

**IN THE SUPREME COURT FOR THE
STATE OF ARIZONA**

David Mast and Tom Crosby,

Plaintiffs,

v.

Katie Hobbs, in her official capacity as Governor of Arizona, Kris Mayes, in her official capacity as Attorney General of Arizona, Adrian Fontes, in his official capacity as Secretary of State of Arizona, Stephen Richer, in his official capacity as Maricopa County Recorder; Scott Jarrett, in his official capacity as Maricopa County Director of Elections; Rey Valenzuela, in his official capacity as Maricopa County Director of Elections; Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo in their official capacities as members of the Maricopa County Board of Supervisors; and the Maricopa County Board of Supervisors,

Defendants.

Case No.:

**COMBINED COMPLAINT FOR SPECIAL ACTION ARIZONA
CONSTITUTION: ARTICLES II, §§ 13, 21 & ARTICLE VII §§ 1 &
12, UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT:
EQUAL PROTECTION & FUNDAMENTAL RIGHT TO VOTE, & 42
U.S.C. § 1983**

(Oral Argument Requested)

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Plaintiffs, David Mast and Tom Crosby (collectively, “Plaintiffs”) bring this Complaint for Special Action (the “Complaint”) against Katie Hobbs, in her official capacity as the recognized Governor of Arizona, Kris Mayes, in her official capacity as the recognized Attorney General of Arizona, Adrian Fontes, in his official capacity as Secretary of State of Arizona, (collectively, “State Defendants”), Stephen Richer, in his official capacity as Maricopa County Recorder; Scott Jarrett, in his official capacity as Maricopa County Director of Elections; Rey Valenzuela, in his official capacity as Maricopa County Director of Elections; Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo in their official capacities as members of the Maricopa County Board of Supervisors; and the Maricopa County Board of Supervisors (collectively, “County Defendants”) (collectively, “Defendants”).

Plaintiffs request that this Court order Maricopa County elections officials and State elections officials to decertify the statewide and Maricopa County canvasses for the 2022 General Election because the results from Maricopa County counted a material number of vote-by-mail ballots in violation of A.R.S. § 16-550(A), a “non-technical” and nondiscretionary law, and order a recount of all vote-by-mail ballots cast in Maricopa County, or, should that prove legally impossible, order a statewide recanvass based only on the legal votes cast in other counties or, in the alternative, order Maricopa County elections officials to decertify all statewide races for the

2022 General Election and order a new election to be conducted in Maricopa County in a manner that ensures strict compliance with Arizona's election safeguards.

INTRODUCTION AND SUMMARY

This Verified Complaint for Special Action alleges that Maricopa County, in conducting the 2022 General Election, neglected its statutorily imposed duty to ensure equal treatment of absentee ballots and proper adherence to the safeguards established by the Arizona Legislature. Foremost among these failures was Maricopa County's disregard for the mandated, uniform application of Arizona's signature verification statute for vote-by-mail ballots. The violation of this clear and unambiguous statutory requirement introduces severe doubt into the credibility of the election's results from Maricopa County requiring nullification as a matter of law.

A.R.S. 16-550(A) requires county officials to verify the ballot affidavit signatures on each vote-by-mail ballot against “the elector's signature on the elector's registration record” (the “Signature Verification Statute”). Despite this, Maricopa County elections officials, acting according to Maricopa County Elections Department 2022 Elections Plan: August Primary and November General (hereinafter “Elections Plan”), verified signatures against historical documents instead of the registration record, *see* Tr. of Proceedings (May 18, 2023), Day 2 at

199–200, in violation of their clear statutory duty to exclude those vote-by-mail ballots from the final election results.

Consequently, Plaintiffs seek the Court’s directive for Maricopa County and State elections officials to decertify the 2022 General Election canvass from Maricopa County and order a recount of all vote-by-mail ballots cast in Maricopa County after said votes have been verified according to statute or, should that prove impossible, declare new state-wide victors based on votes legally cast (nullifying all votes from Maricopa County) or, in the alternative, to order a new election to be conducted in Maricopa County in a manner that ensures strict compliance with Arizona’s election safeguards from which elections officials have no discretion to deviate. The gravity of this statewide issue and the neglect of duty by Maricopa County elections officials renders this case of paramount importance and, thus, deserving of the acceptance of this Complaint for Special Action and issuance of an order or writ granting the relief requested.

The right to vote is firmly anchored as “fundamental” in our legal tradition. *See Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). As the Supreme Court noted, “[o]ther rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). In our political system, few things are more precious or of greater concern than the people’s faith in the fair outcome of their elections. *Id.* Consequently, this right depends upon the fair and consistent

application of election laws, especially those designed to safeguard electoral integrity. Unfortunately, here, this did not take place.

The Arizona Constitution, in Articles II §§ 13, 21, VII §§ 7 & 12, establishes certain guarantees, which respectively provide: (1) laws must apply “equally . . . to all citizens” and do so “upon the same terms”; (2) elections must be “free and equal,” with no power, whether civil or military, being permitted to interfere with their free execution; (3) “the person, or persons, receiving the highest number of legal votes shall be declared elected[;]” and (4) the institution of “registration and other laws” is necessary to ensure the integrity of elections and prevent potential abuses of the electoral franchise. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution similarly guarantees that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Additionally, each Justice of this Court has taken and subscribed to an oath to support both the Constitution of the State of Arizona and the Constitution of the United States. See Ariz. Const. Art. VI, § 26. These guarantees are not empty promises but the most fundamental State and Federal constitutional rights we possess—ensuring that our Nation is one “of laws, and not of men.” See *Winsor v. Hunt*, 29 Ariz. 504, 512 (1926).

In Arizona, a voter's right to cast a vote must be in accordance with constitutional and statutory voting laws, and each vote demands equal treatment. See

e.g., Archer v. Bd. of Supervisors, 166 Ariz. 106, 107 (1990) (in the context of a primary contest challenge, “any elector or voter, regardless of his political affiliation . . . has the responsibility to uphold the integrity of the . . . process, and therefore, may challenge the nomination or election of any person”). Procedural safeguards, such as those defined by A.R.S. § 16-672, et seq., were established to ensure that the results of an election reflect the electorate's will. *See* Ariz. Const. Art. II §§ 13, 21, and VII §§ 7 & 12. During Arizona’s 2022 General Election, Maricopa County's failure to apply these safeguards led to a situation where certain procedural protections were negligently ignored, and others willfully violated. This gross oversight puts at risk the very principles that our legal system and this Court have vowed to uphold.

The situation in Arizona has reached a national audience. The implications extend beyond our borders, with our fellow states watching closely. Failure to act decisively could unintentionally embolden future elections officials to induce errors and gross negligence, undermining faith in our electoral system nationwide. Therefore, this Court must take the necessary steps to decertify the state-wide results of the election for all votes cast in Maricopa County and order a recount of all vote-by-mail ballots cast therein once said votes have been verified according to statute or, should that prove impossible, declare new victors in the state-wide races complained of herein based on votes legally cast or, alternatively, to order

Defendants to conduct a new election, thus upholding the integrity of our legal and democratic processes.

For the reasons set forth herein and pursuant to the Arizona Constitution Articles II §§ 13, 21 & VII §§ 7, & 12, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, applicable to Defendants as state actors; Plaintiffs, by their undersigned attorneys, bring this Complaint against Defendants to ask the Court to issue a writ of mandamus or order instructing Maricopa County elections officials to recount all vote-by-mail ballots cast within Maricopa County using correct signature verification procedures or, should that prove impossible,¹ order state elections officials to report and carry into effect results for all statewide races in the 2022 General Election that exclude unlawfully counted ballots or, in the alternative, to order a new election to be conducted in a manner that ensures strict compliance with Arizona's election safeguards.

JURISDICTIONAL STATEMENT

The Court has jurisdiction over this special action proceeding pursuant to Article VI, § 5(1) of the Arizona Constitution, which grants it “[o]riginal jurisdiction of . . . mandamus, injunction and other extraordinary writs to state officers.” *See*

¹ Plaintiffs believe that, once ballots are separated from their affidavits, they can no longer be matched on a one-to-one basis. However, if Defendants can demonstrate this is not the case, then a recount with correct procedures is the obvious remedy.

also, Ariz. R. P. Spec. Act., Rule 2(a); A.R.S. § 12-2021 (authorizing the same for writs of mandamus to “any person” “on the verified complaint of the party beneficially interested, to compel, when there is not a plain, adequate, and speedy remedy at law, performance of an act which the law specially imposes as a duty resulting from the office ... or station”).

Pursuant to Ariz. R. P. Spec. Act., Rule 3, a question may be raised as a special action if it asks:

(a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

When deciding whether to exercise its discretion to accept special action jurisdiction, the Court traditionally considers several factors: (1) whether the issues presented are of statewide significance; (2) whether the complaint concerns questions of first impression that are pure questions of law; and (3) whether the circumstances underlying the matter are likely to recur. *See Haywood Sec. Inc. v. Ehrlich*, 214 Ariz. 114, 115 (2007).

Through this Special Action, Plaintiffs seek a writ of mandamus² to compel Defendants, state and county officials performing government functions, to honor the Signature Verification statute—a nondiscretionary law from which elections officials have no discretion to deviate. Although nearly a year has passed since the November 2022 General Election, Plaintiffs have only recently learned the extent of Maricopa County’s wrongdoing, and it is not too late for this Court to correct clear violations of Arizona law. *See Hunt v. Campbell*, 19 Ariz. 254 (1917). Bringing this case in the superior court instead of this Court would add months of litigation and unnecessary expenses for both Plaintiffs and Defendants. Thus, this Court is the appropriate body to consider these issues. No speedy or adequate remedy in the ordinary course of law is available to Plaintiffs, therefore, intervention by this Court is appropriate.

I. THIS ACTION IS PROPER PURSUANT TO A.R.S. SPECIAL ACTIONS, RULES OF PROC., RULE 3

A question may be raised before this Court as a special action if it asks:

(a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

² *See* A.R.S. § 12-2021. Plaintiffs would be equally happy with an order effectuating the same outcome. *See* Ariz. R. P. Spec. Act., Rule 2(a).

Ariz. R. P. Spec. Act., Rule 3. This matter asks all three.

A. Defendants Failed to Perform Their Duty to Report and Certify Election Results that Include Only Such Votes as Were Lawfully Counted.

Without following the procedures set forth in A.R.S. § 16-621, Maricopa County elections officials approved ballots subject to defective signature verification, including them in the final canvass of results. Arizona law is plain that the duty to report accurate results of the election falls squarely on the shoulders of county officials. Specifically, Arizona Revised Statutes § 16-621 mandates a rigorous method for counting ballots, ensuring that only those plainly marked as intended by the voter are to be counted. The board of supervisors, as per A.R.S. § 16-642, is entrusted with declaring the election results for the county, which necessarily hinges on the reliability of the data at hand.

In essence, Arizona law does not merely suggest, but rather insists on, the integrity of the election process. The statutes emphasize accuracy, transparency, and fidelity to the prescribed procedures. Including ballots subject to flawed signature verification in the county canvass directly contravenes these principles and undermines confidence in the electoral system.

Given this, Maricopa County officials, by disregarding the clear directives of the law from which they had no discretion to deviate, failed in their foundational

duty to report accurate results of the election. A recount using proper verification procedures is absolutely imperative. Should that prove impossible, the State Defendants must be ordered to decertify the statewide officer and proposition election results from Maricopa County that are corrupted by the stain of “uncertainty” and declare new state-wide victors based on votes legally cast from elsewhere throughout Arizona or, in the alternative, to order a new election to be conducted in Maricopa County in a manner that ensures strict compliance with Arizona's election safeguards.

B. Defendants Acted in Excess of Their Legal Authority by Failing to Compare Signatures Against Each Elector’s Registration Record.

As addressed herein, Arizona’s Signature Verification Statute allows for signature verification to be performed exclusively against the signature contained on each voter’s “registration record.” A.R.S. 16-550(A). Maricopa County elections officials nevertheless compared signatures against a variety of documents, in excess of this lawful authority.

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C. Verification Against Legally Prohibited Signatures is Arbitrary, Capricious, and an Abuse of Discretion.

Approving ballots without verifying against signatures that are legally prescribed flagrantly disregards established electoral protocols. Such a practice not only undermines the integrity of the voting process and the legislative process, but also constitutes an arbitrary and capricious act. Entrusting elections officials with discretionary power does not sanction abuses; hence, circumventing clear legal mandates in signature verification is a manifest abuse of discretion. The County Defendants should be ordered to comply with the laws passed by the Arizona legislature and not usurp that authority by implementing their own standards.

II. THE FACTORS STRONGLY WEIGH IN FAVOR OF THIS COURT EXERCISING ITS DISCRETION TO ACCEPT THIS SPECIAL ACTION

Considering the unique aspects of this case, the factors clearly weigh in favor of this Court exercising its discretion to accept jurisdiction.

A. The Complaint Presents Issues of Statewide Importance.

Disputes presenting substantial federal or state constitutional issues are generally of statewide importance. *See City of Phoenix v. Superior Court in & For Maricopa Cnty.*, 149 Ariz. 143, 144 (1986) (accepting special action jurisdiction where “the constitutionality of the statute presented an important issue of statewide

importance”); *Ariz. Dep’t of Pub. Safety v. Superior Court*, 190 Ariz. 490, 494 (Ct. App. 2003) (special action jurisdiction found to be proper where the complaint “specifically presents a constitutional question, therefore an issue of statewide importance”). “Arizona’s constitutional right to a ‘free and equal’ election is implicated when votes are not properly counted.” *Chavez v. Brewer*, 222 Ariz. 309, 320 (Ct. App. 2009).

As explained below, Maricopa County failed to comply with Arizona’s “non-technical” statutory protection for verifying the identity of absentee voters, *see* A.R.S. § 16-550(A), which was passed to bolster Plaintiffs’ rights as citizens secured by the Arizona Constitution in Articles II §§ 13, 21 & VII §§ 7, & 12 and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Consequently, Maricopa County’s non-uniform administration of the General Election included a material number of illegal votes in the state-wide canvass for the 2022 General Election. Each illegal vote diluted the respective strength of Plaintiffs’ votes in violation of their state and federal constitutional rights.

B. The Complaint Concerns Pure Questions of Law of First Impression.

It is indisputable that Maricopa County verified a material number of signatures without any comparison to registration forms as required by law. *See*

A.R.S. § 16-550(A). Each comparison that failed to consider the purported elector’s registration form (*i.e.*, record) resulted in a *per se* tabulation of an illegal vote.

For the 2022 General Election, Maricopa County signature reviewers at the first level of the review process saw a digital display of a succession of two images on a computer screen. *See Appx: 46–47*. One side of the screen contained a scanned image of the ballot affidavit signature for verification, and—as recently admitted by Defendant Valenzuela—the other side of the screen displayed a singular comparison signature, which was the most recent “historical” signature submitted by the purported elector. *See Appx: 203–04*.

To see any other signatures (other than the most recent historical signature) for comparison (including the “registration record” signature), verifiers needed to scroll down their screens. *Id.* During the 2022 General Election in Maricopa County, hundreds of thousands of signatures for mail-in votes were verified within a matter of seconds. *See Appx: 92—163*. In fact, evidence presented in *Lake v. Hobbs, et al.*, shows that tens of thousands of signatures were accepted by a single individual in just two seconds, which is not enough time to scroll down as is necessary for a lawful comparison to a “registration record” signature. *See Appx: 131–32*.

If even a fraction of the 759,240³ Maricopa County electors that voted by mail in the 2022 Primary did the same a few months later in the General Election, then Maricopa County’s signature verifiers plausibly verified a material number of illegitimate signatures in violation of A.R.S. § 16-550(A)—by comparing affidavit signatures to prior affidavit signatures and other illegal criteria outside of the scope of A.R.S. § 16-152. These indisputable facts render the 2022 General Election results from Maricopa County uncertain as a matter of law.

By the plain language of A.R.S. § 16-550(A), the County Recorder, or his designee, is charged with verifying the identities of purported electors by comparing the signatures on the affidavit submitted by the purported elector to the “signature” (singular) “on” (not, ‘in’) the voter’s “registration record [not, “historical records]” A.R.S. § 16-550. Because new evidence demonstrates that Maricopa County did not use the proper criteria for a material number of verified comparisons, its election results are uncertain, requiring nullification of all state-wide election votes from Maricopa County as a matter of law. *Reyes v. Cuming*, 952 P.2d 329 (Ariz. Ct. App. 1997) (citing *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178 (1994)).

³ See Primary Election Maricopa County August 2, 2022, Final Official Results, Appx: 237.

C. The Circumstances Are Likely to Recur.

The current situation in Arizona has captured the attention of this Nation. The largest county in Arizona has publicly bypassed the required safeguards to ensure the integrity of the 2022 General Election and, therefore, the results for all state-wide races remain uncertain. Additionally, Defendants continue to argue that “registration record” is impermissibly expansive and includes signatures from the voter’s “historical record”⁴ which, if used exclusively for verification of any affidavit, is illegal for the reasons stated herein. Plaintiff Mast attempted to bring this argument to the attention of Judge Thompson in *Lake v. Hobbs et al.* but, unfortunately, attorneys for both Maricopa County and (inexplicably) Ms. Lake objected to the inclusion of Mr. Mast’s appearance as amicus in the superior court.⁵ Ms. Lake’s counsel failed to raise the issue and, thus, it was not considered.⁶

⁴ See Elections Plan § 6.3.8 Appx: 420–21; see also Maricopa County Defendants’ Response Opposing David Mast’s Motion for Leave to File an Amicus Brief, Appx: 560 (the “proposed Amicus Brief argues that A.R.S. § 16-550 limits the Recorder’s review of early ballot affidavit signatures to a comparison of *only* of [sic] the signatures in the voter’s registration form. . . . [However, this law] was amended by the legislature in 2019 to now require the Recorder to compare the signature to the voter’s registration *record*.” (Emphasis original).

⁵ See Motion for Leave to File Amicus Curiae Brief of David Mast in Support of Plaintiff Kari Lake’s Election Contest Appx:445–55.

⁶ See No. CV 2022-095403 Under Advisement Ruling (May 15, 2023) Appx: 456–463; see also No. CV 2022-095403 Order (May 22, 2023), Appx: 565–69.

Unless this Court takes decisive action and orders state and county officials to decertify the state-wide results of the election from Maricopa County and order a recount of all vote-by-mail ballots cast in Maricopa County after said votes have been verified according to statute or, if such is impossible, declare new state-wide victors based on votes legally cast from throughout the remainder of Arizona or, in the alternative, to hold a new election in Maricopa County, utilizing only statutorily authorized signatures on the voters' registration records, it may unintentionally embolden future elections officials to induce errors and gross negligence.

Thus, the issue is likely to recur. Such an outcome would detrimentally impact the electorate, further undermining faith in our electoral system nationwide. The exercise of this Court's discretionary jurisdiction is therefore of vital importance.⁷

STATEMENT OF ISSUES

1. Whether for the Maricopa County General Election in 2022, signatures were verified in accordance with A.R.S. § 16-550(A) and in a manner that satisfies State and Federal Constitutional safeguards.
2. Whether Plaintiffs were disenfranchised and denied their most fundamental constitutional right to vote by Maricopa County's failure to properly

⁷ Should this Court decline jurisdiction, Plaintiffs respectfully request that the special action complaint be transferred to the appropriate court pursuant to A.R.S. § 12-120.22(B) with a directive to accept jurisdiction.

administer in-person voting on Election Day in violation of its own policies and procedures.

PARTIES

1. Plaintiff, David Mast (“Mast”), is a resident of Maricopa County, Arizona and an elector who voted in person during the 2022 General Election. Nevertheless, Mast’s vote in the General Election was diluted by Maricopa County’s inclusion of illegal ballots due to its disregard of Arizona’s “non-technical” requirements set forth in A.R.S. § 16-550(A). Absent this Court’s intervention, Mast’s vote will continue to be diluted in Arizona’s elections by the actions complained of herein and, worse yet, that the illegitimate results of the 2022 General Election for the uncertain state-wide races complained of herein will stand.

2. Plaintiff, Tom Crosby (“Crosby”), is a resident of Cochise County, Arizona who voted by mail in the 2022 General Election. When submitting his mail-in-ballot, Crosby signed a mail-in affidavit, and his identity was verified by comparison to a signature on his “registration record.” Because Crosby voted in Cochise County, which compares to the proper criteria (*i.e.*, the registration “record”), his mail-in vote was treated differently than mail-in votes verified and tabulated in Maricopa County. The inclusion of illegal votes in Maricopa County thus diluted the strength of Crosby’s vote. Absent this Court’s intervention, Crosby’s vote will continue to be diluted in Arizona’s elections by the actions complained of herein and, worse yet,

the illegitimate results of the 2022 General Election for the uncertain state-wide races complained of herein will stand.

3. Defendant, Katie Hobbs, is the currently recognized Governor of Arizona. As a result of Maricopa County's wrongful conduct as described herein, the legality of her office is in doubt. At the time of the events complained of herein, Defendant Hobbs was Arizona's Secretary of State.

4. Defendant, Kris Mayes, is the currently recognized Attorney General of Arizona. As a result of Maricopa County's wrongful conduct as described herein, the legality of her office is in doubt.

5. Defendant, Adrian Fontes, is the Secretary of State of Arizona, and he is sued in his official capacity.

6. At the time of the events described herein, Stephen Richer, acted as the duly elected Maricopa County Recorder, and he is sued in his official capacity.

7. At the time of the events described herein, Scott Jarrett, acted as an Elections Director for Maricopa County, and he is sued in his official capacity.

8. At the time of the events described herein, Rey Valenzuela, acted as an Elections Director for Maricopa County, and he is sued in his official capacity.

9. At the time of the events described herein, Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo ("Defendant Supervisors") acted as

Supervisors for the Maricopa County Board of Supervisors, and they are sued in their official capacities.

10. For all events related to the administration of the 2022 General Election complained of herein, Defendants Hobbs, Richer, Jarrett, Valenzuela, Gates, Hickman, Sellers, Galvin, and Gallardo conducted themselves in their official capacities and acted under color and authority of law.

11. Defendants Mayes and Fontes have an interest in the outcome of this case and are named as Defendants in their official capacities. *See* Ariz. R. P. Spec. Act., Rule 2(a)(1).

FACTS

12. Maricopa County includes the Phoenix metropolitan area and is among the largest voting jurisdictions in the Nation. For any given election, it accounts for more than sixty percent of Arizona's registered voters, as it did in 2022.⁸

13. On November 28, 2022, the Maricopa County Board of Supervisors certified their canvas of returns of the November 8, 2022, general election.⁹ Of the 1,562,758

⁸ *See* <https://www.maricopa.gov/5539/Voting-Equipment-Facts#:~:text=ballot%20rotation%20laws.-,Maricopa%20County%20is%20the%20second%20largest%20voting%20jurisdiction%20in%20the,percent%20of%20Arizona's%20registered%20voters> (accessed August 15, 2023).

⁹ *See* Maricopa County November General Canvass: November 8, 2022, Appx: 464–541.

ballots cast in the 2022 General Election in Maricopa County, 1,311,734 were early ballots (meaning, those that are “signature verified and processed before they are counted”).¹⁰ Comparatively, during the August 2022 Primary Election, 759,240¹¹ Maricopa County electors cast early ballots.

14. Defendant Katie Hobbs (hereinafter “Hobbs”) received 790,352 votes, or 51.21% of total votes cast in the 2022 General Election in Maricopa County. Her counterpart, Kari Lake (hereinafter “Lake”), reportedly received 752,714 votes in the 2022 General Election in Maricopa County.¹² On December 5, 2022, Hobbs canvassed the returns of the 2022 General Election—declaring herself as victor in the state-wide race for Governor of Arizona. Hobbs did so after having purportedly received 1,287,891 votes, or 50.33% of 2,558,665 total votes cast across the State. Comparatively, Lake received 1,270,774 total votes in the state-wide race. Thus, Hobbs allegedly defeated her rival by 17,117 votes.¹³

¹⁰ See <https://elections.maricopa.gov/news-and-information/elections-news/maricopa-county-november-general-election-results-posted.html> (accessed August 16, 2023). If the term “early ballots” includes votes other than early mail-in votes, Maricopa County can disclose exact numbers for a proper analysis.

¹¹ See Primary Election Maricopa County August 2, 2022, Final Official Results, Appx: 237.

¹² See State of Arizona Official Canvass: 2022 General Election, Appx: 543

¹³ See footnote 12.

15. In the race for Attorney General, Kris Mayes was declared the victor in the state-wide race after having purportedly received 1,254,613 votes as compared to 1,254,102 votes awarded to her counterpart, Mr. Hamadeh. That is a difference of 511 votes.¹⁴ In Maricopa County, Ms. Mayes purportedly received 766,869 votes whereas Mr. Hamadeh received 740,960 votes.¹⁵ That is a difference of 25,909 votes.¹⁶

16. Proposition 308, relating to classification of students for tuition purposes, allegedly passed having received 1,250,320 favorable votes across the state whereas 1,189,877 voters selected against this measure, a difference of 60,443 votes. In the Maricopa County General Election for 2022, 770,971 voters apparently voted in favor of this proposition whereas 695,474 voters selected against the measure, a difference of 75,497 votes.¹⁷

17. Proposition 309, relating to voter identification, allegedly failed to pass having received 1,201,181 favorable votes across the state whereas 1,219,669 voters

¹⁴ Notably, Ms. Mayes's lead has shrunk to just a few hundred votes following a state-wide recount. *See* Order Dated December 29, 2022, Regarding Recount Results, Attorney General, Superintendent of Public Instruction, and State Representative in Legislative District 13 CV2022-015915 (Ariz. Filed Dec. 5, 2022) Appx: 557–58.

¹⁵ *See* State of Arizona Official Canvass: 2022 General Election, Appx: 551.

¹⁶ *See* footnote 15.

¹⁷ *See* State of Arizona Official Canvass: 2022 General Election, Appx: 553.

selected against this measure, a difference of 18,488 votes. In the Maricopa County General Election for 2022, 706,549 voters apparently voted in favor of this proposition whereas 742,698 voters selected against the measure, a difference of 36,149 votes.¹⁸

18. Given the small margins of victory noted above, these statewide elections were plausibly impacted because Maricopa County tabulated a material number of approximately 1.3 million mail-in ballots by verifying them without referencing registration records.

19. Contrary to the clear import of A.R.S. § 16-550(A), Maricopa County allowed its signature verification personnel to verify hundreds of thousands of signatures during the 2022 General Election by comparing them to any “historical reference signature that was previously verified and determined to be a valid signature for the voter.”¹⁹ Such “historical documents” include “in-person roster signatures and early voting affidavits from previous elections.”

20. Under Arizona law, the “registration record” is a term of art indicating the “form” that the elector signs when registering to vote. To complete this form, all registrants are required to provide a form of identification. *See* A.R.S. 16-152(A)(12). Voters that submit absentee ballots in Arizona are not required to

¹⁸ See footnote 17.

¹⁹ *See* Elections Plan § 6.3.8 Appx: 420–21.

provide a form of identification. Instead, a mail-in-voter completes his or her ballot, seals it inside the return envelope (affidavit), signs the return envelope, and delivers it by USPS or by depositing the return envelope into a designated drop box (including those at voting centers). *See* Appx: 156. By signing the return envelope, the putative voter declares under penalty of perjury that he or she is the registered voter of the ballot contained in the envelope. *See* A.R.S. § 16-547(A). To be lawful and eligible for tabulation, the signature on the affidavit accompanying a mail-in ballot must be matched (by human comparison) to the signature featured on the elector's "registration record." *See* A.R.S. § 16-550(A), *see also* A.R.S. §16-152.

21. This Court has long refused to interpret statutes in such a way “that would lead to a result at odds with the legislature’s intent.” *See State v. Estrada*, 201 Ariz. 247, 251 ¶ 19 (2001) (internal quotations, citations, and ellipses omitted for clarity).

22. In 2019, A.R.S. § 16-550(A) was updated with the passage of SB1054, changing the phrase “registration form” to “registration record.” County Defendants have previously argued that this change was intended to expand the scope of criteria available for signature comparisons.²⁰ However, nothing from the legislative record

²⁰ *See* Elections Plan § 6.3.8 Appx: 420–21; *see also* Maricopa County Defendants’ Response Opposing David Mast’s Motion for Leave to File an Amicus Brief, Appx: 560 (the “proposed Amicus Brief argues that A.R.S. § 16-550 limits the Recorder’s review of early ballot affidavit signatures to a comparison of *only* of [sic] the signatures in the voter’s registration form. . . . [However, this law] was

supports this position.²¹ Indeed, the Final Fact Sheet for SB1054 explains, “the county recorder or other officer in charge of elections shall compare the signatures on completed early ballot affidavits *with the signature on the elector's registration form*. If the signatures match, the ballot is tallied. If the signatures do not match, the county recorder or other officer in charge of elections shall make a reasonable attempt to contact the voter.”²²

23. Despite now asserting that the 2019 legislature intended for the term “record” to include “historical” signatures—until May of 2022—under the “Frequently Asked Questions” section of the Maricopa County Recorder’s website, County Defendants maintained, “[w]hen an early ballot is received through the mail, the unopened affidavit packet (green envelope with ballot sealed inside) is scanned to acknowledge receipt and to capture the signature of the voter on the envelope. The captured signature is used by staff to compare it to the signature on file from the given voter’s original registration form or forms.”²³ Likewise, Defendant Fontes employed a seemingly identical standard while he acted as the Maricopa County

amended by the legislature in 2019 to now require the Recorder to compare the signature to the voter’s registration *record*.” (Emphasis original).

²¹ See <https://apps.azleg.gov/BillStatus/BillOverview/71131>.

²² See Final Fact Sheet for SB1054 Appx: 563 (emphasis added).

²³ See *What happens when my early ballot is received?* (<https://web.archive.org/web/20220522002524/https://recorder.maricopa.gov/site/faq.aspx>) (accessed July 21, 2023) (emphasis added).

Recorder in 2020.²⁴ Thus—for three years after the legislative change—Maricopa County understood that “registration record” meant “registration form.”

Maricopa County’s Signature Verification Process

24. All mail-in ballots submitted by Maricopa County voters are processed by a third-party contractor, Runbeck. *See* Appx: 159–62. Upon reaching Runbeck’s warehouse (either from MCTEC or USPS), all mail-in ballot packets are entrusted to Runbeck employees. In the presence of Maricopa County employees, the Runbeck employees are required to conduct an “inbound scan” of each affidavit signature. *Id.* at 162.

25. According to Elections Plan § 6.3.7, “[u]pon delivery of early ballot affidavits, Runbeck conducts an inbound scan of the affidavit envelope [via mail sorter] to capture a digital binary image of the voter signatures from that packet and places those images into an automated batch system for Elections Department staff review.” *See* Appx: 419–20 Per Defendant Jarrett’s testimony on December 21, 2022, this plan was followed by Maricopa County during the November 8, 2022, general election. *See* Appx: 631–633. This inbound scan serves to capture an image of the packet for signature comparison for verification purposes. *See* Appx: 1260. To verify

²⁴ *See What happens when my early ballot is received?* (<https://web.archive.org/web/20200409064741/https://recorder.maricopa.gov/site/faq.aspx>) (accessed July 22, 2023).

signatures contained on mail-in ballot packets, Maricopa County uses a multi-level system. *See* Elections Plan § 6.3.8 Appx: 420–21.

26. During the 2022 General Election, Maricopa County signature reviewers at the first level of the review process saw a digital display of a succession of two images on a computer screen: one part of the screen contained a scanned image of the ballot affidavit signature for verification, and—as recently admitted by Defendant Valenzuela—the other part of the screen contained a singular comparison signature, which was the most recent historical signature submitted by the purported elector. *See* Appx: 1064–65.

27. To see any other signatures (other than the most recent historical signature) for comparison (including the “registration record” signature), verifiers needed to scroll down on their screens. *Id.*

28. Because of the application of this process, hundreds of thousands of votes were illegally tabulated in Maricopa County—comparing mail-in-affidavit signatures to prior mail-in affidavit signatures and other illegal criteria outside of the scope of A.R.S. § 16-152.

ARGUMENT

I. MARICOPA COUNTY FAILED TO VERIFY A MATERIAL NUMBER OF SIGNATURES IN ACCORDANCE WITH A.R.S. § 16-550(A) AND, THEREBY, PLAUSIBLY INCLUDED A

**MATERIAL NUMBER OF ILLEGAL VOTES IN THE STATE-
WIDE CANVASS, DILUTING THE STRENGTH OF PLAINTIFFS’
VOTES WERE DILUTED IN VIOLATION OF THEIR
CONSTITUTIONAL RIGHTS**

In pertinent part, A.R.S. § 16-550(A) states that “*on receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on the elector's registration record.*” (Emphasis added). The purpose of A.R.S. § 16-550(A) is to benefit all Arizona voters, including Plaintiffs, by ensuring the *uniform administration* of fair and accurate elections across Arizona. Its requirements are “non-technical,” and it furthers clearly established constitutional safeguards.

The most critical issue in this case is whether Maricopa County satisfied its obligation to uniformly apply the signature verification standard set forth in A.R.S. § 16-550(A). This statute mandates an appropriate procedure to guarantee that absentee ballots are cast only by registered voters. To do this, it requires that affidavit signatures on mail-in ballot envelopes be compared to each voter’s “registration record” signature before that ballot can be legally tabulated. It does not require any special expertise on the part of the person making the comparison, only that the comparison in fact be made. *Reyes v. Cuming*, 952 P.2d 329, 331 (Ariz. Ct. App.

1997).²⁵ This law is a “non-technical” statute because it advances the constitutional goal of “setting forth procedural safeguards to prevent undue influence, fraud, ballot tampering, and voter intimidation.” *Id.* at 331. (*quoting* Ariz. Const. Art. VII § 1)). Indeed, this law is imperative to “secure the purity of elections and guard against abuses of elective franchise.” *Id.* (*quoting* Ariz. Const. Art. VII § 12). Thus, even a finding of substantial compliance would still be an abuse of discretion. *See id.* at 332.

To be lawful and eligible for tabulation, the signature on the affidavit accompanying a mail-in ballot must be matched (by human comparison) to the signature featured on the elector's "registration record." *See* A.R.S. § 16-550(A), *see also* A.R.S. § 16-152. Instead of abiding by this simple requirement, Maricopa County employed an arbitrary screening system for verifying affidavit signatures, which allowed reviewers to compare affidavit signatures to the most recent signature submitted by the purported voter. Consequently, County Defendants included hundreds of thousands of illegal votes in all statewide results for the 2022 General Election.

Whether these defects affect 3,700 votes, as in *Reyes*, or 1.3 million, as here, the principles remain the same, and Arizona law provides only one remedy. When a

²⁵ *See* No. CV 2022-095403 Order (May 22, 2023), Appx: 565–69.

non-technical statute, like A.R.S. § 16-550(A), is violated, and its violation renders the results of any election mathematically “uncertain,” the results from the uncertain election must be set aside as a matter of law. *Miller*, 179 Ariz. 178. This Honorable Court recently clarified that “uncertainty” is shown where “votes were affected in sufficient numbers to alter the outcome of the election based on a competent mathematical basis to conclude that the outcome would plausibly have been different.” *See Lake v. Hobbs*, No. CV-23-0046-PR, Order at 4–5 (Ariz. Sup. Ct. Mar. 22, 2023).

Here, Maricopa County failed, in fact, to uniformly apply signature verification standards for a material number of approximately 1.3 million votes. As a result, every single one of those 1.3 million votes is tainted by the fatal stain of “uncertainty,” requiring the setting aside of all votes from Maricopa County for statewide races for the 2022 General Election. *Reyes*, 952 P.2d at 332.

In November of 1996, Marco. A. (“Tony”) Reyes (a Democrat) and Clyde Cuming (a Republican incumbent) squared off as candidates for a seat on the Yuma County Board of Supervisors. *Id.* at 331. After an initial count, excluding absentee ballots, Reyes led Cuming 1,320 votes to 1,169 votes, a margin of 12.9%. After 1,210 absentee ballots were added to the total count, however, Cuming led Reyes 1,861 to 1,838. Mr. Cuming was therefore declared the winner, having secured victory by a margin of merely 23 votes—or 0.62179%.

In an election contest brought by Mr. Reyes pursuant to A.R.S. § 16-672, the trial court determined that the Yuma County Recorder failed to compare “any of the signatures on the outside of the absentee ballots with the registration lists, as required by statute.” *Reyes*, 952 P.2d at 330 (citing A.R.S. § 16-550(A)). Despite this abject failure, the trial court determined “that compliance with the statute would place an ‘undue burden on the recorder’ and that there was ‘no evidence indicating that any ballot was cast by any person other than the elector who requested the early ballot.’” Considering these findings, the trial court held that “the Recorder was in *substantial compliance with all of the rules, regulations, and statutes governing election for this office*, and affirmed the election.” *Id.* (emphasis added).

Over a year after the election—despite Mr. Cuming having never stepped down from his seat as an incumbent—a three-judge panel for the Court of Appeals of Arizona unanimously ordered that the results of the Yuma election be set aside as a matter of law.²⁶ The court explained, “[a]t first blush,” the nondiscretionary requirement for immediate signature verification set forth in A.R.S. § 16-550(A) may seem “unimportant”—just as the requirement for “mailing versus hand delivery [of ballots as required by A.R.S. § 16-542] may seem unimportant.” *Id.* at 331 (quoting *Miller*, 179 Ariz. at 180. However, considering their purpose, such laws are

²⁶ In March of 1998, this Honorable Court denied review.

“very important.” Both “non-technical” statutes advance the constitutional goal of “setting forth procedural safeguards to prevent undue influence, fraud, ballot tampering, and voter intimidation.” *Id.* (quoting Ariz. Const. Art. VII § 1)). Although seemingly trivial on their face, such laws are imperative to “secure the purity of elections and guard against abuses of elective franchise.” *Id.* (quoting Ariz. Const. Art. VII § 12).

Despite the trial court’s determination that “it would be impracticable for the [Yuma County] Recorder to comply with A.R.S. 16-550(A),” the Arizona Court of Appeals held “as a matter of law that such a finding does not excuse the complete noncompliance with this non-technical statute.” *Id.* Indeed, “[e]lection statutes are mandatory, not ‘advisory,’ or else they would not be law at all.” *Id.* (quoting *Miller*, 179 Ariz. at 180). If this statute “unduly burdens elections officials, the Recorder or other appropriate officials *may lobby the legislature to change it; until then it is the law.*” *Id.* at 331-32 (emphasis added).

Although 17,117 votes may seem like an insurmountable number, Defendant Hobbs’s margin of victory was, in fact, a mere fraction of a percentage—exactly 0.668982%. Likewise, Proposition 309 failed to pass by a mere 18,488 votes—a margin of victor equivalent to 0.763699%. The Attorney General race was separated by just a few hundred votes—which is a 0.020369% margin of victory (which has

since shrunk to just a few hundred votes).²⁷ Critically, these nominal margins are nearly identical to that seen in *Reyes*—0.62179%—where, more than a year after the challenged election and based on substantively identical facts, a Yuma County Election was *unanimously set aside by the Arizona Court of Appeals as a matter of law*. The “purpose of A.R.S. 16-550(A) is to prevent the inclusion of invalid votes.” *Reyes*, 952 P.2d at 332. “To rule otherwise would ‘affect the result or at least render it uncertain.’” *Id.* (quoting *Miller*, 197 Ariz. at 180).

In *Miller*, this Honorable Court “established that an election contestant need only show that absentee ballots counted in violation of a non-technical statute changed the outcome of the election [or rendered it ‘uncertain’]; actual fraud is not a necessary element.” *Id.* (quoting *Miller*, 197 Ariz. at 180). In other words, the absence of tangible “evidence that any ballots were cast by persons other than registered voters is irrelevant.” *Id.*

Well over 700,000 signatures from mail-in affidavits submitted in the 2022 Primary election were included in Maricopa County’s “historical record” for registered voters. If even just half of the same electors voted again by mail in the 2022 General Election, then hundreds of thousands of signatures were “compared,”

²⁷ See Order Dated December 29, 2022, Regarding Recount Results, Attorney General, Superintendent of Public Instruction, and State Representative in Legislative District 13 CV2022-015915 (Ariz. Filed Dec. 5, 2022) Appx: 557–58.

in a matter of seconds,²⁸ to illegitimate criteria and, thereby, “verified.” These illegally verified votes were included in Maricopa County’s canvass and, subsequently, in the state-wide canvass. Thus, it is *highly plausible* that hundreds of thousands of votes were illegally tabulated in Maricopa County. Here, even if there is not a precise mathematical basis to determine the exact number of votes impacted, considering such small margins, enough votes were clearly impacted to find that the outcome here not only could have been different, but is exceedingly likely to have been different.

The mere inclusion of a convincing number of illegal votes in violation of the plain language and intent of A.R.S. § 16-550(A)—which advances numerous constitutional safeguards—necessitates that this Court set aside Maricopa County’s 2022 General Election results for all state-wide races and order County Defendants to recount all vote-by-mail ballots cast in Maricopa County in accordance with law, or, should that be impossible, order a statewide recanvass based only on the legal votes cast in other counties or, alternatively, order that a new special election be conducted and that the signatures on mail-in ballots be compared against the proper criteria:

This is not a case of mere technical violation or one of dotting one's "i's" and crossing one's "t's." At first blush, mailing versus hand delivery may seem unimportant. But in the context of absentee voting,

²⁸ See Appx: 946–1024.

it is very important. Under the Arizona Constitution, voting is to be by secret ballot. Ariz. Const. Art. VII, § 1. Section 16-542(B) advances this constitutional goal by setting forth procedural safeguards to prevent undue influence, fraud, ballot tampering, and voter intimidation. [...] A] showing of fraud is not a necessary condition to invalidate absentee balloting. It is sufficient that an express non-technical statute was violated, and ballots cast in violation of the statute affected the election. We therefore vacate the opinion of the court of appeals and reinstate the judgment of the trial court setting aside the election.

Miller, 179 Ariz. at 180.

In short, “because A.R.S. section 16-550(A) is a “non-technical” statute and because a material number of absentee ballots were counted in violation of that statute, the outcome of this election is mathematically “uncertain.” *Lake v. Hobbs*, No. CV-23-0046-PR, Order, at 4–5 (Ariz. Sup. Ct. Mar. 22, 2023). A recount using the proper verification procedures would be necessary, were such a procedure possible. However, on information and belief, Defendants contend that this is now impossible.²⁹ Thus, the only appropriate remedy—as a matter of law—is to set aside all state-wide results of the 2022 Maricopa County election and strike such from the 2022 Arizona General Election Canvass, *Reyes*, 952 P.2d at 331 (quoting *Miller*, 179 Ariz. at 180) or, alternatively, for this Court to order a new election be conducted in Maricopa County in accordance with state law.

²⁹ Plaintiffs believe that, because ballots are separated from their affidavits, they can no longer be matched on a one-to-one basis. However, if Defendants can demonstrate this is not the case, a recount with correct procedures is the obvious remedy.

II. FAILING TO FOLLOW THE NON-TECHNICAL REQUIREMENTS ESTABLISHED BY A.R.S. § 16-550(A) VIOLATED THE EQUAL PROTECTION PROVISIONS OF THE ARIZONA AND UNITED STATES CONSTITUTIONS

A. Maricopa County’s Failure to Uphold the Legislature’s “Precise Manner” of Voting Must Meet Strict Scrutiny.

Both Arizona and federal law mandate “uniform” administration of elections. *See* Ariz. Const. Art. II §§ 13, 21; A.R.S. § 16–449(B), 16–452(A); 42 U.S.C. § 1983; U.S. Const. amends. I, XIV. Perfect uniformity between counties is not required, but uniform application of unambiguously prescribed statutes within each county throughout the State is both presumed and mandatory.

The “Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees each and every person that they will not be denied their fundamental rights—including the right to vote—in an arbitrary or discriminatory manner.” *Charfauros v. Bd. of Elections*, No 99-15789, 2001 U.S. App. LEXIS 15083, at *24 (9th Cir. May 10, 2001). Thus, “it is well-established that once the legislature prescribes a particular voting procedure, *the right to vote in that precise manner is a fundamental right*, and ‘one source of its fundamental nature lies in the . . . equal dignity owed to each voter.’” *Id.* at *31 (*quoting Bush v. Gore*, 531 U.S. 98, 104 (2000)) (emphasis added).

Here, A.R.S. § 16-550(A) is a statute passed by the Arizona Legislature that prescribes the way that every county across Arizona must verify the signatures on mail-in ballot packets before a purported elector's vote is counted. Accordingly, the procedural safeguards conferred by A.R.S. § 16-550(A) are fundamental rights—and they must be strictly followed. *Gore*, 531 U.S. at 104; *Charfauros*, No 99-15789, 2001 U.S. App. LEXIS 15083, at *31–23.³⁰

Yet, discrepancies have arisen. While other counties meticulously followed this statute's guidelines for signature verification against the registration form, Maricopa County diverged, employing alternative sources for signature verification. This inconsistency threatens the very foundation of uniform election administration. Given that the State of Arizona promises its electors, including the Plaintiffs, a standardized scrutiny of their ballots, any deviation from the stipulated procedure,

³⁰ Because they “may dilute the effectiveness of some citizens’ votes,” *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621, 626 (1969) (emphasis original), Maricopa County’s actions “must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are ‘necessary to promote compelling governmental interest.’” *Dunn v. Blumstein*, 405 U.S. 330, 342 (1972) (emphasis in original) (quoting *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969); *Kramer*, 395 U.S. at 627); see also, e.g., *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 36 n. 78 (1973) (noting that, “implicit in our constitutional system, [is the right] to participate in state elections on an equal basis with other qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State’s population.”); *Green v. City of Tucson*, 340 F. 3d 891, 897 (9th Cir. 2003) (“[o]nce a state grants citizens the right to vote on a particular matter, such as municipal incorporation, that right is protected by the Equal Protection Clause”).

as seen in Maricopa County, must be subjected to the highest level of judicial scrutiny. *Dunn*, 405 U.S. at 343; *Green*, 340 F. 3d at 899; *See also Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966) (applying strict scrutiny to voting rights and stating that “We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.”)³¹ Maricopa County cannot meet this standard.

B. Maricopa County Cannot Satisfy the Requirements of Strict Scrutiny

Maricopa County must overcome strict scrutiny by demonstrating that the challenged procedures were no less burdensome than available alternatives and,

³¹ This strict scrutiny requirement of complying with prescribed voting procedures is exactly why, in *Reyes*, the Arizona Appellate Court referred to A.R.S. § 16-550(A) as a “very important,” “non-technical” (*i.e.*, substantive) statute that advances the constitutional goal of “setting forth procedural safeguards to prevent undue influence, fraud, ballot tampering, and voter intimidation.” 952 P.2d at 331 (quoting Ariz. Const. Art. VII § 1). Such safeguards are imperative to “secure the purity of elections and guard against abuses of elective franchise.” *Id.* (quoting Ariz. Const. Art. VII § 12). Although decided before *Gore*, *Reyes* rests upon the same principle: *i.e.*, that uniform application of state election laws is necessary to guard against arbitrary and disparate determinations for what constitutes a “legal vote.” The “purpose of A.R.S. 16-550(A) is to prevent the inclusion of invalid votes.” *Id.*

thus, “well calculated to sustain the confidence that all citizens must have in the outcome of elections.” *Gore*, 531 U.S. at 109.

This is simply an impossible burden for Maricopa County to meet because Maricopa County adopted a new understanding of the law in 2022 to include a “historical record” to verify mail-in signatures for tabulation. Obviously, less burdensome alternatives exist, as County Defendants have utilized the appropriate criteria in the past, and no new circumstances have occurred that make comparison against the new criteria necessary or even desirable. Instead of adopting a new standard, Maricopa County could have lobbied to change the law or invested more resources in hiring staff to handle the signature verification comparison, by hand, as prescribed by A.R.S. § 16-550(A) and scrolling down their screens to locate the voters’ actual registration record signatures. While elected officials in Maricopa County may have felt it necessary to take shortcuts due to anticipated volume of mail-in ballots, “[t]he press of time does not diminish the constitutional concern. A desire for speed is not a general excuse for ignoring equal protection guarantees.” *Gore*, 531 U.S. at 108. Accordingly, even if this Court decides not to follow the clear standards set forth in *Reyes*, the Court must still set aside the results from Maricopa County’s 2022 election for state-wide races because the results are constitutionally void.

Plaintiffs have suffered and (absent this Court's intervention) will continue to suffer irreparable harm—namely, disenfranchisement by vote dilution caused by Maricopa County's illegitimate signature verification policy for mail-in ballots. Based on numbers alone (with hundreds of thousands of mail-in ballot packets being accepted after an exclusive comparison to a “historical record”), Plaintiffs have no confidence that Maricopa County conducted a legitimate review of the 1.3 million mail-in ballot packets allegedly received during the November 8, 2022, General Election. If there is no change in the status quo, Plaintiffs will have no confidence in future elections.

Instead of lobbying to change the law, Defendant Supervisors authorized county elections officials to adopt and implement a procedure that resulted in hundreds of thousands of mail-in-affidavit signatures being illegally verified and included in the statewide totals. Plaintiffs are entitled to ensure all mail-in votes across Arizona are verified and tabulated in the uniform, precise manner prescribed by A.R.S. § 16-550(A). In deviating from the clear, uniform procedures established by A.R.S. § 16-550(A) during the 2022 General Election, County Defendants tabulated a huge number of illegal votes, each of which consequently diluted the strength of Plaintiffs' votes in violation of their State and Federal constitutional rights. *See* Ariz. Const. Art. II § 13, & U.S. Const. amends. I, XIV.

A.R.S. § 16-550(A) protects the rights of individual voters across Arizona, including Plaintiffs, for whose benefit the statute was adopted. The law requires comparison to the “registration form.” This is not altered by the change in language that A.R.S. § 16-550(A) underwent in 2019. Maricopa County’s contention that it can compare signatures against signatures other than the signatures contained on a voter’s registration record is ostensibly grounded in this change. However, even though A.R.S. § 16-550(A) was changed in 2019 from “form” to “record,” this change had no effect on the requirement that affidavit signatures be compared to signatures on the form signed by electors when registering to vote. Indeed, for three years after A.R.S. § 16-550(A) was modified, Maricopa County itself understood “record” and “form” to mean the same thing.

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C. Maricopa County’s Noncompliant Verification Procedures Resulted in Vote Dilution of Lawfully Counted Votes.

Maricopa County’s new understanding of the signature verification protocol applied in the 2022 General Election resulted in a significant distortion of the voting process, leading to a form of vote dilution where each legally cast vote lost proportional value.

The seminal case on vote dilution, *Reynolds v. Sims*, 377 U.S. 533 (1964), emphasizes the principle of “one person, one vote”, asserting that each vote must carry equal weight, a standard blatantly violated by Maricopa County’s irregular application of their signature verification process. By permitting improper verifications, County Defendants effectively diluted the weight of legally cast votes throughout the state, undermining the democratic principle of equal representation.

In cases involving disenfranchisement and undue burdens on suffrage, equal treatment must be analyzed from within the “confines of the governmental entity concerned, be it the State or its political subdivisions.” *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 68 (1978). In fact, “[o]nce the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote.” *Id.* Put simply, each United States citizen “has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn*, 405 U.S. at 336. Here, because the case at hand

involves state-wide elections, electors across Arizona must be treated equally with respect to the way their votes are counted—irrespective of which county they reside in or how they vote.

The right to vote far exceeds the initial allocation of the franchise. *Bush v. Gore*, 531 U.S. 98, 104 (2000). “Equal protection applies *as well to the manner of its exercise*. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Id.* (emphasis added) Moreover, “[i]t must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of the citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Id.* at 105 (quoting *Reynolds*, 377 U.S. at 555).

By deviating from the uniform, non-technical process established by A.R.S. §16-550(A), County Defendants necessarily included illegal votes. Each of the illegal votes tabulated respectively diluted the strength of Plaintiffs’ votes, thus, they were not treated equally in violation of their fundamental rights secured by Article II § 13 of the Arizona Constitution and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The inconsistent application of Maricopa County’s signature verification plan (as compared to other counties) means that voters outside of Maricopa County, such as Plaintiff Crosby, did not have their votes subjected to the same level of scrutiny

for verification purposes. By comparing affidavit signatures to affidavit signatures in Maricopa County (which is the most significant county in Arizona by percentage of registered voters),³² County Defendants inherently compromised the integrity of the electoral process at the state level. This irregularity infringed upon the constitutional rights of voters throughout Arizona (only some of which had their votes subjected to proper verification) and diluted the potency of all legally cast votes, thereby leaving the results of all statewide races in the General Election mired in uncertainty. *See Reyes*, 952 P.2d 329; *see also Miller*, 179 Ariz. 178.

REQUEST FOR ATTORNEYS' FEES

Plaintiffs request their reasonable attorneys' fees pursuant to A.R.S. § 12-2030.

PRAYER AND REQUESTED RELIEF

Plaintiffs respectfully request the following relief:

1. Declare impermissible and unlawful Maricopa County's failure to conform with the unambiguous and "non-technical" requirements of A.R.S. § 16-550(A) by exclusively utilizing a "historical record" for determining the validity or

³² *See* <https://www.maricopa.gov/5539/Voting-Equipment-Facts#:~:text=ballot%20rotation%20laws,-.Maricopa%20County%20is%20the%20second%20largest%20voting%20jurisdiction%20in%20the,percent%20of%20Arizona's%20registered%20voters> (accessed August 15, 2023).

invalidity of signatures on mail-in ballot packets in the 2022 General Election, as violating Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Articles II §§ 13, 21, VII §§ 7 & 12 of the Arizona Constitution.

2. If possible, order a recount of all vote-by-mail ballots cast in Maricopa County during the 2022 General Election using signature verification procedures that comply with A.R.S. § 16-550(A).
3. In the alternative, direct County Defendants to decertify the state-wide results of the election from Maricopa County and State elections officials to recanvass the state-wide results based exclusively on legal votes cast throughout the remainder of Arizona. Should the Court adopt this option, the exclusion of votes from Maricopa County would change the General Election results for Governor, Attorney General, Proposition 308, and Proposition 309.
4. In the further alternative, order Maricopa County (as soon as practicable but no later than October 15, 2023) to conduct a new election in a manner that ensures strict compliance with A.R.S. § 16-550(A) by requiring that signature comparison against the signature stored on each voter's registration form.
5. Order County Defendants to pay attorneys' fees and costs to Plaintiffs.

6. Grant and impose any other remedy and grant and impose such other and further relief, at law or equity, that this Court deems just and proper in the circumstances.

RESPECTFULLY SUBMITTED this 17th day of August, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Ariz. R. Spec. Act. 7, the undersigned counsel certifies that the Complaint for Special Action is double spaced and uses proportionally spaced typeface (*i.e.*, 14-point Times New Roman) and contains less than 10,500 words according to the word-count function of Microsoft Word. Verifications are also attached to this Combined Complaint for Special Action.

RESPECTFULLY SUBMITTED this 17th day of August, 2023.

By: /s/ RYAN L. HEATH
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Attorneys for Plaintiffs

**IN THE SUPREME COURT FOR THE
STATE OF ARIZONA**

David Mast and Tom Crosby,

Plaintiffs,

v.

Katie Hobbs, in her official capacity as Governor of Arizona, Kris Mayes, in her official capacity as Attorney General of Arizona, Adrian Fontes, in his official capacity as Secretary of State of Arizona, Stephen Richer, in his official capacity as Maricopa County Recorder; Scott Jarrett, in his official capacity as Maricopa County Director of Elections; Rey Valenzuela, in his official capacity as Maricopa County Director of Elections; Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo in their official capacities as members of the Maricopa County Board of Supervisors; and the Maricopa County Board of Supervisors,

Defendants.

Case No.:

**APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF'S COMBINED
COMPLAINT FOR SPECIAL ACTION**

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**Pro hac vice motion to be filed*

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RESPECTFULLY SUBMITTED this 17th day of August, 2023.

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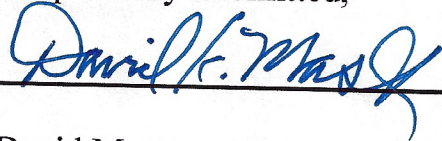
VERIFICATION OF DAVID MAST

Before me, the undersigned notary, on this day personally appeared David Mast, the affiant, whose identity is known to me. After I administered the oath, affiant testified as follows:

1. My name is David Mast. I am over eighteen (18) years of age, of sound mind, and capable of making this verification. I have read thoroughly the document to which this verification is attached, Complaint for Special Action.
2. The facts stated and set forth in Complaint for Special Action are within my personal knowledge and are true and correct.

Further Affiant Seyeth Not.

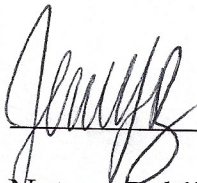
Respectfully Submitted,

By: 

David Mast

Subscribed to and sworn before me on this 17th day of August, 2023.



By: 

Notary Public in and for the state of
Arizona

VERIFICATION OF TOM CROSBY

Before me, the undersigned notary, on this day personally appeared Tom Crosby, the affiant, whose identity is known to me. After I administered the oath, affiant testified as follows:

1. My name is Tom Crosby. I am over eighteen (18) years of age, of sound mind, and capable of making this verification. I have read thoroughly the document to which this verification is attached, Complaint for Special Action.
2. The facts stated and set forth in Complaint for Special Action are within my personal knowledge and are true and correct.

Further Affiant Seyeth Not.

Respectfully Submitted,

By: _____

Tom Crosby

Subscribed to and sworn before me on this 17th day of August, 2023.

By: _____

alexis lucas

Notary Public in and for the state of
Arizona

