

1 **PARKER DANIELS KIBORT**

2 Andrew Parker (028314)  
3 888 Colwell Building  
4 123 Third Street North  
5 Minneapolis, Minnesota 55401  
6 parker@parkerdk.com  
7 Telephone: (612) 355-4100  
8 Facsimile: (612) 355-4101

6 **OLSEN LAW, P.C.**

7 Kurt Olsen (D.C. Bar No. 445279)\*  
8 1250 Connecticut Ave., NW, Suite 700  
9 Washington, DC 20036  
10 Telephone: (202) 408-7025  
11 ko@olsenlawpc.com  
12 \* Admitted *Pro Hac Vice*

11 Alan M. Dershowitz (MA Bar No. 121200)#  
12 1575 Massachusetts Avenue  
13 Cambridge, MA 02138  
14 # To be admitted *Pro Hac Vice*

14 *Attorneys for Plaintiffs*

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

17 Kari Lake; Mark Finchem,

18 Plaintiffs,

19 v.

20 Kathleen Hobbs, as Arizona Secretary of  
21 State; Bill Gates; Clint Hickman; Jack  
22 Sellers; Thomas Galvin; and Steve  
23 Gallardo, in their capacity as members of  
24 the Maricopa County Board of  
25 Supervisors; Rex Scott; Matt Heinz;  
26 Sharon Bronson; Steve Christy; Adelita  
Grijalva, in their capacity as members of  
the Pima County Board of Supervisors,

Defendants.

No. 22-cv-00677-DMF  
(Honorable John J. Tuchi)

**PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION  
AND MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION**

**Oral Argument Requested**

Declaration of Benjamin R. Cotton,  
Declaration of Walter C. Daugherty,  
Declaration of Douglas Logan,  
Declaration of John R. Mills,  
Declaration of Shawn A. Smith, and  
Declaration of Andrew Parker filed in  
support.

1                   **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

2                   Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and to Rule 7.2  
3 of the Rules of Practice and Procedure of the U.S. District Court for the District of  
4 Arizona, Plaintiffs hereby move the Court to enter a preliminary injunction barring  
5 Defendants from using computerized equipment to administer the collection, storage,  
6 counting, and tabulation of votes in any election until such time that the propriety of a  
7 permanent injunction is determined. This motion is based on Plaintiff's memorandum  
8 of law and the Declarations of Benjamin R. Cotton, Walter C. Daughterity, Douglas  
9 Logan, John R. Mills, Shawn A. Smith, and Andrew Parker, which are filed herewith.

10                   **MEMORANDUM OF POINTS AND AUTHORITIES**

11                   The right to vote and know that one's vote is fairly and accurately counted is  
12 foundational to our democracy. With this case Plaintiffs seek to eliminate the black box  
13 voting system that has developed in this country as it is used in this State. Arizona  
14 voters no longer know whether their vote has been accurately tabulated or manipulated.  
15 And there can be no spot check within reasonable levels of confidence. This is a  
16 violation of Plaintiffs' Constitutional rights.

17                   For centuries, American voters recorded their votes by hand on paper ballots that  
18 were counted by human beings. In the last two decades, states including Arizona have  
19 adopted electronic, computerized voting systems. Expert analyses, studies and  
20 investigations have determined that even the most sophisticated computers can be and  
21 have been hacked. It is now widely accepted that the equipment used is often assembled  
22 or made in countries like China that allows unauthorized access. Indeed, countries like  
23 Russia, China, and Iran have thousands of highly trained individuals whose sole  
24 function is to penetrate commercial and government computers in the United States—  
25 including our election systems. In response, countries like France ban the use of  
26

1 computerized voting machines because of their inherent security flaws and opaqueness.

2 Experience has now shown the move to computerized voting in Arizona was a  
3 mistake – an unnecessary, unsecure change that opened election results to manipulation  
4 by unauthorized persons. This is not a partisan issue. Experts across the political  
5 spectrum have long sounded the alarm about the inherent insecurity and lack of  
6 transparency in computerized voting systems such as those used in Arizona. It is time  
7 to reverse this mistake. The right to vote is constitutionally guaranteed. Computerized  
8 voting systems leave an open door for votes to be changed, deleted, or fabricated in  
9 violation of constitutional requirements. A return to the tried-and-true paper ballots of  
10 the past – and of the present, in countries like France, Taiwan, and Israel – is necessary.

11 Plaintiffs submit this memorandum and related expert declarations and  
12 documentary evidence, and further request that the Court hear live testimony, in support  
13 of their request that this Court enter a preliminary injunction barring Defendants from  
14 using computerized equipment to administer the collection, storage, counting, and  
15 tabulation of votes in any election until such time that the propriety of a permanent  
16 injunction is determined. Computerized equipment is vulnerable to manipulation by  
17 unauthorized persons, meaning that the true results of an election that relies upon  
18 computerized equipment can never be known and Plaintiffs’ constitutional rights to vote  
19 will be denied, if computerized equipment is used.

## 20 I.

### 21 FACTS

#### 22 A. 2022 Election Upcoming.

23 On November 8, 2022, Arizona will hold a statewide general election (“2022  
24 Election”) in which the holders of numerous public offices will be determined by majority  
25 vote, including the Arizona Governor and the Arizona Secretary of State. *See* A.R.S. § 16-  
26

1 211. Administration of the 2022 Election requires Arizona, and counties within the State,  
2 to provide eligible Arizona voters with ballots and an opportunity to complete the ballots  
3 in secrecy and privacy; to collect the completed ballots; to count the number of legal votes  
4 for each candidate; and to tabulate across all precincts and counties the total number of  
5 votes each candidate received. *See* A.R.S. §§ 16-404, 405, 447, 450, 503, 517, 564, 602,  
6 608, 609, 614, 615, 622, 646, 647. Arizona and Arizona counties intend to use  
7 computerized devices (“Electronic Voting Systems”) to complete these administrative  
8 tasks. Ariz. Sec’y of State, *2022 Election Cycle/Voting Equipment* (Feb. 2022 Revision).  
9 Decl. of Andrew Parker ¶ 2 & Ex. A (“Parker Decl.”).<sup>1</sup> However, the Electronic Voting  
10 Systems provide a means for unauthorized persons to manipulate the reported vote counts  
11 in the election and thereby change the candidate who is deemed the winner.

- 12 • Defendant Hobbs has approved, and Maricopa County intends to use, the  
13 ImageCast X BMD, the ICC Canon DR-G1130, and the Democracy Suite  
14 5.5b Election Management System (EMS) software running on a computer  
15 server, in a computerized system supplied by Dominion Voting Systems.  
16 Parker Decl. ¶¶ 2-3 & Exs. A & B; *see also* Parker Decl. ¶ 4 & Ex. C (Test  
17 Report). ImageCast X BMD is a ballot-marking device – a touchscreen  
18 computer used to electronically complete a ballot which is then printed by  
19 an attached printer. *See* Parker Decl. ¶ 4 & Ex. C at 3-4. The ICC Canon  
20 DR-G1130 is a scanner used for scanning and counting ballots. *Id.* at 3, 12.  
21 Democracy Suite 5.5b EMS is a set of software applications intended to be  
22 used to manage elections, including election results acquisition, validation,  
23 tabulation, reporting, and publishing, and holding election data. *Id.* at 1-2.

---

25 <sup>1</sup> Available at  
26 [https://azsos.gov/sites/default/files/2022\\_Election\\_Cycle\\_Voting\\_Equipment-Feb-Final.pdf](https://azsos.gov/sites/default/files/2022_Election_Cycle_Voting_Equipment-Feb-Final.pdf).

- 1 • Defendant Hobbs has approved, and Pima County intends to use, the  
2 ExpressVote (BMD), the DS850, and the ElectionWare 6.0.4.0 Election  
3 Management System software, in a system supplied by Election Systems &  
4 Software, LLC (“ES&S”). Parker Decl. ¶¶ 2-3 & Exs. A & B. ExpressVote  
5 is a ballot-marking device – a touchscreen computer used to electronically  
6 complete a ballot which is then printed. *See* Parker Decl. ¶ 5 & Ex. D at 7.  
7 The DS850 is a scanner used for converting marks on paper ballots to  
8 electronic Cast Vote Records. *Id.* at 8. ElectionWare EMS is a software  
9 application used to manage elections, including ballot formation,  
10 equipment configuration, result consolidation, adjudication, and report  
11 creation. *Id.* at 7.
- 12 • Defendant Hobbs has approved, and at least one county in Arizona intends  
13 to use, the OpenElect 2.1 FVT, the OpenElect 2.8 OVCS, and the OCS  
14 OpenElect 2.1, in a system supplied by Unisyn Voting Solutions. Parker  
15 Decl. ¶¶ 2-3 & Exs. A & B. The OpenElect FVT is a ballot-marking device  
16 – a device used to electronically complete a ballot which is then printed.  
17 Parker Decl. ¶ 6 & Ex. E at 5. The OpenElect OVCS is a bulk scanner and  
18 computer that reads ballots and permits evaluation of ballots with  
19 questionable marks and “chang[ing] votes in accordance to the voter’s  
20 perceived intent.” *Id.* at 1, 2, 6-7. OCS OpenElect is an election  
21 management system (EMS) that includes applications to receive and  
22 validate voting data, retrieve vote files and ballot images, evaluate ballots  
23 with questionable marks and “change votes in accordance to the voter’s  
24 perceived intent,” store results from precincts, and generate tabulator  
25 reports. *Id.* at 1-2.
- 26

1 The Dominion, ES&S, and Unisyn systems are all Electronic Voting Systems. The  
2 BMDs they use, the ballot scanners and tabulators they use, and the computer servers  
3 running EMS software they use, are all computerized, electronic devices.

4 **B. Electronic Voting Systems Not Reliable.**

5 Since 2002, mounting evidence and experience has shown Electronic Voting  
6 Systems to be unreliable, unsecure, and vulnerable to undetected manipulation of the  
7 voting results they report. Indeed, just last week, the U.S. Cybersecurity and Infrastructure  
8 Security Agency (“CISA”) issued a public statement concerning a Dominion voting  
9 system used in sixteen states, including Arizona. The statement detailed a number of  
10 critical vulnerabilities discovered by a computer scientist in connection with litigation to  
11 prohibit the use of the electronic voting machines used in Georgia.<sup>2</sup>

12 **1. Electronic Devices**

13 The vulnerability of Electronic Voting Systems results from basic principles of the  
14 behavior of electronic devices. In broad terms, “electronic voting machines,” “electronic  
15 voting systems,” and “electronic election equipment” refer to any computerized devices  
16 or equipment used to cast, print, count, tabulate, process, and/or store ballot images or  
17 election results. Decl. of Douglas Logan ¶ 15 (“Logan Decl.”). “Source code” or  
18 generically “code” refers to instructions written in a programming language that tells a  
19 computerized device, such as an electronic voting machine, how to operate, “think,” and  
20 process data. *Id.* ¶ 16. “Erroneous code” is source code that, when run as a computer

21 \_\_\_\_\_  
22  
23 <sup>2</sup> *Curling et al. v. Raffensperger et al.*, No. 1:17-CV-2989-AT, ECF 1391 (N.D. Ga.  
24 June 4, 2022). CISA’s statement is available at  
<https://www.cisa.gov/uscert/ics/advisories/icsa-22-154-01>.

1 program, does not perform the expected behavior and intention of the program. *Id.* ¶ 19.  
2 Erroneous code may be caused by a “bug” (an unintentional error by a programmer) or  
3 “malicious code” (an intentional cause of adverse behavior by the computerized device).  
4 *Id.* ¶¶ 19-21. A “malicious program” is a computer program that is created or otherwise  
5 contains “malicious code,” and therefore performs some adverse behavior. *Id.* ¶ 22.

6 A person who gains access to change or add code to electronic equipment that is  
7 part of an electronic voting system has the ability to control the behavior of that  
8 equipment, such as the ability to cause the equipment to change, delete, or fabricate votes.  
9 *Id.* ¶ 34. A malicious program can be written to cause the device to perform tasks  
10 immediately, or at a conditional time in the future. *Id.* ¶ 22. A malicious program can  
11 modify other programs or data, delete other programs or data, or exfiltrate data on the  
12 device. *Id.* ¶ 23. Malicious programs can be configured to be extremely subtle, choosing  
13 not to alter all votes, or to only alter votes from specific precincts, on specific times or on  
14 specific days. *Id.* ¶ 36. They can even be configured to only be triggered after a certain  
15 type of ballot comes through, or a certain set of ballots in sequence. *Id.* A malicious  
16 program can even be written to delete *itself* after its instructions are completed. *Id.* ¶ 23.

17 Cybersecurity is the practice of ensuring the confidentiality, availability, and  
18 integrity of computerized devices and the data that resides on them. *Id.* ¶ 30. This includes  
19 preventing changes being made to the computer programs or data on a device by any  
20 person who is not authorized to made changes by the owner of the device, and  
21 detecting/remediating any unauthorized changes that are made. *Id.* Cybersecurity also  
22 requires establishing a “secure baseline” for the device, and maintaining adequate logs  
23 for the device, which record data about access to or changes made to it. *Id.* ¶¶ 25, 27.  
24 “Hacking” is the process by which the misconfiguration of a computerized device or  
25 erroneous code on the device is exploited to cause some adverse behavior that impacts  
26

1 the confidentiality, integrity or availability of the computerized device. *Id.* ¶ 32.

2 A malicious program can be written to delete traces that it ever ran, including  
3 deleting itself. Logan Decl. ¶ 23.

## 4 **2. Electronic Devices in Voting Systems**

5 In the context of Electronic Voting Systems, these principles have numerous  
6 implications. Any person who gains sufficient access to add or update a program on  
7 electronic equipment that is part of an Electronic Voting System has the ability to control  
8 the behavior of that equipment – such as the ability to cause the equipment to change,  
9 delete, or fabricate votes. Logan Decl. ¶ 34. Malicious actors who wish to control the  
10 outcome of an election without regard to the actual votes cast by voters can create, and  
11 save to the memory or storage of an electronic device, a malicious program that instructs  
12 the device to report that a particular candidate received a majority of the votes, or to report  
13 that votes cast for one candidate were instead votes cast for another candidate. *Id.* ¶ 35.  
14 To prevent electronic devices from manipulating votes, the devices must be absolutely  
15 secured against the introduction of any malicious programs. *Id.* ¶ 37. Programs must go  
16 through proper cybersecurity testing, and computerized devices must be configured to  
17 cybersecurity best practices so that access is controlled, systems are up-to-date with the  
18 latest patched versions of computer programs, and all actions on the system are properly  
19 logged so they can be validated. *Id.* ¶ 38.

20 Manufacturers of Electronic Voting Systems claim their products are secured  
21 against unauthorized access. However, at least one manufacturer, Dominion, has admitted  
22 that *any* computer can be hacked given enough time and access. Parker Decl. ¶ 7 & Ex. F  
23 at ¶ 13 (Declaration of Dr. Eric D. Coomer, then-Director of Product Strategy and  
24 Security for Dominion Voting Systems). A malicious program can be copied to Electronic  
25 Voting Systems through portable storage media, such as a USB device. Logan Decl.

26



1 ¶¶ 24, 35. A malicious program can also be copied to an Electronic Voting System  
2 through a local network or through an internet connection. *Id.* ¶ 24. Malicious programs  
3 could even infiltrate an Electronic Voting System during the equipment manufacturing  
4 process, from data maliciously implanted on the physical components that constitute the  
5 equipment. Decl. of Shawn A. Smith ¶¶ 11-15 (“Smith Decl.”).

### 6 3. General Vulnerability of Electronic Voting Systems

7 Electronic election equipment is notorious for continuing to be inadequately secure  
8 against intrusion even *after* federal government certification for use. In a 2021 article  
9 addressing the issue of errors and vulnerabilities in computer code, three professors of  
10 computer science cited voting machines as the “best-documented example” of  
11 “adversarial testing” finding “flaws in software that had been certified by outside parties.”  
12 Steven M. Bellovin et al., *Seeking the Source: Criminal Defendants’ Constitutional Right*  
13 *to Source Code*, 17 Ohio St. Tech. L. J. 1, 35 (Dec. 2020) (Parker Decl. ¶ 8 & Ex. G).  
14 “[O]utside auditors,” they wrote, “have *always* found flaws” in voting machine software.  
15 *Id.* As a result, “There is broad consensus among elections experts that modern software  
16 systems are, by virtue of their design, too complex and unreliable to be relied upon for  
17 determining the outcomes of civil elections.” *Id.* at 36-37.

18 A fourth professor of computer science testified in detail about these  
19 vulnerabilities before the Senate Select Committee on Intelligence in 2017. J. Alex  
20 Halderman, who had spent a decade studying electronic voting systems, testified that “our  
21 highly computerized election infrastructure is vulnerable to sabotage and even to cyber  
22 attacks that could change votes.” He testified, “I know America’s voting machines are  
23 vulnerable because my colleagues and I have hacked them repeatedly as part of a decade  
24 of research studying the technology that operates elections and learning how to make it  
25 stronger. We’ve created attacks that can spread from machine to machine, like a computer  
26

1 virus, and silently change election outcomes. We’ve studied touchscreen and optical scan  
2 systems, and in every single case we found ways for attackers to sabotage machines and  
3 to steal votes. These capabilities are certainly within reach for America’s enemies.”  
4 *Russian Interference in the 2016 U.S. Elections* at 72, Hearing of S. Sel. Comm. on  
5 Intelligence, S.Hrg. 115-92 (June 21, 2017) (Parker Decl. ¶ 9 & Ex. H) (“Halderman  
6 Testimony”). Professor Halderman testified, “Cybersecurity experts have studied a wide  
7 range of U.S. voting machines—including both DREs and optical scanners—and in *every*  
8 *single case*, they’ve found severe vulnerabilities that would allow attackers to sabotage  
9 machines and to alter votes. That’s why there is overwhelming consensus in the  
10 cybersecurity and election integrity research communities that our elections are at risk.”  
11 *Id.* at 76 (emphasis in original).

12 On August 2, 2021, Professor Halderman signed a declaration for litigation  
13 concerning electronic voting systems used in Georgia. The declaration stated that  
14 Professor Halderman had spent twelve weeks performing intensive testing of Dominion  
15 voting equipment used in Fulton County, Georgia, and found “multiple severe security  
16 flaws,” that attackers could exploit “to install malicious software, either with temporary  
17 physical access (such as that of voters in the polling place) or remotely from election  
18 management systems,” and “such malware, once installed could alter voters’ votes while  
19 subverting all the procedural protections practiced by the State.” Decl. of J. Alex  
20 Halderman ¶ 4, *Curling v. Raffensperger*, no. 17-cv-2989-AT, ECF 1304-3 (N.D. Ga.  
21 Feb. 3, 2022) (Parker Decl. ¶ 10 & Ex. I).

22 After hearing Dr. Halderman’s testimony and a large amount of other evidence,  
23 the federal court in the *Curling* litigation concluded, “Evidence presented in this case  
24 overall indicates the possibility generally of hacking or malware attacks occurring in  
25 voting systems and this particular system through a variety of routes - whether through  
26

1 physical access and use of a USB flash drive or another form of mini-computer, or  
2 connection with the internet. As discussed in the declarations and testimony of the  
3 proffered national cybersecurity experts in this case, a broad consensus now exists among  
4 the nation's cybersecurity experts recognizing the capacity for the unobserved injection  
5 of malware into computer systems to circumvent and access key codes and hash values  
6 to generate fraudulent codes and data. In these experts' views, these risk issues are in play  
7 in the operation of Dominion's Democracy Suite 5.5-A GA." *Curling v. Raffensperger*,  
8 493 F. Supp. 3d 1264, 1280 (N.D. Ga. 2020).

9 Douglas Logan is an industry cybersecurity practitioner who has developed  
10 cybersecurity programs and led cybersecurity-related services for the federal government  
11 and Fortune 500 corporations, including malicious code detection, code review, threat  
12 modeling, and hacking vulnerability testing. Logan Decl. ¶¶ 3-5. He has also written  
13 training materials and taught classes on these topics. *Id.* ¶ 6. He has overseen or conducted  
14 application vulnerability assessments on over 2,000 software applications. *Id.* ¶ 8. Logan  
15 testifies:

- 16 • Commercially available voting machines from major vendors have for years been  
17 hacked by participants at an annual cybersecurity conference called DEFCON,  
18 including by participants with little prior knowledge and limited tools and  
19 resources. *Id.* ¶¶ 43-47. A variety of techniques have been demonstrated to allow  
20 an unauthorized person to change votes within the electronic election equipment,  
21 even new systems. *Id.* ¶ 47. The vulnerability to hacking includes equipment with  
22 a security vulnerability that was disclosed to the vendor a decade ago, yet never  
23 fixed by the manufacturer. *Id.* ¶ 45.
- 24 • Investigation of Dominion equipment used to administer the 2020 election in  
25 Antrim County, Michigan revealed that the election software could be easily  
26

1 modified to attribute one candidate's votes to another candidate, the election  
2 software fell short of basic validation practices used even in commercial inventory  
3 control software, and the software could easily be intentionally modified to  
4 wrongly attribute votes to a favored candidate while outputting manipulated results  
5 on the poll tape, thereby leaving little indication that anything had been tampered  
6 with. *Id.* ¶¶ 48-54. After analyzing equipment used in Antrim County, post-  
7 election, Logan found the Dominion software exhibited a large number of failures  
8 in implementing secure coding practices, application security design principles,  
9 and cyber security best practices. *Id.* ¶ 57.

- 10 • Logan authored an evaluation, commissioned by the Arizona Senate, of the  
11 performance of Maricopa County, Arizona voting practices and equipment during  
12 the 2020 general election. *Id.* ¶¶ 10, 59. After reviewing the Dominion equipment  
13 and software used by Maricopa County, he concluded the software lacked  
14 necessary security measures; security logs that recorded access to the system had  
15 been lost and files deleted, often without any record of who performed these  
16 actions; and the system allowed multiple people to access it through shared  
17 accounts that did not change from year to year, thereby permitting changes to be  
18 made without any record of who made the changes. *Id.* ¶¶ 59-63 & Ex. E.
- 19 • “Air gap” cyber security practices are not sufficient to adequately protect election  
20 systems. *Id.* ¶¶ 81-84. First, there is substantial evidence that many election  
21 systems are not actually protected by air-gapping at all times. *Id.* ¶ 82. Second,  
22 even a properly air-gapped system can have malicious code copied to it through  
23 means other than a direct network connection, such as through a portable USB  
24 drive. *Id.* ¶¶ 83-84.

- 1       • After speaking with election workers across the country, Logan concluded that  
2       many election workers operating electronic equipment to administer elections have  
3       inadequate technical knowledge and rely fully on the equipment vendor or its  
4       subcontractors to perform the most basic tasks. *Id.* ¶¶ 12, 87-88.
- 5       • Considering the complexity of electronic election equipment and software, the  
6       general lack of cybersecurity sophistication of election workers, elected officials,  
7       and others, and the equipment’s vulnerability to compromise, Logan has  
8       concluded that electronic voting systems cannot be properly secured by the 2022  
9       elections and should not be used. *Id.* ¶¶ 85-91.

10       Col. (Ret.) John Mills served in senior positions in the Department of Defense,  
11 including Director of Cybersecurity Policy, Strategy, and International Affairs. Mills  
12 Decl. ¶¶ 2, 21. He has taught cybersecurity law and policy at the University of Maryland  
13 since 2013. *Id.* ¶ 2. He has also served as an election official at the county level. *Id.* ¶ 17,  
14 22. Col. Mills testifies that “remote access operations” capability to access computer  
15 networks without detection have greatly expanded from the 1980s to the present. *Id.* ¶¶ 4-  
16 6, 27-45. The U.S. Government conducts remote access operations. *Id.* ¶ 7. Other  
17 countries, organizations, and individuals have capabilities to conduct remote access  
18 operations with varying degrees of sophistication, which have expanded at an accelerating  
19 rate over the last two decades. *Id.* ¶ 8. Electronic election infrastructure can be subjected  
20 to remote access operations that can change vote totals. *Id.* ¶¶ 9-10. Today, remote access  
21 operation capabilities have “escaped” from U.S. “classified environments” into “the  
22 wild,” and other countries including China, Russia, Iran, North Korea, and Venezuela  
23 now use the same, similar, and improved methodologies. *Id.* ¶¶ 11, 15, 36. In view of  
24 successful cyberattacks now known to have succeeded against U.S. federal government  
25 targets and the state of the U.S. election process, Col. Mills concludes that federal  
26

1 government assertions about the 2020 election being “the most secure in American  
2 history” have “little, if any, basis in fact.” *Id.* ¶¶ 18-19. American elections deviate  
3 substantively from the standards for free and fair elections, with respect to the operation  
4 of election machines and technology. *Id.* ¶¶ 46-48. After reviewing evidence concerning  
5 the election equipment used in Mesa County, Colorado for the 2020 election, Col. Mills  
6 finds the evidence “consistent with previous, publicly known, computer network  
7 intrusions, breaches, exfiltrations, and compromises of data integrity conducted via  
8 remote access operations by sophisticated actors, likely nation state level, with intimate,  
9 insider knowledge of the machines, networks, operating systems, and complete  
10 architecture of the information technology environment including off premise, ‘cloud’  
11 based storage and processing.” *Id.* ¶¶ 12-13, 20-21.

#### 12 **4. Supply Chain Vulnerability of Electronic Voting Systems**

13 Yet another vulnerability in electronic election equipment is vulnerability to attack  
14 through the supply chain that produces the hardware and software used in the equipment.  
15 Shawn Smith is a retired U.S. military officer who served more than 25 years performing  
16 tasks related to the management of computer-based weapons systems, and who has served  
17 in his retirement as a consultant to the Department of Defense concerning cyber threat  
18 risks against U.S. governmental and non-governmental national security targets. Smith  
19 Decl. ¶¶ 2-6. Smith testifies that “U.S. elections are critically vulnerable to exploitation  
20 by foreign adversaries through supply chain compromise of our computerized election  
21 systems.” *Id.* ¶ 8. A supply chain compromise is the deliberate introduction of flaws,  
22 covert access or functionality, malicious code, or other undesirable attributes into a  
23 product or service in the supply chain lifecycle of the product or service. *Id.* ¶ 12. A supply  
24 chain compromise may be intended to make a device accessible to unauthorized parties  
25 or to behave differently upon the occurrence of a command or specified conditions. *Id.* It  
26

1 can take place at any stage of the supply chain, going back to the design, integration, or  
2 manufacture of the product. *Id.* ¶¶ 13, 15. Supply chain attacks are now frequent  
3 occurrences in the global economy, and data indicate that in excess of 90% of companies  
4 surveyed have experienced a cybersecurity supply chain breach. *Id.* ¶ 14. “Supply chain  
5 attack is so pervasive that it must be assumed to threaten and affect all computers,  
6 computer components, hardware with embedded electronics, software, and firmware, to  
7 the extent that any aspect of them is accessible, at any time in their lifecycle from  
8 conception through end-of-life, to malicious or self-interested domestic or non-  
9 governmental actors but especially to foreign nation states and their agents.” *Id.* U.S  
10 government entities and private sector organizations have publicized the increasing threat  
11 of supply chain attacks. *Id.* ¶¶ 15-18.

12         Supply chain attacks may take many different forms. *Id.* ¶ 23. CISA, the U.S.  
13 federal agency tasked with ensuring the cyber security of critical infrastructure in the  
14 United States, had *its own* computer networks compromised for at least ten months in  
15 2020 by two separate supply chain attacks, and only learned of these attacks when notified  
16 of the threat by a private company. *Id.* ¶ 20. At least 120 sophisticated cyber threat groups,  
17 including arms of China’s military, have been publicly identified. *Id.* ¶ 27. These groups  
18 enjoy the resources and support of foreign governments and have the capacity to pursue  
19 years- and decades- long campaigns to create and exploit supply chain vulnerabilities in  
20 targeted institutions and systems. *Id.* ¶¶ 28-37. U.S. government resources to defend  
21 electronic election systems against these cyber threats are sorely inadequate. *Id.* ¶¶ 40-  
22 63. None of the measures necessary to secure U.S. electronic voting systems against  
23 supply chain attacks have been in place. *Id.* ¶ 59. In view of the capacity of foreign cyber  
24 threat actors to accomplish supply chain attacks on U.S. election equipment systems, U.S.  
25 voting systems are not secure or securable. *Id.* ¶ 78. The electronic election equipment  
26



1 that Arizona intends to use in the 2022 Election uses components that may have been  
2 compromised by a supply chain attack, and such an attack, if it happened, may never be  
3 discovered. *Id.* ¶¶ 78-80 & Appendices.

#### 4 **5. Specific Examples of Vulnerable Electronic Voting Systems**

5 Benjamin Cotton is a computer forensics professional with twenty-six years of  
6 experience performing computer forensics and digital systems analysis, including nearly  
7 two decades as an instructor of computer forensics and incident response. Decl. of  
8 Benjamin Cotton ¶¶ 4-5 (“Cotton Decl.”). He has forensically examined Dominion  
9 Democracy Suite voting systems used in counties in four states, including Maricopa  
10 County, Arizona, and has reviewed the administrative manuals and documentation for the  
11 Dominion Democracy Suite software and hardware components. *Id.* ¶¶ 7, 9-10. He has  
12 also reviewed substantial other materials relating to EAC certification of election software  
13 and the performance of election software in the 2020 general election. *Id.* ¶¶ 11-15. In the  
14 course of these analyses, he found:

- 15 • The Democracy Suite systems in all four states had never received antivirus  
16 definition updates after the installation of the Democracy Suite software. *Id.*  
17 ¶ 18(a). Because an enormous amount of malicious code is continuously created  
18 and released, it is imperative to the security of any computing system that its  
19 antivirus definitions be updated as updates become available, typically on a weekly  
20 basis. *Id.* Because the Maricopa County antivirus definitions had not been updated,  
21 that system would not have prevented over 570,000,000 pieces of malicious code  
22 from compromising it.
- 23 • The Democracy Suite systems in all four states exhibited a consistent failure of the  
24 responsible authorities to implement operating system software patches at any time  
25 after the initial installation of the Democracy Suite software. The Democracy Suite  
26



1 systems in all four states contained vulnerabilities that could be exploited to gain  
2 unauthorized access to the systems. *Id.* ¶ 18(b). There was no evidence on the  
3 systems of a procedure to patch or fix operating system vulnerabilities. *Id.* The  
4 Maricopa County systems had not been patched for 19 months, a period during  
5 which 3,512 Windows vulnerabilities were identified. *Id.* & Cotton Decl. Ex. J.

- 6 • Each Democracy Suite system used identical passwords for all user accounts on  
7 that particular system, and the passwords were never changed after initial  
8 installation of the software. *Id.* ¶ 18(c). Further, the user accounts did not appear  
9 to be assigned to specific individual people. *Id.* CISA and industry best practices  
10 recommend all username and password combinations be unique and assigned to  
11 one individual, with access disabled for users who no longer require access and  
12 with passwords changed every ninety days. *Id.* This means there was “long-term  
13 shared password exposure for multiple elections,” and “individual accountability  
14 for actions performed by the account during an election” was “impossible.” *Id.*
- 15 • None of the systems in the four states had the capability to actively monitor the  
16 programs that were running on the computers or monitor network activity. *Id.*  
17 ¶ 18(d). Nor did they have a process to alert election officials if activity deviating  
18 from an approved, expected baseline occurred. *Id.* Accordingly, system  
19 administrators would not know if an unauthorized person gained access to the  
20 voting systems and either caused them to carry out improper functions or  
21 concealed code within them to cause them to carry out improper functions in the  
22 future.
- 23 • All four systems lacked adequate log management practices. *Id.* ¶ 18(e). Software  
24 logs create a record of instances in which a person gained access to the system and  
25 the activities performed within the system. Logan Decl. ¶ 27. “[A] robust log  
26

1 management program support[s] the detection and monitoring of real-time security  
2 postures,” and “in the event of an audit or a cyber security event,” the logs “support  
3 triage and remediation of the historical cybersecurity events.” Cotton Decl.  
4 ¶ 18(e). Secure logs are a critical cybersecurity function. *Id.* Failing to ensure  
5 adequate log management can result in a situation where the data needed to  
6 determine if a breach occurred does not exist. Logan Decl. ¶ 27. The logs in the  
7 voting systems in all four states were exposed to modification by users, meaning  
8 that an unauthorized user could make changes to the system and then delete the  
9 log entries that recorded the unauthorized access. *See* Cotton Decl. ¶ 18(e)(ii). “It  
10 is common for threat actors to delete, modify and/or otherwise manipulate logs  
11 and other artifacts as an integrated elements of an unauthorized attack,” and  
12 therefore “[a]n effective log management program would establish a centralized  
13 log repository that is not located on the device that generates the logged event.”  
14 *Id.* ¶ 18(e)(i). Further, the logs were configured so that their entries would be  
15 automatically overwritten after a certain number of events were recorded. *Id.*  
16 ¶ 18(e)(iv). As a result, the mere passage of time and operation of the system would  
17 result in the loss of important log data. In Maricopa County, the critical Windows  
18 security.evtx log file had so many entries overwritten that by the time Cotton  
19 examined it, the log only recorded events occurring on February 5, 2021 and later  
20 – meaning the log entries from the 2020 election had been destroyed. *Id.*

- 21 • The Democracy Suite voting systems in all four states attempted to segment the  
22 equipment that recorded votes from other administrative support equipment. *Id.*  
23 ¶ 18(f). However, the form of segmentation was an “air gap” configuration. *Id.*  
24 Air gapping can be easily bypassed by connecting any one of a number of devices  
25 (including a cell phone) to the air gapped system. *Id.* Further, the computers in the  
26

1 Democracy Suite system are commercial off-the-shelf equipment that contain  
2 wireless 802.11 modems that can connect the computers to an unauthorized  
3 network, and the systems did not have any mechanism to detect or prevent such a  
4 security violation from occurring. *Id.*

- 5 • The Democracy Suite voting systems lacked any mechanism for blocking  
6 malicious activity or programs, aside from the outdated antivirus program. *Id.*  
7 ¶ 18(g). The systems do not have the ability to detect or block suspicious activity.  
8 *Id.*
- 9 • “Administrative access” to a computer or computer system means a person knows  
10 the necessary passwords to access critical functions of the software and make  
11 authorized changes to the software. Logan Decl. ¶ 33. “Administrative access”  
12 gives a person control over the computer or system without needing to hack it. *Id.*  
13 The county officials with responsibility to administer the voting systems typically  
14 lacked administrative access to their own equipment, instead leaving  
15 administrative access solely within the control of employees of the vendor who  
16 supplied the equipment, such as Dominion. Cotton Decl. ¶ 19. Maricopa County  
17 officials lacked administrative access to Maricopa County’s equipment. *Id.* The  
18 county officials had no way to independently verify that these contracted  
19 employees were properly performing their tasks, were not exposing the systems to  
20 unauthorized access, or had properly configured the system. *Id.*
- 21 • The voting systems in the four states would not have been certifiable under PCI or  
22 HIPAA industry standards. *Id.* ¶ 20.

## 23 **6. Historical Breaches of Election-Related and Government Cyber** 24 **Security**

25 Multiple past instances of election-related and government computers being  
26

1 hacked have been discovered.

2 In 2020, CISA, the U.S. federal agency responsible for the cybersecurity of critical  
3 infrastructure including electronic election equipment, was *itself* victimized for over ten  
4 months by two hacks of its own computer networks that it did not discover until it was  
5 informed of them by a private company. Smith Decl. ¶ 20.

6 Georgia's state election server was breached, exposing voter data, software  
7 passwords, and software applications to the public. *Curling*, 493 F. Supp. 3d at 1273-74.

8 The U.S. Senate Select Committee on Intelligence issued a report titled *Russian*  
9 *Active Measures Campaigns and Interference in the 2016 U.S. Election Volume 1:*  
10 *Russian Efforts Against Election Infrastructure with Additional Views* (Parker Decl. ¶ 11  
11 & Ex. J). While the publicly available version of the report is heavily redacted, it reveals  
12 the following: "The Russian government directed extensive activity, beginning in at least  
13 2014 and carrying into at least 2017, against U.S. election infrastructure at the state and  
14 local level." *Id.* at 3. The report used the term "election infrastructure" to refer to "the  
15 equipment, processes, and systems related to voting, tabulating, reporting, and  
16 registration." *Id.* At least 21 states were targeted. *Id.* at 15-20. Russian cyber actors  
17 successfully penetrated Illinois's voter registration database and accessed up to 200,000  
18 records, obtaining an unknown quantity of voter registration data. *Id.* at 22. The Russian  
19 actors could have deleted or changed voter data, but it does not appear they did so. *Id.*  
20 "Election infrastructure" in another state was also breached by Russian cyber actors, but  
21 details regarding this incident were redacted. *Id.* at 24. Russian cyber activity was also  
22 directed at "Voting Machine Companies," but details regarding this activity were  
23 redacted. *Id.* at 29-30.

24 Dr. Walter Daughterity taught in the Department of Computer Science and  
25 Engineering at Texas A&M University for over thirty years. Decl. of Walter C.

26

1 Daugherity ¶¶ 1-2 (“Daugherity Decl.”). Dr. Daugherity examined the Cast Votes  
2 Records from Pima County, Arizona and Maricopa County, Arizona for the 2020 election.  
3 *Id.* ¶¶ 6-7. Focusing on the early mail-in and in-person votes, he found that the ratios of  
4 votes for one candidate to another exhibited a systematic decline over time, as each batch  
5 successively closer to election day showed a lower ratio. *Id.* ¶¶ 9-35. He concluded, “Such  
6 predictability and dependence would not occur without artificial manipulation.  
7 Achieving such predictability requires what should be independent votes to be artificially  
8 manipulated to form the downward sloping line for the cumulative vote ratio. In my expert  
9 opinion such predictability is so statistically improbable as to be impossible and thus  
10 demonstrates to a reasonable degree of scientific and mathematical certainty that the  
11 tabulation of these ballots was artificially controlled.” *Id.* ¶ 31. Rather, “[t]he standard  
12 method of producing such control . . . is to use a Proportional-Integral-Derivative (PID)  
13 controller in a closed-loop feedback system,” a technique broadly used in other contexts  
14 including cruise controls in automobiles and industrial automation of all kinds. *Id.* ¶¶ 34-  
15 35, 7-8. Dr. Daugherity was able to program a PID controller “to produce the observed  
16 cumulative ratio” with “good convergence.” *Id.* ¶ 36.

17 **C. Administrative Cybersecurity Risks.**

18 Even in a well-designed computer system the factor of human error can lead to  
19 cybersecurity breaches. Logan Decl. ¶ 40. Ultimately it is individual employees or  
20 officials who must choose secure passwords, keep their passwords secret, refrain from  
21 activating malware by opening email attachments or clicking on unsafe internet links,  
22 refrain from connecting computer hardware to portable computer memory media or  
23 computer networks, maintain software up-to-date, and a host of other mundane  
24 cybersecurity practices – including remembering what cybersecurity practices must be  
25 observed. *Id.* ¶ 41. Experience has shown that humans err on these practices, through  
26

1 ignorance, forgetfulness, neglect, and even intention, simply because it is less demanding  
2 to ignore the proper procedure. *Id.* ¶ 42. County election officials who use election  
3 equipment only a handful times in each two-year election cycle, together with volunteer  
4 election workers who may not have much cybersecurity training, present prime  
5 candidates for cybersecurity breach as a result of human factors. “I have never come  
6 across a county where the sworn election officials know how to access or see network  
7 activity beyond the operator level of any election machine or related information  
8 technology component.” Mills Decl. ¶ 47. On balance, Col. Mills believes based on his  
9 experience that “the U.S. Government does not have the people, programs, or resources  
10 to have a comment on the true resilience and security of the election critical  
11 infrastructure.” *Id.* ¶ 50.

12 **D. Electronic Voting System Manufacturers Not Reliable.**

13 The manufacturers of electronic voting systems cannot be relied upon to provide  
14 quality equipment reasonably secure against unauthorized intrusion and manipulation.

15 The U.S. Election Assistance Commission (EAC) was created by Congress in 2002  
16 to test and certify voting systems. 52 U.S.C. §§ 20921-20922. On March 20, 2020, EAC  
17 issued a letter to ES&S stating that ES&S had misrepresented the certification of its  
18 voting systems by the EAC.<sup>3</sup> The misrepresentation related to the inclusion of optional  
19 modems in some election equipment manufactured by ES&S, but referring in marketing  
20 materials to the equipment with optional modems as “fully certified and compliant with  
21 EAC guidelines.” *Id.*

22 On November 3, 2021, the EAC received a report from the Tennessee Secretary  
23

---

24 <sup>3</sup> Kim Zetter, POLITICO, Aug. 13, 2020, *Election commission orders top voting machine*  
25 *vendor to correct misleading claims*, available at  
26 <https://www.politico.com/news/2020/08/13/election-voting-machine-misleading-claims-394891>; <https://www.politico.com/f/?id=00000173-e9b5-d0bf-a17b-fdbfc0290000>.

1 of State related to an anomaly from the October 26, 2021, municipal elections in  
2 Williamson County, Tennessee. Logan Decl. ¶ 65. Votes counted by 7 of the 18 ballot  
3 scanners did not match the number of ballots scanned. *Id.* During a subsequent  
4 investigation, the anomaly was reproduced and connected to error codes in the equipment  
5 logs, but the cause of the erroneous behavior could not be determined by the investigation  
6 team that included two EAC accredited vendors and representatives from Dominion, the  
7 EAC, the Tennessee Secretary of State, and Williamson County. *Id.* ¶¶ 66-69. Later,  
8 Dominion submitted an analysis to the EAC stating “erroneous code is present in the EAC  
9 certified D-Suite 5.5-B and D-Suite 5.5-C systems.” *Id.* ¶ 70. Dominion stated that when  
10 a certain part of a QR code was misread, the ICP interpreted the ballot as provisional and  
11 thereafter marked all ballots subsequently scanned as provisional, leaving these ballots  
12 out of the close poll report totals. *Id.* Dominion’s solution was to submit revised code that  
13 would reset the provisional flag within the tabulator after a ballot was scanned as  
14 provisional, so that subsequent ballots would not automatically be flagged as provisional.  
15 *Id.* Because of the features and characteristics of QR codes, Dominion’s explanation is  
16 insufficient to adequately explain what occurred. *Id.* ¶¶ 70-74. Moreover, Dominion’s  
17 code change did not fix the cause of the ballot misreads – it simply reset the provisional  
18 flag so the error code would not impact subsequently scanned ballots. *Id.* ¶ 75. Overall,  
19 the EAC report concerning Dominion election equipment in Williamson County,  
20 Tennessee shows that “erroneous code” was included in the Dominion system actually  
21 used in the election, the same code has been used in elections across the country for some  
22 time, with unknown impact on elections in other locations, the EAC accepted an  
23 explanation from Dominion that does not make technical sense, and the EAC deferred to  
24 the vendor to define the root cause and create code to fix the issue. *Id.* ¶ 80.

25 The system used in Williamson County, Tennessee was the Dominion D-Suite 5.5-  
26

1 B system. *Id.* ¶ 66. Maricopa County intends to use a Dominion D-Suite 5.5-B system for  
2 the 2022 Election. Parker Decl. ¶ 2 & Ex. A.

3 CISA issued a public statement concerning a Dominion voting system used in  
4 sixteen states, including Arizona. The statement detailed a number of critical  
5 vulnerabilities discovered by a computer scientist in connection with litigation to prohibit  
6 the use of the electronic voting machines used in Georgia.<sup>4</sup>

7 **E. Hand Voting and Counting With Paper Ballots Is Practical.**

8 Returning to voting by auditable paper ballots counted by hand is safe, secure, and  
9 reasonable. It is the method used in past U.S. elections. It is a method approved for use  
10 by Arizona statute. “If for any reason it becomes impracticable to count all or a part of  
11 the ballots with tabulating equipment, the officer in charge of elections may direct that  
12 they be counted manually.” A.R.S. § 16-621(C). It is the method successfully used today  
13 by voters in other countries. Taiwan, under constant geopolitical pressure from China, for  
14 its 2020 election used manual counting to the greatest degree possible, the simplest of  
15 election machines and technology, and counting in full view on Jumbo-Tron screens so  
16 observers could see the ballot and how the count changed with each ballot. Mills Decl.  
17 ¶¶ 23-26.

18 For many years, prior to the invention of mechanical or computerized election  
19 equipment, American voters cast hand-marked paper ballots and counted the vote totals  
20 by hand. Today’s citizens are just as capable of that process as their forebears. Counting  
21

---

22 <sup>4</sup> *Curling et al. v. Raffensperger et al.*, No. 1:17-CV-2989-AT, ECF 1391 (N.D. Ga.  
23 June 4, 2022). CISA’s statement is available at  
24 <https://www.cisa.gov/uscert/ics/advisories/icsa-22-154-01>.



1 votes by hand, in individual precincts, is neither unrealistic nor unprecedented.

2  
3 **II.**

4 **PRELIMINARY RELIEF IS NECESSARY**

5 The Constitution requires that elections be free, fair, and accurately counted.  
6 Changing reported votes or vote totals in a public election violates Plaintiffs' fundamental  
7 right to vote and Plaintiffs' rights under the Due Process clause and the Equal Protection  
8 clause. The only way to prevent these violations is to refrain from using vulnerable  
9 Electronic Voting Systems to administer future elections, including the 2022 Election. The  
10 relief requested by Plaintiffs is the only way to eliminate the likelihood that Arizona's  
11 election results from will be secretly changed by malicious programs hidden in Electronic  
12 Voting Systems. Accordingly, a preliminary injunction is appropriate and necessary to  
13 remedy the impending violations of Plaintiffs' constitutional rights.

14 "In order to obtain a preliminary injunction a plaintiff must establish (1) 'that he  
15 is likely to succeed on the merits,' (2) 'that he is likely to suffer irreparable harm in the  
16 absence of preliminary relief,' (3) 'that the balance of equities tips in his favor,' and (4)  
17 'that an injunction is in the public interest.'" *Hernandez v. Sessions*, 872 F.3d 976, 989-90  
18 (9th Cir. 2017) (quoting *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)). "Under our 'sliding  
19 scale' approach, 'the elements of the preliminary injunction test are balanced, so that a  
20 stronger showing of one element may offset a weaker showing of another.'" *Hernandez*,  
21 872 F.3d at 990 (quotations omitted). Plaintiffs meet each of the four elements here.

22 **A. Plaintiffs Are Likely to Succeed on the Merits.**

23 Plaintiffs will prevail on the merits of their claims because the right to vote and  
24 have one's vote counted correctly together with all other votes is a basic right guaranteed  
25 by multiple constitutional provisions, and the use of Electronic Voting Systems as  
26 Arizona intends grossly infringes that right.

1                   **1. Plaintiffs Have a Constitutional Right to Have Their Votes Cast and**  
2                   **Counted Through an Election System Not Subject to Vote**  
3                   **Manipulation.**

4           Voting is, indisputably, a right “of the most fundamental significance under our  
5 constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (internal quotation  
6 marks and citation omitted). “No right is more precious in a free country than that of  
7 having a voice in the election of those who make the laws under which, as good citizens,  
8 we must live. Other rights, even the most basic, are illusory if the right to vote is  
9 undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Therefore, states may not, by  
10 arbitrary action or other unreasonable impairment, burden a citizen’s right to vote. *Baker*  
11 *v. Carr*, 369 U.S. 186, 208 (1962) (“citizen’s right to a vote free of arbitrary impairment  
12 by state action has been judicially recognized as a right secured by the Constitution”). “A  
13 law that severely burdens the right to vote must be narrowly drawn to serve a compelling  
14 state interest.” *Curling*, 493 F. Supp. 3d at 1280 (citing *Burdick*, 504 U.S. at 434). “Since  
15 the right to exercise the franchise in a free and unimpaired manner is preservative of other  
16 basic civil and political rights, any alleged infringement of the right of citizens to vote  
17 must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. 533, 562  
18 (1964).

19           The scope of the right to vote requires states to adopt methods of voting, vote  
20 collection, vote counting, and vote tallying that ensure fair, accurate, and secure counting  
21 of all legal ballots and exclude any attempt to change the total results reported to differ  
22 from the true sum of the votes legally cast. The fundamental right to vote is “the right of  
23 qualified voters within a state to cast their ballots and have them counted.” *United States*  
24 *v. Classic*, 313 U.S. 299, 315 (1941). It necessarily encompasses the right to have **all**  
25 votes counted accurately. “Every voter’s vote is entitled to be counted once. It must be  
26

1 correctly counted and reported.” *Gray v. Sanders*, 372 U.S. 368, 380 (1963). Because the  
2 significance of a vote is inherently comparative – the meaning of a vote is destroyed by  
3 improper inflation of opposing vote totals, just as much as if the vote itself was wrongfully  
4 prevented – a state’s entire system of collecting, counting, and tallying votes must prevent  
5 any manipulation of the reported totals. “[T]he right of suffrage can be denied by a  
6 debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly  
7 prohibiting the free exercise of the franchise.” *Reynolds*, 377 U.S. at 555. *See also United*  
8 *States v. Saylor*, 322 U.S. 385, 386 (1944) (“[T]he free exercise and enjoyment of the  
9 rights and privileges guaranteed to the citizens by the Constitution and laws of the United  
10 States” entails “the right and privilege . . . to have their expressions of choice given full  
11 value and effect by not having their votes impaired, lessened, diminished, diluted and  
12 destroyed by fictitious ballots fraudulently cast and counted, recorded, returned, and  
13 certified.”).

14 The framework articulated by the Supreme Court in *Anderson v. Celebrezze*, 460  
15 U.S. 780 (1983) and *Burdick*, 504 U.S. 428 is used to resolve the “competing  
16 constitutional commands” of the right to vote and “the practical realities of voting laws.”  
17 *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1186 (U.S. 9th Cir. 2021).  
18 *Anderson/Burdick* applies a “flexible standard” that weighs the character and magnitude  
19 of the asserted injury against the interests put forward by the state to justify the burdens  
20 imposed by its law. *Id.* Here, the injury is maximum; Defendants’ use of Electronic  
21 Voting Machines in practical effect completely denies voters their right to vote, by  
22 allowing the outcome of elections to be solely determined by a cyber intruder who  
23 manipulates the electronic election equipment. Under Defendants’ system, it does not  
24 matter how Plaintiffs or anyone who shares their interests votes, because the “winner” of  
25 the election may not be determined by votes at all, but rather solely by the manipulation  
26

1 of a cyber intruder. There is no interest the State could advance to justify blanket  
2 nullification of the right to vote in this manner. The outcome of an *Anderson/Burdick*  
3 analysis clearly supports the relief Plaintiffs seek.

4 A voting system that counts ballots cast by some voters using different standards  
5 from ballots cast by other voters also violates the Equal Protection rights of the voters.  
6 “Having once granted the right to vote on equal terms, the State may not, by later arbitrary  
7 and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531  
8 U.S. 98, 104-05 (2000); *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (“[A] citizen has a  
9 constitutionally protected right to participate in elections on an equal basis with other  
10 citizens in the jurisdiction.”).

11 Federal courts are obligated to intervene to correct state voting practices found to  
12 infringe the right to vote, and to prevent future elections from using such practices. “Once  
13 a State’s [election-related] scheme has been found to be unconstitutional, it would be the  
14 unusual case in which a court would be justified in not taking appropriate action to insure  
15 that no further elections are conducted under the invalid plan.” *Reynolds*, 377 U.S. at 585.  
16 If Arizona’s voting system permits a person – any person – to surreptitiously change,  
17 inflate, or diminish vote totals so that they differ from the true totals of the legal votes  
18 cast, then Arizona’s voting system infringes the constitutional rights of Plaintiffs to vote.  
19 If Arizona’s system counts ballots cast by absentee voters securely, but counts ballots cast  
20 at polls insecurely (or *vice versa*), the system infringes the Equal Protection rights of the  
21 Plaintiffs. Indeed, if Arizona counts ballots cast by absentee voters differently than it  
22 counts ballots cast at polls, the system infringes those same Equal Protection rights.

## 23 **2. Arizona’s Use of Electronic Voting Systems Permits Vote** 24 **Manipulation.**

25 Electronic Voting Systems are inherently vulnerable to improper manipulation of  
26

1 votes and vote totals. They cannot be effectively secured against improper manipulation.  
2 Therefore, they cannot be constitutionally used to administer Arizona's elections.

3 **i. Electronic Voting Systems Can Be Controlled by**  
4 **Unauthorized Persons Through the Introduction of**  
5 **Malicious Computer Programs.**

6 A person who gains sufficient access to electronic equipment that is part of an  
7 electronic voting system to add or update a program on it thereby gains the ability to  
8 control the behavior of that equipment. Logan Decl. ¶ 34. Programs can be written to  
9 cause an Electronic Voting System to change the votes cast by a voter, or to report vote  
10 totals different from the votes actually cast by voters. *Id.* ¶¶ 35-36. Such a program can  
11 be configured to only trigger upon subtle circumstances, making it impossible to detect  
12 in a Logic and Accuracy test. *Id.* The *only* way to ensure an Electronic Voting System  
13 reports correct votes and vote totals is to absolutely secure the system against the  
14 introduction of any malicious programs. *Id.* ¶ 37. A malicious program can be introduced  
15 onto a computerized device in numerous ways, including through a computer network or  
16 through portable storage media such as a USB device. *Id.* ¶ 24. It could also be hidden in  
17 the hardware or software components of the system at the time those components were  
18 manufactured. Smith Decl. ¶¶ 11-15.

19 **ii. The Electronic Voting Systems That Arizona Intends to Use**  
20 **in the 2022 Election Are Inherently Vulnerable to the**  
21 **Introduction of Malicious Computer Programs.**

22 The computer components of the Electronic Voting Systems that Arizona intends  
23 to use in the 2022 Election are not absolutely secured against the introduction of malicious  
24 programs, nor can they realistically be made secure. Logan Decl. ¶¶ 36, 39-42, 82-84, 90-  
25 91; Smith Decl. ¶¶ 39-40, 59, 80-81. Malicious programs could be introduced to them in  
26

1 multiple ways, including through an internet connection, over a wireless network, or  
2 through portable storage media. Logan Decl. ¶¶ 82-84, Cotton Decl. ¶ 18(f). The  
3 possibility of malicious code on portable storage media means that even “air-gapping”  
4 computerized equipment (attempting to prevent it from any connection to an external  
5 computer network) does not provide an adequate defense against the introduction of  
6 malicious programs. Logan Decl. ¶¶ 81-84. In fact, individual hardware components of a  
7 computer can be manufactured with malicious computer code written into them before  
8 the components are even installed into the computer during the manufacturing process,  
9 and then this code may instruct the computer to open itself up to access by an outsider in  
10 the future, permitting the introduction of additional malicious code. Smith Decl. ¶¶ 11-  
11 15, 39, 43. The use of this technique to compromise during the manufacturing process a  
12 computer’s defenses against outside manipulation has become endemic in recent years,  
13 with over 90% of companies surveyed reporting a negative impact from such attacks. *Id.*  
14 ¶ 14. In 2020, the U.S. federal agency responsible for the cybersecurity of critical  
15 infrastructure, CISA, was itself victimized for over ten months by two supply chain  
16 attacks that it did not discover until it was informed of them by a private company. *Id.*  
17 ¶ 20.

18 **iii. Malicious Computer Programs Can Change the Reported**  
19 **Results of an Election Without Leaving Any Evidence of the**  
20 **Change.**

21 Strategically constructed malicious programs can cause a computer to erase the  
22 traces of them, and the malicious programs themselves, after they complete their work.  
23 Logan Decl. ¶ 23. This means that a person who sought to change election results could  
24 transmit a program to an Electronic Voting System that caused the computers to change  
25 or inflate vote totals so that a specific candidate was reported to receive the most votes,  
26

1 and then *delete the malicious program*, leaving no evidence that the election results were  
2 changed. If this happened, there would be no way to discover, from examination of the  
3 affected computer, that anything improper had occurred. Cotton’s inspection of Dominion  
4 systems showed that these systems lacked any mechanism to detect or prevent a violation  
5 of system security by any user who knew the shared password for the system in a “matter  
6 of seconds,” or to detect or block suspicious activity at all. Cotton Decl. ¶ 18(f), (g). In  
7 Maricopa County, the electronic election equipment had election data purged and files  
8 deleted after the 2020 election, without any ability to attribute that activity to a specific  
9 individual. Logan Decl. ¶¶ 61(c), 63. This equipment was vulnerable to malicious  
10 programs because of multiple failures to implement cybersecurity practices. Cotton Decl.  
11 ¶ 18. The Maricopa network would not have been certifiable under PCI or HIPAA  
12 industry standards. *Id.* ¶ 20.

13 **iv. Measures Intended to Secure Electronic Voting Systems**  
14 **Against Manipulation by Unauthorized Persons Are Not**  
15 **Effective.**

16 As described above, Electronic Voting Systems are inherently vulnerable to  
17 unauthorized access and manipulation. Professor Halderman further explains, “Some say  
18 the fact that voting machines aren’t directly connected to the Internet makes them secure,  
19 but unfortunately, this is not true. Voting machines are not as distant from the Internet as  
20 they may seem. Before every election, they need to be programmed with races and  
21 candidates. That programming is created on a desktop computer, then transferred to  
22 voting machines. If Russia infiltrated these election management computers, it could have  
23 spread a vote stealing attack to vast numbers of machines.” Halderman Testimony at 72.  
24 Both in theory and in practice, the Electronic Voting Systems that Arizona seeks to use  
25 are not reliable or secure. Halderman, addressing Dominion Ballot Marking Device  
26



1 (BMD) electronic election equipment used in Georgia, testified, “[T]he scientific  
2 evidence about voter verification shows that attackers who compromise the BMDs could  
3 likely change individual votes and even the winner of a close race without detection.  
4 Georgia can eliminate or greatly mitigate these risks by adopting the same approach to  
5 voting that is practiced in most of the country: using hand-marked paper ballots and  
6 reserving BMDs for voters who need or request them. Absent security improvements such  
7 as this, it is my opinion that Georgia’s voting system does not satisfy accepted security  
8 standards.” Halderman Decl. ¶ 33, ECF #1304-3, *Curling v. Raffensperger*, no. 1:17-CV-  
9 2989-AT (N.D. Ga. Feb. 3, 2022).

10 **3. Arizona’s Current System Does Not Protect Against Vote Fraud**  
11 **Through Hacking of Electronic Election Equipment.**

12 Under Arizona law, “An electronic voting system consisting of a voting or marking  
13 device in combination with vote tabulating equipment shall provide facilities for voting  
14 for candidates at both primary and general elections.” A.R.S. § 16-446(A). The electronic  
15 voting system must “Provide a durable paper document that visually indicates the voter’s  
16 selections, that the voter may use to verify the voter’s choices,” and this “paper document  
17 shall be used in manual audits and recounts.” *Id.* § 16-446(B)(7). The board of supervisors  
18 is required to “prepare and provide ballots” for the election, at county expense, except for  
19 local elections. *Id.* § 16-503. The counting of the ballots at the counting center is “under  
20 the direction of the board of supervisors or other officer in charge of elections.” *Id.* § 16-  
21 621(A). If counting is performed using automatic tabulating equipment, only two percent  
22 of precincts are required to be counted by hand. *Id.* § 16-602(B)(1). But such a limited  
23 post-election hand count is not an effective means of detecting fraud, because the number  
24 of ballots counted is too small and because the method Arizona mandates for conducting  
25 the hand count, the “Sort-and-Stack” method, is known to be error-prone. Smith Decl. ¶¶  
26



1 75-77.

2 For example, if one or even a few locations in an Arizona county had their  
3 electronic voting systems hacked to change votes, there is little chance that the fraud  
4 would be discovered by a hand count of the paper ballots at only two percent of precincts.  
5 This system does not reasonably ensure that Plaintiffs' constitutional right to vote is  
6 secure. On the contrary, it provides a great likelihood the violation of the Plaintiffs'  
7 constitutional rights would pass undetected.

8 **B. Plaintiffs Will Suffer Irreparable Harm Absent Preliminary Relief.**

9 "It is well established that the deprivation of constitutional rights 'unquestionably  
10 constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
11 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Hernandez*, 872 F.3d at 994-95.  
12 Because Arizona's intended use of Electronic Voting Systems in the future elections,  
13 including the 2022 Election, will deprive Plaintiffs of their constitutional rights, they will  
14 suffer irreparable harm absent the grant of preliminary relief.

15 **C. The Balance of Equities Favors an Injunction.**

16 The balance of equities favors entering the injunction sought by Plaintiffs. It will  
17 cause little, if any, harm to the Defendants, because the system currently intended to be  
18 used already requires the creation of paper ballots for each voter, and the counting of the  
19 paper ballots by hand at 2% of precincts. *See* A.R.S. § 16-602(B). By Arizona law, the  
20 Defendants are already able to carry out the relief sought by Plaintiffs. The requested  
21 injunction would merely require the use of hand counting for all voters and all contests.

22 In contrast, failing to enter the injunction and permitting use of the currently  
23 intended system would inflict immeasurable harm. In addition to the deprivation of  
24 Plaintiffs' constitutional rights, the true election results would never be known with  
25 certainty, casting a pall of illegitimacy over the subsequent official acts of the winning  
26

1 candidates. If the defining feature of self-government is the selection of governing  
2 officials by majority vote, then conducting an “election” process in which it is not and  
3 *cannot* be confidently known which candidate actually received the majority vote means  
4 intentionally casting aside self-government. That enormous harm would be felt by all  
5 persons, whether citizen, voter, or neither, because it would bring into dispute the  
6 governance of the public authorities. The resulting loss of legitimacy and increase in  
7 political strife would be felt by all.

8 **D. The Requested Injunction Is in the Public Interest.**

9 The public interest requires free, fair, and accurately counted elections, in which  
10 the votes of all legal voters are counted equally and are not diluted by altered votes or  
11 phantom votes. This is also the constitutional right of Plaintiffs and all Arizona voters.  
12 "Generally, public interest concerns are implicated when a constitutional right has been  
13 violated, because all citizens have a stake in upholding the Constitution." *Hernandez*, 872  
14 F.3d at 996 (quoting *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)). Further,  
15 eliminating even the *appearance* of unsecure elections serves the public interest.  
16 “[P]ublic confidence in the integrity of the electoral process has independent significance,  
17 because it encourages citizen participation in the democratic process.” *Crawford v.*  
18 *Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008).

19 The use of Electronic Voting Equipment creates large, invisible risks of vote  
20 dilution and/or alteration. Therefore, the injunction against the use of this equipment  
21 sought by Plaintiffs strongly serves the public interest.

22 The principle that a federal court should not cause confusion among voters by  
23 enjoining state election laws immediately before an election, *Purcell v. Gonzalez*, 549  
24 U.S. 1 (2006), does not apply in these circumstances. First, the 2022 Election is more than  
25 four months away, not bare weeks, as in *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081,  
26

1 1086-87 (9th Cir. 2020) and the cases cited therein. “When an election is ‘imminen[t]’  
2 and when there is ‘inadequate time to resolve . . . factual disputes,’” *Purcell* will “often”  
3 (though “not always”) prompt courts to “decline to grant an injunction to alter a State’s  
4 established practice.” *Ohio Republican Party v. Brunner*, 544 F.3d 711, 718 (6th Cir.  
5 2008). The 2022 Election is upcoming, but not so imminent that inadequate time remains  
6 to allow for the relief sought by Plaintiffs.

7         Second, the “concerns that troubled the Supreme Court in *Purcell* are not present  
8 in this instance,” where voters “will be entirely unaffected by an order enjoining” the  
9 disputed practice because it “applies only after a ballot is submitted.” *Self Advocacy Sol.*  
10 *N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1055 (D.N.D. 2020). The relief sought by Plaintiffs  
11 here only affects the counting of the cast ballots – it does not affect the location of polling  
12 places, voter identity requirements, or any other matter that might prevent a voter from  
13 voting. All voters will be able to cast their ballots by appearing at the same poll locations  
14 just as they would in the absence of an injunction, so *Purcell*’s policy of preventing voter  
15 confusion is not applicable here. *See also Common Cause Ind. v. Lawson*, No. 1:20-cv-  
16 01825-RLY-TAB, 2020 U.S. Dist. LEXIS 247756, at \*13 (S.D. Ind. Oct. 9, 2020) (“But  
17 the concerns animating *Purcell* and its progeny are not present in this case. This court’s  
18 decision to preliminarily enjoin the Challenged Amendments poses little risk of disrupting  
19 Indiana’s election process or confusing voters. The laws only pertain to Election Day  
20 activities, so they have no effect on any aspect of the election process up until then; any  
21 ongoing early voting activity is unaffected by the injunction.”). Here, as in “many  
22 election-related disputes” that may occur even as late as “on election day” or “during  
23 election week,” it is “unclear” why *Purcell* would apply – and so the court need not refrain  
24 from granting injunctive relief. *Ohio Republican Party v. Brunner*, 544 F.3d at 718. On  
25 the contrary, in light of the clear risk that illegal manipulation of vote totals may occur  
26

1 through unauthorized access to electronic election equipment, another policy affirmed by  
2 *Purcell* weighs in favor of *granting* injunctive relief:

3 Confidence in the integrity of our electoral processes is essential to the  
4 functioning of our participatory democracy. Voter fraud drives honest  
5 citizens out of the democratic process and breeds distrust of our  
6 government. Voters who fear their legitimate votes will be outweighed by  
7 fraudulent ones will feel disenfranchised. “[T]he right of suffrage can be  
8 denied by a debasement or dilution of the weight of a citizen's vote just as  
9 effectively as by wholly prohibiting the free exercise of the  
10 franchise.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

11 *Purcell*, 549 U.S. at 4.

12  
13 **III.**

14 **CONCLUSION**

15 For the foregoing reasons, Plaintiffs are entitled to a preliminary injunction  
16 prohibiting the use of Electronic Voting Systems to count the ballots or otherwise  
17 administer future Arizona elections.

18  
19 DATED: June 8, 2022.

**PARKER DANIELS KIBORT LLC**

20 By /s/ Andrew D. Parker

21 Andrew D. Parker (AZ Bar No. 028314)  
22 888 Colwell Building  
23 123 N. Third Street  
24 Minneapolis, MN 55401  
25 Telephone: (612) 355-4100  
26 Facsimile: (612) 355-4101  
parker@parkerdk.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**OLSEN LAW, P.C.**

By /s/ Kurt Olsen  
Kurt Olsen (D.C. Bar No. 445279)\*  
1250 Connecticut Ave., NW, Suite 700  
Washington, DC 20036  
Telephone: (202) 408-7025  
ko@olsenlawpc.com  
\* Admitted *Pro Hac Vice*

By /s/ Alan M. Dershowitz  
Alan M. Dershowitz (MA Bar No. 121200)#  
1575 Massachusetts Avenue  
Cambridge, MA 02138  
# To be admitted *Pro Hac Vice*  
*Counsel for Plaintiffs Kari Lake  
and Mark Finchem*

RETRIEVED FROM DEMOCRACYDOCS.COM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2022, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

/s/ Andrew D. Parker

RETRIEVED FROM DEMOCRACYDOCKET.COM