that Maricopa County performs a “hash code verification” prior
to the Secretary’s logic and accuracy testing. (Tr. 187:15-24.) As the Court understands it,
a unique hash code value provides a digital representation of every piece of equipment and
software that should be installed on the Election Management System, and the County does
a one-for-one check to ensure that no erroneous or malicious software or hardware has
been added to the equipment.

1 accessed Aug. 17, 2022), <https://www.maricopa.gov/5539/Voting-Equipment-Facts>
2 (hereinafter “Maricopa Cnty. Election Facts”).) The second required audit also takes place
3 before election day. For the second audit, Arizona counties must perform a logic and
4 accuracy test on all of their tabulation equipment. 2019 Elections Procedures Manual
5 (“2019 EPM”) at 86. In 2020, the second Maricopa County audit also took place on October
6 6, and the tabulators counted the ballots with 100% accuracy. (Maricopa Cnty. Election
7 Facts.)

8 When the time to vote arrives, every Arizona voter casts a ballot by hand, on paper.
9 This is the law. *See* A.R.S. §§ 16-462 (primary election ballots “shall be printed”), 16-
10 468(2) (“Ballots shall be printed in plain clear type in black ink, and for a general election,
11 on clear white materials”), 16-502 (general election ballots “shall be printed with black ink
12 on white paper”). Arizona’s statutes carve out one exception to this rule—voters with
13 disabilities may vote on “accessible voting devices” (sometimes referred to as “ballot
14 marking devices,” or “BMDs”), but these devices still must produce a paper ballot or voter
15 verifiable paper audit trail, which the voter can review to confirm that the machine correctly
16 marked his or her choices, and which can be used in the event of an audit.⁷ A.R.S. §§ 16-
17 442.01; § 16-446(B)(7); 2019 EPM at 80. As Mr. Jarrett explained, the accessible voting
18 devices are not connected to the internet, and the ports on the devices are locked and have
19 affixed tamper evident seals.⁸ (Tr. 177:5-20.) There has never been an instance where one
20 of the seals was removed or broken during voting. (Tr. 178:4-9.) The Secretary also

21 ⁷ In *Curling v. Raffensperger*, the plaintiffs’ expert, Professor J. Alex Halderman, noted in
22 his report that “Georgia can eliminate or greatly mitigate [the risks of electronic ballot
23 marking devices (“BMDs”)] by adopting the same approach to voting that is practiced in
24 most of the country: using hand-marked paper ballots and reserving BMDs for voters who
need or request them.” (Halderman Dec. 33, Doc. 1304-3, *Curling v. Raffensperger*, No.
1:17-CV-2989-AT (N.D. Ga. Feb. 3, 2022) (emphasis added)). This is already Arizona’s
practice.

25 ⁸ Mr. Jarrett testified that serialized port blockers with customized keys are also used on
26 Maricopa County’s vote tabulation equipment. (Tr. 178:19-179:7.) The equipment is also
27 enclosed in security containers, which prevent access to all ports, even those that may have
28 a mouse or a keyboard plugged in. (Tr. 179:8-15.) The keys to the security containers are
locked in a secure server room, to which only three people have access, and upon entering
the secure server room, those three individuals must keep a log of their reasons for doing
so. (Tr. at 179:15-20.)

1 certifies the accessible voting systems for each county. *See* Ariz. Sec’y of State, *Voting*
2 *Equipment* (last accessed Aug. 17, 2022), [https://azsos.gov/elections/voting-](https://azsos.gov/elections/voting-election/voting-equipment)
3 [election/voting-equipment](https://azsos.gov/elections/voting-election/voting-equipment). In the 2020 general election, 2,089,563 ballots were cast in
4 Maricopa County, and only 453 of those were cast using an accessible voting device.
5 (Tr. 174:24-175:4.)

6 Following the election, the third required audit—a hand count—takes place.⁹ A.R.S.
7 § 16-602(B). Representatives of the political parties, under the oversight of the Elections
8 Department, randomly select two percent of the polling locations, as well as one percent of
9 the early ballots cast or five thousand early ballots, whichever is less, and count all the
10 ballots by hand. A.R.S. §§ 16-602(B), (F); EPM at 215. Maricopa County’s hand count
11 audit of the 2020 general election was conducted from November 4 through 9, 2020, and
12 showed that the tabulators had counted the ballots with 100% accuracy. (Doc. 29, Ex. 10.)

13 The fourth required audit is the post-election logic and accuracy testing performed
14 by the counties. Each county performs its own post-election logic and accuracy testing.
15 EPM at 235. This process uses the same test ballots as the counties’ pre-election logic and
16 accuracy testing, and should generate the same results, verifying that no changes were
17 made to the tabulators’ software between the two tests. EPM at 235. Maricopa County’s
18 post-election logic and accuracy testing took place on November 18, 2020, and showed
19 that the tabulators counted the votes with 100% accuracy. (Doc. 29, Ex. 11; see also
20 Maricopa Cnty., Media Advisory: Post Election Logic and Accuracy Test on Nov. 18
21 (Nov. 17, 2020) <https://content.govdelivery.com/accounts/AZMARIC/bulletins/2acfff>;
22 Maricopa Cnty., Board of Supervisors Certifies Maricopa County Election Results
23 (Nov. 20, 2020) <https://content.govdelivery.com/accounts/AZMARIC/bulletins/2ada05e>.)
24

25 ⁹ This audit can only be performed if the county chairs of each political party designate and
26 provide election board members to conduct the hand count. (Doc. 27 at 5, fn. 4; A.R.S. §
27 16-602(B)(7).) One or more of the political party chairs in Apache, Gila, Graham, La Paz,
28 and Yuma did not designate election board members for the 2020 general election, so hand
count audits were not performed in those counties. (Doc. 27 at 5, fn. 4; *see also* Ariz. Sec’y
of State, *Summary of Hand Count Audits - 2020 General Election* (Nov. 17, 2020),
<https://azsos.gov/2020-general-election-hand-count-results>.)

1 In February 2021, Pro V&V and SLI Compliance, another EAC-accredited
 2 laboratory, conducted audits of Maricopa County’s tabulation equipment. (Doc. 27, Ex. 6.)
 3 The two auditors reached the same conclusions: (1) all systems and equipment were using
 4 software and equipment certified by the EAC and Arizona Secretary of State; (2) no
 5 malicious hardware or software discrepancies were detected; (3) the system was
 6 determined to be a “closed network” and no internet connections were identified; and (4)
 7 logic and accuracy testing resulted in accurate numbers.¹⁰

8 C. Procedural History

9 Plaintiffs brought this action under 42 U.S.C. § 1983 and *Ex parte Young*, 209 U.S.
 10 123 (1908) and its progeny to challenge government officers’ “ongoing violation of federal
 11 law and [to] seek[] prospective relief” under the equity jurisdiction conferred on federal
 12 district courts by the Judiciary Act of 1789. (FAC ¶ 48.) Specifically, Plaintiffs allege that
 13 the Secretary has violated A.R.S. §§ 16-452 (A), (B), and (D); 16-446 (B); 16-445(D); and
 14 § 16-442(B).¹¹ (FAC ¶¶ 156-161.) They also allege that the County Defendants have
 15 violated A.R.S. §§ 11-251¹² and 16-452 (A). (FAC ¶¶ 162-165.) Plaintiffs further allege
 16 that all Defendants have violated the Due Process Clause of the Fourteenth Amendment of
 17 the U.S. Constitution and Article 2, Section 4 of the Arizona Constitution; the Equal
 18 Protection Clause of the Fourteenth Amendment; and the fundamental right to vote as
 19 protected by the U.S. Constitution. (*See generally* FAC.) They seek declaratory and
 20 injunctive relief against all Defendants pursuant to 42 U.S.C. § 1983, as well as a
 21 declaratory judgment pursuant to 28 U.S.C. § 2201. (FAC ¶¶ 196-199, 207-211.)
 22

23 ¹⁰ Logic and accuracy testing was outside SLI Compliance’s scope of work, so was
 24 performed only by Pro V&V. (Doc. 29, Ex. 6 at 1.)

25 ¹¹ During the July 21, 2022 hearing, Plaintiffs took the position that the FAC does not
 26 present claims that are based in state law, and they “are not alleging [Defendants’ actions]
 27 violate[] state statute[s].” (Tr. 224:12-225:3.) However, paragraphs 177, 184, 190, 196, and
 28 207 are clear: in bringing their claims under federal law, “Plaintiffs incorporate and
 reallege all paragraphs in this Complaint.” This includes paragraphs 156-161, where
 Plaintiffs allege the Secretary acted in violation of Arizona state law.

¹² Plaintiffs are no longer pursuing their A.R.S. § 11-251 claim. (Doc. 27 at 19.)

1 The County Defendants filed a Motion to Dismiss Plaintiffs’ claims under Federal
2 Rule of Civil Procedure 12(b)(6), arguing that (1) Plaintiffs’ claims are untimely;
3 (2) Plaintiffs fail to allege sufficient factual allegations; and (3) Plaintiffs fail to allege a
4 cognizable legal theory. (*See generally* Doc. 27.) The Secretary joined in the County
5 Defendants’ arguments, and also filed her own Motion to Dismiss under Federal Rules of
6 Civil Procedure 12(b)(1) and 12(b)(6), arguing that (1) Plaintiffs lack standing; (2) the
7 Eleventh Amendment bars Plaintiffs’ claims; and (3) Plaintiffs fail to state a cognizable
8 constitutional claim. (*See generally* Doc. 45.)

9 On July 21, 2022, the Court heard the parties’ arguments on Plaintiff’s Motion for
10 Preliminary Injunction and Defendants’ Motions to Dismiss. In this Order, the Court
11 addresses only the Defendants’ arguments concerning standing, the Eleventh Amendment,
12 and portions of Defendants’ arguments that pertain to the timing of Plaintiffs’ suit, because
13 it finds that each of these arguments is dispositive on its own.

14 **II. LEGAL STANDARDS**

15 **A. Federal Rule of Civil Procedure 12(b)(1)**

16 “A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) may
17 attack either the allegations of the complaint as insufficient to confer upon the court subject
18 matter jurisdiction, or the existence of subject matter jurisdiction in fact.” *Renteria v.*
19 *United States*, 452 F. Supp. 2d 910, 919 (D. Ariz. 2006) (citing *Thornhill Publ’g Co. v.*
20 *Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979)). “Where the jurisdictional
21 issue is separable from the merits of the case, the [court] may consider the evidence
22 presented with respect to the jurisdictional issue and rule on that issue, resolving factual
23 disputes if necessary.” *Thornhill*, 594 F.2d at 733; *see also Autery v. United States*, 424
24 F.3d 944, 956 (9th Cir. 2005) (“With a 12(b)(1) motion, a court may weigh the evidence
25 to determine whether it has jurisdiction.”). The burden of proof is on the party asserting
26 jurisdiction to show that the court has subject matter jurisdiction. *See Indus. Tectonics, Inc.*
27 *v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990).

28

1 **B. Article III Standing**

2 Article III Courts are limited to deciding “cases” and “controversies.” U.S. Const.
3 art. III, § 2. “Article III of the Constitution requires that one have “the core component of
4 standing.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To have standing
5 under Article III, a plaintiff must show: (1) an injury in fact that is (a) concrete and
6 particularized and (b) actual or imminent; (2) the injury is fairly traceable to the challenged
7 action of the defendant; (3) it is likely, not merely speculative, that the injury will be
8 redressed by decision in the plaintiff’s favor. *Maya v. Centex Corp.*, 658 F.3d 1060, 1067
9 (9th Cir. 2011). A complaint that fails to allege facts sufficient to establish standing
10 requires dismissal for lack of subject-matter jurisdiction under Federal Rule of Civil
11 Procedure 12(b)(1). *See, e.g., Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115,
12 1123 (9th Cir. 2010).

13 **C. The Eleventh Amendment**

14 The Eleventh Amendment prevents a state from being sued in federal court without
15 its consent. *Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 952 (9th Cir. 2008). When
16 the state is “the real, substantial party in interest,” Eleventh Amendment immunity extends
17 to “suit[s] against state officials.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S.
18 89, 101 (1984) (quotations omitted). *Ex parte Young* provides an exception to Eleventh
19 Amendment immunity, but it applies only to “claims seeking prospective injunctive relief
20 against state officials to remedy a state’s ongoing violation of federal law.” *Ariz. Students’*
21 *Ass’n v. Ariz. Bd. of Regents*, 824 F.3d 858, 865 (9th Cir. 2016) (citing *Ex parte Young*,
22 209 U.S. 123 (1908)).

23 **D. The Purcell Doctrine**

24 The *Purcell* doctrine directs federal appellate courts “to weigh, in addition to the
25 harms attendant upon issuance or nonissuance of an injunction, considerations specific to
26 election cases and its own institutional procedures.” *Purcell v. Gonzalez*, 549 U.S. 1, 4
27 (2006). The Supreme Court “has repeatedly emphasized that lower federal courts should
28 ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm.*

1 *v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (collecting cases); *Short v.*
2 *Brown*, 893 F.3d 671, 676 (9th Cir. 2018) (“[T]he Supreme Court has warned us many
3 times to tread carefully where preliminary relief would disrupt a state voting system on the
4 eve of an election.”); *see also New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1283
5 (11th Cir. 2020) (“And we are not on the eve of the election—we are in the middle of it,
6 with absentee ballots already printed and mailed.”).

7 **III. ANALYSIS**

8 **A. Plaintiffs Lack Article III Standing**

9 To establish an injury in fact, the first element of standing, “a plaintiff must show
10 that he or she suffered an invasion of a legally protected interest that is concrete and
11 particularized and actual or imminent, not conjectural or hypothetical.” *Spokeo, Inc. v.*
12 *Robins*, 578 U.S. 330, 339 (2016) (quotations omitted). A “concrete” and “particularized”
13 injury must be “real,” not “abstract,” *id.*, and “must affect the plaintiff in a personal and
14 individual way.” *Raines v. Byrd*, 521 U.S. 811, 819 (1997) (quotation omitted). And to be
15 “actual or imminent,” a threatened injury must be “certainly impending”— “allegations of
16 possible future injury are not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409
17 (2013) (cleaned up).

18 The Secretary argues that Plaintiffs cannot establish an injury in fact for two
19 reasons. First, the Secretary argues that Plaintiffs’ claimed injuries are too speculative to
20 establish standing. (Doc. 45 at 5.) According to the Secretary, the bulk of Plaintiff’s
21 allegations are vague, and have to do with electronic voting systems generally. (Doc. 45 at
22 6.) She also notes that all of Plaintiffs’ examples of “issues” with election equipment
23 involve other jurisdictions, not Arizona. (Doc. 45 at 6; *see also* FAC ¶¶ 4, 23, 29, 32 61,
24 73-80, 81-89, 90-92, 93-102, 103-106, 107, 108-116, 125-131, 133-134, 181, 199.) The
25 Secretary cites *Shelby Cnty. Advocs. for Valid Elections v. Hargett* to support her position.
26 2019 WL 4394754 (W.D. Tenn. Sept. 13, 2019), *aff’d Shelby Advocs. for Valid Elections*
27 *v. Hargett*, 947 F.3d 977 (6th Cir. 2020). There, the district court found that the plaintiffs’
28 allegations that their county’s electronic voting equipment was “vulnerable to undetectable

1 hacking and malicious manipulation” were “based only on speculation, conjecture and [the
2 plaintiffs’] seemingly sincere desire for their ‘own value preferences’ in having voting
3 machines with a paper trail.” *Id.* at *2, 7. The district court held that the plaintiffs had failed
4 to allege facts to show that “Shelby County’s voting system is more likely to miscount
5 votes than any other system used in Tennessee,” and the allegations in their complaint were
6 therefore too conjectural to survive. *Id.* at 10.

7 Plaintiffs argue that “[a]n allegation of future injury may suffice if . . . there is a
8 substantial risk that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149,
9 158 (2014) (quotation omitted). They point to their Complaint for support, contending that
10 it “pleads detailed allegations showing that existing safety procedures and certifications
11 can be defeated and that manipulation of votes can be performed without leaving any record
12 of the changes.” (Doc. 58 at 4; FAC ¶¶ 31, 75, 98, 128, 138-40, 145-46.) Plaintiffs also cite
13 *Curling v. Kemp*, where the U.S. District Court for the Northern District of Georgia held
14 that the plaintiffs had standing where they “plausibly allege[d] a threat of a future hacking
15 event that would jeopardize their votes and the voting system at large.” *Curling v. Kemp*,
16 334 F. Supp. 3d 1303, 1316 (N.D. Ga. 2018).

17 Ultimately, even upon drawing all reasonable inferences in Plaintiffs’ favor, the
18 Court finds that their claimed injuries are indeed too speculative to establish an injury in
19 fact, and therefore standing. This case is nothing like *Curling v. Kemp*. There, the plaintiffs
20 alleged that specific voting machines used in Georgia had actually been accessed or hacked
21 multiple times, and despite being notified about the problem repeatedly, Georgia officials
22 failed to take action. *Curling v. Kemp*, 334 F. Supp. 3d at 1314-1317. Here, as the Secretary
23 points out, a long chain of hypothetical contingencies must take place for any harm to
24 occur— (1) the specific voting equipment used in Arizona must have “security failures”
25 that allow a malicious actor to manipulate vote totals; (2) such an actor must actually
26 manipulate an election; (3) Arizona’s specific procedural safeguards must fail to detect the
27 manipulation; and (4) the manipulation must change the outcome of the election. (*See* Doc.
28 62 at 2-3.) Plaintiffs fail to plausibly show that Arizona’s voting equipment even has such

1 security failures.¹³ And even if the allegations in Plaintiff’s complaint were plausible, their
2 alleged injury is not “certainly impending” as required by *Clapper*. 568 U.S. at 409.¹⁴

3 Second, the Secretary argues that Plaintiffs cannot establish an injury in fact because
4 they fail to show that their alleged injury is particularized. (Doc. 45 at 8.) The Secretary
5 again cites *Shelby Cnty. Advocs. for Valid Elections* to assert that Plaintiffs’ claims
6 represent a “general dissatisfaction with the voting system and processes” used in Arizona.
7 2019 WL 4394754, at *9. While it is well-established that a generalized “interest in seeing
8 that the law is obeyed” is neither concrete nor particularized, Plaintiffs allege, and the
9 Secretary does not consider, whether Plaintiffs’ status as candidates may confer standing.
10 *See, e.g., Pierce v. Ducey*, 965 F.3d 1085, 1089 (9th Cir. 2020).

11 During the July 21 hearing, Plaintiffs argued “[a]nytime ... the playing field in an
12 election is tilted in any way, standing is -- exists for the candidates.” (Tr. 244:8-9.) It is
13 true that, as candidates, Plaintiffs “have a cognizable interest in ensuring that the final vote
14 tally accurately reflects the legally valid votes cast. An inaccurate vote tally is a concrete
15 and particularized injury to candidates.” *Carson v. Simon*, 978 F.3d 1051, 1058 (footnote
16 omitted); *Trump v. Wis. Elections Comm’n*, 983 F.3d 919, 924 (7th Cir. 2020). However,
17 while Plaintiffs’ status as candidates does make the argument that their alleged injuries are
18 particularized more compelling, it is not sufficient to establish standing. Simply put,
19 Plaintiffs have not alleged facts to show that it is plausible that the field is “tilted” here.
20 *See Stein v. Cortés*, 223 F. Supp. 3d 423, 432-33 (E.D. Pa. 2016) (finding no standing
21 where the plaintiff, an unsuccessful candidate, alleged that Pennsylvania’s DRE electronic
22 voting machines may be susceptible to hacking).

23
24 ¹³ Defendants have taken numerous steps to ensure such security failures do not exist or
25 occur in Arizona or Maricopa County. As the Court chronicled in painstaking detail in
26 Section I.B, every vote cast can be tied to a paper ballot (*see* A.R.S. §§ 16-442.01; § 16-
446(B)(7); 2019 EPM at 80), voting devices are not connected to the Internet (*see* Doc. 29,
Ex. 6) any ports are blocked with tamper evident seals (*see* Tr. 177:5-20), and access to
voting equipment is limited (*see* Tr. at 179:15-20).

27 ¹⁴ As set forth in Section I.B, Defendants have extensive post-election audit procedures in
28 place to detect and reconcile any problems with tabulation machine counts if an intrusion
did occur.

1 For the foregoing reasons, this Court joins many others that have held that
2 speculative allegations that voting machines may be hackable are insufficient to establish
3 an injury in fact under Article III. *See Stein*, 223 F. Supp. 3d at 432-33; *Samuel v. Virgin*
4 *Islands Joint Bd. of Elections*, 2013 WL 842946, at *5 (D.V.I. Mar. 7, 2013) (finding no
5 standing on the grounds that the plaintiffs’ “conjectural” allegations “that the election
6 process ‘may have been’ left open to compromise” by using certain voting machines were
7 “amorphous due process claims, without requisite concreteness”); *Schulz v. Kellner*, 2011
8 WL 2669456, at *7 (N.D.N.Y. July 7, 2011) (allegations that “votes will allegedly not be
9 counted accurately” because of “machine error and human fraud resulting from
10 Defendants’ voting procedures” were “merely conjectural and hypothetical” and
11 insufficient to establish standing); *Landes v. Tartaglione*, 2004 WL 2415074, at *3 (E.D.
12 Pa. Oct. 28, 2004), *aff’d*, 153 F. App’x 131 (3d Cir. 2005) (finding no standing because the
13 plaintiff’s claim “that voting machines are vulnerable to manipulation or technical failure”
14 was “conjectural or hypothetical”).

15 **B. The Eleventh Amendment Bars Plaintiffs’ Claims**

16 Even if Plaintiffs had standing, dismissal of their claims is warranted under the
17 Eleventh Amendment. As mentioned *supra*, Plaintiffs bring this action under 42 U.S.C.
18 § 1983 and *Ex parte Young* to challenge government officers’ “ongoing violation of federal
19 law.” (FAC ¶ 48 (citing 209 U.S. 123 (1908)).) However, as the Secretary points out,
20 *Ex parte Young* cannot apply here, because, despite Plaintiffs’ claims that their
21 constitutional rights have been violated, Plaintiffs do not plausibly allege a violation of
22 federal law. (Doc. 45 at 9.) To support this argument, the Secretary cites a multitude of
23 cases. For example, in *Weber v. Shelley*, the Ninth Circuit held that “[n]othing in the
24 Constitution” forbade the use of touchscreen voting systems as an alternative to paper
25 ballots, noting that it is “the job of democratically-elected representatives to weigh the pros
26 and cons of various balloting systems.” 347 F.3d 1101, 1107 (9th Cir. 2003). Other federal
27 courts have reached similar conclusions. In *Pettengill v. Putnam County R-1 Sch. Dist.*, the
28 Eighth Circuit unequivocally stated that there is no constitutional basis for federal courts

1 to oversee the administrative details of local elections. 472 F.2d 121, 122 (8th Cir. 1973)
2 (“[The] complaint asks the federal court to oversee the administrative details of a local
3 election. We find no constitutional basis for doing so.”). The Fourth Circuit has also held
4 that “[a] state may employ diverse methods of voting, and the methods by which a voter
5 casts his vote may vary throughout the state.” *Hendon v. N.C. State Bd. of Elections*, 710
6 F.2d 177, 181 (4th Cir. 1983.) Furthermore, in a case similar to the one presently before
7 the Court, the Southern District of New York held that the use of voting machines is “for
8 the elected representatives of the people to decide[.] There is no constitutional right to any
9 particular method of registering and counting votes.” *Green Party of N.Y. v. Weiner*, 216
10 F. Supp. 2d 176, 190-91 (S.D.N.Y. 2002).¹⁵

11 Plaintiffs counter that the Secretary’s Eleventh Amendment argument is erroneous,
12 because she argues the Plaintiff’s claims fail on the merits and ignores their constitutional
13 arguments. (Doc. 58 at 9.) According to Plaintiffs, “[t]o be constitutional, election
14 regulations must produce a reliable count of the legal votes. Plaintiffs’ ... allege that
15 Arizona’s equipment and system do not.” (Doc. 58 at 9-10.) Thus, according to Plaintiffs,
16 they allege a violation of federal law. Plaintiffs also attempt to distinguish *Weber*, which
17 the Secretary cites, because the court there reviewed a grant of summary judgment.
18 347 F.3d at 1105. The Court finds this line of argument unpersuasive.

19 The Eleventh Amendment bars Plaintiffs’ claims. Because the Constitution charges
20 states with administering elections, Plaintiffs’ claims can only stem from an argument that
21 Defendants are violating state law by using what Plaintiffs allege are insecure or inaccurate
22 voting systems. Plaintiffs argued at the hearing in this matter that their claims do not depend
23 on any application of Arizona state law, and the Court need not determine whether
24 Defendants’ procedures comply with state law to grant Plaintiffs relief, but as set forth

25 ¹⁵ In any event, insofar as Plaintiffs argue a constitutional violation grounded in Arizona’s
26 failure to require voting by paper ballots, their allegations are flatly wrong. The Court finds
27 for purposes of determining jurisdiction, that as set forth *supra*, 99.98% of voters in
28 Arizona cast their votes by marking and submitting paper ballots in the 2020 election, and
the remaining 0.02% —representing mostly sight impaired voters—cast their ballots on
system-generated paper ballots which could be verified before casting to ensure they
reflected those voters’ choices.

1 above, they are incorrect. Indeed, Arizona state laws set forth detailed requirements
 2 concerning how ballots are counted and how voting systems are used. *See* A.R.S. §§ 16-
 3 400 and 16-411 *et seq.* Absent a constitutional right to a particular method of voting,
 4 Plaintiffs’ claims that Arizona’s voting systems are flawed can *only* arise under state law¹⁶,
 5 and such claims are barred. Courts have repeatedly rejected alleged federal constitutional
 6 claims that rely on a determination that state officials have not complied with state law.
 7 *See S&M Brands, Inc. v. Georgia ex rel. Carr*, 925 F.3d 1198, 1204-05 (11th Cir. 2019);
 8 *see also Bowyer v. Ducey*, 506 F.Supp.3d 699, 716 (D. Ariz. 2020) (“where the claims are
 9 state law claims, masked as federal law claims” Eleventh Amendment immunity applies).
 10 Moreover, the Court fails to see how Plaintiffs’ requested relief would not violate the
 11 “principles of federalism that underlie the Eleventh Amendment.” *Pennhurst State Sch. &*
 12 *Hosp. v. Halderman*, 465 U.S. 89, 106 (1984). If the Court were to enjoin Defendants from
 13 using electronic voting systems, retain jurisdiction to ensure compliance, and require
 14 Defendants to conduct elections according to Plaintiffs’ preferences, the Court would
 15 unavoidably become impermissibly “entangled, as [an] overseer[] and micromanager[], in
 16 the minutiae of state election processes.” *Ohio Democratic Party v. Husted*, 834 F.3d 620,
 17 622 (6th Cir. 2016).

18 C. Plaintiffs’ Suit is Untimely

19 Finally, even if the Court could properly retain jurisdiction over Plaintiff’s claims,
 20 it could not grant the injunctive relief Plaintiffs request. The 2022 Midterm Elections are
 21 set to take place on November 8. In the meantime, Plaintiffs request a complete overhaul
 22 of Arizona’s election procedures.

23 In advancing their *Purcell* argument, the County Defendants emphasize the strain
 24 on elections officials that would be prompted by such a late change to elections procedures.
 25 (Doc. 27 at 9.) During the July 21 hearing, Mr. Jarrett testified that Maricopa County “could
 26 not” switch to precinct-based polling locations, as Plaintiffs request, before the November

27 ¹⁶ In fact, Plaintiffs’ First Amended Complaint repeatedly so alleged (FAC ¶¶ 156-161),
 28 directly contradicting the position Plaintiffs now take in an attempt to overcome the
 Eleventh Amendment bar Defendants have raised.

1 election. (Tr. 198:14-21.) Mr. Jarrett also testified that thousands more workers would be
2 needed for a full hand count, and Maricopa County already struggles to retain enough poll
3 workers. (Tr. 198:2-8, 199:22-200:5.) For example, for the August primary, Maricopa
4 County had to increase its wages from \$14 to \$19 per hour, and still fell “woefully short”
5 of the number of workers it needed for the primary. (Tr. 198:2-6.)

6 The County Defendants also cite a number of cases from this election cycle where
7 federal courts have invoked *Purcell* to deny requests for injunctive relief. The Court finds
8 *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State* instructive. 32 F.4th 1363, 1371
9 (11th Cir. 2022). In that case, the district court granted an injunction when voting was set
10 to begin in less than four months, but the Eleventh Circuit stayed the district court’s
11 injunction pending appeal. *Id.* The Eleventh Circuit based its reasoning on Justice
12 Kavanaugh’s concurrence in *Merrill v. Milligan*, — U.S. —, 142 S. Ct. 879, 880, —
13 L.Ed.2d — (2022), holding that under *Purcell*, the standard a plaintiff must meet to
14 obtain “injunctive relief that will upset a state’s interest in running its elections without
15 judicial interference” is heightened. *Id.* at 1372. This means that the plaintiff “must
16 demonstrate, among other things, that its position on the merits is ‘entirely clearcut’” in
17 order for a district court to grant injunctive relief. *Id.* Here, Plaintiffs filed their Motion for
18 Preliminary Injunction on June 15, 2022 (Doc. 50), and on July 21, 2022, soon after the
19 motion was fully briefed the Court held a hearing. At the time of the hearing, the November
20 election was already less than four months away. Further, as the Court has suggested
21 throughout this Order, Plaintiffs’ position is a far cry from “entirely clearcut.”

22 Plaintiffs argue that *Purcell* does not apply on these facts, because it stands for the
23 “principle that a federal court should not cause confusion among voters by enjoining state
24 election laws immediately before an election.” (Doc. 56 at 8 (citing 549 U.S. at 4-5).) Here,
25 according to Plaintiffs, the election was not imminent when they brought this action. *See,*
26 *e.g., Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081, 1086-87 (9th Cir. 2020). Plaintiffs
27 also argue that here, voters will be “entirely unaffected” by the injunctive relief they seek,
28 because the relief “applies only after a ballot is submitted.” *Self Advocacy Sol. N.D. v.*

1 *Jaeger*, 464 F. Supp. 3d 1039, 1055 (D.N.D. 2020) (internal quotations omitted). Instead,
2 Plaintiffs assert, *Purcell* weighs in favor of granting injunctive relief, because they seek to
3 “vindicate” *Purcell*’s concern for the “integrity of our electoral processes.” (Doc. 56 at 10
4 (citing 549 U.S. at 4).)

5 The Court finds Plaintiffs’ reading of *Purcell* unconvincing. In applying *Purcell*,
6 Courts have made clear that it stands for more than just the proposition that federal courts
7 should avoid changes in law that may cause voter confusion. The County Defendants are
8 correct to assert that courts applying *Purcell* also “caution federal courts to refrain from
9 enjoining election law too close in time to an election if the changes will create
10 administrative burdens for election officials.” (Doc. 61 at 5.) *See Ariz. Democratic Party*,
11 976 F.3d at 1086 (“And, as we rapidly approach the election, the public interest is well
12 served by preserving Arizona’s existing election laws, rather than by sending the State
13 scrambling to implement and to administer a new procedure for curing unsigned ballots at
14 the eleventh hour.”) The injunctive relief Plaintiffs seek would not just be challenging for
15 Arizona’s election officials to implement; it likely would be impossible under the extant
16 time constraints.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Plaintiffs’ First Amended Complaint is dismissed in its
19 entirety. While the Court agrees with Plaintiffs that the right to vote is precious, and should
20 be protected, Plaintiffs lack standing because they have articulated only conjectural
21 allegations of potential injuries that are in any event barred by the Eleventh Amendment,
22 and seek relief that the Court cannot grant under the *Purcell* principle.

23 **IT IS THEREFORE ORDERED** granting Defendants’ Motions to Dismiss
24 (Docs. 27, 45), and granting in part the County Defendants’ Motion for Judicial Notice
25 (Doc. 29).

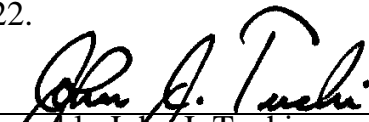
26 **IT IS FURTHER ORDERED** denying as moot Plaintiffs’ Motion for Preliminary
27 Injunction (Doc. 50) and Defendants’ Motion to Strike (Doc. 74).

28

1 **IT IS FURTHER ORDERED** denying Plaintiffs’ Expedited Motion to
2 Supplement Record (Doc. 93).¹⁷

3 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
4 accordingly and close this case.

5 Dated this 26th day of August, 2022.

6 
7 Honorable John J. Tuchi
8 United States District Judge

9
10
11
12
13
14
15
16
17
18
19
20
RETRIEVED FROM DEMOCRACYDOCKET.COM

21 ¹⁷ In their Expedited Motion (Doc. 93), Plaintiffs request to supplement the record with
22 evidence they argue would either undermine or impeach the testimony of Mr. Jarrett as to
23 the security of Maricopa County’s electronic ballot counting equipment. The request is
24 extraordinarily and inexcusably untimely, and in any event does not remedy the speculative
25 nature of Plaintiffs’ claims. Plaintiffs initiated this action according to their preference. The
26 Court set the hearing by an Order issued well in advance, and Plaintiffs had ample time to
27 prepare their evidence. At the hearing, Mr. Jarrett’s testimony was consistent with, if not
28 identical to, his prior appearance before the Arizona Senate and his other statements
detailing Maricopa County’s election system security and verification procedures, so
Plaintiffs had ample notice of what he was going to say at the hearing here. Nonetheless,
Plaintiffs waited nearly two weeks after the hearing to ask to submit another declaration,
in what appears to be an effort to get the last word and cast doubt on Mr. Jarrett’s testimony
at a point when the County could no longer respond. The Court will not allow such potential
gamesmanship; nor will it, in the alternative, allow the submission and then a response
from Defendants. Such a step would breed satellite litigation and deprive the Court of the
ability to evaluate witnesses and their credibility live at hearing.