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22 *Attorneys for Plaintiff/Contestant Abraham Hamadeh*

23 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
24 **IN AND FOR THE COUNTY OF MOHAVE**

25 JEANNE KENTCH, an individual; TED BOYD,
26 an individual; ABRAHAM HAMADEH, an
27 individual; and REPUBLICAN NATIONAL
28 COMMITTEE, a federal political party
committee

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

ADRIAN FONTES, *et al.*,

Defendants.

No. S8015CV202201468

**CONSOLIDATED REPLY IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A NEW TRIAL**

(assigned to Hon. Lee F. Jantzen)

(ORAL ARGUMENT
REQUESTED)

1 Exactly one day after Contestee Kris Mayes was sworn in as Arizona Attorney
2 General,¹ and two business days after Plaintiffs first received notice that Pinal County
3 confirmed errors caused valid votes in the attorney general race to be misread as no votes
4 (known as undervotes), Plaintiffs filed this Motion for a New Trial. Critically, then-
5 Secretary Hobbs (a Defendant in this matter) knew about the misreads at the time of the
6 trial, but chose not to disclose the widespread issues until after the pronouncement of the
7 recount results. Yet despite Plaintiffs extreme diligence in quickly bringing this Motion for
8 a New Trial, Defendants essentially argue “too little, too late.”

9 Sadly and unsurprisingly, Defendants wish away the guarantees of due process,
10 ignore longstanding precedent, and cast aside material facts for fear of confirming what the
11 evidence will undoubtedly prove: Abe Hamadeh, not Kris Mayes, received the most votes
12 for attorney general when every qualified vote is accurately counted.

13 Mayes, in fact, makes her “hope” abundantly clear that this “is the end” and
14 expresses that she simply wants this case to be “over.” Def. Mayes Resp. to Pl. Mot. For
15 New Trial (filed Jan. 17, 2023) (“Mayes Resp.”) at 2, 1. Defendant Maricopa County
16 similarly decries “[t]his election and this contest is over” and Defendant Secretary of State
17 Adrian Fontes bemoans that this “Court should not permit these proceedings to drag out
18 any further.” Maricopa County Defs. Resp. to Pl. Mot. for New Trial (filed Jan. 23, 2023)
19 (“Maricopa Resp.”) at 4; Sec. Fontes Resp. in Opp. To Pl. Mot. for New Trial (filed Jan.
20 23, 2023) (“Fontes Resp.”) at 3. This has been Defendants’ refrain from day one, constantly
21 waiving the threat of seeking sanctions as the cost they seek to impose on electors and
22 candidates who dare attempt to vindicate their rights in litigation. This concerted effort to
23 squash inquiry and eliminate good faith legal argument is not how judicial review and due
24 process work in Arizona, particularly when the law and facts demonstrate the necessity of
25 a new trial.

26 Arizona’s constitution demands that only the “person having the highest number of

27
28 ¹ Mayes’ swearing-in occurred on January 2, 2023—a state and federal holiday, but pursuant to
Ariz. Const. art. V, § 1(A) (“beginning on the first Monday of January”).

1 the votes cast for the office voted for shall be elected” (Ariz. Const. art. V, § 1(B)) and
2 provides a statutory process to contest an election where “by reason of erroneous count of
3 votes the person declared elected... did not in fact receive the highest number of votes for
4 the office[.]” A.R.S. § 16-672(A)(5). And due process demands that Plaintiffs be granted a
5 new trial based on the newly discovered (and questionably withheld) evidence as well as
6 the error of the court of not only limiting the inspection of ballots to a small sample (and
7 excluding inspection of provisional ballots), but also failing to provide Plaintiffs time to
8 meaningfully inspect the ballots in *preparation* for trial (not just hours before the trial). *See*
9 A.R.S. § 16-677(A).

10 Defendants catch themselves coming and going with arguments that Plaintiffs lacked
11 diligence in obtaining evidence when Defendants ensured it could not see the light of day
12 until after trial. Defendant Fontes trips over himself arguing that the recount proceedings
13 demanded that “no one – not the Secretary, not Pinal County, and not anyone else – was
14 allowed to release *information* about the recount” (Fontes Response at 2 (emphasis added)),
15 while ignoring the fact the order did not permit the Secretary to withhold critical evidence,
16 and more directly, permit the Secretary’s counsel to potentially run afoul of his duty of
17 candor to the tribunal. *See* Ariz. R. Prof’l. Cond. 3.3(a)(1) (“A lawyer shall not knowingly
18 make a false statement of fact or law to a tribunal *or fail to correct a false statement of*
19 *material fact* or law previously made to the tribunal by the lawyer.” (emphasis added)).
20 Specifically, in the Secretary’s Reply in Support of the Secretary’s Motion to Dismiss
21 Statement of Election Contest filed in this Court, counsel asserted that “[e]ven if the Court
22 were to assume these [395] votes were to favor Hamadeh” that “cannot magically lead to a
23 showing that the election results would be different[.]” Sec. Reply at 4 (filed Dec. 16, 2022).

24 When this statement was written, or at least by the December 23 trial date, the
25 Secretary’s counsel knew or should have known this statement was false, and that the
26 margin was in fact *less* than 395 votes. In fact, counsel representing the Secretary in the
27 recount proceeding (the very same counsel representing the Secretary in this proceeding),
28 disclosed to the Maricopa Court on December 29, 2022 that he was one of two people in

1 the courtroom who knew what the recount results were prior to handing the Court the sealed
2 envelope.²³

3 Although the Maricopa Recount Order prevented the Secretary from disclosing the
4 precise vote counts, nothing prevented her from disclosing the identified *problems* with
5 undervotes. And specifically, the Secretary knew or should have known at trial that the
6 allegations raised in the Plaintiffs' election contest and at trial – namely that tabulators
7 erroneously misread ballots and failed to count valid votes cast in the attorney general's
8 race – were a confirmed problem in Pinal County, discovered during the recount. Critically,
9 if similar errors occurred statewide, it would likely be outcome determinative in this
10 exceedingly close race. Defendant Secretary Hobbs counsel should have advised this Court
11 the Secretary had information that supported the issues litigated at trial by Plaintiffs, and
12 further could have advised this Court that further inspection of undervoted ballots might be
13 warranted, without revealing the vote count.

14 Not only did Defendant Hobbs keep Plaintiffs in the dark, Plaintiffs requested this
15 Court accelerate discovery once Maricopa County failed to timely respond to Plaintiffs'
16 request for production of records related to provisional ballots. Yet Defendants opposed
17 the request and this Court denied it. *See* Emergency Hearing Transcript 47:11-12 (Dec. 22,
18 2023). Consequently, Maricopa did not provide Plaintiffs with the information related to
19 provisional ballots until December 31, 2022. Maricopa's delay in providing critical
20 evidence prevented Plaintiffs from timely discovering significant, likely outcome
21 determinative, irregularities with provisional ballots.

22 This Court should not reward Defendants' tactics of misrepresenting critical facts
23 and withholding relevant evidence such that it tarnishes the election process for years to
24

25 ² *See* ABC15, *Arizona election recount results revealed following Abe Hamadeh lawsuit*, stream of
26 December 29, 2022 recount hearing at 5:53, available at https://www.youtube.com/live/J8f-8h_5Onc?feature=share&t=353 (last accessed Feb. 6, 2023).

27 ³ Notably, assuming, *arguendo*, that counsel did not know the margin was drastically altered when
28 the Secretary's Reply was filed, there is no question that counsel became aware on or before
December 29, 2022, when the results of the recount were revealed. Despite Plaintiffs' counsel
request to correct the filing, counsel has failed to do so.

1 come. In fact, this Court is the most appropriate forum to redress the 2022 election
2 maladies. Judges, not executive branch nor election officials, are the arbiters of justice.
3 After all, if this—the closest statewide officer election in Arizona history—is not worth an
4 exacting review, whatever could be? That Defendants would lock up the underlying
5 evidence and demand this “case [be] over” is contrary to Arizona law, the interest of justice,
6 and an affront not only to the democratic process, but to Arizona voters. *Mayes Resp.* at 1.

7 Although Defendants attempt to confuse and conflate the Plaintiffs’ request,
8 Plaintiffs simply want to ensure that every lawful vote is counted such that no voter is
9 disenfranchised by way of machine or human error. Plaintiffs simply ask this court to allow
10 the parties to inspect all ballots that failed to record a vote in the attorney general race
11 (known as an “undervote”) in all 15 counties to confirm that the machines properly and
12 appropriately counted every vote in the attorney general race – and ensure that no voter is
13 disenfranchised through failed election systems and processes.⁴ Based on information and
14 belief, most counties should be able to electronically sort the cast ballot images to find only
15 those with undervotes in the attorney general race. And this is necessary because Pinal
16 County already proved, thanks to its diligent investigation and inquiry, that valid votes were
17 misread as undervotes and not counted in its original canvass.

18 Additionally, Plaintiffs request review of the provisional ballots in all 15 counties
19 that officials rejected on the grounds that the voter was not “registered to vote” or “not
20 eligible to vote” in the November General election despite having successfully voted in the
21 2018 General, 2020 General, and/or 2022 Primary. This is another necessary step to prevent
22 the disenfranchisement of Arizonans and uphold Arizona election law—namely, by
23 determining if any of these ballots were erroneously rejected due to a procedural error that

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25 ⁴ In Maricopa County alone, there are 50,246 ballots that were read as an “undervote” in the
26 attorney general race. See Maricopa County Elections Department November General Election
27 Canvass, available at <https://elections.maricopa.gov/asset/jcr:b4cf8c23-01e6-4a18-8a77-96e5cb34cb0a/11-08-2022-0%20Canvass%20COMPLETE.pdf>, at 24 (last accessed Jan. 19,
2023). This court may take judicial notice of these records that are publicly available on Maricopa
County’s website. See *Ariz. R. Evid.* 201; *Pedersen v. Bennett*, 230 Ariz. 556, 559, ¶15 (2012).

1 may have caused the voter registration to be cancelled, rather than inactivated, in violation
2 of A.R.S. §§ 16-165, -166(C).⁵ Based on Plaintiffs initial review, more than 450
3 provisional ballots appear to have been erroneously rejected and should be counted. This
4 too could be outcome determinative and demands a closer look.

5 Plaintiffs further request that the 73 provisional ballots cast by “high propensity
6 voters” rejected as voting “out-of-precinct” or “out-of-jurisdiction” in Mohave County be
7 reviewed to determine if the Arizona law was followed to properly inform voters of the
8 legal implications of out-of-precinct voting, and whether the ballots were lawfully rejected.

9 Once the Plaintiffs have had a reasonable opportunity to inspect the ballots with
10 undervotes in the attorney general’s race and confirm that all lawfully cast provisional
11 ballots were counted, a new trial should immediately ensue. Given the time constraints of
12 the initial trial, this Court erroneously denied Plaintiffs their statutory right to inspect “*the*
13 *ballots*” in preparation for trial, a new trial and a new order granting Plaintiffs ability to
14 inspect “undervoted” ballots and rejected provisional ballots should rightly ensue.⁶

15 Notwithstanding Defendants’ hyperbole and incendiary language, Defendants’
16 responses demonstrate one thing: fear. Fear that the election was not conducted properly,
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18 ⁵ Based on Plaintiffs’ review of the list of rejected provisional ballots obtained from Maricopa
19 County on or around December 31, 2022, it appears that of the 4,498 provisional ballots rejected
20 as “not registered to vote” or “not eligible to vote[,]” upwards to 500 of those voters cast a ballot
21 that was accepted and counted in the 2018 and/or 2020 general elections. Given that state and
22 federal law requires most voters to be placed on the inactive voter registration list rather than have
23 their registrations be outright cancelled, it appears that those voter registrations may have been
unlawfully cancelled. *See* A.R.S. § 16-165 (detailing the specific circumstances in which a
registration may be cancelled, including a felony conviction or death); *see also* A.R.S. § 16-
166(C) (“The county recorder shall maintain on the inactive voter list the names of electors who
have been removed from the general register pursuant to subsection A or E of this section for a
period of four years or through the date of the second general election for federal office”).

24 ⁶ A.R.S. § 16-677 statutorily entitles Plaintiffs the ability to inspect “the ballots” in preparation for
25 trial, without limitation. Although Mayes Response suggests that *Ward v. Jackson* held that A.R.S.
26 § 16-677 does not entitle Plaintiffs the ability to inspect all ballots, the court made no such finding.
27 In fact, the court specifically found “the Court need not decide if the challenge was in fact
28 authorized under A.R.S. § 16-672” therefore any discussion related to ballot sampling or inspection
can only be construed as dicta in this *decision order*. No. CV-20-0343-AP/EL, 2020 Ariz. Lexis
313, *6. Notably, this decision order is not and cannot be cited as precedent, yet Defendant failed
to adequately relate to this court the citation was from an unpublished memorandum decision. *See*
Ariz. Sup. Ct. R. 111(c)(1), (2).

1 fear that the reported results were not accurate, and, at bottom, fear of finding out the truth
2 of the proper election result. That’s why Defendants sought to limit ballot inspection,
3 prevented good faith inquires predicated on unimpeachable data, and wish to silence anyone
4 who dare use a statutorily prescribed process to test the accuracy of the vote count by
5 demanding excessive sanctions and threaten bar charges. This Court should take this
6 opportunity to fully litigate this election contest to help restore transparency and
7 accountability in Arizona elections and lead the way to restoring voter confidence.

8 **Analysis**

9 **I. Questionably Withheld Evidence Will Prove That Abe Hamadeh Received** 10 **The Most Votes in the Attorney General Race**

11 Although Defendants would like to sweep the problems with, and the actual results
12 of, the 2022 General Election under the rug, Arizona law provides a legal mechanism to
13 request a new trial based on newly discovered (and, in this case, questionably withheld)
14 evidence. Ariz. R. Civ. Pro. (“A.R.C.P.”) R. 59(a)(1)(A),(D); *infra* at (II). The evidence
15 that only came to light *after* the December 23rd trial reveals that Mr. Hamadeh
16 unquestionably received the most votes for Attorney General, and is the constitutionally
17 elected winner of the race. *See* Ariz. Const. art. V, § 1(B)(“The person having the highest
18 number of the votes cast for the office voted for shall be elected[.]”).

19 Mayes claims in her response that the newly discovered information giving rise to a
20 motion is not “material[.]” Mayes Resp. at 1. She claims that it would not “have changed
21 the result of this case.” *Id.* at 10. There is one problem with this argument – the newly
22 discovered evidence shows that Mr. Hamadeh received the highest number of votes. And,
23 though a more complete ballot inspection is necessary to confirm, Plaintiffs can now
24 quantify, in detail, where those votes are and has proof to back up assertions as to each
25 specific category as set forth in the table below:

County	Cancelled	Precinct	Total
Cochise	28		28
Maricopa	353		353
Mohave	20	73	93
Pima	53		53
TOTAL			527

Specifically, based on Plaintiffs’ review of the list of voters whose provisional ballots were rejected, the evidence suggests that at least 454 Election Day voters who, despite having voted in the General Election in either or both 2018 and 2020 (and some having voted in the Primary in 2022), had their provisional ballot *rejected* as being purportedly unregistered voters.⁷ In order for this to happen, their voter registration would have been cancelled sometime after they last voted, and in accordance with state and federal law. *See* A.R.S. §§ 16-165, -166. However, Plaintiffs have contacted many of those voters and have found that most have had *no material changes* that would have lawfully triggered their voter registration record to be cancelled since they last voted, suggesting a system or process erroneously disenfranchised these voters.

Further, in Mohave County, 73 provisional ballots were rejected as being cast as registered voters in either the wrong precinct or wrong county. However, Plaintiffs have found that for many of those voters, either Mohave County poll workers failed to “inform the voter that although the voter has a right to vote a provisional ballot at that location, the voter must vote in the correct polling place that corresponds with the voter’s current address in order for the vote to count” as required by Arizona law or the Mohave County Recorder’s office erroneously rejected the provisional ballots despite the voter having moved *within the county* and being lawfully permitted to vote in their new precinct. *See* 2019 Elections Procedures Manual, Ch. 9, VI(B)(1)(e)-(f) at 187-88; *see also* A.R.S. § 16-584(C).

⁷ This does not include the more than 4,000 voters who had their provisional ballot rejected due to not being registered to vote, but hadn’t voted in any of the last two statewide general elections. State and federal law both provide that an inactive voter registration may be cancelled after a period of four years or two federal elections. Plaintiffs presume that cancelled registrations of any previously active voters who had not cast a ballot in more than four years were cancelled pursuant to state law.

1 Maricopa asserts that “Plaintiffs have yet to identify a single voter who improperly
2 was required to cast a provisional ballot or a single provisional ballot that should have been
3 counted but was not” – sidestepping the fact that Plaintiffs were only provided this
4 information from various counties *after* the trial was concluded. Maricopa Resp. at 3.
5 Accordingly, in reply to those assertions and as an offer of proof as to the evidence that will
6 be provided at trial, Plaintiffs submit declarations from some voters who were
7 disenfranchised through no fault of their own, but rather due to county systems or
8 procedures that erroneously discarded and rejected lawfully cast ballots. *See* Exhibit A.⁸

9 Plaintiffs assert that by trial, Plaintiffs will not only be able to produce declarations,
10 but proffer testimony of voters who have been disenfranchised through faulty systems and
11 procedures that not only violate state and federal law, but also the due process rights of
12 those voters. Plaintiffs’ review of the rejected provisional ballots suggests that more than
13 500 voters may have wrongfully been disenfranchised – greatly exceeding the 280-vote
14 margin. This Court has the power to uphold Arizona election law, enfranchise those voters,
15 and have their votes for attorney general cast.

16 In addition, testimony elicited at the December 23rd Trial evidenced that not only
17 did Pinal County’s tabulator fail to initially count every vote in the attorney general race,
18 *neither did Maricopa County’s*. As summarized in Fontes Response, it was determined that
19 14 of the approximately 2300 Maricopa County ballots inspected had ***valid votes*** cast that
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21 ⁸ Plaintiffs note that two of the declarants are married Mohave County voters that moved within
22 the Mohave County from Bullhead City to Lake Havasu City. When husband attempted to vote in
23 the new precinct, he was told he could vote a provisional ballot, but because he was still registered
24 at his old address in Bullhead City, it would not count. Unable to go to Bullhead City, he voted the
25 provisional ballot, but told his wife to vote in Bullhead City (where she works) at their old precinct.
26 At the old precinct, the wife was told that because she moved to Lake Havasu, she would have to
27 vote a provisional ballot and that it might not count. On November 12, 2022, the same county
28 employee rejected both provisional ballots. Apparently neither method was acceptable, despite
Arizona law specifically providing that voters may vote in their new precinct. *See* A.R.S. § 16-
584(C)(“If a voter has moved to a new address within the county and has not notified the county
recorder of the change of address before the date of an election, the voter shall be permitted to
correct the voting records for purposes of voting in future elections at the appropriate polling place
for the voter’s new address.”). Notably, the wife had intended to vote in the new precinct, but only
voted in the old one based on the information relayed by her husband from information provided
by the poll worker at the Lake Havasu South Precinct.

1 were not counted for either party but were instead recorded an undervote (and in a few
2 instances overvote) in the attorney general’s race. Fontes Resp. at 2. The misread rate of
3 0.61% is more than 60 times the 0.01% margin of victory.

4 Because it is impossible to extrapolate misreads across a body of ballots, the actual
5 number of votes for each candidate cannot be reasonably presumed. And while Maricopa’s
6 misreads were known at trial, it was *unknown* that Pinal County had in fact *confirmed* that
7 tabulators misread at least 63 ballots as undervotes. Pl. Mot. at 11. While Plaintiffs
8 advanced the theory in their complaint and at trial that valid votes in the attorney general
9 race were misread as undervotes, the only party who knew this to be a confirmed fact (then
10 Defendant Secretary Hobbs) *withheld this knowledge from this Court*. Notwithstanding the
11 Maricopa County Court’s Order to not disclose *vote counts*, nothing prevented Hobbs from
12 advising the Court, and the Parties, that the precise issue at trial (were valid votes misread
13 as undervotes) was a confirmed problem in at least one county. And even if the Secretary
14 could not provide specific details, she could have revealed that the error was significant
15 enough to *reduce* Mayes’ margin of victory.

16 Critically, Maricopa County, unlike Pinal County, does *not* adjudicate undervotes *at*
17 *all* unless the ballot is read as a completely blank ballot. Trial Trans. (Dec. 23, 2022) 81:24-
18 25; 82:1-25. Accordingly, although Defendants seem to suggest the recount proceedings
19 would have discovered misread undervotes, the mere fact that the recount *did not* find the
20 misreads identified at trial proves that to be an inaccurate assessment. Rather, Pinal
21 County’s discovery of the undervote misreads was discovered accidentally in their attempts
22 to resolve larger issues. *See* Pl. Mot., Ex. B.

23 Prior to Pinal County’s discovery, 63 voters were systematically disenfranchised by
24 machine read errors in that county. To this day, the voters with ballots containing known
25 misreads in Maricopa County remain disenfranchised. An untold number of voters have
26 been disenfranchised by undervote misreads throughout the state. Until every ballot with
27 undervotes is inspected, there is no doubt that the election stands clearly and unmistakably
28 with an “erroneous count of votes” and, given the very narrow margin of victory (0.01%),

1 it is unknown whether Mayes actually did “in fact receive the highest number of votes for
2 the office[.]” A.R.S. § 16-672(A)(5).

3 As a further offer of proof, based off the Recount Reports, Maricopa, Yavapai, and
4 Yuma had a significantly higher rate of undervotes than most other counties. Although
5 most counties had 2.1% to 2.5% of votes cast in the attorney general race recorded as an
6 undervote, Maricopa had an 3.22%, Yavapai exceeded 3.5%, and Yuma was 3.2%. *See*
7 Neff, Terri Jo, “Unusual Undervote Rate Raises Questions About Arizona’s 2022 Election
8 Results” (Feb. 3, 2023), available at [https://arizonadailyindependent.com/2023/02/unusual-
9 undervote-rate-raises-questions-about-arizonas-2022-election-results/](https://arizonadailyindependent.com/2023/02/unusual-undervote-rate-raises-questions-about-arizonas-2022-election-results/) (last accessed Feb.
10 5, 2023). Also higher than most other counties, Coconino had 2.749% and La Paz 2.869%.
11 Based on information contained within the 2022 General Election Recount Summary
12 Results by County, the official undervotes by county were reported as follows:

	All Ballots AG race	Reported Undervotes	Undervotes as % race
Apache	27074	580	2.142%
Cochise	47259	1028	2.175%
Coconino	55359	1522	2.749%
Gila	22293	not reported	
Graham	11001	254	2.308%
Greenlee	2480	not reported	
La Paz	5611	161	2.869%
Maricopa	1560032	50247	3.220%
Mohave	80312	not reported	
Navajo	40964	996	2.431%
Pima	402864	8751	2.172%
Pinal	142372	not reported	
Santa Cruz	13301	282	2.120%
Yavapai	124800	4375	3.505%
Yuma	45261	not reported	

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26 available at
27 [https://azsos.gov/sites/default/files/2022_GE_Statewide_Recount_Results_for_Website.p
28 df](https://azsos.gov/sites/default/files/2022_GE_Statewide_Recount_Results_for_Website.pdf) (last accessed Feb. 5, 2023). This data suggests that counties that significantly exceeded

1 the statewide averages may have tabulators that misread valid votes as undervotes. In fact,
2 taking the 0.61% misread rate across all counties that reported their undervotes – that equals
3 potentially 389 uncounted valid votes, exceeding the 280-vote differential.

4 If the election stands with the knowledge there are, in fact, more than 900 uncounted
5 votes in the attorney general’s race, voters cannot be confident that the person declared
6 elected (Mayes) is entitled to the office – especially when the margin of victory is incredibly
7 slim (0.01%). It will remain an itch that cannot be scratched, and Mayes’ entire term will
8 be clouded as to her administration’s legitimacy. This Court can remedy that itch, and
9 resolve those issues now by granting a new trial – something Mayes should welcome.

10 For far too long, voters have been left with lingering, unanswered questions
11 regarding the administration of Arizona elections, and for the first time, there are not
12 speculative, but known and actual counting errors that have been identified that can and
13 should be remedied as provided for in A.R.S. § 16-672(A)(5). Furthermore, such a review
14 could provide an opportunity to prevent such mistakes in the future, assist lawmakers in
15 making appropriate policy changes, and help improve the waning confidence in election
16 administration by transparently reviewing the identified issues and providing accountability
17 by correcting the erroneous vote count – ensuring the rightful winner holds office.

18 **II. The Arizona Rules of Civil Procedure Permit Motions for A New Trial in** 19 **Election Contests**

20 Defendants disingenuously argue that Arizona’s election contest statutes supplant
21 the entire body of the Arizona Rules of Civil Procedure, and suggest that a Motion for a
22 New Trial is barred. Mayes Resp. at 2-4; Maricopa Resp. at 5. Based on the Defendants’
23 flawed arguments, a Motion to Dismiss would be similarly barred, however Defendants
24 filed not one (Doc. 45), not two (Doc. 50), but three (Doc. 98) motions to dismiss (as well
25 as joinders to said motions by two separate counties, Maricopa (Doc. 69) and Santa Cruz
26 (Doc. 72)). However, Arizona courts have already resolved the issue of whether motions
27 allowed under the civil rules are permitted in election contests. *See Griffin v. Buzard*, 86
28 Ariz. 166, 169-70 (1959) (applying Rule 12(b)(6) to an election contest despite statute

1 requiring a hearing), *Camboni v. Brnovich*, 2016 Ariz. App. Unpub. LEXIS 127, at *5 (Ct.
2 App. Feb. 2, 2016) (finding no authority for the proposition that civil rules did not apply to
3 election contest and applying rule 12(b)(6)).⁹

4 Mayes is correct, “time elements in election statutes [must] be strictly construed”
5 and where “time elements ‘**conflict**[.] with a procedural rule, the statute prevails[.]” Mayes
6 Resp. at 3 (citations omitted)(emphasis added). Critically, however, there is nothing in title
7 16 that conflicts with the rules of procedure over motions for a new trial, or even timely
8 appeals. In fact, Maricopa County Superior Court recently held that the “Arizona Rules of
9 Civil Procedure ‘govern procedure in all civil actions **and proceedings in the superior**
10 **court of Arizona.**’ An election contest is a ‘proceeding in the superior court of Arizona.’”
11 Under Advisement Ruling, *Finchem v. Fontes*, Maricopa Co. Sup. Ct. No. CV2022-053927
12 (Dec. 16, 2022) at 3 (quoting Ariz. R. Civ. Pro. 1)(emphasis in original), available at
13 [https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/4395/6380682112](https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/4395/638068211240100000)
14 [40100000](https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/4395/638068211240100000) (last accessed Jan. 31, 2023)

15 Pointedly, Mayes talks out of both sides of her mouth by also suggesting that *Reyes*
16 *v. Cuming* (191 Ariz. 91 (App. 1997)) could continue to be litigated for nearly a year after
17 the purported statutory deadline of “not later than ten days after the date the contest was
18 filed” (A.R.S. § 16-676(A)) because “*Reyes* appears to have satisfied all statutory
19 deadlines” by timely bringing an appeal. Mayes Resp. at 5, n3. Nothing in title 16 provides
20 a statutory right to appeal, rather, that right to appeal comes from the Arizona’s Rules of
21 Civil Procedure (Rule 8(a)); likewise, those rules permit a motion for a new trial (Rule 59).

22 Plaintiffs filed the motion for a new trial on January 3, 2023, within 15 days of the
23 trial and this Court’s oral order denying the Plaintiff’s election contest. Dec. 23, 2022
24 Evidentiary Hearing Minute Entry (filed Dec. 28, 2022). Accordingly, this Motion was
25 timely filed, nothing in title 16 bars such a motion, either directly or indirectly.

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27 ⁹ Unpublished decision cited pursuant to Supreme Court Rule 111. Available at
28 <https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2016/1%20CA-CV%2015-0014.pdf> (last
accessed Feb. 1, 2023).

1 But assuming, *arguendo*, this Court were inclined to agree that the time elements of
2 the election contests must be strictly construed to suggest a new trial cannot be granted,
3 Arizona's Supreme Court has found otherwise in similar circumstances. In *Brousseau*, the
4 Court explained as follows:

5 Fitzgerald argues that *Bedard v. Gonzales*, 120 Ariz. 19, 583 P.2d 906
6 (1978), held that the time elements in the election statutes were to be
7 construed strictly. *Bedard*, however, deals with the time requirements
8 for *elector* filing and is thus jurisdictional, whereas the time requirement
9 appellee refers to is concerned with the superior court hearing a matter within
its jurisdiction. We hold that the ten day requirement for action by the
superior court is directory and not mandatory.

10 *Brousseau v. Fitzgerald*, 138 Ariz. 453, 456 (1984) (emphasis provided). Defendants' error
11 confuses statutory rules governing when election contests must be **filed** (which are
12 jurisdictional statutes of limitations and repose, and thus *mandatory*) with those providing
13 guidance as to when a court must hold the trial of such a contest (which are *directory*).¹⁰
14 The latter category of rule is outside of the legislature's power to prescribe and cannot
15 override the civil rules mandated by the Supreme Court. *See* Ariz. Const. art. 6 § 5(5)
16 (vesting the Arizona Supreme Court with the power to make rules relative to all procedural
17 matters in any court).

18 **III. Plaintiffs Motion is Neither Barred by Laches Nor Moot; Plaintiffs' Remedy**
19 **is Statutorily Prescribed and Constitutionally Sound**

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23 ¹⁰ Although Maricopa feebly attempts to equate the Plaintiffs' Motion akin to bringing a new
24 election contest and is therefore jurisdictional (Maricopa Resp. at 5), Plaintiffs raised all of the
25 pertinent issues in the original contest. Statement of Election Contest (Dec. 9, 2022) at 4-5.
26 Maricopa rightly notes there is new evidence, but that evidence was withheld by Defendants and
27 produced *after* the trial. Ironically, had Maricopa timely produced the provisional ballot data,
28 related issues would have been resolved at the original trial. Unfortunately, it is because of
Defendants' dilatory conduct that we are back in court. Notably, Plaintiffs specifically addressed
Maricopa's failure to produce evidence related to provisional ballots not only prior to, but at trial.
See Emer. Hrg. Trans. (Dec. 22, 2022) at 6:8-10; *see also* Trial Trans. 79:15-20. In fact, Plaintiffs
specifically queried as to why Mayes campaign had the provisional ballot list that Maricopa failed
to produce to Plaintiffs. Trial Trans. 78:3-10. Accordingly, suggesting that the Motion raises new
issues and therefore implicates a jurisdictional component fails, miserably.

1 **A. Laches Does Not Apply Where Defendants Withheld Evidence**

2 Defendants have greatly abused the concept of laches by suggesting that Plaintiffs
3 “sat on their supposedly ‘newly discovered’ evidence and waited to spring it on this Court
4 until after Ms. Mayes was sworn into office” (Mayes Resp. at 2). Plaintiffs brought this
5 Motion (1) within two business days after Plaintiffs became aware that one of the
6 Defendants in this matter *withheld* material information from this Court that directly related
7 to Plaintiffs’ claims regarding undervotes and (2) just days after Defendant Maricopa
8 County finally and belatedly responded to Plaintiffs’ provisional ballot public records
9 request. Although Plaintiffs would have greatly preferred to have all of the evidence prior
10 to trial such that this litigation could have been fully resolved more than a month ago, *as*
11 *Defendants had exclusive control over said evidence*, Plaintiffs filed this motion as soon as
12 the withheld evidence was finally disclosed, and it became clear that the withheld evidence
13 would have changed the outcome of the not only the case, but the election itself.

14 Defendants should not be rewarded by this Court for their dilatory conduct. In fact,
15 anything short of granting a new trial will not only condone Defendants’ improbity but will
16 canonize the abuse of public officials’ dissonant informational imbalances. If public
17 officials can withhold critical information and evidence and delay its revelation until after
18 the time elements of the election contest statutes lapse, how can any elector ever succeed in
19 such a contest? And if public officials can unreasonably withhold evidence, how can even
20 the most malicious of actions be adjudicated? Nay, Arizonans deserve a judicial system
21 that holds our public officials accountable under egregious circumstances such as these.

22 **B. The Motion is Not Moot**

23 Defendants cleverly try to obfuscate both the law and precedent to suggest this case
24 is moot. Even if Defendants were correct on the law (they are not), Arizona has not one,
25 but two ways in which an office holder may be removed from office and replaced with the
26 person who legitimately obtained “highest number of the votes cast for the office.” Ariz.
27 Const. art. V, § 1(B). The first is the process in which an election is contested, including
28 “by reason of erroneous count of votes the person declared elected... did not in fact receive

1 the highest number of votes for the office” under which this contest was filed. A.R.S. § 16-
2 672(A)(5).

3 The second is Arizona’s statutory provisions related to *quo warranto* that permits
4 judicial proceedings to test an office holder’s lawful authority to exercise the office thereof.
5 See A.R.S. §§ 12-2041 (“An action may be brought... against any person who...
6 unlawfully holds or exercises any public office”) and -2044 (“When the action involves the
7 right to an office, the complaint shall show the one who is entitled to the office, and the
8 issues made thereon shall be tried.”). Any suggestion that the mere act of taking office
9 moots every claim against the office holder’s right to hold office, and any suggestion there
10 is no remedy in Arizona law to revoke a certificate of election and declare another elected
11 is unsupported.

12 To be clear, not only has a sitting Governor been removed from office under the
13 election contest procedures (*Hunt v. Campbell*, 19 Ariz. 254 (1917)), but also a county
14 supervisor (*Reyes v. Cuming*, 191 Ariz. 91 (App. 1997)). And the *quo warranto*
15 proceedings have been used to remove a state corporation commissioner (*Jennings v.*
16 *Woods*, 194 Ariz. 314 (1999)), a sitting legislator (*Smith v. Ariz. Citizens Clean Election*
17 *Comm’n*, 212 Ariz. 407 (2006)), and city councilmember (*Laos v. Arnold*, 141 Ariz. 46
18 (1984)).¹¹ See A.R.S. §§ 12-2041 to -2045.

19 Mayes’ erroneous claim that “[n]o provision of the statutes authorizes this Court to
20 remove [Ms. Mayes]” disingenuously mischaracterizes not only Arizona law, but the clear
21 precedent established by the aforementioned cases. Mayes Resp. at 17. Notably, Arizona’s
22 Supreme Court has barred an action in *quo warranto* where an election contest would have
23

24 _____
25 ¹¹ Plaintiffs note that not all *quo warranto* proceedings have resulted in published opinions. See,
26 e.g., [https://www.azag.gov/press-release/judge-removes-member-window-rock-unified-school-](https://www.azag.gov/press-release/judge-removes-member-window-rock-unified-school-district-governing-board-following)
27 [district-governing-board-following](https://www.azag.gov/press-release/judge-removes-member-window-rock-unified-school-district-governing-board-following) (last accessed Jan. 31, 2023)(Window Rock Unified School
28 District Governing Board Member was removed from office following *quo warranto* proceedings
more than two years after taking office as he was not qualified at the time he filed papers to run for
office).

1 been the appropriate statutory remedy.¹² See *Donaghey v. Att’y Gen.*, 120 Ariz. 93 (1978).
2 Mayes appears to want to foreclose every statutory remedy to cling to power, rather than
3 taking a chance that she might be forced to yield to the true will of Arizona voters.

4 **IV. *Hunt v. Campbell* Remains Good Law**

5 Defendants spill much ink trying to wish away the clear precedent established at the
6 onset of Arizona’s statehood. The Secretary demeans the precedent, suggesting its age,
7 “from over a century ago[,]” lessens its impact. Fontes Resp. at 6. Mayes makes the
8 argument that subsequent changes in the election contest statutes invalidated the precedent.
9 Mayes Resp. at 4. However, this Court is *bound* by Supreme Court precedent. See *Sell v.*
10 *Gama*, 231 Ariz. 323, 330 (2013)(“The lower courts are bound by our decisions, and this
11 Court alone is responsible for modifying that precedent.”). And statutory changes,
12 especially ones that are not clearly irreconcilable with the established precedent, do not
13 implicitly overrule the higher court. See *Blevins v. Gov’t Emps. Ins. Co.*, 227 Ariz. 456,
14 462 (2011)(holding that the Supreme Court’s prior precedent was controlling, despite
15 statutory changes).

16 So, although Defendants would like to wish away *Hunt v. Campbell*, it still governs.
17 And it governs not only how to resolve the contest (by carefully reviewing the questioned
18 ballots – here undervotes and questionably rejected provisional ballots), but its predecessor
19 case resolves the status of the person with the certificate of election.

20 First, *Campbell v. Hunt* established that when there is an open election contest, the
21 person who holds the certificate of election shall be inaugurated and take office, holding

22
23 ¹² Accordingly, Mayes’ suggestion that the appropriate remedy available to Plaintiffs would be an
24 “ouster” is tragically and legally flawed. Mayes Resp. at 17. In fact, Mayes cites *Donaghey v.*
25 *Att’y Gen.* in her response on the immediately preceding page, so this should come as no surprise.
26 Notably, judgments in ouster are the *quo warranto* statutory remedy, there is no judgment in ouster
27 in election contests. See A.R.S. § 12-2045. Of course, if Ms. Mayes refuses to accept the judgment
28 of this court and fails to leave office, Mr. Hamadeh may seek a *quo warranto* or *writ of mandamus*.
Interestingly, in *Hunt*, the first case brought before the Arizona Supreme Court ousted Mr. Hunt
from office (he was the incumbent Governor who initially “lost”) and declared Mr. Campbell the
de facto Governor until the election contest was fully adjudicated. See *Campbell v. Hunt*, 18 Ariz.
442 (1917). So in the course of 13 months, Mr. Hunt was ousted, Mr. Campbell was inaugurated,
and then Mr. Campbell was ousted, and Mr. Hunt was inaugurated. While Mayes would like to
rewrite history, she can’t.

1 office as the *de facto* officer while the courts determine who the *de jure* officer should be.
2 18 Ariz. at 456. The authority of *de facto* officers, and the operation therewith while
3 questions persist about an officer’s constitutional or statutory eligibility, was affirmed in
4 *Jennings v. Woods*. 194 Ariz. 314, 332 (1999). *Jennings* and *Campbell* provide precedent
5 for the two ways in which an individual’s right to office can be contested (election contest
6 and *quo warranto*) and the operation of the office during the contest proceedings. And
7 while statutorily different, procedurally they are much the same.

8 Second, *Hunt v. Campbell* provides the roadmap of how ballots are adjudicated. 19
9 Ariz. 254. The court delineates the careful and scrupulous review conducted of the
10 questioned ballots which ultimately resulted in a change in outcome of the election.
11 Although Mayes suggests that the statutory changes created strict, unyielding timelines that
12 truncated any chance of such a review, the statutory framework suggests otherwise. In fact,
13 the statutory provisions provide “[t]he court shall continue in session to hear and determine
14 all issues arising in contested elections[.]” with no limit on how many days, weeks, or
15 months the hearing could take. A.R.S. § 16-676(B). Instead, “after hearing the proofs and
16 allegations of the parties[.]” the court has five days to file its finding. *Id.*

17 The *Campbell* court quipped the status as *de facto* governor should “invite on the
18 part of plaintiff and defendant every reasonable effort to expedite the ultimate determination
19 as to who is the real Governor of Arizona.” 18 Ariz. at 457. But the court also noted that
20 “this most important question, affecting the purity of elections and the legally expressed
21 will of the voters... [should be done] with such dispatch as will deprive neither party of a
22 fair opportunity to be heard on essential particulars and compatible with a fair and impartial
23 understanding as to which of the contending parties has received the highest number of legal
24 votes for the office, and thereby, whatever the result may be, fearlessly to determine who is
25 the *de jure* as well as the *de facto* Governor of Arizona.” *Id.* at 458; *see also Griffin* at 173
26 (“Furthermore we are of the opinion that the holding of the subsequent general election does
27 not operate to make the issues presented [in this primary election contest] moot. The courts
28 must be alert to preserving the purity of elections and its doors must not be closed to hearing

1 charges of deception and fraud that in any way impede the exercise of a free elective
2 franchise. The contestors are entitled to an opportunity to prove their charges. The judgment
3 of the lower court is reversed with directions to reinstate the election contest and proceed
4 to trial.”).

5 The *Campbell* court respected and understood the important and *delicate* duty of the
6 trial court to resolve lingering issues in order to ensure the “public confidence” in the
7 election results. 18 Ariz. at 458. As noted by Mayes, there was brewing discontent between
8 the supporters of both Hunt and Campbell, which was on the brink of escalating to violence.
9 Mayes Resp. at 4, n2. And in the face of this adversity, Arizona’s highest court trusted the
10 trial court to faithfully execute its duty to achieve “a judicial determination of the ultimate
11 right” to the statewide office. *Campbell*, 18 Ariz. at 458. And being an arbiter of justice,
12 the Court de-escalated a volatile situation and expressed the deference and respect the
13 executive and judicial branch must show one another. *Id.*

14 **V. A New Trial is Warranted**

15 Although raised in the Motion, in reply to the Defendants’ responses, Plaintiffs
16 would like to clarify the grounds upon which Plaintiffs plead for a new trial.

17 First, Defendant then-Secretary Hobbs withheld material information that supported
18 Plaintiffs allegations that the tabulators were misreading valid votes as undervotes. Had
19 Defendants confirmed this fact at or before trial, such information would have not only
20 supported Plaintiffs’ request to inspect more undervoted ballots, but also Plaintiffs’ request
21 to postpone the hearing in order to conduct the expanded inspection. Plaintiffs believe there
22 are a material number of undervotes that, upon inspection, will change the outcome of the
23 election.

24 Defendant Maricopa withheld material information related to provisional ballots that
25 prevented Plaintiffs’ ability to exercise reasonable diligence to determine if provisional
26 ballots were wrongfully rejected such that it resulted in an erroneous vote count.
27 Furthermore, had that withheld information been provided in preparation for trial, it would
28 have materially impacted the outcome of the trial (and election). Critically, Plaintiffs’

1 review of the provisional ballots suggests more than 500 ballots have been erroneously
2 rejected, exceeding the vote margin by almost double.

3 Second, this Court abused its discretion by denying the Plaintiffs' request to
4 postpone the hearing after Defendant counties unreasonably delayed Plaintiffs' statutory
5 right to inspect ballots. A.R.S. § 16-677 permit the parties to have *the ballots* inspected.
6 There is neither language, nor binding precedent that constrains the inspection to a sample
7 in the context of election contests. Although this Court relied on other counties historic
8 practice of taking a sample of ballots, there is no statutory authority or judicial precedent to
9 so constrain. Furthermore, Plaintiffs have not and did not unreasonably demand to see *all*
10 ballots, but rather all ballots with a specific defect that suggest they may have valid votes
11 that were not read by the tabulators. As noted *supra* at note 4, the case cited by Defendants
12 related to limiting ballot reviews to samples is not binding precedent. Specifically, the case
13 is not only *unpublished*, the Supreme Court did not reach whether the proceedings were
14 rightfully brought as an election contest and cannot be assumed to dictate election contests.

15 Third, the Court erred by finding that information related to provisional ballots were
16 not "ballots" as contemplated by A.R.S. § 16-677. Emer. Hrg. Trans. 47:11-14. Provisional
17 ballots *are* ballots. They are just uncouned ballots. See A.R.S. § 16-584(E)("If the
18 [provisional voter's] registration is not verified the *ballot* shall remain unopened and shall
19 be retained in the same manner as voted ballots.")(emphasis added). Plaintiffs sought to
20 determine, as a threshold matter, if county systems and procedures caused qualified electors
21 to have their provisional ballots erroneously rejected and thereby be wrongfully
22 disenfranchised. Although this Court found that the *information* was not a ballot, the
23 information sought was reasonably calculated to determine which uncouned *ballots* should
24 be inspected and potentially counted. Although Plaintiffs could have requested the physical
25 provisional ballots, which would most certainly be "ballots" as contemplated by the statute,
26 requesting the information was intended to reduce the administrative burdens by narrowing
27 the number of ballots to be inspected to those that should be counted.

1 Fourth, this Court erred by finding that Plaintiffs were not entitled to inspect more
2 ballots after it was unquestionably determined that the tabulators failed to accurately record
3 valid votes and instead misread them as undervotes. Arizona law requires that vote
4 tabulation equipment must “[w]hen properly operated, record *correctly* and count
5 *accurately* every vote cast.” A.R.S. § 16-446(B)(6)(emphasis added). The testimony
6 elicited at trial from Scott Jarrett of Maricopa County, undoubtedly confirmed that the
7 tabulators failed in several known instances to “record correctly and count accurately *every*
8 vote cast.” *Id.* (emphasis added).

9 Although *human* errors can cause garden-variety, routine election maladies that
10 courts and voters accept, *tabulation* errors presumably caused by faulty programming that
11 systematically disenfranchises voters without safeguards demanded by procedural due
12 process are more akin fundamental unfairness. See *Krieger v. Peoria, City of*, 2014 U.S.
13 Dist. LEXIS 117235, 2014 WL 4187500 (D. Ariz.)(differentiating between garden variety
14 election irregularities and systemic problems that are fundamentally unfair and violate due
15 process).

16 People are fallible and make innocent mistakes. Tabulators, by law, are expected to
17 count every vote; yet visual inspection of Maricopa County ballots proved tabulators were
18 not counting every vote. In fact, Mr. Jarrett could not explain why votes he visualized as
19 being valid votes were not counted by the tabulator. Trial Trans. 71:9 through 75:18. One
20 vote, he admitted, was simply not counted because of internal procedures, despite clear
21 voter intent. *Id.* at 71:21-24. No procedures should allow a human inspector to patently
22 ignore the clear and unambiguous will of the voter. Further, the errors identified in Pinal
23 County evidence the precise concerns that have been repeatedly raised by Plaintiffs. A new
24 trial is required to illuminate, adjudicate, and correct tabulation errors that the newly
25 available evidence show impacted the vote count, and likely the outcome, of the attorney
26 general race.

27 **Conclusion**

28 Questions surrounding the results of the 2022 attorney general race should not linger.

1 Rather, this Court is perfectly poised to address significant, non-speculative, and quite
2 possibly outcome determinative issues to ensure that every valid vote has been counted.
3 Democracy requires competent elections. And frankly, the whole of Arizona should not
4 have to suffer because of Maricopa County's maladministration of the 2022 election or
5 because of any systematic failure that taints the reported results of a statewide election.
6 Arizonans,¹³ and Americans,¹⁴ deserve transparency and accountability in election
7 administration, and this Court is the proper body to provide both.¹⁵

8 For all of the foregoing reasons, Plaintiffs' motion for a new trial should be
9 GRANTED.

10 RESPECTFULLY SUBMITTED this 6th day of February, 2023.

11 By: /s/ Jennifer J. Wright

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16 ¹³ Plaintiffs hereby incorporate by reference proposed Brief of *Amici Curiae* Arizona Senate
17 President Warren Petersen and Speaker of the Arizona House of Representatives Ben Toma. (Filed
18 Jan. 25, 2023). Clearly, Arizonans crave a judiciary to stand for truth and justice.

19 ¹⁴ According to a November 30, 2022 Rasmussen Reports survey, a whopping 71% of U.S. *all*
20 likely voters (including both Republicans *and* Democrats) believed that the problems with the
21 election in Maricopa County affected the outcome of Arizona's U.S. Senate race, for which Senator
22 Mark Kelly is declared to have prevailed by more than 100,000 votes. *See*
23 [https://www.rasmussenreports.com/public_content/politics/biden_administration/most_voters_sh](https://www.rasmussenreports.com/public_content/politics/biden_administration/most_voters_sh_are_gop_concerns_about_botched_arizona_election)
24 [are_gop_concerns_about_botched_arizona_election](https://www.rasmussenreports.com/public_content/politics/biden_administration/most_voters_sh_are_gop_concerns_about_botched_arizona_election) (last visited February 3, 2023). Imagine the
25 same survey results on a race where the outcome is only separated by 280 votes.

26 ¹⁵ In September 2012, the Global Commission on Elections, Democracy, and Security issued a
27 report discussing the importance of Election Integrity that stated:

28 The integrity of elections is also political, because integrity depends on public confidence
in electoral and political processes. It is not enough to reform institutions; citizens need to
be convinced that changes are real and deserve their confidence. Inclusiveness,
transparency, and accountability are all fundamental to developing that confidence. Without
transparency, there is no way for citizens to know for themselves that elections are genuine.
And there must be effective mechanisms and remedies for citizen complaints. The absence
of accountability produces cynicism and reinforces citizen apathy and inefficacy.

Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide (September
2012), available at
https://www.kofiannanfoundation.org/app/uploads/2016/01/deepening_democracy_0.pdf (last
accessed Feb. 2, 2023).

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35 *and Yuma County Board of Supervisors*

36 /s/ Jennifer J. Wright

EXHIBIT

A

RETRIEVED FROM DEMOCRACYDOCKET.COM

DECLARATION OF DAVID W [REDACTED]

I, David W [REDACTED], hereby declare as follows under penalty of perjury:

1. My name is David W [REDACTED].
2. I reside at [REDACTED], Lake Havasu City, Arizona 86404.
3. I am over the age of 18 and competent to make this declaration.
4. I am a citizen of the United States and of the State of Arizona.
5. I reside Mohave County, Arizona.
6. I have been a registered voter in Mohave County for at least two years.
7. On November 8, 2022, I arrived at the Lake Havasu South Precinct inside the Mount Olive Lutheran Church in Mohave County, Arizona, located at 2170 Havasupai Boulevard in Lake Havasu City, Arizona.
8. When I arrived at the Mount Olive Lutheran Church, the clerk informed me the county records indicated I was registered to vote with a residential address of [REDACTED], Bullhead City, Arizona 86442 and that I must vote at a Bullhead City Precinct.
9. I notified the clerk that I had moved within the county to [REDACTED], Lake Havasu City, Arizona 86404, and provided a paper copy of my driver's license reflecting my current residential address.
10. The clerk informed me that because my registration record reflected a residential address within Bullhead City Precinct that if I voted at the Lake Havasu South Precinct, that I would have to vote a provisional ballot and that my vote would likely not be counted.
11. Because the Bullhead City Precinct was more than an hour away, I opted to vote a provisional ballot.
12. After voting I called my wife, Wendy W [REDACTED], who worked near our old residential address in Bullhead City.
13. I informed Wendy that she should vote at the Bullhead City Precinct to ensure her vote counted.
14. On or after November 13, 2022, I became aware that my ballot was rejected by Mohave County.

15. I was recently notified that the Mohave County Recorder employee who rejected the provisional ballot was listed in the records provided by Mohave County as Natalie Collings, and that my provisional ballot was listed as rejected at 10:05 am on November 12, 2022.

16. I also understand that Natalie Collings is listed in those same county records as having rejected my wife's provisional ballot at 3:34 pm on November 12, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Signed: DocuSigned by:
David W [REDACTED]
64729G1E57A2484...
Date: 2/6/2023

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DECLARATION OF WENDY W [REDACTED]

I, Wendy W [REDACTED], hereby declare as follows under penalty of perjury:

1. My name is Wendy W [REDACTED].
2. I reside at [REDACTED], Lake Havasu City, Arizona 86404.
3. I am over the age of 18 and competent to make this declaration.
4. I am a citizen of the United States and of the State of Arizona.
5. I reside Mohave County, Arizona.
6. I have been a registered voter in Mohave County for at least two years.
7. A few weeks before the November 8, 2022 election, my husband, David W [REDACTED], and I moved from Bullhead City, Arizona to Lake Havasu City, Arizona, both within Mohave County.
8. On November 8, 2022, I worked in Bullhead City, but lived in Lake Havasu City.
9. On November 8, 2022, I was planning to vote in Lake Havasu City after work on my way home.
10. After my husband was told when he voted a provisional ballot at the Lake Havasu South Precinct that his provisional vote would not count because he was still a registered voter in Bullhead City, he called me and told me I should vote in Bullhead City before I returned to Lake Havasu City.
11. Because he was provided that warning, I decided to vote in Bullhead City and I went to the Bullhead City Precinct inside the Hope United Methodist Church in Mohave County, Arizona, located at 1325 Lamar Road in Bullhead City, Arizona to vote.
12. When I arrived at the Hope United Methodist Church, I notified the clerk that I had moved within the county to [REDACTED], Lake Havasu City, Arizona 86404, and provided a paper copy of my driver's license reflecting my current residential address.
13. The clerk informed me the county records indicated that I was registered to vote with a residential address of [REDACTED], Bullhead City, Arizona 86442 but because my identification indicated that I had moved to Lake Havasu City, I would have to vote a provisional ballot at the Bullhead City Precinct.

14. The clerk informed me that because my residential address was within Lake Havasu South Precinct that if I voted at the Bullhead City Precinct, that my provisional ballot would likely not be counted.
15. Because my husband had been provided the opposite information, and because the Lake Havasu South Precinct was more than an hour away and I was concerned I would not make it to the Lake Havasu Precinct before the polls closed at 7:00pm, I opted to vote a provisional ballot at the Bullhead City Precinct.
16. On or after November 13, 2022, I became aware that my ballot was rejected by Mohave County.
17. I was recently notified that the Mohave County Recorder employee who rejected the provisional ballot was listed in the records provided by Mohave County as Natalie Collings, and that my provisional ballot was listed as rejected at 3:34 pm on November 12, 2022.
18. I also understand that Natalie Collings is listed in those same county records as having rejected my husband's provisional ballot at 10:05 am on November 12, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:

Wendy W. [REDACTED]

Signed: _____

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Date: 2/6/2023

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