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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. **CV 202200552**

**PETITION FOR WRIT OF  
MANDAMUS**

**(Expedited relief requested)**

1  
2 v.  
3 TOM CROSBY, ANN ENGLISH, and  
4 PEGGY JUDD, in their official capacities  
as the Cochise County Board of  
Supervisors,  
5 Defendants.

6  
7 Pursuant to Rule 4(c) of the Arizona Rules of Procedure for Special Actions,  
8 Plaintiffs hereby petition this Court for a writ of mandamus to compel Defendants to  
9 canvass the results of the 2022 general election as required by A.R.S. § 16-642. This request  
10 is supported by the following Memorandum of Points and Authorities.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **INTRODUCTION**

13 Today, November 28, 2022, on the last day for counties to canvass election results  
14 for the 2022 general election pursuant to A.R.S. § 16-642(A), the Cochise County Board of  
15 Supervisors (the “Board”) unlawfully refused to do so. The Board’s decision was  
16 unjustifiable, based on entirely unsubstantiated, vague allegations that the county’s  
17 electronic voting machines could not be trusted. But canvassing election results by a date  
18 certain is the Board’s mandatory legal duty under Arizona law, and the Board does not have  
19 discretion to refuse. *See* A.R.S. § 16-642. As the Arizona Supreme Court has previously  
20 found, “if the board neglects or refuses to perform its plain duty [to canvass the election],  
21 mandamus would issue to compel it to do so.” *Hunt v. Campbell*, 19 Ariz. 254, 278-79  
22 (1917) (cleaned up). The timely canvassing of election results is essential to ensure the  
23 accuracy and finality of Arizona’s statewide elections, many of which will be decided by  
24 narrow margins and some of which are subject to automatic recounts. The Board’s inaction  
25 thus threatens to harm not only Cochise County voters, whose votes may be excluded from  
26 the statewide returns if the Board does not canvass the County’s election results, but every  
27 voter in Arizona.  
28

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.<sup>1</sup> 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.

26  
27 <sup>1</sup> *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."<sup>2</sup>

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

27 <sup>2</sup> Video Recording of Nov. 18, 2022, Special Meeting at 1:57:30-1:57:46, available at  
28 <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.<sup>3</sup> 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.”<sup>4</sup> 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.

23  
24  
25 <sup>3</sup> 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](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).

<sup>4</sup> 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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1  
2 Dated: November 28, 2022  
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