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Plaintiff (Pro Per)

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

**Josh Barnett,**

**Plaintiff,**

**v.**

KATIE HOBBS, in her official capacity as  
Secretary of State of Arizona, JACK  
SELLERS, THOMAS GALVIN, BILL GATES,  
CLINT HICKMAN, AND STEVE GALLARDO  
in their respective official capacities as members  
of the Maricopa County Board of Supervisors,

**Defendants**

) **Case No.**  
)  
) **CIVIL COMPLAINT**  
) **FOR DECLARATORY**  
) **AND INJUNCTIVE**  
) **RELIEF**

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Josh Barnett, Plaintiff, brings this action for declaratory and injunctive relief, and hereby alleges as follows:

**JURISDICTION AND VENUE**

This Court has jurisdiction over actions seeking declaratory and injunctive relief under Article VI, § 14 of the Arizona Constitution and A.R.S. §§ 12-123, 12-1801, and 12-1831.

A justiciable controversy exists because, without Court intervention, Plaintiff’s pending election contest will be burdened by various presumptions — legal, political, and in the public mind — that the election was conducted properly, when it was not

Venue is proper in Maricopa County under A.R.S. § 12-401 and Arizona Rule of

Procedure 65(a) and (b).

## **PARTIES**

Plaintiff is Josh Barnett, a qualified elector in the State of Arizona, who voted on November 8, 2022.

Defendant Katie Hobbs, is the Secretary of State of Arizona.

Defendant Bill Gates is the Chairman of the Maricopa County Board of Supervisors.

Defendant Jack Sellers is a member of the Maricopa County Board of Supervisors.

Defendant Thomas Galvin is a member of the Maricopa County Board of Supervisors.

Defendant Clint Hickman is a member of the Maricopa County Board of Supervisors.

Defendant Steve Gallardo is a member of the Maricopa County Board of Supervisors.

## **GENERAL ALLEGATIONS**

### **a) Maricopa County Board of Supervisors Chairman Bill Gates Stated That The November 8th Election Was “Chaos”; And He Admitted Responsibility For The Chaos.**

On November 14, 2022, at an official press conference held by the Board of Supervisors, Chairman Bill Gates made an admission of maladministration after blaming the voters for not wanting to put their ballots in “Box 3” - defined as the “misread ballots” box in the 2022 Maricopa County Poll Training manual - when he stated that the Board of Supervisors was responsible for “some of the chaos last Tuesday”.

The Official Youtube Channel of Defendants, Maricopa County Board of Supervisors, does not contain a video of this press conference at this time, but as of the writing of this Complaint, the press conference video is hosted by multiple news organizations, including; The Independent, [youtube.com/watch?v=tepnac3OP5s](https://www.youtube.com/watch?v=tepnac3OP5s) at 29:55 - 31:55; and ABC15 Arizona, [youtube.com/watch?v=SR4s815v\\_zo](https://www.youtube.com/watch?v=SR4s815v_zo) at 31:50 - 32:10. (Should these video files be removed from Youtube, plaintiff has retained a copy offline should the Court request it.)

**b) Ongoing Investigation By The Elections Integrity Unit of the Arizona Attorney General's Office.**

On November 8, 2022, voters headed to the polls were greeted with a systemic county-wide obstacle of malfunctioning electronic voting equipment exacerbated by systemic maladministration of the emergency by officials of the Board of Supervisors, the Recorder's Office, and Election Board members on the ground at 223 Voter Centers throughout Maricopa County. To which, Plaintiff requests the Court take Judicial Notice of the ongoing controversy concerning the November 8th General Election; and Judicial Notice of the official letter sent on November 19, 2022, by Assistant Attorney General, Jennifer Wright, to Mr. Thomas Liddy, Civil Division Chief, Maricopa County Attorney's Office, regarding an ongoing investigation into multiple issues of potential maladministration, and violations of law concerning execution of the November 8th General Election. (See Exhibit 1).

In that letter, Assistant Attorney General, Jennifer Wright, referred to the chaos on Election Day caused by systemic failure of voting machines and printers as follows:

*"The Elections Integrity Unit ("Unit") of the Arizona Attorney General's Office ("AGO") has received hundreds of complaints since Election Day pertaining to issues related to the administration of the 2022 General Election in Maricopa County. These complaints go beyond pure speculation, but include first-hand witness accounts that raise concerns regarding Maricopa's lawful compliance with Arizona election law..."*

*"According to Maricopa County, at least 60 voting locations had issues...which appeared to have resulted in ballots that were unable to be read by on-site ballot tabulators..."*

*"Following widespread reports of problems at voting locations on Election Day...voters who had already checked in to e-Poll book, but were having difficulties voting [were instructed that they could] "check out" of that voting location, and would be able to nonetheless vote in another voting location. Based on sworn complaints received by the Unit, not only have poll workers reported that they were not trained and/or not provided with information on how to execute "check out" procedures, but many voters have reported the second voting location required the voter to cast a provisional ballot as the e-Poll books maintained the voter had cast a ballot in the original voting location..."*

The letter notes that Maricopa County had stated "at least 60 voting locations had issues" processing ballots. But that number is nowhere supported as anything more than a guess

by the Board of Supervisors, and therefore it is not possible - at this time - to know how many of the 223 voting locations actually had substantial issues, if not all of them, since “at least 60” puts no ceiling on the number.

### **c) Maricopa County Responds To Asst. Att. Gen. Wright**

On Nov. 27, 2022, while plaintiff was having this action composed, the Maricopa County Board of Supervisors responded to the Elections Integrity Unit in a letter from Civil Division Chief Liddy (hereinafter, “the Liddy letter”). (Exhibit 2). Thankfully, the Liddy letter — though not intended to support plaintiff’s factual and legal points in this pleading — does, in fact, support plaintiff’s arguments and conclusions herein.

For example, Maricopa County previously stated that “at least 60 voting locations had issues”, whereas the Liddy letter admits that, “Maricopa County experienced unanticipated printing problems in 31% of its vote centers.” 31% of 223 vote centers equals 71 vote centers with “printing problems”, a significant increase up from 60, but that admission does not in any way put a ceiling on the number of vote centers that had “issues”.

Maricopa County’s previous admission isn’t limited to printer issues, but states quite generally, “*at least 60 voting locations had issues*”. Other issues concern tabulator issues, and Election Board administration issues, Board of Supervisors communication issues, maladministration issues, wait time issues, and a pandemic of hopelessness at vote centers which went viral throughout the hearts and minds of Maricopa County voters. Nobody can deny *that*. As such, the Liddy letter only admits that 71 locations had printer issues, while failing to inform how many other locations suffered from these other issues, and for how many hours of the day each location was affected.

### **d) The “Check-Out” and Check-In At New Location Option Had No Basis in Law.**

Adding to the confusion and chaos on November 8th, was a decision by the Board of Supervisors to give voters an unusual option to vote that isn’t codified anywhere in the Arizona Revised Statutes, or the 2019 Election Procedures Manual (EPM) promulgated by the Secretary of State (which remains the controlling EPM for the 2022 General Election), wherein voters were informed they could “check-out” of any vote center by spoiling their ballot, and then “check-in” at any other vote center to cast another ballot.

A statement tweeted by Maricopa County Recorder, Stephen Richer, at 4:07 PM on November 8th, was issued by his Office on behalf of the Board of Supervisors, which set in print the emergency instructions widely reported in the media all day:

*“The Board of Supervisors is also advising all affected voters to do one of the following...*

*“2. If you have already checked in, but want to cast your ballot at another site, you must first check out with a poll worker at the SiteBook to return the issued ballot. Then you will be able to vote at any of our locations.” (Exhibit 3.)*

But this was a clear usurpation of the procedure regarding spoiled ballots mandated by ARS 16-585 (and the EPM at pg. 174, discussed further below), which unambiguously codifies a consecutive sequence of events that take place at *the same location* where the voter received their initial ballot:

**c) ARS 16-585:** *If a voter spoils a ballot **and obtains another**, the inspector and one of the judges shall write on the back of the ballot the words "spoiled" and return it to the board or persons from whom the ballots were originally received. (Emphasis added.)*

Nothing in the statute authorizes, indicates, or even suggests a voter may leave one location after receiving a ballot first, then go vote in a second location. When that voter checks in to a vote center, they receive a ballot with the name of that precinct printed on the ballot. (See Exhibit 4.) If the voter spoils the ballot, a “replacement” is given. If the voter were to leave that location, for a vote center in another precinct, those ballots will have the *next precinct’s name on them*, and therefore the voter could not get an *actual replacement* at another location.

To this point, the Liddy letter makes a ridiculous circular argument, stating, “No statute prohibits a voter from checking *out* of a particular polling location to go to another polling location to vote. The County allows voters to do so.” I’m sure the Court could imagine infinite things which are not specifically prohibited by statute, but that doesn’t mean any of them are sanctioned by law to take place during the administration and execution of an election. For example, there is no law that prohibits a voter from yodeling silently in their mind for all 13 hours in meditation over their choices in marking the ballot for the entire time the vote center is open, thereby preventing any other voter from using that precious space dedicated for voters, but that certainly doesn’t mean such behavior authorized by law.

ARS 16-585 *specifically* lays out a clear sequence of events mandating how the voter will spoil the ballot at the location and receive the new one from the same poll workers charged by law with guiding him in spoiling it. Since the voter is prohibited from leaving the vote center with a regular ballot, the sequence of events listed in ARS 16-585 leave

no wiggle room for the troubling assertion in the Liddy letter, which sounds more like administrative insurrection and arrogance, rather than an honest respect for law.

Additionally, plaintiff asks the court to take Judicial Notice of the fact that the words “check-out”, do not appear anywhere in ARS 16-585; the Elections Procedure Manual, or the Maricopa Poll Training manual given to *all* poll workers in advance of the election.

The poll training manual for *Cochise* County, at pg. 43 (See Exhibit 5), states:

*“No more than two (2) additional Ballots may be issued to a Voter. Let the Voter know this when they spoil the first Ballot. Essentially, they have 3 attempts to vote the ballot issued.”*

If the replacement ballot represents an identical copy of the initial ballot, and each spoiled ballot is read in the voting system as “an attempt” (to tabulate an exact copy) rather than as a new ballot, then once a voter registers in the E-pollbook at a certain voting location, it’s possible no other voting location will allow the voter to check in, as that voter is now linked with ballots from the first location. This could have been a major reason that there was so much chaos on November 8th. In any case, the Cochise manual makes it clear that a voter is entitled to *three* regular ballots, not two.

#### **d) Erroneous Poll Training Manual.**

Further adding to the confusion and chaos on November 8th was that the official Maricopa County Poll Training Manual (PTM) for 2022 contained an egregious error of law and procedure which confounded poll workers and voters trying to utilize the misinformed option of going to another vote center after spoiling their ballot at the initial location. On page 115, of the PTM, it states that, “A voter may spoil **two** ballots at a voting location, after which they will be offered a provisional ballot.” (Exhibit 6, PTM at pg. 115.) But this is false as to *both* regular ballots and provisional ballots.

While the PTM uses bold print emphasis to stress that the voter may only get “**two**” regular ballots, the emphasis acts as an utterly false usurpation of law on two points of great magnitude concerning the legal arguments herein. This is because the EPM — which mandates rules that have force of law in all Arizona counties, for running uniform elections in statewide races — mandates that each voter may receive **three** regular ballots, not **two**:

*“If you accidentally spoil your ballot, present it to the election judge. Make sure to conceal any votes you have made on the ballot. Either you or the judge will need to mark*

*the ballot as spoiled, and the judge will give you another ballot on which to cast your vote. You are allowed to use no more than **three** ballots.”* (See Exhibit 7, EPM at pg. 174. Emphasis added.)

Since the Board of Supervisors officially stated that the tabulators were systemically rejecting *some* ballots due to printer errors on the ballot read marks, the chances of obtaining a non-defective ballot go up 33.3 percent if a voter receives **three** regular ballots instead of **two**.

Maricopa Election Day voters who were not on the Early Voting List, and who did not receive an “Early Ballot”, were exposed to a technical manual, in the hands of poll workers, which indicated that voters were stripped of their third regular ballot *on the day they needed it most*. November 8th was exactly the chaotic Election Day disaster which the three ballot rule was mandated to protect against, but through maladministration, Maricopa County election officials approved a defective manual which struck third *regular ballot* availability out, and replaced it with instructions to issue a *provisional ballot instead*, that no voter who received a regular ballot had any legal right to. The manual led to chaos, in that poll workers who consulted it got malicious information, rather than clarity. The full extent of the damage is just not knowable.

#### **e) Illegal Provisional Ballots.**

Any such provisional ballot, if cast, would be an illegal ballot. And if the law were followed by ballot adjudicators, such provisional ballot could not be counted, and therefore any such voter would be disenfranchised. And there’s no way of knowing how many voters were subjected to control of the illegal manual without a thorough investigation of all voters and poll workers spoiling ballots, and checking in voters on November 8th. Such an investigation would be impossible to conduct, and therefore the election - for this reason, and others discussed herein - is incurably uncertain and should be annulled as per ARS 16-672(A)(1); and 16-676(B). This is because “*ARS 15-579. Procedure for obtaining ballot by elector*”, does not authorize provisional ballots for Election Day voters who have not already received an Early Ballot.

This is made obvious in the EPM at pg. 176, which contains a poster that must be posted at every voting location in Maricopa County (See Exhibit 8, PTM at pg. 176). The poster’s bold faced title is, “**Right to Vote a Provisional Ballot.**” It begins with a proviso: “*If you did **not** receive a regular ballot, you have a right to vote a provisional ballot...*” (Emphasis added.) Therefore, it’s obvious that if a voter *did* receive a regular ballot, that voter does *not* have a right to a provisional ballot at all. Both the ARS and EPM directly prohibit it.

And on this point, the Liddy letter absolutely gets it wrong, misstating the law as follows:

*“If a voter leaves a vote center without checking out, then goes to another vote center to vote, the site book will show that she checked in at the previous vote center. Consistent with Arizona law, she will be allowed to vote a provisional ballot in the new vote center and place it in a provisional ballot envelope.”*

That statement is *not* consistent with Arizona law at all — *if* they received a regular ballot at a different location first, which is exactly what happened on November 8. No voter is allowed to receive a provisional ballot at any point after receiving a regular ballot, as previously discussed above, as per the EPM, and as posted in all vote centers.

Therefore, the Maricopa Poll Training manual is false and misleading, which contributed significantly to the chaos on Election Day. Voters have been forced to accept the outcome of an election tainted by systemic technological failure, substantive maladministration in publishing the basic training manual, and with no official explanation accurately detailing how many voters were disenfranchised as a result of the pandemic of hopelessness unleashed upon Maricopa County voters by official election malfeasance.

#### **f) Abnormal Increase Of Inactive Voter List In Run-Up To The November 8 Election.**

The Recorder of Maricopa County maintains historical records of voter registration. In the four years, from 2018 up until April 2022, the highest number of Inactive Voters was recorded at 302,688 (October 2018), and the lowest was 220,888 (January 2020). Concurrently, Active Voters went up from 2,229,718 in the 2018 Primary, to 2,592,800 in the April 2022 Voter Registration Report.

But in the six months — from April 2022 to October 11, 2022 — which was the registration cut-off for the Nov 8th General Election, the Inactive Voter list experienced an abnormal exponential increase of Inactive Voters, going up from 278,570 to 503,741. And the Active Voter list — in the *six month run-up* to the general election — went down from 2,592,800 to 2,435,397, which makes no sense.

The difference as to Inactive Voters is 225,171. In order for that to be accurate, 225,171 Final Notices would have needed to be mailed from the Recorder to those voters, and each would have 35 days to respond before being placed on the Inactive Voter List. This would have required significant attention from staff at the Recorder’s Office and from Recorder Richer himself. It is a huge number, and assuming it was accomplished



according to law, answers must be forthcoming as to *why*, in the run-up to the November 8th General Election, the Recorder was so intensely focused on removing registered voters from the Active List, and placing them on the Inactive List.

The official “Participation” of Maricopa County voters was just published (Exhibit 9) at 64.17%, which is almost as high as the historic turnout in the 2018 Midterm Election. Since Plaintiff must prove that the results of the 2022 General Election have been rendered incurably uncertain as per Arizona precedent (see below), whether the participation rate was reduced unnaturally compared to 2018 will be a probative piece of evidence.

Theoretically, if you shift 225,171 voters from inactive to active just before the election, which reflects a statistically normal number of inactive and active voters — when compared to all elections and official Maricopa Recorder reports determining registered voters in the four years leading up to April 2022 — and then divide the official number of ballots cast in this election - 1,562,758 — by the theoretically adjusted active voter number — 2,660,568 — the participation rate drops to .5873, or 58.7%. Then if you subtract that from the historically high participation rate of 64.5% in Maricopa County in the 2018 Midterm General Election, the difference is .0576, or 5.76%, which reflects a 153,248 vote drop off from 2018, and may reflect a ballpark figure as to how many voters were disenfranchised by the chaos on November 8th.

Additionally, in another act of maladministration — while ARS 16-583, and the EPM, contain very specific and elaborate procedures concerning inactive voters — including special instructions whereby such voters must “affirm” before an election official their exact legal address — in a complex process by which ARS 16-583 requires the voter to hold dual capacities on Election Day as both a “registrant” and “elector” — the official Maricopa Poll Training manual again *fails* by not including the word “inactive” anywhere in the manual.

Furthermore, despite a widespread public relations campaign by election officials telling voters in Maricopa County that the vote center model would allow them to vote at any of the 223 locations, it wasn't true as to voters on the Inactive Voter List, in that while the EPM does allow inactives to vote a provisional ballot at any precinct location they show up at, the EPM also makes it clear that such a vote will *not* count:

*“If a voter whose registration record is in inactive status...has a new residential address in a different precinct, the voter must be directed to the correct voting location (in counties that conduct assigned polling place elections). In this case, the voter must also be informed 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 to the voter's current address for the vote to count.” (Exhibit 10.)*

This paragraph — because of the odd use of parentheses — actually applies to both; *vote center counties*; and *assigned voting location counties*. In both cases, inactive voters *must* be directed to the correct voting center for their provisional vote to count. But the inactive voter *must* also be informed that they have a *right* to vote a provisional ballot that will not count right there at the location they are at. The EPM cites directly to ARS 16-583 as authority, which states:

*“If the registrant indicates that the registrant lives at a new residence, the election official shall direct the registrant to the polling place for the new address.”*

The statute applies to all inactive voters, no exceptions. Of course, the statute was written before there were vote center models, but the statute could have been updated if the legislature sought to exempt inactive voters from this requirement. But they didn't. The EPM reflects that both authorities are of one mind. The statute says — “shall direct...”, and the EPM says, “voters must be directed...” — to the *correct voting location*.

Both authorities agree, but the EPM adds this strange confounding demonic knuckle-ball which requires the poll worker to inform the inactive voter that they have the *right* to vote a provisional which will *not* count — standing right where they are. The knuckle-ball allows election officials to inform the public that all Maricopa Voters can vote at all poll locations. But in order to make that blanket cover all voters, inactives must be informed that they have the *dubious right* of voting a ballot which will not count.

It gets even more strange when you consider an inactive voter who has *not* changed their address, but is placed on the Inactive Voter List anyway, to which ARS 16-583 says this:

*“If a person whose name is not on the precinct register appears at a polling place, an election official shall determine whether the person is on the inactive voter list. If the person is on the inactive voter list, the registrant, on affirmation by the registrant before an election official at the polling place that the registrant continues to reside at the address indicated on the inactive voter list, shall be permitted to vote at that polling place.”*

So if you show up at a polling location and are informed that you are on the Inactive Voter List, you can cure that problem — if your actual address matches the one on file for you at the vote center you are at — by becoming a *registrant* who *affirms* that the addresses match. In that case, you may then vote a regular ballot. But *only* if you are

made aware of this technical option and follow these steps. You need an “election official” to go before, and you must make an “affirmation” which is a legal term of art for something more than a simple statement.

When we consult the EPM to see whether the poll worker — *shall* or *must* — inform you of this cure option, we see this:

*“If a voter affirms they continue to reside at the address on the signature roster or in the e-pollbook, the voter must be issued a regular ballot and the County Recorder must place the voter’s registration record in active status following the election. A.R.S. § 16-583(A)-(B).”*

There’s nothing in the EPM which requires the poll worker to inform voters of their statutory right to affirm the address. So if a voter happens to mention that they do live at the address on file in the precinct register or E-pollbook, and if that poll worker allows someone to vote a regular ballot without their following the technical sequence of becoming a *registrant* before an election official, then technically they have cast an illegal ballot, and if flagged later it may not count. And it’s also feasible that a malicious partisan Election Board poll worker might even prevent an inactive list voter from voting at all unless they know the affirmative secret.

Now consider again that the word “inactive” doesn’t appear even once in the 2022 Maricopa Poll Training manual. In light of the official Inactive Voter List having been given a massive steroid-like injection of 225,171 voters just prior to November 8th, it’s only reasonable to consider that poll workers, E-pollbooks, ballots, and printers may have been affected by both — a lack of training thereto — and the complete absence of any guidance whatsoever in the Maricopa Poll Training Manual.

As such, plaintiff contends that the results of the November 8th General Election are cast into incurable uncertainty due to election maladministration.

## **II. LEGAL ALLEGATIONS**

### **a. The Election Results Are Incurably Uncertain**

Plaintiff relies on three cases in the Complaint for Declaratory Judgment and Injunctive Relief. The controlling precedent concerning election contests in Arizona is *Findley v. Sorenson*, 276 P. 843, 35 Ariz. 265 (1929):

*“[H]onest mistakes or mere omissions on the part of the election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain.”*

In *Storer v. Brown*, 415 U.S. 724, 730 (1974), the Supreme Court announced perfectly why elections must be free from chaos:

*“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes. In any event, the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates.*

When officials charged with executing elections break away from established regulations, chaos is always waiting in the wings to destroy order and sew the seeds of radical uncertainty. There are multiple races yet to be determined, but Plaintiff will contest the election regardless of the result, because it's the right thing to do at this moment in time, and as to the particular events discussed herein. But if Plaintiff must wait until winners are declared in the statewide races for Governor, Secretary of State, and Attorney General, the burden against him is much greater:

*“The Plaintiff in an election contest has a high burden of proof and the actions of election officials are presumed to be free from fraud and misconduct. See Hunt v. Campbell, 19 Ariz. 254, 268, 169 P. 596, 602 (1917) ('the returns of the election officers are prima facie correct and free from the imputation of fraud'); Moore v. City of Page, 148 Ariz. 151, 156, 713 P.2d 813, 818 (App. 1986). (Quoting, Ward v. Jackson, pg. 5, Minute Entry in the Sup. Ct. Mar. Cty., Judge Randall H. Warner, CV 2020-015285)(Dec. 4, 2020)*

Plaintiff contends that the General Election in Maricopa County was rendered incurably uncertain due to official misconduct, and it must be annulled, and Plaintiff seeks to avail himself of Declaratory relief before the legal, political, and psychological burdens which stack up after the election is canvassed by the Secretary of State, and winners are declared.

**b. ARS 16-672; and 16-676, the election contest statutes.**

ARS 16-672 states:

A. **Any elector** of the state may contest the election of any person declared elected to a state office...upon any of the following grounds:

1. For misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election. (Emphasis added.)

Plaintiff alleges misconduct on the part of Election Boards and members thereof, and also on the part of officers charged by law with the responsibility of making the canvass, and participating in the canvas. Because of the misconduct of these officers in creating the conditions by which the chaos ensued, the canvas has been made bad. Whatever numbers are revealed by the actual returns of the canvas (*participation in the canvas*), cannot be trusted. All of the steps taken in administering the election are part of the *making* of the canvas. And these officers made a bad canvas. Had they made a good canvas, plaintiff would not be pleading before this Honorable Court.

In order to discuss the legislative history of ARS 16-672 — plaintiff draws attention of the Court to the actual statute interpreted by the Arizona Supreme Court in *Findley v Sorenson* — the “1913 Revised Statutes As Amended”, a precursor to 16-672. They have virtually the same intent and scope, but the vocabulary has changed to reflect that Maricopa County does not have a Board of Canvassers, but now has a Board of Supervisors, and a Recorder. Section 3065 of the 1913 law states that “any elector” may contest the election upon the following grounds:

Sec. 3065(1): “For *malconduct* on the part of the election board, or any member thereof, or on the part of the board of canvassers, or any member thereof.

“Malconduct”, according to Black’s law dictionary is a synonym of misconduct. And misconduct includes malfeasance, and/or maladministration. Moreover, Sec. 3065 obviously applies to malconduct by the those officers throughout the election, not only when they were actively canvassing the results. This, of course, includes officers involved with making or participating in the canvas. But ARS 16-672 is not limited to misconduct of the officers *while* actually canvassing, but is aimed - as the previous statute makes clear - at misconduct in executing all duties of such officers before, during and after the election.

**c) ARS 16-574: Repair or substitution of machines; use of paper ballots.**

*A. If a voting machine being used at an election becomes out of order during the election, it shall be repaired if possible or another machine substituted as promptly as possible...*

*B. If repair or substitution of a machine cannot be made, paper ballots printed or written and of any suitable form may be used for taking votes, and for that purpose the sample ballots may be employed.*

The law is clear, voting machines must be repaired or replaced when they malfunction. There is no option in the statute which allows the machines to continue in use when they are obviously failing to read ballots. But that didn't happen at many of the 223 locations on November 8th. Instead, the Election Boards just kept checking in voters all day, allowing them to engage their sacred votes with very sick voting machines by printing a ballot, while knowing there was an abnormal likelihood that the ballot would not be tabulated. Instead, every machine that had rejected more than a handful of ballots should have been shut down immediately, as per ARS 16-574.

This trapped voters into a desperate situation where they were prevented from voting on accurate voting machines, and were forced to vote by methods unfamiliar to them, including placing their ballot in the misread ballot box for duplication followed by adjudication.

#### **d. Standing; Declaratory Judgment**

Plaintiff is a qualified elector in Arizona who voted on November 8, 2022. (Plaintiff was also a candidate in the Republican Primary for Congress this year.) While the plaintiff has express statutory standing under ARS 16-672, he cannot bring his contest action until a winner is declared. But since Plaintiff will contest the election due to misconduct of government officials in charge of the election, regardless of who is declared the winner in the races for Governor, Secretary of State, and Attorney General, there is an existing justiciable controversy, and therefore, the Uniform Declaratory Judgment Act, at ARS 12-1831, gives standing to plaintiff for this complaint and all motions for injunctive relief related thereto:

*ARS 12-831: "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."*

Plaintiff understands that there will be legal, political, procedural, and psychological public presumptions against his contest, once a winner is declared, and he seeks to avoid butting up against them in pleading his case. A Declaratory judgment will also save personal resources of the plaintiff, and judicial resources of the court, and will act as res judicata in subsequent contests.

A declaratory judgment will terminate the underlying controversy, and the underlying uncertainty as per ARS 12-1836, which states:

*“The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.”*

Since plaintiff must prove that the results of the election have been rendered incurably uncertain in order to prevail — as per his allegations in this complaint — the peculiar wording of ARS 12-1836 must be considered, in that one may ask, how can an order sought by plaintiff — which requires a showing of incurable uncertainty as to the factual aspects of the election — terminate the underlying uncertainty at the same time.

It’s a nice point, but easily overcome by first clarifying that there are *two* uncertainties in play here; a *factual* uncertainty as to the outcome of the election; and a *legal* uncertainty as to whether the Court may refuse to render an order for declaratory judgment, if such a decree would not terminate the underlying controversy. If the declaratory judgment trial ends in a finding of incurable uncertainty as to the winners of certain races, that verdict is res judicata as to the underlying *factual* controversy in any subsequent election contest under ARS 16-676(B), which requires that “the court shall file its findings and immediately thereafter shall pronounce judgment...*annulling*...the election.”

If the election is annulled, it’s legally void. The law no longer recognizes that there was an election, and therefore all *legal* uncertainty is terminated as well. It’s like the difference between a divorce and an annulment; a *divorce* ends the marriage, whereas an *annulment* means you were never married.

### **COUNT ONE - DECLARATORY RELIEF**

Plaintiff incorporates by reference the above allegations.

Pursuant to Arizona’s Uniform Declaratory Judgment Act (A.R.S. § 12-1831 *et seq.*), Plaintiff is entitled to and requests a judicial determination and declaratory judgment that

the General Election concluding on November 8, 2022 has been rendered incurably uncertain due to the misconduct of Election Boards and officers making and participating in the canvass thereof.

There is an actual and justiciable controversy, and such judgment or decree will terminate the uncertainty and controversy giving rise to this proceeding as required by A.R.S. § 12-1836.

Accordingly, the Plaintiff is entitled to declaratory relief providing that the General Election of November 8, 2022, as to the races for Governor; Secretary of State; Attorney General; and United States Senator have been rendered incurably uncertain under Arizona statutes and precedents.

### **COUNT TWO - INJUNCTIVE RELIEF**

Plaintiff incorporates by reference the above allegations.

Plaintiff will be irreparably harmed if the Defendant, Katie Hobbs is permitted to certify the statewide canvass of the General Election of November 8, 2022, as to the races for Governor; Secretary of State; Attorney General; and United States Senator.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment in his favor and against Defendants as follows: Declare that the outcome of the General Election of November 8, 2022, as to the races for Governor; Secretary of State; Attorney General; and United States Senator, has been rendered incurably uncertain due to misconduct of the Election Boards and/or officers making or participating in the canvass;

Enter an injunction enjoining the defendant, Secretary of State Katie Hobbs, from canvassing the statewide results of the General Election of November 8, 2022, as to the races for Governor; Secretary of State; and Attorney General; and United States Senator;

Enter an injunction enjoining the defendant, Secretary of State Katie Hobbs, from declaring any winners of the General Election of November 8, 2022, as to the races for



Governor; Secretary of State; and Attorney General;

Enter other injunctive relief that is necessary and appropriate to ensure compliance with the foregoing constitutional and statutory provisions;

Award such other relief as the Court deems proper.

RESPECTFULLY SUBMITTED: November 29, 2022

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Plaintiff (Pro Per)

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