ARIZONA COURT OF APPEALS
DIVISION 2

ARIZONA ALLIANCE FOR RETIRED AMERICANS, INC., and STEPHANI STEPHENSON, Plaintiffs-Appellees, v. TOM CROSBY, ANN ENGLISH, and PEGGY JUDD, in their official capacities as the Cochise County Board of Supervisors; DAVID STEVENS, in his official capacity as the Cochise County Recorder; and LISA MARRA, in her official capacity as the Cochise County Elections Director, Defendants-Appellants.	No. 2CA-CV2022-0136 Cochise County Superior Court No. CV2022-00518

APPELLANTS' OPENING BRIEF

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INTRODUCTION

Every general election, each county in Arizona that uses tabulation machines must count some ballots twice—once by machine and once by hand—pursuant to A.R.S. § 16-602. Counties must meet certain minimums as to the number of ballots that are recounted but have the discretion to count more if they wish. Prior to election day, the elected Cochise County Board of Supervisors ("Board") and the elected County Recorder chose to exercise their discretion to conduct an expanded hand count of all the ballots cast in the 2022 General Election. [ROA 7 ep 28.]

As Stephani Stephenson, the individually named Plaintiff, testified, the hand count process has never harmed her in any way despite its longstanding use. [Tr., 11/4/2022[1] p 36 at 36:21-23.] In actual fact, no voter would have or could have been harmed by what the Board voted to do in 2022 because no possible harm can result from having one's ballot counted twice to confirm the accuracy of the count. Nevertheless, the afternoon prior to the election, the trial court entered a writ of mandamus prohibiting Cochise County ("County") from proceeding with its 100% hand count of all ballots—"day-of" and early ballots alike. [ROA 38 ep 1.]

[1] Defendants-Appellants filed a motion to include the trial transcript in the record on February 9, 2023, but for unknown reasons had to refile their motion on February 13, 2023, the same day their opening brief is due. The court will not have time to rule on the motion before the opening brief is submitted. Thus, Defendants-Appellants cannot include a hyperlink to the transcript. If the court grants the motion, however, the page numbers cited in the brief will correspond to the page numbers on the transcript.

Expanded hand counts to assuage voter concerns are not new. Indeed, a few years ago, Maricopa County conducted its own expanded hand count to assuage voter concerns regarding the 2020 General Election, something that none of the named Plaintiffs in this case challenged. [Tr., 11/4/2022 p 84.]

At issue in this case is whether subparts (B) and (F) of A.R.S. § 16-602 prohibit counties from conducting a full hand count of both election-day and early ballots. While nothing in Title 16 expressly or implicitly requires counties to use electronic tabulators at all, A.R.S. § 16-602(B) provides the rule for hand count audits of **election-day ballots** when counties do choose to use tabulators. *See* A.R.S. § 16-602(A) (statute applies to "any primary, special or general election in which the votes are cast on an electronic voting machine or tabulator"). The statute further provides: "**At least** two percent of the precincts in that county, or two precincts, whichever is greater, shall be selected at random from a pool consisting of every precinct in that county" for a hand count audit. A.R.S. § 16-602(B)(1) (emphasis supplied). By the plain language of the statute, counties may elect to audit a greater percentage.

A.R.S. § 16-602(F) controls hand count audits of **early ballots** for races in which electronic tabulation is used. It provides that a "number equal to one percent of the total number of early ballots cast or five thousand early ballots, whichever is less" shall be recounted by hand. The statutory text is not clear on whether counties

may count more early ballots than this, but the (currently operative) 2019 Elections Procedures Manual[2] ("EPM"), which has the force of law, provides: "The officer in charge of elections is required to conduct a hand count of 1% of the total number of early ballots cast, or 5,000 early ballots, whichever is less. A.R.S. § 16-602(F). **Counties may elect to audit a higher number of ballots at their discretion**." EPM at 215 (emphasis supplied). Even former Secretary of State Katie Hobbs, who drafted the EPM, conceded this fact. [ROA 20 ep 13 n.4.] Plaintiff Stephenson, meanwhile, conceded that, if the law in place allows counties to elect to audit a higher number of ballots in their discretion, she would "be happy with that...." [Tr., 11/4/2022 p 74.] The president of Plaintiff Arizona Alliance for Retried Americans, Inc., agreed:

> *Q. If Secretary Hobbs in her capacity as the Secretary of State were to issue an elections procedure manual in 2021 that specifically and very clearly allowed counties, such as Cochise County, to count more ballots than a minimum required by law in an audit, would you support that?*
>
> *A. Yes.*

[Tr., 11/4/2022 pp 64-65 at 64:25-65:6.]

However, even though identical language was included in the draft 2021 EPM that former Secretary Hobbs prepared, she nonetheless argued (as amicus) that

[2] The current text of the EPM is available at https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf.

"[s]ince the issuance of the 2019 EPM…both the factual and legal landscape have changed in material ways," justifying a finding that the provision was "invalid and without the force and effect of law." [ROA 20 ep 13-14 n.4.] She claimed that "previously routine aspects of election administration have come under increasing attack by proponents of baseless election conspiracy theories." [*Id.* ep 13 n.4.] Obviously, however, this does not change the law, despite the former Secretary's contention that "the Arizona Supreme Court has begun to scrutinize and invalidate specific EPM provisions that either conflict with a statute or do not have specific statutory authorization." [*Id.* (citing *McKenna v Soto*, 250 Ariz. 469 (2021)).] But *McKenna v. Soto* reaffirmed that the EPM's procedures for "collecting, counting, tabulating and storing ballots" are the law, 250 Ariz. at 473 ¶ 20, though provisions outside those topics lacked specific statutory authorization and could therefore be invalidated. *Id.* Nevertheless, former Secretary Hobbs and the nominal Plaintiffs successfully convinced the trial court to change the law in the middle of an election to suit the former Secretary's new policy preferences.

Especially in light of the recent and well publicized election-day issues with Maricopa County's electronic voting system,[3] voter confidence in the accuracy of

[3] *See, e.g.*, Sasha Hupka, *Early glitches with Maricopa County election machines frustrate voters*, AZCENTRAL (Nov. 8, 2022, 10:47 AM), https://www.azcentral.com/story/news/politics/elections/2022/11/08/arizona-election-problems-maricopa-county-tabulator-issues/8302133001/,

electronic tabulation is at an all-time low. The Cochise County Board of Supervisors found that "a 100% County wide hand count audit of the 2022 General Election [would] enhance voter confidence" [ROA 38 ep 2. *See also* ROA 7 ep 31.], reassuring voters that their election was free and fair, but the trial court prohibited the Board from exercising its discretion to do so for the 2022 election cycle. Although it is too late to enhance voter confidence for the last election, Cochise County intends to conduct full hand counts in future elections, including the upcoming election in May 2023, if Defendants-Appellants are successful on appeal. Thus, this controversy remains live.

STATEMENT OF THE CASE AND JURISDICTION

Late in the afternoon on November 7, 2022, visiting Pima County Superior Court Judge Casey F. McGinley, sitting as a judge of the Superior Court for Cochise County, issued his Ruling in this case. [ROA 38.] In addition to considering the testimony of witnesses and the arguments of the parties presented at an all-day trial on November 4, 2022, the court also considered the briefs filed by Defendant David Stevens (the elected Recorder of Cochise County), the Board of Supervisors of

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12News, *Printer issue to blame for problems at Maricopa County polling places* (Nov. 8, 2022, 11:25 AM), https://www.12news.com/article/news/politics/elections/decision/tabulators-down-people-can-still-vote-maricopa-county-officials-say/75-9de41949-f2d2-4314-9a37-2724ae1d1150

Cochise County, and an amicus brief submitted by former Secretary of State Katie Hobbs. [*Id.* ep 1.]

The Ruling granted Plaintiffs' Petition for Writ of Mandamus, or in the Alternative, Motion for Preliminary Injunction, filed on October 31, 2022, prohibiting Recorder Stevens from performing a hand recount of all ballots cast in the 2022 General Election. [*Id.* ep 11.] On October 24, 2022, the Board had directed Recorder Stevens to perform a hand recount of all ballots cast in the General Election, whether early, mail-in, or day-of ballots. [*Id.* ep 2. *See also* ROA 7 ep 31.]

On November 9, 2022, Defendants timely filed their notice of appeal in the trial court. [ROA 39.] On November 10, Defendants filed their Opening Brief in this Court. [OB, 11/10/2022.] They also requested, *inter alia*, expedited consideration of their case in light of the (then) upcoming election. [Mot. for Proc. Order, 11/10/2022.] After conducting a telephonic conference with the parties, this Court denied Defendants' several requests and ordered the case to proceed as a non-expedited appeal. [Misc. Order, 11/10,2022.] On November 28, 2022, Plaintiffs filed a Rule 54 motion for attorney fees and costs. [ROA 42.] The trial court issued a second Ruling granting Plaintiffs' motion for fees and costs on February 1, 2023. [ROA 48.] This non-expedited appeal follows.

The Rulings from which Plaintiffs appeal are final appealable orders that dispose of all the issues presented in the case. A.R.S. § 12-2101(A)(1) (final

judgment in an action or special proceeding commenced in superior court); 12-2101(A)(5)(b) (granting an injunction). This Court has jurisdiction pursuant to A.R.S. § 12-120.21(A)(1), and venue is proper in this Division pursuant to A.R.S. § 12-120.21(B) because the Rulings issued from the Cochise County Superior Court.

STATEMENT OF THE FACTS

The operative facts are largely uncontested. On October 24, 2022, by a 2-1 vote the Cochise County Board of Supervisors—finding that it was "widely known that many voters lacked confidence in the voting system" and that "[a] 100% County wide audit of the 2022 General Election [would] enhance voter confidence"—adopted a resolution requiring the County Recorder or other officer in charge of elections "to perform a hand count audit of all County precincts for the 2022 General Election." [ROA 38 ep 2.]

The Board acted in reliance on an informal legal opinion from the Arizona Attorney General explaining that the Board had the discretion, pursuant to statute and the EPM (which also has the force of law), to perform a hand recount of all ballots cast. [ROA 30 ep 3, 14-18.]

On October 31, 2022, Plaintiffs collectively filed a special action with the Cochise County Superior Court seeking a declaration that conducting a full hand count audit was outside of the County's authority. [ROA 7.] Additionally, they filed a petition seeking either a writ of mandamus or a

preliminary injunction to prevent the proposed full hand count audit of the election. [ROA 1.]

Plaintiff Arizona Alliance for Retired Americans, Inc. ("AARA"), is a 504(c)(4) nonprofit organization that represents retired people from every county in Arizona on a variety of issues. [ROA 38 ep 2.] Their membership includes 1,200 to 1,300 residents of Cochise County. [*Id.*] AARA's primary stated objective is to "enroll and mobilize retired union members and other senior and community activists into a nationwide grassroots movement advocating a progressive political and social agenda—one that respects work and strengthens families."[4] On October 19, 2022, Plaintiff AARA endorsed a slate of Democratic candidates: Mark Kelly, Katie Hobbs, Adrian Fontes, Kris Mayes, Kathy Hoffman, and others.[5] Plaintiff Stephani Stephenson is a Cochise County resident who cast an early ballot for the 2022 election;

[4] *See* Arizona Alliance for Retired Americans, *About Us*, https://arizona.retiredamericans.org/about-us/ (last accessed 2/10/2023).

[5] *See* Arizona Alliance for Retired Americans, FACEBOOK (Oct. 19, 2022), https://www.facebook.com/azretiredams/.

her ballot was accepted, validated, and was ready for tabulation (on the day of the Ruling). [ROA 38 ep 2.]

Defendant David Stevens is the duly elected County Recorder for Cochise County. [*Id.* ep 3.] His office is responsible for, among other statutory requirements, registering voters, providing early ballots, and ensuring that early ballots are properly provided to the County Elections Director for tabulation. [*Id.*] He is intimately familiar with the 2019 EPM because he participated in drafting it. [Tr., 11/4/2022 pp 92-93.] The 2019 EPM was promulgated by Secretary Hobbs after consultation with recorders across the state and is the currently governing EPM.

Defendants Tom Crosby, Ann English, and Peggy Judd (Defendant Board of Supervisors) are the duly elected members of the Cochise County Board of Supervisors, which voted to adopt the full hand count audit procedure challenged by Plaintiffs. [ROA 38 ep 3.]

Defendant Lisa Marra ("Marra") is a nominal defendant in her capacity as the appointed Elections Director for Cochise County, but she agreed that Plaintiffs were entitled to the relief they sought below. She had already started the process of tabulating early ballots and sequestering ballots for the statutorily required audit as required by A.R.S. § 16-602(I) at the time the Ruling was issued. [*Id.*]

STATEMENT OF THE ISSUES

1. Did the trial court err in finding that A.R.S. § 16-602(B) prohibits the County from performing a hand count audit of all election-day ballots when, as it acknowledged, "[a] plain reading" of A.R.S. § 16-602(B)(1) "permits elections of officials to lawfully choose to hand count" as many such ballots as they please? [ROA 38 ep 8.]

2. Did the trial court err in finding that A.R.S. § 16-602(F) prohibits a county from performing a hand count audit of more than 5,000 early ballots when the EPM provides that "Counties may elect to audit a higher number of [early] ballots at their discretion," and Title 16 provides counties with broad statutory discretion regarding the method of counting ballots and verifying that count. 2019 EPM at 215.

STANDARD OF REVIEW

Appellate courts review questions of legal construction de novo. *Fitzgerald v. Myers*, 243 Ariz. 84, 88 ¶ 8 (2017).

ARGUMENT

I. The trial court erred by adopting an absurd construction of A.R.S. § 16-602(B) contrary to its plain meaning.

The trial court's interpretation of A.R.S. § 16-602(B) was guided by the subpart's requirement that the ballots to be recounted by hand be randomly selected. [ROA 38 ep 8.] The trial court reasoned that because a 100% hand count, by definition, does not involve random selection, the statute cannot be read to authorize a 100% hand count of election day ballots. Under the trial court's reasoning, the County can hand count 99% of election day ballots but not 100%. This is absurd.

The rule of random selection is an eminently sensible one. Political preferences

are not homogonous but vary across several categories. For example, rural areas tend to be much more Republican, while urban communities tend to be much more Democratic.[6] If the ballots to be recounted are not randomly selected, then the potential for elections officials to put their thumbs on the scale by hand counting ballots that are likely to favor their side is obvious (e.g., a Democratic elections official might choose to recount only those ballots from vote centers in predominantly urban areas in hopes that the result would favor Democrats).

But these concerns, as per Recorder Stevens's uncontradicted testimony, are not implicated for a 100% hand count because there can be no possibility of bias when *all* ballots are recounted by hand. [Tr., 11/4/2022 p 169 (The point of the random sample portion of a random sample hand-count audit is "to prevent bias.")] As Stevens further explained, "If you're selecting them all, there is no bias involved." [*Id.* p 170.] Even Director Marra agreed with this assessment. [*Id*. p 251.]

It in no way renders the random selection safeguard "void, inert, or trivial" to recognize that it has no applicability in the one and only situation in which it is not needed—a 100% hand count. *See Marshall v. Marshall (In re Marshall)*, 403 B.R. 668, 678 (C.D. Cal. 2009) (explaining that there was "no showing" a judge "was

[6] *See* Eli Yokley, *The Culture War Has Democrats Facing Demise in Rural America. Can They Stop the Bleeding?*, MORNING CONSULT (Feb. 22, 2022, 5:00 AM), https://morningconsult.com/2022/02/22/rural-voters-polling-democrats-face-electoral-demise/.

biased or prejudiced, or that a reasonable person could perceive as much," and thus "the policies of random assignment—i.e., avoiding bias and the appearance of impropriety—[were] **not implicated**") (emphasis supplied). Again, it is **impossible** for a 100% hand count to contain a biased selection to begin with. Therefore, the trial court's reasoning that the random selection safeguard acts as a prohibition on a 100% hand count ignores legislative intent. It is exactly the sort of "overly technical construction," *Gosnell v. Phoenix*, 126 Ariz. 121, 122 (1980), resulting in "absurd and unreasonable" results, *State v. McFall*, 103 Ariz. 234, 238 (1968), that courts are required to eschew.

II. The trial court erred in failing to find that the Board had lawful authority to conduct a 100% hand count of early ballots pursuant to Title 16 and the EPM.

The trial court found that the EPM's "declaration that '[c]ounties may elect to audit a higher number of ballots at their discretion' is not found anywhere in A.R.S. § 16-602, and has no basis or authority in any other statute." [ROA 38 ep 9.] However, this was an error not only because the legislature expressly delegated authority to the Arizona Secretary of State to promulgate rules and instructions for early voting, including the authority to allow individual counties to conduct expanded hand recounts under A.R.S. § 16-602, but also because Arizona statutes confer broad authority on counties to provide for the canvass and certification of votes. Indeed, as discussed further below, counties have broad authority under Title

11 as well as under Title 16.

A. By statute, counties have broad discretion regarding the use of hand counts. The EPM, which has the force of law, expressly authorizes the 100% hand count of early ballots, and—having established any requirement of machine counting—is free to modify it.

The EPM expressly authorizes a 100% hand count of early ballots:

> The officer in charge of elections is required to conduct a hand count of 1% of the total number of early ballots cast, or 5,000 early ballots, whichever is less. A.R.S. § 16-602(F). **Counties may elect to audit a higher number of ballots at their discretion.**

2019 EPM at 215 (emphasis supplied).

This provision has the force of law. *See Ariz. Pub. Integrity All. V. Fontes*, 250 Ariz. 58, 63 (2020) (citing A.R.S. § 16-452(I)) ("Once adopted, the EPM has the force of law."). Further, "[t]he legislature has **expressly delegated** to the Secretary the authority to promulgate rules and instructions for early voting [via the EPM]." *Ward v. Jackson*, 2020 Ariz. LEXIS 313, at *5 (Dec. 8, 2020) (emphasis supplied). In these areas, the EPM speaks for the legislature.

In fact, nothing in Title 16 requires counties to count ballots by machine **at all**. Instead, Title 16 clarifies that the use of ballot-tabulating machines is, by default, discretionary. *See* A.R.S. § 16-443 ("At all...elections, ballots or votes **may** be…counted by voting or marking devices and vote tabulating devices as provided in this article.") (emphasis supplied). [*See also* Tr., 11/4/2022 p 188.] The EPM, not

Title 16, is the source of any **requirement** that counties tabulate votes by machine. *See* EPM at 76 (arguably mandating that voting systems must include an electronic tabulation component). The EPM, insofar as it has created any requirement for machine counting in the first instance (arguably exceeding the Secretary's authority given the statutory text), may naturally modify it by providing that counties may, at their discretion, count more than 5,000 ballots by both machine and by hand. This is perfectly sensible since the results printed by vote tabulating equipment only constitute the official canvass "when certified by the board of supervisors." A.R.S. § 16-622(A).

The act of certifying the canvass is not ministerial. Rather, according to the U.S. Election Assistance Commission:

> The purpose of the canvass is to account for every ballot cast and to ensure that each valid vote is included in the official results. For an election official, the canvass means aggregating or confirming every valid ballot cast and counted—absentee, early voting, Election Day, provisional, challenged, and uniformed and overseas citizen. The canvass enables an election official to resolve discrepancies, correct errors, and take any remedial actions necessary to ensure completeness and accuracy before certifying the election.[7]

In other words, the County is required to satisfy **itself** that the results are accurate before certifying an election. The discretion conferred to counties by the EPM to

[7] U.S. Election Assistance Commission, *Election Management Guidelines* 133 (Aug. 26, 2010), available at https://www.eac.gov/sites/default/files/eac_assets/1/6/EMG_chapt_13_august_26_2010.pdf.

hand recount as many ballots as is required in order to obtain such satisfaction is thus a natural corollary of the County's power to certify the canvass, a power that is also conferred to county boards of supervisors under Title 11. *See* A.R.S. § 11-251 (entitled "Powers of board" and declaring that county boards of supervisors may "canvass election returns, declare the result and issue certificates thereof").

Accordingly, county boards, having the power to canvass and certify election returns under Title 11, also have the discretion to canvass and certify votes either by machine or by hand count *outside* of the mandatory provisions of A.R.S. § 16-602, which outlines the duties of counties in one specific circumstance—during a *mandatory* recount of a limited number of races for each election. Yet nothing in Title 16 or Title 11 prohibits county boards from tabulating ballots by hand in the first instance (initial tabulation of ballots), much less for a recount. Rather, again, county boards of supervisors have broad authority and discretion regarding election matters, including how they choose to canvass and certify votes. *See, e.g.*, A.R.S. §§ 16-621(A) (requiring *all proceedings* at the counting center to be "under the direction of the board of supervisors" and compliant with the EPM), 16-622(A) (canvass not official until "certified by the board of supervisors"), 16-443 (counties have discretion whether to use "vote tabulating devices"), 16-445(A) (lists requirements for counties that *choose* to use tabulating devices), 16-450 (board of supervisors' discretion to provide for location of vote tabulating devices), and

16-451 (board of supervisors' discretion to provide payment for vote tabulating equipment). It would make no sense for the statutes to confer such broad authority on counties only to then limit counties' discretion concerning how ballots are tabulated and re-tabulated/counted.

The trial court thus erred in finding that the "[EPM] clause at issue cannot be relied upon to conduct a full hand count audit" and that there is "no basis or authority in any other statute." [ROA 38 ep 9.]

B. Alternatively, the EPM has the force of law, *can* be harmonized with A.R.S. § 16-602(F), and therefore *must* be harmonized.

The law requires courts, wherever possible, to harmonize laws that appear in conflict. "Any differences [between two laws] **must be reconciled**, if such is possible." *Hughes v. Martin*, 203 Ariz. 165, 168 (2002) (emphasis added). Harmonization is possible if a "consistent workable whole" can be achieved even if two laws are "seemingly in conflict." *State ex rel. Nelson v. Jordan*, 104 Ariz. 193, 196 (1969). As the Attorney General, the Secretary of State, and the Governor all realized when they jointly approved the 2019 EPM,[8] the discretion of counties to hand count more than 5,000 early ballots is not in direct conflict with the language of A.R.S. § 16-602(F). *See Washburn v. Pima Cty.*, 206 Ariz. 571, 576 ¶ 11 (App.

[8] Indeed, even the Secretary's proposed draft 2021 EPM contains the operative language. *See* https://azsos.gov/sites/default/files/2021_EPM_Draft_for_Public_Cmt.pdf at 223.

2003) (courts presume that lawmakers are "aware of existing statutes" when they make new law). In finding that the two sources of law could not be harmonized [ROA 38 ep 9], the trial court erred.

The EPM and A.R.S. § 16-602(F) can be easily harmonized by construing A.R.S. § 16-602(F) in light of its purpose and legislative intent, as this Court must. *Zamora v. Reinstein*, 185 Ariz. 272, 275 (1996). For "[t]he goal of statutory construction is "to fulfill the intent of the legislature that wrote it." *State v. Williams*, 175 Ariz. 98, 100 (1993). Accordingly, a court is to "interpret statutes 'in such a way as to achieve the general legislative goals that can be adduced from the body of legislation in question.'" *Zamora*, 185 Ariz. at 275 (citing *Dietz v. General Electric Co.*, 169 Ariz. 505, 510 (1991)).

The court's reasoning with respect to A.R.S. § 16-602(F) suffers from similar faults to its reasoning with respect to A.R.S. § 16-602(B). Namely, it is overly technical[9] and disregards the statute's intent and purpose. The statute exists because

[9] For example, taking at face value the trial court's reasoning that subpart (F) mandates counties to count a number of early ballots exactly equal to one percent of the total vote centers or 5,000, whichever is less, the County could never comply. The County has less than 20 vote centers, meaning that selecting even one vote center would put the County over the maximum of 1% (as one vote center is 5% of the total). Further, the number of ballots cast at any given vote center never equals exactly 5,000. If the County were then, in the alternative, to attempt to count exactly this number of votes, the County would have to pick and choose which ballots from a given vote center to count. Thus, the trial court's overly technical reasoning with respect to subpart (F) mandates absurd results.

the legislature thinks it is a good thing to mandate a hand count of ballots as a check on machines. To the extent that either statute contains limiting rules, those rules plainly exist to prevent the possibility of bias in the selection of ballots to be hand counted, which cannot exist in a 100% hand count. Like the similar limitations in (B), the limitations in (F) serve the useful purpose of preventing elections officials from putting their thumb on the scale. In subsection (F), the concern is focused on eliminating the possibility of bias by preventing elections officials who choose to recount less than 100% of ballots from stopping the count at an arbitrary number that favors their preferred candidate. Obviously, this is not a harm that must be safeguarded against when the County has made a decision before the election to count 100% of the ballots (though these safeguards would do valuable work in the event of a hand count of any lesser number of ballots).

If laws "relate to the same subject or have the same general purpose—that is...are in pari materia—they should be read in connection with, or should be construed together with other related [laws], as though they constituted one law." *State ex rel Larson v. Farley*, 106 Ariz. 119, 122 (1970). Reading the EPM and A.R.S. § 16-602(F) as one law, it is apparent that subsection (F) can be harmonized by construing subsection (F) as providing fixed and definite points at which a hand count must be terminated to avoid the possibility of bias if the County has decided to initially count less than 100% of ballots by hand. The trial court erred by not

construing the statute and the corresponding provision of the EPM in this harmonious way.

CONCLUSION

WHEREFORE Defendants-Appellants pray that the trial court's Ruling be REVERSED and that conducting 100% hand count audits of elections be DECLARED to be within the County's rightful authority. Alternatively, they pray that this court REVERSE the decision of the trial court at least as to a 100% hand count of election-day ballots.

RULE 21(A) NOTICE

Defendants-Appellants request costs below and on appeal pursuant to Ariz. R. Civ. App. P. 21, A.R.S. § 12-332, and other applicable law. They also request that the Court reverse the trial court's ruling on attorney fees and costs [ROA 48] should they prevail on appeal.

RESPECTFULLY SUBMITTED February 13, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Arizona Rules of Civil Appellate Procedure Rule 4, the undersigned counsel certifies that the Opening Brief is double spaced and uses a proportionately spaced typeface (i.e., 14-point Times New Roman) and contains 4534 words according to the word-count function of Microsoft Word.

RESPECTFULLY SUBMITTED this 13th day of February 2023.

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The undersigned hereby certifies that on this 13th day of February 2023, a copy of the foregoing Opening Brief was electronically filed. The undersigned also certifies that a copy was e-served and emailed to:

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