SUPREME COURT OF ARIZONA

JEANNE KENTCH; TED BOYD; ABRAHAM HAMADEH; and REPUBLICAN NATIONAL COMMITTEE,

Petitioners/Plaintiffs/Contestant,

v.

HON. LEE F. JANTZEN, Judge of the Superior Court of the State of Arizona, in and for the County of Mohave,

Respondent,

and

KRIS MAYES, an individual;

Real Party in Interest/Contestee,

and

ADRIAN FONTES, in his official capacity as the Secretary of State, *et al.*,

Nominal Defendants.

No. _____

Court of Appeals
Division One
1 CA-CV 23-0472

Mohave County
Superior Court
No. CV-2022-01468

COMBINED PETITION FOR SPECIAL ACTION AND APPENDIX

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I. INTRODUCTION

"If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." Hardy v. United States, 375 U.S. 277, 293–94 (1964) (Goldberg, J., concurring) (quoting Judge Learned Hand).

According to the automatic statewide recount, Kris Mayes overcame Abraham Hamadeh in the 2022 election for Attorney General by just 280 votes out of 2,512,390 votes cast—a mere 0.01%.[1]

Yet evidence that came to light through that recount process—evidence Petitioners had sought but were previously denied in the trial court—revealed critical vote count discrepancies that call into question the integrity of the result. "The realities of this past election have indeed 'demonstrated the vulnerability of what we believe to be a bedrock principle of democracy: that every vote counts.'" *Gore v. Harris*, 773 So. 2d 524, 537 (Fla. 2000).

The trial court's decision to deny process and quell exploration into the validity of what it described as "a close call in a closely contested election" [APPV2-00061] casts aside this bedrock principle and, most importantly, the Arizona Constitution's requirements. A new trial will ensure the people of Arizona are represented by the

[1] Ariz. Sec'y of State, *2022 General Election Recount Summary Results by County*, https://azsos.gov/sites/default/files/2022_GE_Statewide_Recount_Results_for_Website.pdf (last accessed Aug. 1, 2023). The Court may take judicial notice of these records, which are publicly available on the Secretary of State's website. *See* Ariz. R. Evid. 201; *Pedersen v. Bennett*, 230 Ariz. 556, 559 ¶ 15 (2012).

candidate who received the most valid votes—nothing more, nothing less. This Court should reverse and remand for a new trial.

* * *

More than six months ago, based on newly discovered evidence that election officials failed to count all legal votes in the race for Arizona Attorney General, Petitioners filed a Motion for a New Trial on January 3, 2023 ("Motion"), under Arizona Rule of Civil Procedure 59(a)(1)(A), (D), & (F). [APPV1-101 to -119.] In fact, the newly discovered evidence was information and data that government bodies not only failed to disclose but that they also wrongfully withheld. Accordingly, Petitioners could not have obtained it before trial—indeed, it was not obtained until *after* trial—despite Petitioners' reasonable diligence. The material nature of this evidence to the outcome of this case and the election establishes the need for a new trial on this ground alone.

Despite Petitioners' diligence pursuing relief, nearly nine months have passed since the November 2022 General Election, seven months since trial, and nearly six months since the Motion became ripe, yet it took 161 days for the trial court to issue an unsigned order denying Petitioners' Motion. Specifically, after waiting more than 60 days to set oral argument on the Motion (at issue on February 6), the trial court then took another 60 days to issue its order. Contrary to Arizona Rule of Civil Procedure 54(c), that order lacks a final judgment, as does the court's order denying relief following the December 23, 2022, evidentiary hearing held in this matter. In fact, one of the many motions left unresolved by the trial court includes Petitioners' Motion for an Order

Reflecting Additional Rulings of the Court filed on December 28, 2022. [APPV1-079 to -00091.] The one thing both Petitioners and Contestee Mayes agree upon is that the trial court should have issued a final judgment as required by Rule 54(b). [APPV1-092 to -100.]

These unexplainable and unnecessary delays on an issue of extreme statewide importance justify Petitioners' request to seek extraordinary relief from this Court directly via special action.[2] *See* Ariz. R. P. Spec. Act. 7(b). Not only does this petition raise "purely legal issues of statewide importance[,]" but there is also no "equally plain, speedy, and adequate remedy by appeal[.]" *Tobin v. Rea*, 231 Ariz. 189, 193 ¶ 8 (2013) (citing Ariz. R. P. Spec. Act. 1(a)) (other citations omitted).

Indeed, because there is no final order that complies with Rule 54(c), an appeal would be premature.[3] *See* Ariz. R. Civ. App. P. 9(a); *Ghadimi v. Soraya*, 230 Ariz. 621, 622 ¶ 8 (App. 2012) ("A notice of appeal filed in the absence of a final judgment is premature…[and the appellate court] lack[s] jurisdiction to hear the action[.]"). *But see Kelly v. Blanchard in and for County of Maricopa*, 529 P.3d 590, 593 ¶¶ 9-10 (App. 2023) (finding that superior court's minute entry was not a final order or otherwise appealable but accepting special action jurisdiction because the relief requested required resolution

[2] Ariz. Const. art. 5, § 1(B) ("The person having the highest number of the votes cast for the office voted for shall be elected[.]"); Ariz. Const. art. 7, § 7 ("In all elections held by the people in this state, the person, or persons, receiving the highest number of legal votes shall be declared elected.")

[3] Petitioners nonetheless filed a Notice of Appeal to ensure the appeal was timely filed in the event our analysis faltered.

of a purely legal issue, was a recurring matter of statewide importance, and was one of first impression).

Critically, the newly discovered and wrongfully withheld evidence indicates there are hundreds, if not thousands, of ***uncounted*** votes that, once counted, will prove that Abraham Hamadeh—not Kris Mayes—is the constitutionally elected Attorney General for the State of Arizona. But due to a lack of procedural clarity in election contests, the trial court denied Petitioners' Motion. Without relief from this Court, this case could linger for another nine months even though the stakes could not be higher.

II. JURISDICTION

Although acceptance of an original proceeding for special action relief in this Court is highly discretionary, the Court has accepted jurisdiction when "purely legal issues of statewide importance" are raised and "there is no 'equally plain, speedy, and adequate remedy by appeal.'" *Tobin*, 231 Ariz. at 193 ¶ 8 (quoting Ariz. R. P. Spec. Act. 1(a)). *See also Ariz. Legislative Council v. Howe*, 192 Ariz. 378, 382 ¶ 10 (1994); Ariz. R. P. Spec. Act. 4(a), 7(b). Further, conflicting and inconsistent interpretations of the requisite procedures for litigating election contests compels this Court to accept jurisdiction to set forth a "consistent, statewide application[.]" *Cronin v. Sheldon*, 195 Ariz. 531, 533 ¶ 3 (1999).

As "due process demands that the procedures to be followed [for special actions] must be set out with reasonable clarity," Ariz. R. P. Spec. Act. 1, Note (a) (citation omitted), so much more must it be so for election contests, which are statutorily

granted. Yet the election contest provisions in A.R.S. § 16-671 *et seq.* lack clear procedures, falling short of due process considerations. This has left the courts and parties to wade through a "murky world where [the] statutes seem designed merely to confuse, where written rules are either incomplete or lacking entirely, and where the only path is in the footsteps of those who have gone before, a good many of whom have fallen off the edge." Ariz. R. P. Spec. Act. 1, Note (a) (citation omitted).

Under the unique posture of this case and the significant issues raised, this Court should accept special action jurisdiction.[4]

III. STATEMENT OF THE ISSUES

A. Did the trial court fail to perform a duty required by law when it failed to issue a final judgment as prescribed by Arizona Rule of Civil Procedure 54(c)? *See* Ariz. R. P. Spec. Act. 3(a).

B. Was it an abuse of discretion to deny Petitioners' Motion for a New Trial? *See* Ariz. R. P. Spec. Act. 3(c). Alternatively, is the trial court threatening to proceed in excess of legal authority if it issues a final judgment denying Petitioners' Motion for a New Trial? *See* Ariz. R. P. Spec. Act. 3(b).

1. Was it arbitrary and capricious for the trial court to ignore the rules of court such that it deprived Petitioners of due process of law? *See* Ariz. R. P. Spec. Act. 3(c).

2. Was it arbitrary and capricious to find (a) that, notwithstanding the trial

[4] In the event this Court declines jurisdiction, Petitioners respectfully request that the special action petition be transferred to the Court of Appeals pursuant to A.R.S. § 12-120.22(B) with instructions to accept jurisdiction, notwithstanding the lack of final judgment on Petitioners' Motion for a New Trial. Regardless of the outcome at the appellate court, given this case's significance, the losing party will undoubtedly seek review by this Court, further delaying a complete and final adjudication of the 2022 Attorney General's race.

court's denial of discovery as to provisional ballots, Petitioners failed to exercise sufficient diligence in obtaining the newly discovered evidence that upwards of 1,100 provisional ballots appear to have been wrongfully rejected and remain uncounted in a race decided by 280 votes and (b) that evidence withheld by Defendants—which validated Petitioners' claim that machine tabulators were misreading valid votes as undervotes—was warranted based on an order that prevented counties from releasing "vote counts" during the recount and that 68,196 known undervotes is not sufficient evidence to change the outcome of the election? *See* Ariz. R. P. Spec. Act. 3(c).

C. Was the trial court's interpretation of the election contest provisions arbitrary and capricious? *See* Ariz. R. P. Spec. Act. 3(c).

IV. STATEMENT OF MATERIAL FACTS

Arizona held a statewide election on November 8, 2022 ("General Election"), with Contestant Abraham Hamadeh and Contestee Kris Mayes both vying to become Arizona's Attorney General. On December 5, 2022, Kris Mayes was declared elected, prevailing by just 511 votes out of more than 2.5 million ballots cast. [APPV1-005.] But because the margin of victory was just 0.02%, an automatic recount was triggered. *See* A.R.S. § 16-661(A) ("A recount of the vote is required when the canvass of returns… shows that the margin between the two candidates… is less than or equal to one-half of one percent of the number of votes cast for both such candidates[.]")

On December 9, 2022, Mohave County residents Jeanne Kentch and Ted Boyd, Contestant Abraham Hamadeh, and the Republican National Committee filed an election contest in Mohave County, asserting the following five counts:

- **Count I:** Erroneous Count of Votes and Election Board Misconduct; Wrongful Disqualification of Provisional and Early Ballots (Ariz. Const. art. 2, §§ 13, 21; A.R.S. §§ 12-2021, 16-672(A)(1), (A)(5)) [APPV1-020 to -022];

- **Count II:** Erroneous Count of Votes and Election Board Misconduct: Wrongful Exclusion of Provisional Voters (A.R.S. §§ 16-584, 12-2021, 16-672(A)(1), (A)(5)) [APPV1-022 to -023];

- **Count III:** Erroneous Count of Votes: Inaccurate Ballot Duplications (A.R.S. §§ 16-621, 16-672(A)(5)) [APPV1-023 to -024];

- **Count IV:** Illegal Votes and Erroneous Count of Votes: Improper Ballot Adjudications (A.R.S. §§ 16-621, 16-672(A)(4), (A)(5)) [APPV1-024 to -025]; and

- **Count V:** Illegal Votes: Unverified Early Ballots (A.R.S. §§ 16-550(A), 16-672(A)(4)) [APPV1-025 to 026].

On December 13, 2022, to prepare for trial, Petitioners filed a Motion to Expedite Discovery, specifically seeking "a list of persons who cast a provisional ballot that was not tabulated" from each Maricopa County vote center. [APPV1-048.] Petitioners also submitted a public records request to Maricopa County for that same information, as the provisional ballot list is a public record maintained by the county. [APPV1-109.]

Contestee Mayes, Defendants Maricopa County, the Secretary of State, and four other counties all filed objections to the expedited discovery request. Notably, all those same parties also objected to Petitioners' Petition to Inspect Ballots, despite the statutory right to inspect the ballots. *See* A.R.S. § 16-677(A) ("either party may have *the* ballots inspected before preparing for trial") (emphasis added). All told, Petitioners were bombarded with sixteen oppositional pleadings, only three of which were filed by Contestee Mayes, thirteen of which were filed at taxpayer expense.

On December 19, 2022, the trial court held oral argument on motions to dismiss by Contestee Mayes and county and state defendants (including the Secretary of State and Maricopa County); the court subsequently dismissed Count V, stating that "the doctrine of laches applies to Count V as the procedures in the EPM should have been challenged prior to election." [APPV2-038.] The claim was dismissed notwithstanding the plain language of A.R.S. § 16-676(B) providing that "[t]he court shall continue in session to hear and determine ***all issues*** arising in contested elections."

On December 21, pursuant to the trial court's order from the day prior, Petitioners filed their Response to Court's Order Requiring Written Submissions Regarding Issues On Which No Agreement Has Been Reached, raising five specific issues. [APPV1-055 to -078.] Significantly, one of the issues was a request to compel Maricopa County to "produce the list of all voters who (sic) Provisional Ballot was rejected along with the reason for the rejection of the provisional ballot." [APPV1-061.] Petitioners also raised Maricopa County's refusal to provide access to an unredacted copy of the cast vote record ("CVR") that would allow Petitioners to "run a computer program that flags which ballots are potentially impacted by the issues raised in the complaint" to identify "a specific ballot image for review of…under votes."[5] [APPV1-

[5] The CVR is the official record of how each vote was cast and recorded by the election systems from a specific ballot image. [APPV1-058; APPV1-072 to -073.] A.R.S. § 16-625 provides that cast vote records, specifically the "electronic data from and electronic or digital images of ballots" must have security measures "as protective as those prescribed for paper ballots"—thus equating paper ballots to their electronic counterparts.

059.] Finally, Petitioners asked the trial court to compel the counties to provide adequate time for inspection, allow an adequate number of people to conduct the ballot inspections, and grant access to conduct the inspection. [APPV1-061 to -063.] Petitioners then sought and obtained an Emergency Hearing, which was held on December 22. [APPV2-04 to -048.]

At the Emergency Hearing, Petitioners specifically requested the "provisional ballot list from Maricopa County" [APPV2-074 at 6:8-9] and more time to inspect ballots as—on the eve of trial—ballot inspection had yet to commence. [APPV2-074 to -076.] Petitioners noted at trial, "every place we turn, we've got every governmental body involved that's making a presentation here kind of trying to block us, limit us…we haven't gotten the what we think is the cooperation that the court's order kind of assumed would happen." [APPV2-075 at 7:9-14.]

Defendant Maricopa County flatly objected to conducting *any* ballot inspections before the hearing, which was scheduled for the following day, stating "it would not be possible to conduct a valid inspection today" because Elections Director Scott Jarrett was unavailable. [APPV2-077 at 13:5-6.] Further, Maricopa County argued that the public records relating to rejected provisional ballots were "not authorized by statute" to be disclosed in advance of trial and that while Maricopa conceded the information may be important in an election contest, granting the request would "open[] the door to discovery" and "violate what the legislature wrote." [APPV2-078 at 16:19-25; APPV2-079 at 17:1-7.]

Defendant Secretary of State ("Defendant Secretary") characterized Petitioners' request to expedite ballot inspection by having multiple boards of three inspectors as a "state-wide fishing expedition," notwithstanding Petitioners' statutory right to inspection and the practical reality that the evidentiary hearing would be held in less than 24 hours. [APPV2-080 at 20:22.] In fact, counsel for Defendant Secretary quipped:

> Your Honor, with all due respect, the fact that the plaintiffs have no evidence to prove their claim without this kind of widespread ballot inspection that's beyond the scope of the statute, is not the defendant's problem. It's not the secretary's or the county's problem. It's not the court's problem. It's the plaintiffs' problem. And it only goes to show that this case never should have been brought.

[APPV2-080 at 22:7-14.]

Despite Petitioners' December 22 oral motion to continue the trial scheduled for the next day to the following week, the trial court ultimately agreed with Defendant Maricopa County, Defendant Secretary, and Contestee Mayes that the statutory requirement that the "court shall set a time for the hearing of the contest, not later than ten days after the date on which the statement of contest was filed, which may be continued for not to exceed five days for good cause shown" patently prevented the evidentiary hearing from being continued into the following week. A.R.S. § 16-676(A).[6]

[6] Discussion regarding the impact a continuance would have on the recount hearing scheduled for December 29 in Maricopa County was also raised. Notably, the plain language of A.R.S. § 16-667 demands that upon the initiation of an election contest, a recount "proceeding begun under this article shall abate." *Black's Law Dictionary* defines "abatement" as "suspension or defeat of a pending action for a reason unrelated to the merits of the claim[.]" ABATEMENT, *Black's Law Dictionary* (11th ed. 2019).

Notably, Petitioners had until then been denied inspection of *any* of the 2.5 million ballots and had also been denied a copy of the electronically producible provisional ballot report.[7]

The trial court limited ballot inspection to one three-person panel in each of the three subject counties, denied access to the CVR because it "was not requested in the original Petition for Inspection of Ballots," and did not compel Maricopa County to provide the rejected provisional ballot report. [APPV2-044.]

Following the Emergency Hearing, the trial court issued an order appointing a limited number of inspectors in Maricopa, Pima, and Navajo Counties, permitting only one inspector each for the Contestant and Contestee to participate, strictly construing the provisions of A.R.S. § 16-677(B) ("the court shall appoint three persons, one selected by each of the parties and one by the court, by whom the inspection shall be made").

As evidenced by the record, from the moment the election contest was filed on December 9 until the trial court ordered inspectors just before noon on December 22, Petitioners expended virtually all resources defeating adversarial motions and

Notwithstanding the plain statutory language, the recount was not suspended pending conclusion of this election contest.

[7] The provisional ballot report is not only an official report exclusively maintained by county officials; the report also details who cast provisional ballots and the ballots ultimate dispositions. Without this report, it is impossible to prove which provisional ballots were wrongfully rejected.

compelling counties to comply with their statutory obligations. Petitioners were also completely deprived of access to the evidence necessary to prove their case.

Petitioners were only able to inspect a few thousand ballots statewide out of 2.5 million ballots cast before the trial commenced on December 23. Trial testimony focused almost exclusively on analyzing ballots that had been erroneously tabulated. Following the evidentiary hearing, all parties agreed that fourteen of the approximately 2,300 Maricopa County ballots inspected had ***valid votes*** cast that were not counted for either party but that election officials instead recorded as undervotes[8] (and, in a few instances, overvotes) in the Attorney General's race. [APPV2-086 at 113:1-2.] The misread rate of 0.61% is ***more than 60 times*** the 0.01% margin of victory. [APPV2-011 to -012.]

After Contestee Mayes made her closing arguments, Defendant Maricopa County claimed it was "not on either candidate's side in terms of who should be the next attorney general" and then directly asked the court to "rule against plaintiff and its challenge and affirm Maricopa County's election." [APPV2-083 at 102:1-10.] Defendant Secretary stated that "plaintiffs had no evidence, none, to support their remarkable claim," called the hearing a "farcical proceeding," and urged the court to "confirm that Ms. Mayes was elected as Arizona's next attorney general and to do so

[8] An undervote occurs when no vote is recorded as cast for any candidate in a particular race.

from the bench today here and now." [APPV2-083 at 102:24-25; APPV2-084 at 103:1-21.]

From the bench, the trial court ruled in favor of the Defendants and denied relief to Contestant Hamadeh. [APPV2-052.] To date, the trial court has not entered a final judgment that complies with Rule 54(c). In fact, Petitioners filed a Motion for an Order Reflecting Additional Rulings of the Court on December 28, 2022, specifically urging the trial court to issue a final judgment, and as to that portion of the motion, Contestee Mayes concurred. [APPV1-081; APPV1-094.]

Contemporaneous to these proceedings, the statewide recount was underway. On December 21 (two days before the evidentiary hearing), Pinal County submitted a "Recount Discrepancy Report" to Kori Lorick, the Elections Director for the Secretary of State.[9] [APPV1-123 to -128.] Among other things, Pinal County reported that 63 ballots with "unclear marks" were initially machine tabulated as undervotes in the canvass, but in the recount they were determined to be ***uncounted valid votes***. [APPV1-128.] Altogether, Pinal County added 392 votes to the tally for Abraham Hamadeh and 115 votes for Kris Mayes. [APPV1-123.]

[9] At all times, Pinal County was a named defendant in this matter and filed its notice of appearance on December 13, 2022. The court excused nominal defendants from appearing at hearings, and Pinal County did not appear at either the Emergency or Evidentiary Hearing.

On December 5, Maricopa County Superior Court issued the Order to Conduct the Recount ("Recount Order"). [APPV2-092 to -094.] The Recount Order dictated that the counties "shall not release to the public the results of the recount, including daily vote totals, until the Court has certified the results" and required all parties to "keep confidential any information they may acquire that would disclose the vote of any elector and destroy any notes that would disclose same[.]" [APPV2-093.]

Neither Defendant Secretary nor Defendant Pinal County (who remained nominal throughout the proceedings) have denied having direct knowledge of Pinal County's undervote issue prior to the December 23 Hearing. Rather, Defendant Secretary has repeatedly asserted that the Recount Order prevented disclosure—which by its plain language only prevented *counties* from releasing "vote totals"—apparently superseding any duty of candor to the tribunal.

Further, based on the ten counties that reported undervotes in the final recount, there were at least 68,196 ballots that machine tabulators recorded as an undervote—which means the tabulators did not record a vote for either candidate—in the Attorney General's race. [APPV2-013.] During ballot inspection, Petitioners found that 0.61% of the inspected ballots were valid votes that were misread by the machine tabulators as undervotes (and in a couple of instances, overvotes). [APPV2-014.]

Following the recount, Maricopa County finally released to Defendants the provisional ballot report under Arizona's public records laws. [APPV1-109.]

On January 3, 2023. Petitioners filed their Rule 59(a)(1) Motion for a New Trial based on irregularities in the proceedings, newly discovered material evidence, and errors of law. [APPV1-101 to -119.] Contestee Mayes, as well as Defendants Maricopa County and Defendant Secretary, filed responses in opposition.

On February 6, Petitioners filed their Consolidated Reply in Support of Plaintiffs' Motion for a New Trial, putting the Motion at issue. [APPV2-003 to -034]. On April 11, the trial court ordered oral arguments on the Motion to be held on May 16. [APPV2-056 to -060].

At oral arguments on the Motion, Contestant Hamadeh asserted that Petitioners on-going analysis of the rejected provisional ballots had thus found "about 1,100 voters" "who had recent, active voting history that had rejected provisional ballots."[10] [APPV2-088 at 32:15-19.] Contestant Hamadeh further articulated:

> [A]fter interviewing hundreds of those voters, we found that many are voters who have connections to properties outside of their home county; and due to no fault of their own, but instead changes to the statewide computer system, their registration was moved from their county of residence to the county where they had some connection without the voter's express knowledge, consent or intent in a way that lacks a requisite procedural due process requirement necessitated before depriving someone of their sacred right to vote.

[10] As explained at oral arguments, after analyzing the provisional ballot report and interviewing voters whose provisional ballots were rejected, Petitioners believe that "changes were made to both Service Arizona and the Arizona Voter Information Database that unintentionally and tragically caused disenfranchisement of hundreds of Arizona voters" and are prepared to present this evidence at trial. [APPV2-091 at 35:15-18.]

[*Id.* at 32:20-25; APPV2-089 at 33:1-4.] Contestant Hamadeh then proffered that "[a]t trial [Petitioners] can get into the specifics…but for the purposes of this motion, I think it's sufficed to say that it appears that more than 1100 election day provisional voters were, we believe, wrongfully disenfranchised." [*Id.* at 33:5-10.] Contestant Hamadeh further indicated that Petitioners have evidence that "good-intention[ed] changes were made to both Service Arizona and the Arizona Voter Information Database that unintentionally and tragically caused disenfranchisement of hundreds of Arizona voters." [APPV2-091 at 35:15-18.]

As articulated during oral arguments and based on the publicly available 2022 General Election Recount Summary Results, the vast majority of Election Day voters statewide cast their ballots for Abraham Hamadeh. *See supra* at n.1; [APPV2-090 at 34:18-25, APPV2-091 at 35:1-7 (suggesting that based on the number of questionably rejected provisional ballots identified and the election day voting trends, if the erroneously rejected provisional ballots are opened and counted, Contestant Hamadeh should prevail over Contestee Mayes by more than 150 votes)].

On July 14, the trial court issued a decision order denying the Motion and issued his reasoning on July 17, precipitating this petition. [APPV2-061 to -072.]

V. ARGUMENT

The Arizona Constitution guarantees that that "[a]ll elections shall be free and equal, and no power… shall… interfere to prevent the free exercise of the right of suffrage." Ariz. Const. art. 2, § 21. Yet Contestee Mayes argued—and the trial court apparently agreed—that this guarantee is an empty promise. And apparently, as it relates to election contests, so too is its guarantee of "due process of law." Ariz. Const. art. 2, § 4. In fact, as currently interpreted, the election contest provisions have completely usurped the constitutional mandate that "[t]he person having the highest number of the votes cast for the office voted for shall be elected[.]" Ariz. Const. art. 5, § 1(B). For, if there is no meaningful way for candidates to question and confirm the accuracy of the vote count when the margin of victory is 0.01%, then there is no way to ever determine if the person elected truly received the highest number of votes.[11]

The esteemed officers of this Court take and subscribe to an oath to support the Constitution of the State of Arizona. Ariz. Const. art. 6, § 26. It is uniquely the duty of the Supreme Court to be the last bastion of defense to protect the rights of Arizonans. Petitioners urge this Court to breathe life and meaning into the constitutional provisions that seem to have become nothing more than dead letter rights.

[11] This is especially true as the recount provisions permit the same errors as the original count. Critically, Petitioners do not seek a ***recount***. Petitioners seek to have valid votes—which were cast either by provisional ballot or with an unadjudicated "unclear" mark that machine tabulators failed to read—***counted for the first time***.

A. THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO ENTER FINAL JUDGMENTS IN BOTH THE ORIGINAL CONTEST AND IN ITS DENIAL OF THE MOTION FOR A NEW TRIAL.

The Arizona Constitution states that "[e]very matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof." Ariz. Const. art. 6, § 21. Although the trial court timely *decided* the original election contest when he denied Petitioners' relief and issued a minute entry, he did not and has not issued a final judgment. [APPV2-00047 to -00053.]

Petitioners raised this deficiency in their Motion for an Order Reflecting Additional Rulings of the Court ("Final Order Motion") on December 28, 2022. [APPV1-081 to -091.] Contestee Mayes concurred with that portion of the motion, similarly urging the trial court to issue a final judgment. [APPV1-094.] Petitioners' Final Order Motion remains outstanding such that the trial court has failed to issue a final judgment on the initial contest.

Similarly, Petitioners' Motion for a New Trial was fully briefed and at issue on February 6, 2023. Months later, oral arguments were set and heard on May 16. However, the order denying Petitioners' Motion does not contain language consistent with Rule 54(c). Accordingly, to date, no final judgment on the Motion has been issued.

Pointedly, the parties' rights to speedy decisions have been grossly and repeatedly violated.

Despite repeated attempts, Petitioners have been unable to move the trial court to action. Given the urgency to resolve all of these matters and the lack of a plain, speedy, and adequate remedy, a special action to this Court is warranted. *So. Cal. Edison Co. v. Peabody Western Coal Co.* 194 Ariz. 47, 53 ¶ 20 (1999) ("the refusal to enter an appealable order may be reviewed for abuse of discretion by special action proceedings"). The trial court has a duty to issue final judgments and should be compelled to issue final judgments as to both the original election contest and the Motion for a New Trial. *See* Ariz. R. P. Spec. Act. 3(a).

B. THE TRIAL COURT EITHER ABUSED ITS DISCRETION BY DENYING PETIONERS' MOTION FOR A NEW TRIAL OR IS THREATENING TO PROCEED WITHOUT LEGAL AUTHORITY.

Despite its laborious process, nearly every paragraph of the trial court's order contains legal errors and makes factual findings not supported by the record. As detailed below, the trial court abused its discretion by denying Petitioners' Motion. *See* Ariz. R. P. Spec. Act. 3(c). Alternatively, if an appeal is not ripe, based on the trial court's unsigned order, it is threatening to proceed without legal authority. Ariz. R. P. Spec. Act. 3(b).

1. Courts, not the legislature, set court rules. Due process of law and the right to free and equal elections demand adherence to them.

At the outset, the trial court concluded without reference that the Arizona Constitution gives the legislature the right to make not only the rules concerning

elections but also the procedural rules for the related court proceedings. While the former is true, the latter is not. Ariz. Const. art. 4, Pt. 1, § 1(1) ("The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives[.]"); Ariz. Const. art. 6, § 5(5) (The Supreme Court shall have the "[p]ower to make rules relative to all procedural matters in any court.").

Although Arizona has long recognized that election contests are purely statutory, the statutes give courts *jurisdiction* to hear the case. *Grounds v. Lawe*, 67 Ariz. 176, 186 (1948). Any statutorily prescribed court procedures, however, are directory and seem to reflect not only a strong public policy in favor of finality in elections but also the reality that certain issues, such as the printing of petitions, demand expeditious resolution. However, as recently reaffirmed by this Court, while the legislature can prescribe substantive law, the courts "recognize 'reasonable and workable' procedural laws if they supplement rather than conflict with court procedures." *State v. Reed*, 248 Ariz. 72, 76 ¶ 10 (2020).

a. The time provisions in A.R.S. § 16-676(A) are directory, not mandatory.

The trial court cited *Bohart v. Hanna*, 213 Ariz. 480 (2006), for the proposition that "[t]ime elements in election contests must be strictly construed" [APPV2-066] and then later purported to apply this proposition to its finding that the election contest statutes do not contemplate additional discovery in election cases after the trial on the merits, so the trial must be held in an expedited fashion, and Plaintiffs remedy is

appeal.[12] [APPV2-069.]

The time elements in *Bohart* concern a nomination petition challenge whereby the appellant failed to file his notice of appeal within five calendar days instead of five business days.[13] 213 Ariz. at 481 ¶ 2. As explained in *Broussea v. Fitzgerald*, time elements regarding when to file the contest (or, in the case of *Bohart*, the appeal) are jurisdictional and mandatory, whereas the "ten-day requirement for action by the superior court is directory and not mandatory." 138 Ariz. 453, 456 (1984).

Accordingly, the time elements related to filing the contest are jurisdictional, while the time elements related to when the trial must be heard (within ten days) is directory. Further, any time constraints that would deprive litigants of post-trial remedies clearly conflict with, rather than supplement, court procedures and are therefore directory, not mandatory.

The trial court abused its discretion by strictly construing the election contest procedural time constraints as (1) a basis to deny Petitioners' Motion and (2) as a basis to deny Petitioners' motion to continue the trial to provide adequate time to inspect ballots, given the delays in obtaining access to the ballots. Ariz. R. P. Spec. Act. 3(c).

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[12] Petitioners note that the trial court fails to cite any legal authority to support the proposition that the election contest statutes expressly or impliedly preclude a new trial. In fact, not only can election contests be appealed but, based on this Court's recent order in *Lake v. Hobbs*, they can also be remanded for further proceedings.

[13] Petitioners at all times have strictly complied with all jurisdictional time elements, having timely filed both the election contest and their Motion.

b. A.R.S. § 16-677(A) does not purport to limit discovery, nor can it.

A.R.S. § 16-677(A) provides that "either party may have the ballots inspected before preparing for trial."

According to the trial court, A.R.S. § 16-677(A) implicitly abrogates all rules of discovery such that "the only discovery allowed in these contested elections is a limited inspection of ballots[.]" [APPV2-067.] Further, the court claimed that it made "no errors of law in the Court's denial of a delay to conduct additional discovery[.]" [APPV-068.]

Notwithstanding that the legislature cannot legislate away a litigant's due process right to reasonable discovery (especially discovery of materials in the sole control and possession of a government body), *nothing* in election contest statutes, and especially nothing in A.R.S. § 16-677, expressly *or even impliedly* constrains discovery. Instead, A.R.S. § 16-677 affords parties to an election contest the *right* to inspect ballots. Absent this provision, inspection of ballots would directly conflict with A.R.S. § 16-624(A), which requires ballots to be delivered to the county treasurer, "who shall keep [the packages containing ballots] unopened and unaltered" after the canvass has been completed.

Further, the CVRs and provisional ballot reports were reasonably calculated to lead to the discovery of specific ballots for inspection. Specifically, the CVR would allow Petitioners to narrow inspection of ballots to a specific universe of ballots, such

as those tabulated as an undervote (the precise issue litigated at trial). The provisional ballot report would allow Petitioners to identify voters whose ballots were rejected and to isolate provisional ballots for inspection that were erroneously rejected.

In other words, even as defined by the trial court, Petitioners' discovery requests were within that narrow definition as they were reasonably calculated to lead to discoverable ballots. More importantly, even under the necessarily truncated time constraints of an election contest, Petitioners requests were reasonable—as both were electronic records available at the click of a button by county officials.[14]

In fact, "the rules of discovery are to be broadly and liberally construed to facilitate identifying the issues, promote justice, provide a more efficient and speedy disposition of cases, avoid surprise, and prevent the trial of a lawsuit from becoming a 'guessing game.'" *Cornet Stores v. Superior Court In and For Yavapai Cnty.*, 108 Ariz. 84, 86 (1972) (citations omitted). Instead, the rules of discovery in this case were so narrowly defined that Petitioners could not reasonably identify the "issues" (in particular as to the wrongfully rejected provisional ballots), the proceedings were drawn out and decidedly inefficient, Petitioners were surprised by the undervote evidence revealed at the recount, the entire trial was a "guessing game[,]" and justice has been denied.

[14] Through a public records request, Maricopa County released to Petitioners an electronic, redacted copy of the cast vote record. [APPV1-059.] The redactions prevented Petitioners from identifying specific ballots to inspect. [*Id.*] Further, the provisional ballot report was electronically provided in response to Petitioners' public records request a little more than a week after the trial. [APPV1-109.]

The trial court abused its discretion by severely limiting discovery. *See* Ariz. R. P. Spec. Act. 3(c).

c. Depriving Petitioners of court procedures violates their right to due process and free and equal elections under the Arizona Constitution.

Once the legislature provides the court jurisdiction to hear election contests—by virtue of separation of powers—the legislature has no power to dictate court procedures, including statutorily depriving litigants of discovery, foreclosing motions, and limiting post-trial remedies to appeals.[15] Not only do such procedural denials deprive Petitioners of due process of law on their face, but such deprivation is also extraordinary based on the facts. Ariz. Const. art. 2, § 4 ("No person shall be deprived of life, liberty, or property without due process of law.").

As detailed above, Petitioners have been battling not just the Contestee but the State as well. Making substantive arguments throughout, Defendant Secretary and several counties objected to, delayed, and denied not only Petitioners' right to bring the case but also their statutory right to inspect ballots. Yet nothing in the election contest provisions contemplate state involvement absent intervention by the attorney general.

[15] In *Lake v. Hobbs*, Maricopa County Superior Court recently considered Plaintiff Lake's Motion for Relief from Order and granted part of that motion "on Rule 60(b)(1) grounds[.]" *Lake v. Hobbs*, Maricopa County Superior Court CV 2022-095403, Minute Entry (May 16, 2023), https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/5167/638198648376530000 (last accessed Aug. 2, 2023).

See A.R.S. § 16-672(C).[16]

If title 16 statutorily defines the beginning and end of elections, it necessarily means elections include election contests. The Arizona Constitution gives citizens the right to "free and equal" elections, and an election cannot be considered equal when government officials, including the trial court, used the power of their positions to tip the scales toward Contestee in this case.

Government parties in an election contest, like prosecutors, should be considered "representative[s] not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest… is not that it shall win a case, but that justice shall

[16] Further, A.R.S. § 16-674(B) provides that the summons is to be served upon the *contestee* and only provides for civil actions to be filed "against the county, city, town or subdivision" if the contest involves a "question, proposal, measure or proposition[.]" The summons form in A.R.S. § 16-675(B) similarly provides that only the *contestee* is to be served a summons, unless it is an "initiative or referred measure, a proposed constitutional amendment, or other proposition or question submitted[.]"

In election-related litigation, state and county election officials are included as indispensable, nominal defendants for the sole purpose of binding them to orders, such as verifying petitions, inspecting ballots, or enjoining them from printing ballots. *See, e.g., Mandreas v. Hungerford*, 127 Ariz. 585, 587 (1981) (board of supervisors, who had the statutory responsibility to print ballots, was an indispensable party to a petition challenge as the party to be enjoined if challenge succeeded).

Further, in *Hunt v. Campbell*, Arizona's first statewide election contest, although contestant Hunt alleged misconduct on the part of election boards in Cochise and Coconino counties, neither county appears to have been an active litigant, suggesting the statutory right to election contests was not intended to give the state a role in the proceedings. 19 Ariz. 254 (1917). *See also Findley v. Sorenson*, 35 Ariz. 265 (1929) (School district election board was accused of writing in the name of contestee on the ballots before giving them to voters, yet there is no indication the school district participated in the proceedings.)

be done." *Berger v. U.S.*, 295 U.S. 78, 88 (1935). Governing is not done with impartiality and in the interests of justice when representatives urge the court to "affirm Maricopa County's election" and "confirm that Ms. Mayes was elected as Arizona's next attorney general…here and now" and to put an end to these "farcical proceedings." [APPV2-083 at 102:24-25; APPV2-084 at 103:1-21.]

By actively participating in and filing opposition motions against Petitioners, delaying access to statutorily prescribed discovery (the ballots themselves), denying all other discovery—including access to information that would lead to the inspection of specific ballots—withholding evidence at trial that validated Petitioners' claims, and depriving Petitioners of their right to civil remedies, government officials have fundamentally deprived Contestant Hamadeh of a fair contest and therefore an "equal election."

Specifically, again, county officials delayed Petitioners access to inspect the ballots until the afternoon before the trial, despite repeated and diligent attempts by Petitioners to inspect the ballots. This last minute inspection cannot be reasonably construed as sufficient time to "inspect[] before preparing for trial" as provided for by A.R.S. § 16-677(A).

Further, not only were Petitioners deprived of the ability to inspect *the* ballots—because inspection was limited to a subset of ballots—but Petitioners were also deprived of any meaningful and reasonable ability to narrow the universe of ballots to be inspected when Maricopa County refused to provide access to the unredacted CVR

and the provisional ballot report.

Due process of law demands clear and consistent procedures, not a muddled set of rules subject to the whim of the court and that contradicts statutory precepts at the urging of government officials. Ultimately, depriving Petitioners of their right to reasonable discovery before trial and ignoring newly discovered evidence—essentially to exalt finality over justice—is an absolute abuse of discretion, as is foreclosing post-trial remedies.

The trial court abused its discretion and/or was arbitrary and capricious in its application of court rules and procedures, Ariz. R. P. Spec. Act. 3(c), and should therefore be reversed.

2. The record establishes that Petitioners met their burden.

As detailed in subsection (1) above, the trial court's denial of discovery and misapplication of the time provisions were irregularities of proceedings that amounted to an abuse of discretion that deprived Petitioners of a fair trial. Ariz. R. Civ. P. 59(1)(A). Alternatively, they were errors of law. Ariz. R. Civ. P. 59(1)(F).

The trial court held that, to prevail on a motion for a new trial due to "newly discovered" evidence, the evidence must be "1) material, 2) existed at the time of trial, 3) could not have been discovered by due diligence, and 4) would probably change the result." [APPV2-068.]

a. The record shows the newly discovered provisional ballot evidence entitles Petitioners to a new trial.

The trial court rightly agreed that the provisional ballot evidence discovered "is material to the case and did for the most part exist at the time of trial." [APPV2-068.] However, despite the record, the trial court found it was "discoverable in November and December with sufficient diligence." [*Id.*] That finding is incorrect.

In fact, the record clearly shows that Petitioners diligently sought provisional ballot information from Defendant Maricopa County through public records requests and expedited discovery, discovery that was denied *sub silentio* by the trial court. Petitioners made repeated attempts through the trial court to compel Maricopa County to release the provisional ballot report, which is a public record. [APPV1-048; APPV1-061.] Maricopa continued to resist, arguing at the emergency hearing that releasing the provisional ballot report in advance of trial would "open[] the door to discovery" and "violate what the legislature wrote." [APPV2-078 at 16:19-25; APPV2-079 at 17:1-7.]

Ultimately, the trial court did not compel Maricopa County to release the provisional ballot report, and instead, Maricopa County responded to Petitioners' identical public records request the week after trial. [APPV1-109.]

And although the trial court agreed that "the evidence proffered at oral argument related to provisional ballots is material to this case and did for the most part exist at the time of trial" and that it was from voters trending for Abraham Hamadeh, he nonetheless found that it is "still speculation to say that the difference in votes would have been made up with further discovery." [APPV2-068.]

In other words, in a race decided by just 280 votes, 1,100 provisional ballots were questionably rejected and contained uncounted votes that, having been cast on Election Day, *largely* trended towards Hamadeh. Yet the trial court did not accept the logical conclusion that the proper tabulation of these ballots would likely change the outcome of the trial. Instead, the trial court concluded that it would be "speculation" to assume that votes amounting to four times the vote margin could change the outcome of the trial and therefore denied the Motion. [*Id.*]

Critically, to prevail under the standards, Petitioners do not have to definitively prove that the uncounted ballots *will* change the results of the trial, only that they "would probably change the result." Of course, that is the purpose of the trial Petitioners seek.

By any objective standard, on the newly discovered evidence related to provisional ballots alone, Petitioners have exceeded their burden for a new trial. And unlike election contests where courts must determine the number of illegal ballots to remove, "proportionally" or with "mathematic certainty," this case will ultimately involve ***counting*** uncounted provisional ballots from voters who were wrongfully disenfranchised by deficient government systems that lack requisite procedural due process—thereby proving with mathematical precision who received the most votes for Attorney General. *Huggins v. Superior Court in and for County of Navajo*, 163 Ariz. 348, 352 (1990) (discussing a "proportionate, precinct-by-precinct extraction of the illegal

votes"); *Lake v. Hobbs*, 525 P.3d 664, 668 ¶ 11 (App. 2023) (requiring a "competent mathematical basis to conclude that the outcome would plausibly have been different").

The court's findings that Petitioners failed to meet their burden related to newly discovered provisional ballot information is arbitrary and capricious. *See* Ariz. R. P. Spec. Act. 3(c). The Court should remand for a new trial on this ground alone.

b. The record shows that Defendants withheld evidence supporting Petitioners' claims that votes that should have been counted were instead misread as undervotes.

As to newly discovered evidence related to undervotes in Pinal County, the trial court completely mischaracterized the record in order to deny Petitioners' Motion.

First, the trial court did not make any finding as to whether the evidence—the fact that Pinal County discovered its machine tabulators misread, or could not read, certain marks and recorded them as undervotes—is material. However, given that Petitioners raised concerns with undervotes in the original election contest, pleaded with the court to order access to the CVRs so Petitioners could sort and examine ballots that were tabulated as undervotes, and nearly the entire testimony of the trial was exclusively related to undervoted ballots, it seems likely the trial court presumed the evidence to be material.

Second, the trial court did not make any finding as to whether the evidence existed at the time of trial. However, given the fact the report from Defendant Pinal County to Defendant Secretary of State was dated December 21, it is clear that the evidence existed at the time of trial and was known by at least two public officials who

were parties to this case. [APPV1-128.] In fact, Defendant Secretary exclaimed at trial that "plaintiffs, had no evidence, none, to support their remarkable claim" and called the hearing a "farcical proceeding," all the while knowing that Petitioners' claims had been validated through discoveries made during the recount proceedings. [APPV2-083 to -084.]. That statement is reckless at best, deceitful at worst.

Notably, the trial court mischaracterized the undervote as a "human error." [APPV2-069.] Although Pinal County had several issues that caused a drastic swing in votes, many of which *were* human error, Pinal County reported that 63 ballots having "unclear marks" were initially machine tabulated as undervotes in the canvass, but in the recount they were determined to be ***uncounted valid votes***. This particular error was not human. [APPV1-128.]

Although *human* errors can cause garden variety, routine election maladies that courts and voters accept, *tabulation* errors presumably caused by faulty programming that systematically disenfranchises voters without safeguards demanded by procedural due process are more akin to fundamental unfairness. *See Krieger v. Peoria, City of*, No. CV-14-01762-PHX-DGC, 2014 U.S. Dist. LEXIS 117235 (D. Ariz. Aug. 22, 2014) (differentiating between garden variety election irregularities and systemic problems that are fundamentally unfair and violate due process).

Third, the trial court sidestepped the legal standard for a new trial, and instead of finding that the evidence could not have been discovered by reasonable diligence, the court asserted that the "information was not discoverable until December 29, 2023

(sic), based on the recount judge order precluding sharing of information about the recount prior to the certification." [APPV2-069.] However, this radically misstates the order.

The recount order states counties "shall not release to the public the results of the recount, including daily vote totals, until the Court has certified the results," and all parties must "keep confidential any information they may acquire that would disclose the vote of any elector and destroy any notes that would disclose same[.]" [APPV2-093.] Nothing by express word or implication prevented either Defendant Secretary or Defendant Pinal County from disclosing the fact that machine tabulators in at least one county *did* record valid votes as undervotes. Instead, Petitioners were surprised by this discoverable information six days after the trial when the recount was certified. Critically, no authority permitted Defendant Secretary to violate the duty of candor to the tribunal and to falsely assert that Petitioners had no evidence while simultaneously suppressing facts that validated Petitioners' claims.

Fourth, the trial court found that "the Pinal County errors would not be sufficient to be more than speculation about other errors for which there is no proof." [APPV2-069.] This suggests that Petitioners must know for a fact, without the benefit of discovery (including access to the CVR and inspection of the ballots identified by the CVR), whether or not other counties had the same issue with undervotes. That's impossible. It also suggests that Petitioners might even have to know how many ballots

were misread as undervotes and who the valid votes were intended for. That is another impossibility.

The fact is that Petitioners proved there were 68,196 ballots that machine tabulators recorded as undervotes in the ten counties that reported undervotes in the recount. [APPV2-013.] At trial, 14 ballots out of 2,300 inspected were determined to have been misread by tabulators (either as an undervote or overvote). [APPV2-011 to -012.] This is a 0.61% error rate that was proven at trial. [*Id.*] That suggests there may be 416 uncounted valid votes statewide. For purposes of determining if Petitioners met their burden for a new trial *only*, the court would ordinarily assume all votes were cast in favor of Petitioners. In other words, Contestant Hamadeh would be presumed to have exceeded the margin of victory by 156 votes, which is more than enough to change the outcome of the trial.

The court's findings that Petitioners failed to meet their burden as it relates to newly discovered (and wrongfully withheld) evidence that machine tabulators were confirmed to have misread valid votes as undervotes is arbitrary and capricious. Ariz. R. P. Spec. Act. 3(c).

C. DUE PROCESS OF LAW DEMANDS UNIFORM PROCEDURES FOR ELECTION CONTESTS.

Based on the foregoing facts and issues, the trial court made many arbitrary and capricious determinations. Ariz. R. P. Spec. Act. 3(c). This could be remedied with a

consistent and uniform set of procedures for election contests. Petitioners invite this Court to make the following legal holdings as to the issues identified herein.

First, this Court should affirm that the time provisions of A.R.S. § 16-673(A) are jurisdictional and therefore mandatory, and as such necessitate election contests to be filed within five days of the relevant canvass, but the time provisions in A.R.S. § 16-676(A) merely provide guidance to the court and are therefore directory. *See Brousseau*, 138 Ariz. at 456.

Second, this Court should affirm that the Supreme Court has the exclusive power to prescribe the rules of court and that this Court will "recognize 'reasonable and workable' procedural laws if they supplement rather than conflict with court procedures." *Reed*, 248 Ariz. at 76 ¶ 10; Ariz. Const. art. 3, art. 6, §§ 1, 5(5). *See also Heat Pump Equip. Co. v. Glen Alden Corp.*, 93 Ariz. 361 (1963).

Third, this Court should hold that, along with all other rules of civil procedure, litigants may file motions for a new trial in election contests, and these motions may be granted where litigants meet the requisite burden.

Fourth, this Court should declare that, for purposes of A.R.S. §§ 16-672 and 674, state and county officials are indispensable, nominal parties to an election contest who are joined solely for the purpose of adhering to orders of the court, not for asserting substantive arguments. *See generally Mandreas*, 127 Ariz. at 587.

Fifth, the Court should declare that, for purposes of A.R.S. § 16-677:

- Parties are entitled to inspect ***all*** of the ballots, including provisional ballots, and that a court's decision to ***limit*** the scope of inspection is therefore discretionary to the extent that limitations are necessary and reasonable;
- To aid the court in reasonably limiting the scope of ballots inspected, parties are entitled to inspect:
    - Electronic images of and electronic data from ballots, as expressed in A.R.S. § 16-625, that permit parties to perform queries to identify specific ballots to inspect; and
    - County provisional ballot reports;
- The court may appoint multiple inspection teams in each county consisting of three persons, one person selected by each of the parties and one person appointed by the court; and
- The legal custodian of the ballots is any designee from the county office who has or can have legal custody of the ballots and should not be constrained by the availability of a single representative.

VI. CONCLUSION

Voter confidence in the outcome of elections has steadily waned since Americans were captivated by reports of hanging chads in the 2000 presidential election. In recent years, Arizonans of all political stripes have demonstrated grave concerns over the fair administration of elections. Unfortunately, widespread problems in 2022 have

significantly tarnished the reputation of Maricopa County and the State of Arizona. To date, confidence has yet to be restored.

Here, state and county officials used the power and purse of the government to take a substantive position in an election contest and to actively tip the scales of justice by withholding public records and concealing information that validated the vote count issues Petitioners raised at trial.

In this race decided by only 280 votes, these state actions directly oppose the constitutional rights of Arizonans to *free and equal elections*. Ariz. Const. art 2, § 21 ("All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."). This Court should not condone this abuse of power by state and county officials.

Questions surrounding the 2022 Attorney General race need not linger. Rather, by reversing the trial court's order and remanding for a new trial, this Court will ensure that significant, non-speculative, outcome-determinative issues are fully litigated and that every valid vote is counted. If elections in Arizona are to truly be free and *equal*, Arizonans must be assured that government bodies cannot use resource and information asymmetry to favor one candidate over another with impunity.

For these reasons, Petitioners respectfully request that this Court accept special action jurisdiction and grant the relief requested by: (1) ordering the trial court to issue final judgments consistent with Rule 54(c) and (2) reversing the trial court's denial of Petitioners' Motion for a New Trial and remanding for further proceedings.

VII. REQUEST FOR ATTORNEY FEES

Petitioners request attorney fees and costs pursuant to Ariz. R. Civ. App. P. 21, A.R.S. § 12-2030, the private attorney general doctrine, *see Ariz. Ctr. for Law in Pub. Interest v. Hassell*, 172 Ariz. 356, 371 (App. 1991), and other applicable law.

RESPECTFULLY SUBMITTED this 3rd day of August 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Ariz. R. P. Spec. Act. 7, the undersigned counsel certifies that the Petition for Special Action is double spaced and uses a proportionately spaced typeface (i.e., 14-point Garamond) and contains less than 10,500 words according to the word-count function of Microsoft Word.

RESPECTFULLY SUBMITTED this 3rd day of August 2023.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of August 2022, a copy of the foregoing Combined Special Action Petition and Appendix was electronically filed via AZTurboCourt. The undersigned also certifies that a copy of the Combined Special Action Petition and Appendix was e-served via AZTurboCourt and emailed to:

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