

Description	Amount
----- CASE# CV2022-015521 ----- ELECTION CONTEST:NEW	333.00
TOTAL AMOUNT	333.00
Receipt# 29027958	

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 In the matter of the contest of LEGISLATIVE
11 DISTRICT 22 STATE SENATE ELECTION

Case No. **CV 2022-015521**

12 **VERIFIED COMPLAINT**
13 **FOR SPECIAL**
14 **ACTION/STATEMENT OF**
15 **ELECTION CONTEST**

(mandamus action and contest of
election pursuant to A.R.S. § 16-
672 *et. seq.*)

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19 SHELBY BUSCH; an individual,
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21 Plaintiff/Contestant,
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23 v.
24 EVA DIAZ,
25 Defendant/Contestee,
26
27 ---and---

28 KATIE HOBBS, in her official capacity as the
Secretary of State; STEPHEN RICHER, in his
official capacity as the Maricopa County

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1 Recorder; MARICOPA COUNTY BOARD OF
2 SUPERVISORS STEVE GALLARDO,
3 THOMAS GALVIN, BILL GATES, CLINT
4 HICKMAN, JACK SELLERS, in their official
5 capacities,

6
7 Defendants.

8 For her verified complaint against defendants and statement of election contest,
9 Plaintiff/Contestant SHELBY BUSCH alleges:

10 **SUMMARY OF THE CASE**

11 1. When, as here, an accretion of erroneous ballot processing or tallying
12 determinations is potentially dispositive of an election for public office, Arizona law
13 permits any elector to initiate a contest proceeding to ensure that inaccuracies or illegalities
14 in the canvassed returns are judicially remedied, and the declared result conforms to the
15 will of the electorate. *See* A.R.S. §§ 16-672, *et seq.*

16 2. The Maricopa County Defendants have improperly counted the votes for
17 State Senate legislative district 22 election. Upon information and belief, relying on
18 erroneous legal advice from the Arizona Secretary of State's Office, Maricopa County did
19 not correctly tabulate votes for the 2022 general election for State Senate, Legislative
20 District 22. To wit, if a voter voted for both Diego Espinoza, the withdrawn candidate, and
21 a lawfully registered write-in candidate, Maricopa County counted this as a vote for the
22 write-in candidate, even though under Arizona law it is clear that this is an overvote that
23 should not count for any candidate. A.R.S. §§ 16-610, 16-611, *Arizona Public Integrity*
24 *Alliance v. Fontes*, 250 Ariz. 58, 63 (2020).

25 3. The votes must be properly tabulated, and that may result in a different
26 eligible candidate receiving the highest number of lawful votes. Immediate judicial
27 intervention is necessary to secure the accuracy of the results of the November 8, 2022
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1 general election, and to ensure that candidate who received the highest number of lawful
2 votes is declared the next State Senator from legislative district 22.

3 4 JURISDICTION

5 4. There are two separate and distinct grounds for this Court's jurisdiction. This
6 Court has jurisdiction over this as a special action pursuant to Article 6, § 14 of the Arizona
7 Constitution, and Arizona Rule of Special Action Procedure 3. This Court also has
8 jurisdiction over this as an election contest pursuant to A.R.S. § 16-672(A)-(B),

9 5. Venue lies in Maricopa County pursuant to A.R.S. § 16-672(B). This case
10 is a Tier 2 case under Rule 26.2 of the Arizona Rules of Civil Procedure.

11 PARTIES

12 6. Plaintiff/Contestor Shelby Busch is a qualified elector of the State of
13 Arizona, Maricopa County, legislative district 22 and resides at 9017 W. Osborn Road,
14 Phoenix, Arizona 85037.

15 7. Defendant/Contestee Eva Diaz is a write-in candidate for the office of State
16 Senator, Legislative District 22, in the November 8, 2022 general election.

17 8. Defendant Katie Hobbs is the Secretary of State of Arizona, and is named in
18 this action in her official capacity only. The Secretary of State is the public officer charged
19 by law with conducting the canvass of the returns for statewide offices and with declaring
20 the persons elected to such offices. *See* A.R.S. §§ 16-648, 16-650.

21 9. The county recorder of Maricopa County is named in this action in his
22 official capacity only. The County Recorder is the principal elections officer of Maricopa
23 County and is responsible for overseeing and directing numerous components of election
24 administration within the jurisdiction, to include the processing, verification and tabulation
25 of early ballots, and the appointment and oversight of Ballot Duplication Boards and
26 Electronic Adjudication Boards. *See* A.R.S. §§ 16-541, -542, -543, -544, -550, -602, -621.

27 10. The board of supervisors of Maricopa County is named in its official capacity
28 only. The Maricopa County Board of Supervisors is charged by law with conducting

1 elections within its jurisdictional boundaries, to include appointing polling location
2 election boards, overseeing the operations of polling locations on Election Day, and
3 canvassing the returns of elections in the county. *See* A.R.S. §§ 11-251(3), 16-446, -
4 447(A), -511, -531, -642, -645, -646.

5 11. Upon information and belief, the Boards of Supervisors will, on or before
6 November 28, 2022, canvass the returns of the November 8, 2022 general election in their
7 respective counties, and deliver the canvass results to the Secretary of State.

8 12. Upon information and belief, the Secretary of State will, on or before
9 December 5, 2022, canvass the returns of the November 8, 2022 general election and
10 declare the Contestee elected to the office of State Senator, legislative district 22.

11 13. For the reasons set forth herein, the canvass upon which such declaration will
12 be premised is afflicted by election board misconduct, the tallying of unlawful ballots, and
13 the erroneous counting of votes, within the meaning of A.R.S. § 16-672(A)(1), (A)(4), and
14 (A)(5). A complete and correct tabulation of all lawful ballots may establish that another
15 candidate was the recipient of the most votes in the November 8, 2022 general election for
16 legislative district 22, State Senate.

17 GENERAL ALLEGATIONS

18 14. On August 2, 2022, Diego Espinoza defeated fellow Democrat Richard
19 Andrade in the Primary Election to secure the Democratic Party nomination for the General
20 Election for the office of State Senator, legislative district 22.

21 15. On or about September 2, 2022, Espinoza withdrew as a candidate for State
22 Senate, legislative district 22.

23 16. The Republicans had not nominated anyone to run in the General Election.
24 Subsequently, a number of individuals filed to run as “write-in” candidates, as permitted
25 by Arizona law.
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1 17. Under Arizona law, if a voter votes for two individuals, it is treated as an
2 “overvote” and no vote is tallied for any person.

3 18. A.R.S. § 16-610 provides that “[i]f on any ballot the names of more persons
4 are designated for the same office than are to be chosen, or if for any reason it is impossible
5 to positively determine the voter's choice, all the names designated for that office shall be
6 rejected.”

7 19. A.R.S. § 16-611 provides that “[i]f the voter marks more names than there
8 are persons to be elected to an office, or if from the ballot it is impossible to determine the
9 voter's choice for an office, his ballot shall not be counted for that office.”

10 20. “Under Arizona law, an overvote is invalid and is not counted. A.R.S. § 16-
11 610, -611; 2019 EPM at 56...Additionally, Arizona's “electronic voting system” rejects
12 and does not count overvotes. A.R.S. § 16-446(B)(2); 2019 EPM at 201.” *Arizona Public*
13 *Integrity Alliance v. Fontes*, 250 Ariz. 58, 63 (2020).

14 21. Instead of following these statutory requirements, the County Defendants,
15 relying on erroneous legal advice from the Arizona Secretary of State’s Office, did not tally
16 a ballot in which a voter placed a mark for Diego Espinoza and a write-in as an overvote
17 that would not included in any candidate’s vote total, but instead tallied such a vote as a
18 vote for the write-in candidate.

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23 **COUNT ONE, STATUTORY ELECTION CHALLENGE—THIS COURT MUST**
24 **ANNUL AND VOID THE ELECTION AND THE ELECTION RESULTS DUE TO**
25 **MISCONDUCT, OFFENSES AGAINST THE ELECTORAL FRANCHISE AND**
26 **ERRONEOUS COUNT OF VOTES**

27 22. Plaintiff realleges the foregoing paragraphs as if fully stated herein.
28

1 23. Arizona law provides the following grounds for an election challenge that
2 are applicable here: “[f]or misconduct on the part of...any officer making or participating
3 in a canvass”, for “offense[s] against the elective franchise,” and “ [t]hat by reason of
4 erroneous count of votes the person declared elected or the initiative or referred measure,
5 or proposal to amend the constitution, or other question or proposal submitted, which has
6 been declared carried, did not in fact receive the highest number of votes for the office or
7 a sufficient number of votes to carry the measure, amendment, question or proposal.”
8 A.R.S. § 16-672(A)(1), (A)(3) and (A)(5); *Moore v. City of Page*, 148 Ariz. 151, 155
9 (App. 1986).

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12 24. Under 16-676(B), after a hearing on an election contest, the Court can
13 “confirm or annul and set aside the election.”

14 25. While “honest mistakes or mere omissions on the part of election officers”
15 are generally not enough to void an election, if the irregularities render the result
16 “uncertain”, the Court may grant relief by voiding the election. *Findley v. Sorenson*, 35
17 Ariz. 265, 269 (1929).

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19 26. In addition, “A writ of mandamus may be issued by the supreme or superior
20 court to any person, inferior tribunal, corporation or board, though the governor or other
21 state officer is a member thereof, on the verified complaint of the party beneficially
22 interested, to compel, when there is not a plain, adequate and speedy remedy at law,
23 performance of an act which the law specially imposes as a duty resulting from an office,
24 trust or station...” A.R.S. § 12-2021.
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1 27. The actions here involved the erroneous application of the law in terms of
2 how to count votes—elections officials had a duty to count them in the manner required
3 by statute, and they failed to do so.

4 **COUNT TWO: MANDAMUS RELIEF—THIS COURT MUST ORDER THAT**
5 **THE DEFENDANTS PROPERLY TABULATE THE BALLOTS AND NOT**
6 **COUNT OVERTOTES FOR ANY CANDIDATE**

7 28. Plaintiff realleges the foregoing paragraphs is if fully set forth herein.

8 29. A.R.S. §§ 16-448 and 16-612(A) state the legal requirements for how to tally
9 write in votes.

10 30. These statutes require that any ballot containing a mark for a person whose
11 name is printed on the ballot and a mark for a write-in candidate be treated as an overvote
12 and not count as a vote for any candidate.
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14 31. The County Defendants improperly tabulated these ballots to count these
15 overvotes for whatever write-in candidate chosen by the elector, even though the elector
16 also chose to vote for Diego Espinoza.
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18 32. The County Defendants are proceeding in a manner contrary to state law, and
19 must be ordered to properly tall the ballots of legislative district 22 electors.
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21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

23 A. For an Order from this Court requiring the County Defendants to properly
24 tall votes for legislative district 22 State Senate, and to not count overvotes as a vote for
25 any candidate.
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27 B. For an award of attorney's fees and other eligible expenses under A.R.S. §
28 12-2030 (requiring awards in mandamus actions).

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- C. For an award of taxable costs under A.R.S. § 12-341.
- D. For any other such relief as this Court deems fair and just.
- E. For Findings of Fact and Conclusions of law.

RESPECTFULLY SUBMITTED this 28th day of November, 2022.

TIMOTHY A. LA SOTA, PLC

By: /s/ Timothy A. La Sota

TIMOTHY A. LA SOTA
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Rule 80 Declaration

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I declare under penalty of perjury of the laws of the State of Arizona that the foregoing Verified Complaint For Special Action and Statement of Election Contest is true and correct, except where stated to the best of my knowledge and belief, which assertions I believe to be true, and that this Declaration is executed by me on the 28th day of November, 2022, in Maricopa County, Arizona.


Shelby Busch

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