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*Attorneys for Plaintiffs
Arizona Alliance for Retired Americans, Inc.
and Stephani Stephenson*

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

ARIZONA ALLIANCE FOR RETIRED
AMERICANS, INC., and STEPHANI
STEPHENSON,

Plaintiffs,

No. _____

**PETITION FOR WRIT OF
MANDAMUS**

(Expedited relief requested)

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v.
TOM CROSBY, ANN ENGLISH, and
PEGGY JUDD, in their official capacities
as the Cochise County Board of
Supervisors,
Defendants.

Pursuant to Rule 4(c) of the Arizona Rules of Procedure for Special Actions, Plaintiffs hereby petition this Court for a writ of mandamus to compel Defendants to canvass the results of the 2022 general election as required by A.R.S. § 16-642. This request is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES
INTRODUCTION

Today, November 28, 2022, on the last day for counties to canvass election results for the 2022 general election pursuant to A.R.S. § 16-642(A), the Cochise County Board of Supervisors (the “Board”) unlawfully refused to do so. The Board’s decision was unjustifiable, based on entirely unsubstantiated, vague allegations that the county’s electronic voting machines could not be trusted. But canvassing election results by a date certain is the Board’s mandatory legal duty under Arizona law, and the Board does not have discretion to refuse. *See* A.R.S. § 16-642. As the Arizona Supreme Court has previously found, “if the board neglects or refuses to perform its plain duty [to canvass the election], mandamus would issue to compel it to do so.” *Hunt v. Campbell*, 19 Ariz. 254, 278-79 (1917) (cleaned up). The timely canvassing of election results is essential to ensure the accuracy and finality of Arizona’s statewide elections, many of which will be decided by narrow margins and some of which are subject to automatic recounts. The Board’s inaction thus threatens to harm not only Cochise County voters, whose votes may be excluded from the statewide returns if the Board does not canvass the County’s election results, but every voter in Arizona.

1 Plaintiffs the Arizona Alliance for Retired Americans, Inc. (the “Alliance”), on its
2 own behalf and on behalf of its members who are Arizona residents and voters, and Cochise
3 County voter Stephani Stephenson, have a significant interest in ensuring that the Board
4 performs its non-discretionary legal duties in compliance with state election law to canvass
5 election results as required by Arizona law. If the Board is allowed to refuse to canvass the
6 election, Ms. Stephenson and the Alliance’s Cochise County members will be
7 disenfranchised. The Court should therefore issue a writ of mandamus and order Defendants
8 to immediately canvass Cochise County’s election results in accordance with Arizona law
9 no later than December 1, 2022.

10 BACKGROUND

11 **I. The Board’s refusal to canvass the election results is the latest in a series of 12 unlawful decisions this cycle threatening the right to vote and the integrity of 13 Arizona’s elections.**

14 In recent years, and particularly after the 2020 presidential election, a small but vocal
15 group of individuals and organizations have insisted, without any evidence, that electronic
16 voting systems are unreliable. But as the Secretary of State has explained, “Arizona has
17 rigorous standards in place to ensure that electronic voting systems used in our elections are
18 secure and accurate, including federal and state certification requirements [and] pre- and
19 post-election logic and accuracy testing[.]” Compl. Ex. A at 1. The Board has no evidence
20 to the contrary. And the Secretary of State has even provided to the Board the certification
21 and accreditation information for the machines used in Cochise County during the 2022
22 general election. Compl. Ex. B. Nevertheless, some voters in Cochise County continue to
23 challenge the County’s use of electronic voting machines and have advocated that the
24 County should not rely on them—despite there being no credible evidence to support their
25 contention of their unreliability.

26 Unfortunately, the majority of the Board has submitted to these falsehoods, resulting
27 in a series of decisions that have threatened the voting rights, first, of Cochise County voters,
28 and now, of all Arizonans. First, on October 24, 2022, the Board decided to authorize an
unlawful full hand count audit of ballots cast in the 2022 general election, against the legal

1 advice of the Secretary of State and the Cochise County Attorney.¹ On October 31, the
2 Alliance and Cochise County voter Ms. Stephenson, also Plaintiffs to this litigation, filed
3 suit to ensure that any hand count audit conducted by the County would be in compliance
4 with Arizona law, which authorizes only limited hand count audits. *See* A.R.S. § 16-602.
5 Defendants Crosby, Judd, and English were also defendants in that suit.

6 After conducting a full day evidentiary hearing, the Honorable Casey McGinley
7 granted Plaintiffs' requested relief and ordered the defendants to conduct a hand count audit
8 in strict compliance with Arizona law. *All. For Ret. Ams. v. Crosby*, No. CV202200518,
9 November 7, 2022 Order (Ariz. Sup. 2022). The Court found that a 100% hand recount is
10 not permitted under Arizona law, that detailed statutory procedures require that ballots be
11 randomly selected for the audit, and that audits of escalating increments of ballots are only
12 legally authorized if the difference between the hand count and the machine tabulation
13 meets or exceeds a certain margin of error. *Id.* at 7-10. While some defendants to that
14 litigation, including the Board, appealed the Court's order, the Arizona Court of Appeals
15 denied their motion for an expedited appeal, and the Arizona Supreme Court denied their
16 motion to transfer the action. *See* Order at 1, *All. For Ret. Ams. v. Crosby*, No. 2 CA-CV
17 2022-0136 (Ariz. Ct. App. Nov. 10, 2022); Order at 1-2, *All. For Ret. Ams. v. Crosby*, No.
18 T-22-0008-CV (Ariz. Nov. 10, 2022).

19 Cochise County Elections Director Marra proceeded to conduct the County's hand
20 count audit in strict compliance with Arizona law. That limited hand count audit found *no*
21 *discrepancy* between the electronic voting machine results and the result of the limited hand
22 count. *See* Compl. Ex. C. Despite this, the Board continued with unlawful plans to conduct
23 a separate, significantly expanded hand count audit, noticing a meeting three days after the
24 Court issued its order, in which the Board intended to vote to conduct a hand count audit of
25 99.9% of ballots cast in Cochise County. *See* Compl. Ex. D.

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27 ¹ *See* Cochise County, Video Recording of October 24, 2022 Special Meeting Hand Count
28 of Ballots, available at:
<https://www.youtube.com/watch?v=170xHmbhnJI&feature=youtu.be> (last visited Oct. 31,
2022).

1 When plaintiffs in the hand count audit litigation threatened to move to hold the
2 Board in contempt if they proceeded to authorize a 99.9% hand count, the Board cancelled
3 the meeting. The Board then filed its own suit against Elections Director Marra, seeking a
4 court order to force her to conduct the expanded hand count audit that the Court had
5 previously ordered her not to conduct. *See Tom Crosby et al. v. Lisa Marra*, No.
6 CV202200533 (Ariz. Sup. 2022). However, just two days after filing, the Board withdrew
7 its Petition.

8 This new suit now follows from yet another lawless action by the Board, discussed
9 below.

10 **II. The Board has refused to certify Cochise County’s election results for the 2022
11 general election by the mandatory deadline of November 28, 2022.**

12 On November 18, ten days before the final deadline to do so, the Board met, as
13 required by law, to “[a]ccept the elections results certified and submitted by the Cochise
14 County Elections Department as the official canvass for the General Election held on
15 November 8, 2022.” Compl. Ex. E. The Board’s own meeting notice acknowledged that the
16 Board “will not be in compliance with State Statute for certifying election results” if it failed
17 to canvass the election results. Compl. Exs. H, I.

18 At that meeting, the Board heard extensive comments from the public. Many urged
19 the Board to timely canvass the election results as required by law, while some continued
20 to advocate against canvassing the results, citing their mistrust in the voting machines. The
21 Secretary of State’s Election Director, Kori Lorick, was present and addressed these
22 concerns at the meeting, assuring the Board and the public that Cochise’s electronic voting
23 machines had been and remained “properly certified under both federal and state laws and
24 requirements.”²

25 The process for certifying Arizona’s voting machines is rigorous, intensive, and
26 trustworthy. Under state law, every election cycle, Arizona’s election equipment undergoes

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28 ² Video Recording of Nov. 18, 2022, Special Meeting at 1:57:30-1:57:46, available at
<https://www.youtube.com/watch?v=RvAxd054xoM>.

1 thorough testing by independent, neutral experts, *see* A.R.S. § 16-442(A), (B), as well as
2 four independent audits, two before the election, and two after. The pre-election audits
3 include (1) a logic and accuracy test performed by the Secretary of State on a sample of the
4 tabulation equipment, *see* A.R.S. § 16-449(A), (B); and (2) a logic and accuracy test
5 performed by the counties on all tabulation equipment, *see* 2019 Arizona Elections
6 Procedures Manual (“EPM”) at 86.³ The post-election audits include (3) a limited hand
7 count of a small percentage of ballots overseen by both county election officials and
8 representatives of the political parties, *see* A.R.S. § 16-602(B), (F), and; (4) post-election
9 logic and accuracy testing of tabulation equipment performed by the counties, *see* EPM at
10 235. This extensive testing process is designed specifically to ensure the accuracy of the
11 electronic voting machines. The accuracy of the voting machines was further corroborated
12 this cycle in Cochise County specifically, when County Elections Director Marra completed
13 the limited hand count audit as required under A.R.S. § 16-602 and did not find any
14 discrepancy between the electronic voting machine results and the result of the limited hand
15 count. *See* Compl. Ex. C.

16 Despite the extensive evidence that the machines are trustworthy—and *no* evidence
17 that they are not—a majority of the Board voted on party lines at the culmination of the
18 November 18 meeting to delay canvassing the election results, until “such evidence about
19 lawful certification by an accredited laboratory is presented and confirmed by persons with
20 expertise in that field.”⁴ The Board did not cite any other reason for the delay. It then
21 rescheduled its canvass meeting for November 28, the very last date for counties to canvass
22 results and still be in compliance with Arizona law. Compl. Ex. G.

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25 ³ The Secretary of State promulgated the operative Election Procedures Manual in 2019.
26 The Manual has the force of law. *See* A.R.S. § 16-452; *Ariz. Pub. Integrity All. v. Fontes*,
27 250 Ariz. 58, 63 ¶ 16 (2020) (“Once adopted, the EPM has the force of law; any violation
28 of an EPM rule is punishable as a class two misdemeanor.”). The EPM is available at:
https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf.

⁴ Video Recording of Nov. 18, 2022, Special Meeting at 2:15:28-2:15:51, available at
<https://www.youtube.com/watch?v=RvAxd054xoM>.

1 On November 21, State Election Director Lorick sent a letter to the Board,
2 emphasizing that it has a *mandatory duty* to canvass election results by November 28.
3 Compl. Ex. B. The letter made clear that the Secretary would take legal action if the Board
4 failed to perform their duty under law. *Id.* The following day, Plaintiffs to this litigation
5 sent a similar letter to the Board. Compl. Ex. F. The letter emphasized that there is no
6 legitimate basis for delaying the canvass, and advised that Plaintiffs, too, intended to take
7 legal action if the Board failed to canvass the election results on November 28. *Id.*

8 On November 28, the last day to canvass, the Board refused to canvass the 2022
9 general election results.

10 LEGAL STANDARD

11 “A writ of mandamus allows a ‘party beneficially interested’ in an action to compel
12 a public official to perform an act imposed by law.” *Ariz. Pub. Integrity All.*, 250 Ariz. at
13 62 ¶ 11. While the Board’s refusal to canvass election returns will harm Plaintiffs and all
14 voters, where Plaintiffs have shown that a public official has acted unlawfully and outside
15 the scope of their authority, they need not show irreparable harm or that the balance of harm
16 weighs in their favor. *Id.* at 64 ¶ 26; *see also* *Burton v. Celentano*, 134 Ariz. 594, 596 (App.
17 1982) (explaining mandamus standard).

18 ARGUMENT

19 I. This Court should grant a writ of mandamus compelling Defendants to 20 canvass the election in accordance with Arizona law.

21 a. Plaintiffs have standing to seek a writ of mandamus.

22 Courts apply a particularly “relaxed standard for standing in mandamus actions.” *Id.*
23 at 62 ¶ 11. “The phrase ‘party beneficially interested’ is ‘applied liberally to promote the
24 ends of justice.’” *Id.* (quoting *Barry v. Phx. Union High Sch.*, 67 Ariz. 384, 387 (1948)).
25 Under A.R.S. § 12-2021, a writ of mandamus allows a “party beneficially interested in an
26 action to compel a public official to perform an act imposed by law” (quotation
27 omitted). The mandamus statute “reflects the Legislature’s desire to broadly afford standing
28 to members of the public to bring lawsuits to compel officials to perform their public

1 duties.” *Ariz. Pub. Integrity All.*, 250 Ariz. at 62 ¶ 11 (citing *Ariz. Dep’t of Water Res. v.*
2 *McClennen*, 238 Ariz. 371, 377 ¶ 32 (2015)).

3 The Alliance, which has over 1,200 members in Cochise County, and Ms.
4 Stephenson, a Cochise County voter, have standing to pursue their mandamus action for the
5 same reasons that Arizona voters and citizens had standing to pursue their mandamus action
6 concerning unlawful voting procedures in *Arizona Public Integrity Alliance*, 250 Ariz. 58
7 (2020). In that case, the Arizona Supreme Court held that both plaintiffs had standing
8 because “as *Arizona citizens and voters*, seek[ing] to compel the Recorder to perform his
9 *non-discretionary duty* to provide ballot instructions that comply with Arizona law . . . they
10 have shown a sufficient beneficial interest to establish standing.” *Id.* at 62 ¶ 12 (emphases
11 added). The same is true here: the Plaintiffs have a sufficient beneficial interest in ensuring
12 Defendants conduct the general election and canvass ballots in accordance with Arizona
13 law, to ensure their and their members’ votes will be included in the statewide returns.
14 Indeed, should the County ultimately fail to complete the canvass, Ms. Stephenson and the
15 Alliance’s Cochise County members may have their votes discarded and excluded from the
16 statewide canvass. Accordingly, since Plaintiffs are “beneficially interested” in the Board
17 canvassing the 2022 general election results, Plaintiffs can sue under A.R.S. § 12-2021 to
18 compel the Board to perform their non-discretionary duty to do so. *Ariz. Pub. Integrity All.*,
19 250 Ariz. at 62 ¶ 11.

20 **b. Defendants have a non-discretionary duty to canvass the election**
21 **results.**

22 A writ of mandamus is appropriate where a public official has a non-discretionary
23 duty and fails to act in accordance with the law. *See Stagecoach Trails MHC, L.L.C. v. City*
24 *of Benson*, 231 Ariz. 366, 370 ¶ 19 (2013). Here, the Board has a mandatory, non-
25 discretionary legal duty to canvass and certify the election under Arizona law, and has failed
26 to do so by the statutory deadline, which this year falls on November 28, 2022.

27 Arizona law requires that each county board of supervisors “*shall meet and canvass*
28 *the election not less than six days nor more than twenty days following the election.*” A.R.S.

1 § 16-642(A) (emphasis added). Accordingly, each county board of supervisors—including
2 in Cochise County—must complete their canvass by no later than November 28 for the
3 November 8 general election. *Id.* Once the canvass is complete, the county boards of
4 supervisors “must transmit their canvasses to the Secretary of State,” *id.* at 243, who is
5 required to conduct the statewide canvass on December 5, 2022. A.R.S. § 16-648(a).

6 If the Secretary has not received the official canvass from any county by that date,
7 the canvass shall be postponed day-to-day until canvasses from all counties are received,
8 but only until 30 days after the election, which is December 8, 2022. *Id.* § 16-648(c). If a
9 county has not certified its results by December 8, 2022, its votes may not be included in
10 the statewide canvass. *See id.* § 16-648; EPM at 243 (“The Secretary of State has a non-
11 discretionary duty to canvass the returns as provided by the counties and has no authority
12 to change vote totals or reject the election results.”); Compl. Ex. D at 2. If a county fails to
13 conduct the statutorily mandated canvass, there is a serious risk that the votes of the
14 offending county’s citizens will not be included in the State’s canvass, disenfranchising that
15 county’s residents.

16 The canvass is a purely ministerial act that follows tabulation of votes and various
17 audits that ensure the accuracy and integrity of the election. *See, e.g.,* A.R.S. § 16-602
18 (requiring limited hand count audit of ballots); *see also* EPM at 239 (“A canvass . . . should
19 not be conducted until all necessary audits have been completed to verify the accuracy and
20 integrity of election results.”). The purpose of the county canvass is to officially certify the
21 election. *See* EPM at 239.

22 And the Board’s duties related to the canvass are ministerial and mandatory, not
23 discretionary, as reflected by the plain statutory text: the Board “shall” canvass the county’s
24 election results, A.R.S. § 16-642(A); *see* EPM 239-40 (Board “**must canvass** the election
25 by the required deadline,” or 20 days after the general election); *id.* at 243 (“All counties
26 **must transmit their canvasses** to the Secretary of State.”) (Emphases added). The EPM
27 echoes this mandatory language, emphasizing that: “The Board of Supervisors **has a non-**
28 **discretionary duty to canvass the returns** as provided by the County Recorder or other

1 officer in charge of elections and *has no authority to change vote totals or reject the*
2 *election results.*” *Id.* at 240 (emphasis added).

3 As Arizona courts have consistently stressed, Defendants have only those powers
4 “expressly conferred by statute” and “may exercise no powers except those specifically
5 granted by statute and in the manner fixed by statute.” *Hancock v. McCarroll*, 188 Ariz.
6 492, 498 (App. 1996) (quotation omitted); *see Ariz. Pub. Integrity All.*, 250 Ariz. at 62 ¶ 14
7 (Defendants’ powers “[are] limited to those powers expressly or impliedly delegated to
8 [them] by the state constitution or statutes.”); *see also* Ariz. Const. art. 12, § 4 (stating that
9 “[t]he duties, powers, and qualifications” of county officers “shall be as prescribed by law”).

10 The law permits the Board to delay the canvass under only one circumstance, which
11 is “if the results from any precinct are missing.” *Id.* (citing A.R.S. § 16-642(C)). That
12 provision is inapplicable here because the Board was provided with the complete election
13 results at its November 18, 2022, meeting. Thus, there is no lawful basis for the Board to
14 refuse to complete the canvass, and the Court should order them to do so.

15 **c. The Court should grant a writ of mandamus to protect Cochise County**
16 **voters.**

17 Courts may issue a writ of mandamus to any “person [or] corporation . . . on the
18 verified complaint of the party beneficially interested, to compel, when there is not a plain,
19 adequate and speedy remedy at law, performance of an act which the law specially imposes
20 as a duty resulting from an office” A.R.S. § 12-2021. As discussed *supra* pp. 7-8,
21 Plaintiffs are beneficially interested in this action because they are Arizona citizens and
22 voters of Cochise County, and if Defendants fail to comply with their non-discretionary
23 legal duty to canvass and certify the county’s election results as prescribed by Arizona law,
24 Plaintiffs may have their votes discarded and excluded from the statewide canvass. In such
25 actions, courts “may direct, order, or prohibit specified action by the defendant” as
26 judgment. Arizona Rules of Procedure for Special Actions, Rule 6.

27 By failing to certify Cochise County’s 2022 general election results, the Board failed
28 to complete its non-discretionary, mandatory legal duties. Faced with a similar issue, the

1 Arizona Supreme Court has previously explained that where election returns have been
2 received “if the board neglects or refuses to perform its plain duty [to canvass the election],
3 mandamus would issue to compel it to do so.” *Hunt v. Campbell*, 19 Ariz. 254, 278-79
4 (1917) (cleaned up).

5 As the Arizona Supreme Court has explained, “[e]lection laws play an important role
6 in protecting the integrity of the electoral process,” and “public officials should, by their
7 words and actions, seek to preserve and protect those laws.” *Ariz. Pub. Integrity All.*, 250
8 Ariz. at 61 ¶ 4 (citations omitted). Defendants cannot simply ignore Arizona election law
9 “based on their own perceptions of what they think [the law] *should* be.” *Id.* The Court
10 should therefore order Defendants to immediately canvass and certify Cochise County’s
11 2022 general election results in accordance with A.R.S. § 16-462 and the EPM by no later
12 than December 1, 2022.

13 CONCLUSION

14 For the foregoing reasons, Plaintiffs’ Petition for a Writ of Mandamus should be
15 GRANTED.

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Dated: November 28, 2022

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* *Pro Hac Vice* Motion forthcoming

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