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SUPREME COURT OF ARIZONA

ABRAHAM HAMADEH, as an individual legally entitled to the office of Attorney General; DAVID MAST, and TOM CROSBY, **Petitioners/Plaintiffs,** **v.** **HON. SUSANNA PINEDA, Judge of the Superior Court of the State of Arizona, in and for the County of Maricopa,** **Respondent,** **KRIS MAYES, Attorney General of Arizona, *et al.*,** **Respondents/Defendants.**	**No. _____** **Court of Appeals Division One Case No. 1 CA-CV 24-0357** **Maricopa County Superior Court Case No. CV2023-053465 and CV2023-054988** **(Expedited Relief and Oral Argument Requested)**

COMBINED PETITION FOR SPECIAL ACTION AND APPENDICES

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I. INTRODUCTION

For the 2022 General Election ("Election"), Petitioner Abraham Hamadeh ("Hamadeh") received the highest number of **legal votes** for the office of Attorney General, and more **legal votes** were cast against Proposition 308 and for Proposition 309 (the "Contested Races").[1] It was only discovered well after the Election that Maricopa County ("Maricopa") illegally counted hundreds of thousands of ballots by exclusively comparing early affidavit signatures to signatures from prior mail-in ballot affidavits rather than to signatures from the voter's "registration record"—as required by A.R.S. §§ 16-550(A), 16-152, 16-166 and the 2019 Election Procedures Manual ("EPM").

The trial court improperly dismissed Petitioners' cases pursuant to Ariz. R. Civ. P. 12(b)(6) and, under the standards applicable thereto, without assuming the truth of the well plead allegations or determining the most critical issues: (1) what election-related documents are to be included in the "registration record" for

[1] Originally, Petitioners David Mast ("Mast") and Tom Crosby ("Crosby") (collectively, including Hamadeh, "Petitioners") also challenged the results for the 2022 gubernatorial election and the election for Attorney General. However, at oral argument, Mast and Crosby dropped their challenges to those elections. APPV2-905–06. Regarding Propositions 308 and 309, however, Mast and Crosby are entitled to mandamus relief because abiding by the election contest statute was impossible due to Maricopa concealing the basis for their injury until **over six months** after the election. Accordingly, Mast and Crosby lacked a plain, adequate, or speedy remedy at law and, therefore, may seek mandamus relief.

signature verification as required by Arizona statutes and the EPM; (2) whether Maricopa properly complied with Arizona statutes and the EPM by exclusively comparing early-ballot affidavit signatures against previously verified vote-by-mail affidavit signatures; and (3) when Maricopa's illegal methodology was publicly revealed—which occurred over a half year **after** the Election.

Despite the EPM's clear distinction between **in-person** affidavit signatures (which are identified for inclusion in the "registration record") and **vote-by-mail** affidavit signatures (which are not), the trial court **blatantly ignored** Petitioners' allegations and arguments that Maricopa failed to follow the clear requirements of A.R.S. § 16-550(A) **and the EPM** and dismissed this case—erroneously holding: (1) Petitioners Mast and Crosby lacked standing; (2) the complaints challenged an election procedure that was known prior to the Election such that this litigation was untimely and barred by laches; (3) that Hamadeh failed to state a claim for *quo warranto* because he did not sufficiently plead the strength of his title to the office of Attorney General; (4) claim preclusion and issue preclusion bar Hamadeh's *quo warranto* action because he purportedly raised the same "verification" issue in two prior matters; and (5) that sanctions are warranted against all Petitioners and their counsel.

Should it stand, the trial court's ruling has the practical effect of precluding legitimate contests to faulty elections, even when elections officials conceal

wrongdoing for months after the fact, because—on the one hand—the ruling requires aggrieved parties to bring lawsuits before facts are known and lose due to insufficient evidence to support their claims or—on the other hand—wait until the concealed facts are discovered and lose because it is too late to sue. **Should this Court accept the trial court's interpretation, the result will discourage transparency, encourage cover-ups, and promote election mischief.** This is untenable, and this Court needs to face this issue directly by reversing and remanding the trial court's ruling on all issues—with the specific instruction to grant Hamadeh leave to file his *quo warranto* action—so that Petitioners may pursue their meritorious claims.

II. JURISDICTION

This Court has great discretion to accept an original proceeding for special action relief. *Ariz. Legislative Council v. Howe*, 192 Ariz. 378, 382 ¶ 10 (1994). Exercising special action jurisdiction is appropriate where the case presents "purely legal issues of statewide importance"[2] and "there is no 'equally plain, speedy, and adequate remedy by appeal.'" *Tobin v. Rea*, 231 Ariz. 189, 193 ¶ 8 (2013) (quoting Ariz. R. Spec. Act. 1(a)). Here, because the *de facto* Attorney General (Kris Mayes) has occupied the office for more than one-quarter of the four-year term and every

[2] Notably, the trial court admitted that the issues presented here are "nuance[d]" and "very important." APPV2-943.

day that passes is another day closer to completion of said term, this Court's immediate intervention is necessary to reach an expeditious and final determination regarding who is the *de jure* officeholder. Thus, this case presents a unique situation sufficient to invoke this Court's jurisdiction because there is no "equally plain, speedy, and adequate remedy by appeal."[3] *Id.* Moreover, special action jurisdiction is appropriate here because the "sole issue before [this Court] is one of law and of statewide significance, affecting [voters and citizens] throughout Arizona." *Cronin v. Sheldon*, 195 Ariz. 531, 533 ¶ 2 (1999).

Additionally, special action relief is appropriate in this case under Ariz. R. Spec. Act., Rule 3(c) because the "superior court's ruling is arbitrary, capricious, or an abuse of discretion." *Tobin*, 231 Ariz. at 194 ¶ 14. "Misapplication of law or legal principles constitutes an abuse of discretion." *Id.* (citing *City of Phoenix v. Geyler*, 144 Ariz. 323, 328–29 (1985)). Where, as here, "the facts are undisputed, this [C]ourt is not bound by the trial court's conclusions and may make its own analysis of the facts or legal instruments on which the case turns." *Broemmer v. Abortion*

[3] Should this Court decline jurisdiction, Petitioners respectfully request that the special action petition be transferred to the Court of Appeals pursuant to A.R.S. § 12-120.22(B) with a directive to accept jurisdiction. Irrespective of the outcome at the appellate court, due to the significance of this matter, the losing party will seek review by this Court, further delaying a complete and final adjudication of the Election.

Servs., 173 Ariz. 148, 150 (1992) (citations omitted). For the reasons set forth below, the trial court misapplied long-standing legal principles, ignored substantial undisputed evidence, and improperly imposed sanctions despite the Petitioners asserting valid, good-faith legal arguments. Thus, this Court should exercise its jurisdiction to accept review of this case pursuant to Ariz. R. Spec. Act., Rule 3(c).

III. STATEMENT OF ISSUES

A. Whether the trial court erred in concluding that Maricopa County followed the signature verification standards set forth by A.R.S. § 16-550(A) and the EPM during the Election.

B. Whether the trial court erred in finding that this case is a post-election challenge to an election procedure that was known prior to the Election when the facts demonstrate that Maricopa's departure from statutory and EPM requirements was not revealed until over a half a year after the Election.

C. Whether the trial court erred in concluding that Hamadeh failed to plead the strength of his own title to the office of Attorney General when his complaint clearly states that he is the lawful office holder after the uncertain results from Maricopa are disregarded.

D. Whether the trial court erred in concluding that both claim preclusion and issue preclusion barred Hamadeh's *quo warranto* action although it concerns different claims, different issues, and different facts than his prior cases.

E. Whether the trial court erred in holding that Mast and Crosby lack standing even though: (1) Crosby is a resident of Cochise County (which used different signature verification procedures); (2) Arizona law recognizes that in matters of great public importance, standing requirements are relaxed; and (3) Mast and Crosby also sought declaratory relief concerning future elections.

F. Whether the trial court abused its discretion in awarding sanctions to Respondents while **wholly ignoring** Petitioners' good-faith arguments supported by both fact and law.

G. Whether the trial court abused its discretion in denying Petitioners' requests for sanctions based upon undisputed evidence that the Respondents made material misrepresentations and other improper arguments to the trial court.

IV. STATEMENT OF MATERIAL FACTS

On September 6, 2023, Mast and Crosby filed their complaint (CV2023-053465) seeking mandamus relief. They filed their first amended complaint ("FAC") on September 21, 2023. In their FAC, Mast and Crosby seek to invalidate all mail-in votes cast in Maricopa's 2022 General Election for Propositions 308 and 309 on the grounds that Maricopa violated A.R.S. §§ 16-152, 16-166, 16-550(A), and various provisions of the Arizona Constitution and the Equal Protection Clause of the United States Constitution. APPV1-005 ¶ 5. They also sought, declaratory relief as to **future** elections, as well as attorneys' fees and costs. *Id.*, at ¶ 6. Maricopa

violated these statutory and constitutional provisions by failing to compare the signature of the purported elector on her early ballot affidavit against a signature from her "registration record." Instead, for hundreds of thousands of tabulated votes, Maricopa **exclusively compared** affidavit signatures to the most recent "historical signature" submitted by the purported voter, which typically was a prior **vote-by-mail** affidavit signature, even though such a signature is not lawfully within her "registration record." APPV1-013–19 ¶¶ 33–35, 40–48. As required by Arizona law, all votes for or against Propositions 308 and 309 from Maricopa must be disregarded, and the state-wide results for these races recanvassed based solely on lawful votes cast from throughout the remainder of Arizona. *Id*.

On December 28, 2023, Hamadeh filed his verified petition for writ of *quo warranto* and writ of mandamus (CV-2023-054988). In his complaint, Hamadeh seeks leave to file a writ of *quo warranto* under A.R.S. § 12-2043, finding that Kris Mayes has usurped, intruded into or unlawfully holds or exercises the public office of Arizona's Attorney General and leave from the court to issue a writ of *quo warranto* to Ms. Mayes directing that she cease functioning in her unlawful capacity. APPV1-1479 ¶ 1. He also seeks fees and costs. APPV1-1483 ¶ 12. Furthermore, Hamadeh's complaint asks that he be installed as Arizona's Attorney General by voiding all votes from Maricopa for the Attorney General election and declaring him the lawful victor based solely on the legal votes cast from throughout the remainder

of Arizona. APPV1-1482–83 ¶ 11. Like Mast and Crosby, Hamadeh's complaint asserts that Maricopa included a material number of illegal votes in its canvass by exclusively comparing signatures to the most recent "historical signature" submitted by the purported elector—regardless of whether the most recent "historical signature" compared to was lawfully within the voter's "registration record" as required by A.R.S. §§ 16-550(A), 16-152, 16-166, and the EPM. APPV1-1480 ¶ 5.

Given the similarity of the claims brought by Petitioners, CV2023-053465 and CV-2023-054988 were consolidated by the trial court, and a consolidated hearing on all motions to dismiss was held on March 22, 2024. APPV2-826–968. After oral argument, the trial court took the motions to dismiss under advisement and ruled, dismissing both cases, on March 28, 2024. APPV2-969–85. Final judgment was entered on April 17, 2024, on all issues except for the amount awarded for fees, costs, and sanctions. APPV2-987–90. This petition for special action seeks review of the lower court's dismissal of both cases.

V. ARGUMENT

a. Signatures from vote-by-mail affidavit envelopes are not lawfully within the "registration record."

A.R.S. § 16-550(A) prescribes 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); *see also,* 16-152, 16-166, EPM at 68–69. The term "registration record" is clear and unambiguous—it refers to documents signed by voters **when registering (or re-registering) to vote**.

A.R.S. § 16-152 specifies what information a citizen is required to provide **when registering to vote**. This information includes, among other things, the registrant's state or country of birth, date of birth, and other personal information. **When registering to vote**, each registrant **is required** to provide a form of identification, A.R.S. § 16-152(A)(12), **and** "evidence of United States citizenship with the application[.]"A.R.S. § 16-152(A)(23) (emphasis added). Indeed, absent satisfactory evidence of United States citizenship (including a driver's license or an Arizona identification card issued after October 1, 1996), the County Recorder "**shall reject**" any application for registration. A.R.S. § 16-166(F) (emphasis added).

To submit an early ballot (whether **by mail** or **in person**), a voter must first sign the affidavit envelope accompanying the ballot, by which she attests under penalty of perjury that she (1) is a registered voter in her county of residence, (2) has not already voted in the election, and (3) will not vote again in the election in any other county or state. A.R.S. § 16-547. To cast an early ballot **by mail**, the voter places her ballot in the (green) early ballot affidavit envelope, signs and seals the envelope, and mails or delivers it to the recorder. Comparatively, to cast an early ballot **in person**, the voter must first show her identification prior to receiving the

ballot and (white) affidavit envelope before signing the envelope and casting her ballot—which is precisely why the 2019 Elections Procedures Manual ("EPM") expressly provides, on page sixty–nine, that "[a]fter verifying an **in person** early ballot, a County Recorder may update the signature in a voter's [registration] record by scanning the voter's affidavit signature and uploading the signature image to the voter's record."[4] (emphasis added). The EPM further allows for signatures from signature rosters and Permanent Early Voting List ("PEVL") request forms to be included in the "registration record" (EPM, at page sixty–eight)—because **such documents** also require contemporaneous identification when they are signed. There is **no provision** in the EPM, however, authorizing county recorders to compare affidavit signatures accompanying early ballots to signatures from records signed by voters when not registering to vote (*i.e.*, when the voter did not contemporaneously provide identification) such as **vote-by-mail** affidavits.

The long-established doctrine of *expression unius est exclusion alterius* provides that the "expression of one thing is the exclusion of another." *Jennings v. Woods*, 194 Ariz. 314, 330 (1999). This doctrine commands that when a statute or administrative rule (such as rules promulgated by the EPM) expressly include one

[4] The 2023 Election Procedures Manual provides for the same at page 84: https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf

or more items in a class, such enumeration indicates a clear intent to exclude items of the same class that are not expressly mentioned. *Southwestern Iron & Steel Indus., Inc. v. State*, 123 Ariz. 78, 79 (1979). As argued below (APPV2-886–88), the EPM expressly provides that **in-person** affidavit signatures may be included in the voter's "registration record" after the signature has been verified. However, the EPM **does not** expressly indicate that **vote-by-mail** affidavit signatures may be included in the "registration record" following verification. Thus, pursuant to the doctrine of *expression unius*—**vote-by-mail** affidavit signatures are intentionally excluded from the "registration record." The application of *expression unius* is further supported by page sixty–eight of the EPM—which enumerates additional signatures that may also be included in the "registration record"—specifically, those from "signature rosters or early ballot/PEVL request forms."

The critical distinction between signatures from signature rosters, PEVL request forms, and **in-person** affidavits—as compared to signatures from **vote-by-mail** affidavits—is that the former group requires the voter to provide identification when her signature is submitted. Thus, there is a much greater assurance that signatures collected contemporaneously with identification are not fraudulent in nature. **Put simply—the more a signature is untethered from identification—the**

greater the risk of voter fraud, ballot tampering, and abuses of the elective franchise.[5]

To be lawful and eligible for tabulation in accordance with the "non-technical" requirements of A.R.S. § 16-550(A),[6] the signature on the affidavit

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[5] The **only** provision in Arizona's statutory scheme known to Petitioners wherein **mail-in** ballot affidavits are included in the "registration record" is found at A.R.S. § 16-543.02(D), **which provides an exception for when an overseas voter completes a federal write-in early ballot transmission envelope with his or her federal write-in early ballot request**. **If the Legislature intended for all mail-in ballot affidavits to be included in the "registration record"—then the exception provided by A.R.S. § 16-543.02 would be unnecessary**. Therefore, A.R.S. § 16-543.02(D) provides additional support to the application of *expression unius* to exclude **vote-by-mail** affidavit signatures from the "registration record."

[6] In *Miller v. Picacho Elem. Sch. Dist. No. 33*, this Court held that when election statutes "advance" fundamental rights conferred by the Arizona Constitution, such laws are "non-technical." 179 Ariz. 178, 180 (1994). Specifically, the *Miller* court concluded that A.R.S. § 16-542(B), requiring absentee ballot distribution by mail, set "forth procedural safeguards to prevent undue influence, fraud, ballot tampering, and voter intimidation"—which is the goal of Arizona's secret ballot guarantee established by Art. VII § 1 of the Arizona Constitution. Accordingly, because employees of the school district personally distributed and returned absentee ballots to and from electors in violation of A.R.S. § 16-542(B), the violation of this "**very important**" law resulted in "**substantive irregularities**" and necessitated setting aside the election. *Id.* Pursuant to *Miller*, when such "non-technical" laws are violated in a manner that "affects" the outcome of an election, then the outcome from the affected jurisdiction is void and must be set aside as a matter of law. *Id.* The "non-technical" principle set forth in *Miller* was unanimously applied by the Arizona Court of Appeals, Division One, in *Reyes v. Cumming*, 952 P.2d 329 (1997). The *Reyes* court held that A.R.S. § 16-550(A) is also a "non-technical" statute because it advances the constitutional goal set forth by Art. VII § 12 of the Arizona Constitution

envelope accompanying an early ballot must be matched to the signature featured on the elector's "registration record." A.R.S. §§ 16-550(A), 16-152, 16-166, EPM at 68–69. Instead of abiding by this simple requirement, Maricopa allowed its level-one signature reviewers during the Election to **exclusively compare** early ballot affidavit signatures to the most recent "historical" signature submitted by the purported voter—irrespective of whether the "historical" signature was lawfully a part of her "registration record." Worse yet, Maricopa **did not publicly disclose this practice** until May of 2023—**over a half a year after the Election**. Moreover, as sworn statements from various County Recorders included in the trial court's record demonstrate, the practice of **exclusively comparing** signatures to the most recent "historical" signature is unique to Maricopa. APPV2-247–64. Consequently, Maricopa misapplied its ministerial duty[7] by tabulating a material number of illegal

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by enacting "registration and other laws to secure the purity of elections and guard against abuses of the elective franchise." A.R.S. § 16-550(A) does so by guaranteeing that absentee ballots are cast only by registered voters. *Id.* at 331.

[7] "A ministerial duty is one that specifically describes the manner of performance and 'leaves nothing to the discretion' of the public official or board." *Ponderosa Fire Dist. v. Coconino Cnty.*, 235 Ariz. 597, 601, ¶ 19 (App. 2014) (citation omitted). Use of the word "'shall' generally indicates a mandatory provision." *Walter v. Wilkinson*, 198 Ariz. 431, 432 (App. 2000). A.R.S. § 16-550(A) prescribes 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).

votes following unlawful signature comparisons, which affected the results of the Election for the Contested Races. Accordingly, this Court should reverse and remand the trial court's erroneous determination that **vote-by-mail** affidavit signatures are lawfully within the "registration record."

b. This case is not a post-election challenge to an election procedure that was known prior to the Election, and it is not barred by laches.

In dismissing Hamadeh's complaint as untimely, the trial court stated:

> The 2019 EPM specifically addresses signature verification for mail-in ballots. *See* 2019 EPM VI.A.1. The 2019 EPM allows the County Recorder to "consult additional known signatures from *other election documents in the voter's registration record* . . . in determining whether the signature on the early ballot affidavit was made by the same person who registered to vote." If satisfied that the signature was made by the same person, it moves on for tabulation.

APPV2-972 (italics original). Additionally, the trial court noted:

> Prior to 2019, the A.R.S. § 16-550 required comparison of early ballot signatures to be compared to the voter's "registration form." See A.R.S. §16-550 (2014). The contents of the registration form are detailed in A.R.S. §16-152. However, A.R.S. §16-550 was changed expanding comparison to the voter's "registration record." **The term "registration record" is not defined** but the 2019 EPM gives some examples of signatures that can be used for comparison, including "*other election documents* **contained in the voter's registration record**."

Id. (italics original, emphasis added in bold).[8] Thus, the trial court seems to have determined that "registration record" is defined by the EPM to include "other election documents contained **in the voter's registration record**." Bluntly, this is circular reasoning—using the term "registration record" to define itself. As shown above, there is no rational basis for concluding that prior **vote-by-mail** affidavit signatures are properly included in the voter's "registration record."

By assuming that **vote-by-mail** affidavit signatures are included in the "registration record," the trial court compounded its error by holding that Petitioners challenged the process for signature verification prescribed by the EPM and A.R.S. § 16-550(A). APPV2-973–81. Contrary to the trial court's determination, this case does not challenge any election procedure promulgated in 2019.[9] Indeed, Hamadeh plainly stated in paragraph five of his complaint:

[8] This interpretation of legislative intent is directly at odds with the recent decision by the Hon. John R. Napper (Yavapai County Superior Court), who has held that, as used in A.R.S. §16-550(A), "registration record" only includes signatures on registration forms and amendments thereto (*e.g.*, updates to a voter's address, party affiliation, etc.). APPV1-986–91. Thus, there are now conflicting decisions as to what documents are to be included in the "registration record"—which is yet another reason why the Court should exercise its jurisdiction to hear this special action and determine this issue.

[9] Notably, even Maricopa disclaimed the court's conclusion that Hamadeh's complaint challenged a procedure adopted in 2019, "Hamadeh here asserts that the County's signature verification procedures for the 2022 General Election were inconsistent with A.R.S. § 16-550 and the 2019 EPM[.]" APPV2-161. This, alone, warrants reversal.

> This Petition asserts that by using the phrase "registration record" in A.R.S. § 16-550(A) the Arizona Legislature was referring to the registration-related documents signed by voters when registering to vote, or modifications thereto as required by A.R.S. §§ 12-16-152, 16-166, and the [EPM].

APPV1-1480. The same paragraph further provided (in footnote 2):

> Petitioner believes that the decision by Judge Napper in *Ariz. Free Enter. Club, et al. v. Fontes*, defining 'registration record' as including only registration forms and amendments thereto is well-reasoned. No. CV2023-00202 Under Advisement Ruling and Order Sept. 1, 2023, at 3–4 (Ariz., filed Mar. 6, 2023) . . . **For the purpose of this case, however, Petitioner is showing that Maricopa County not only violated Arizona statutes, but also the EPM when it allegedly verified mail-in ballot affidavit signatures in the November 2022 General Election.**

Id. (emphasis added).

Additionally, the trial court held that this case presented a procedural challenge that should have been brought prior to the election because (1) Maricopa's 2022 Elections Plan for the August Primary and November General ("Elections Plan"), which was published in May of 2022, allowed signature reviewers to compare the signature on the current affidavit envelope against a "historical reference" signature that was "previously verified and determined to be a good signature for the voter[,]" and (2) Maricopa's Elections Plan stated that such historical reference signatures could come from "voter registration forms, in-person roster signatures and **early voting affidavits** from previous elections." APPV2-973 (emphasis added); *see also* (Elections Plan) APPV1-231.

The Elections Plan, however, **did not alert the public** that previously-verified signatures from "early voting affidavits" would include signatures from **vote-by-mail** affidavit envelopes—which are not lawfully a part of the "registration record." Thus, the Elections Plan **did not** provide clear or sufficient public notice prior to the Election that Maricopa planned to deviate from the strict requirements of the EPM and Arizona law.

Stated differently, the trial court dismissed this case—even though Maricopa failed to publicly specify ahead of the election—its plan to break the law. Here, the trial court **ignored** "the general rule of law that public officers are presumed to have done their duty, . . . and that acts of public officials are presumed to be correct and legal in absence of clear and convincing evidence to the contrary[.]" *Verdugo v. Industrial Comm'n*, 108 Ariz. 44, 48 (1972) (citing *Hunt v. Campbell*, 19 Ariz. 254 (1917)) (some internal citations omitted); *see also Burri v. Campbell*, 102 Ariz. 541, 543 (1967) (same); APPV2-226–27. Essentially, the trial court placed the onus on the Petitioners to presume lawlessness from elections officials due to Maricopa's use of ambiguous language (and computer software used for signature verification—the workings of which are not described anywhere in the Elections Plan), which surreptitiously allowed for signature verification using **exclusive comparisons** to illegal criteria. APPV1-1488–98 ¶¶ 33, 46–49, 63, 64**.**

Furthermore, despite § 6.3.8 of the Elections Plan indicating that staff at the "first level review" were trained to compare an affidavit signature to "up to three signatures on file" for the putative voter, Rey Valenzuela (Maricopa's Co-Director of Elections) admitted—for the first time on May 18, 2023, **over a half year after November 8, 2022**—that this did not occur. APPV1-1492–93 ¶¶ 47, 48. Instead, he explained that first-level reviewers need only **exclusively** refer to a singular signature, which was the most recent "historical" signature submitted by the purported voter (irrespective of whether that signature was lawfully within the voter's "registration record"), prior to accepting the ballot and, thereby, tabulating the vote. **This resulted in Maricopa signature reviewers approving hundreds of thousands of early ballot affidavit signatures by comparing them against prior mail-in ballot affidavit signatures which, by law, are not a part of a voter's "registration record."** *Id.*

Under Arizona law, there is a clear distinction between challenges to alleged acts of misconduct that occurred prior to an election (*i.e.*, challenges to policies), **which must be timely filed before an election**, from acts of alleged misconduct that occurred during the "voting process" (*i.e.*, application of policies), **which need not be filed before an election**. *Compare Miller*, 179 Ariz. 178 (setting aside the election where absentee ballots were personally delivered to voters, in violation of A.R.S. § 16-542(B), affecting the outcome) *and Lake v. Hobbs et al.*, No. CV-23-

0046-PR, Order, at 4–5 (Ariz. Sup. Ct. Mar. 22, 2023) (count three of the complaint was held to concern a challenge to "the application of the policies, not to the policies themselves[,]" by alleging that "a material number of early ballots cast in the November 8, 2022 general election were" accepted for processing and tabulation even though said ballots were "transmitted in envelopes containing an affidavit signature that . . . did not match the signature in the putative voter's 'registration record'"), *with Sherman v. City of Tempe*, 202 Ariz. 339 (2002) (dismissing the case as untimely because the alleged violation of law concerned issues known prior to casting and tabulation of votes), and *Tilson v. Mofford*, 153 Ariz. 468 (1987) (holding that "[p]rocedures leading up to an election cannot be questioned after the people have voted, but . . . must be challenged before the election is held"). Here, just as in *Miller* and *Lake*, Petitioners challenge violations of law that necessarily occurred during the "voting process" (the illegal tabulation of unverified votes) and, thus, this case is *not* a procedural challenge that should have been filed before the Election.[10]

[10] Amazingly, the trial court also held that this case is "barred by laches" (APPV2-979) **without providing any analysis as to why such is the case**. For the reasons stated herein regarding the similarity between this case and *Lake* (which reversed the trial court's dismissal based on laches), this case is not barred by laches and this Court should reverse and remand this erroneous, conclusory holding.

In *Lake*, this Court held that the operative complaint (which alleged, "[u]pon information and belief, a material number of early ballots cast in the [Election] were transmitted in envelopes containing an affidavit signature that the [Maricopa] Recorder or his designee determined did not match the signature in the putative voter's 'registration record.' The [Maricopa] Recorder nevertheless accepted a material number of these early ballots for processing and tabulation.") was a challenge "to the application of the policies, not to the policies themselves." CV-23-0046-PR, Order, at 4. Here, Petitioners also challenge the application of policies, not the policies themselves, by alleging that "[f]or the [Election], [Maricopa] elections officials verified hundreds of thousands of mail-in-affidavit signatures utilizing an *exclusive comparison* to the most recent **historical signature** submitted by the purported elector. Most of these **historical signatures** were from prior mail-in ballot affidavits—which are not lawfully within the 'registration record' as defined by A.R.S. § 16-550(A)." APPV1-1487 ¶ 31; *see also* APPV1-1481–99 ¶¶ 6, 9, 32, 47, 48, 59, 60, 64, 70; and APPV1-007–027 ¶¶ 22, 34, 35, 43, 47, 48, 53, 67.

Thus, the trial court misapplied the law in holding that this case is an untimely post-election procedural challenge and is barred by laches, and this Court should reverse.

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c. Hamadeh has plead the strength of his own title.

The trial court also dismissed Hamadeh's suit for failure to state a claim for a writ of *quo warranto* because Hamadeh allegedly did not show that he is entitled to the office of Attorney General. APPV2-975. This conclusion, however, is clearly erroneous. Hamadeh's complaint specifically requested the trial court to "issue a writ of *quo warranto* to Kris Mayes directing that she cease functioning as Arizona's Attorney General" (APPV1-1479 ¶ 1) and for "an order directing both the State and County Defendants to recanvass the Contested Race based solely on **legal votes** cast in Arizona (which results in Petitioner being awarded the office of Attorney General)." APPV1-1482–83 ¶ 11 (emphasis added). Furthermore, Hamadeh's complaint requested "any other relief appropriate under law and justified under the circumstances." APPV1-1479 ¶ 1.[11]

As Hamadeh's complaint makes clear, the question for the trial court's consideration was not whether Hamadeh would have won the Contested Race absent

[11] Moreover, in his Consolidated Response, Hamadeh provided, in footnote one: "If Petitioner's Complaint ambiguous regarding his legal theory in *quo warranto*, then this Court should grant leave to amend pursuant to Ariz. R. Civ. P. 15(a). *MacCollum v. Perkinson*, 185 Ariz. 179, 185 (App. 1996) ("Leave to amend is discretionary, but is to be liberally granted.") (citing *Owen v. Superior Ct.*, 133 Ariz. 75, 79 (1982)). This is not a situation where the proposed amendment would be futile. *Bishop v. State Dep't of Corr.*, 172 Ariz. 472, 474–75 (App. 1992)." APPV2-211–12.

the impropriety in Maricopa but—rather—whether the impropriety renders the results from Maricopa "uncertain" by "affecting" the outcome and, therefore, requiring "nullification" of the results from the impacted jurisdiction. APPV1-1481–97 ¶¶ 7, 11, 31–33, 45–49, 55, 60, 61. By voiding the results from Maricopa and counting only the lawful votes from the remainder of Arizona, as was obviously requested in paragraph 11 of Hamadeh's complaint, he received the highest number of **legal votes** for the office of Attorney General (by a margin of more than 24,000 votes). APPV2-896; *see also* APPV1-1610.

The most critical issue in this case is whether Maricopa satisfied its obligation to uniformly apply the signature verification standard set forth in A.R.S. § 16-550(A) or even as authorized by the EPM, which the Secretary of State must promulgate to establish procedures to ensure "the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots." A.R.S. § 16-452(A). These laws define the appropriate, uniform procedure to guarantee that absentee ballots across Arizona are cast only by registered voters. Ariz. Const. Art. VII § 12.

As shown above, Maricopa tabulated a material number of illegal votes based on unlawful signature comparisons, which "affected" the results for the Contested Races. Whether this "non-technical" defect affects 3,700 votes (as in *Reyes*), or over

a million (as is the case here), Arizona law provides one remedy. When a "non-technical" statute is violated, and the violation renders the results of any election mathematically "uncertain," the results from the uncertain election must be set aside. *Miller*, 179 Ariz. 178. This 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." *Lake*, No. CV-23-0046-PR, Order at 4–5 (emphasis added). Here, Hamadeh alleges that Maricopa failed, in fact, to uniformly apply signature verification standards for hundreds of thousands of approximately 1.3 million votes. APPV1-1487–98 ¶¶ 31, 32, 61, 63. Thus, Maricopa's Election results for the Attorney General race (and Propositions 308 and 309) must be set aside. [12] *Reyes*, 952 P.2d at 332.

As the Reyes court explained, "[a]t first blush," the nondiscretionary requirement for 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 "very

[12] It is worth comparing the margin of victory in *Reyes* 0.62179%, to the margin of victory in the race for Attorney General—0.020369%—which was plagued by the same "non-technical" defect. APPV1-1481–93 ¶¶ 7, 17, 27, 29, 32, 46–49.

important." As stated above, they provide procedural safeguards to prevent undue influence, fraud, ballot tampering, and voter intimidation." *Id.* (*quoting* Ariz. Const. Art. VII § 1). Although seemingly trivial, such "non-technical" laws are imperative to "secure the purity of elections and guard against abuses of elective franchise." *Id.* (*quoting* Ariz. Const. Art. VII § 12). Indeed, as this Court has held, "[e]lection statutes are mandatory, not 'advisory,' **or else they would not be law at all**." *Miller*, 179 Ariz. at 180 (emphasis added). If A.R.S. § 16-550(A) "unduly burdens elections officials, the Recorder or other appropriate officials **may lobby the legislature to change it; until then it is the law**." *Reyes*, 952 P.2d at 331-32 (emphasis added).

The "purpose of A.R.S. 16-550(A) is to prevent the inclusion of invalid [(*i.e.*, illegal)] votes." *Id.* 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 Court "established that an individual challenging an election need only show that absentee ballots counted in violation of a non-technical statute changed the outcome of the election; 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.* Additionally, it is immaterial that Maricopa's unlawful conduct did not impact all votes because **even a finding of substantial compliance with A.R.S. § 16-550(A) still constitutes an abuse of discretion**. *Id.*

As alleged, well over 750,000 signatures from **mail-in** affidavit envelopes submitted during the 2022 Primary Election were included in Maricopa's "historical record" and utilized for signature comparison during the Election. APPV1-1492–96, at ¶¶ 46, 59. If even just one percent of the same electors submitted early ballots in the Election, then thousands of signatures were **exclusively** "compared," in a matter of seconds,[13] to illegitimate criteria and, thereby, illegally "verified." These unlawfully verified votes were included in Maricopa's canvass and, subsequently, in the state-wide canvass. Thus, it is **highly plausible** that a material number of votes were illegally tabulated in Maricopa affecting the results for the Contested Races. APPV1-1497 ¶ 61; *see also* APPV1-017–18 ¶ 45. Indeed, such is a virtual certainty.

Here, considering such small margins (including a mere 280 votes for the race of Attorney General), a competent mathematical basis exists (which can be proven at trial) to set aside the Contested Races because enough illegal votes plausibly affected the outcomes. Put simply, because A.R.S. section 16-550(A) is not a mere "technicality" and because Petitioners sufficiently allege that a material number of early ballots were illegally counted in violation of this statute, the contours of which

[13] APPV1-1233–34 (*Lake v. Hobbs, et al.*, CV-2022-095403 (Ariz., filed Dec. 9, 2022) Tr. of Proceedings (May 18, 2023), Day 3, demonstrating the speed at which signatures were verified, rendering "scrolling" for proper comparisons impossible).

are clearly defined by the EPM, the Contested Races are mathematically "uncertain" and, therefore, must be set aside. *Id.*

In *Lake*, this Court recently determined that the operative complaint (alleging that an election decided by more than 17,000 votes was "affected" by a material number of illegal votes in violation of A.R.S. § 16-550(A)) included sufficient allegations regarding "mathematical certainty" to survive a motion to dismiss. No. CV-23-0046-PR, Order, at 4–5. Given this Court's ruling in *Lake*, it would be wholly inconsistent for this Court to affirm the trial court's dismissal where Petitioners' allege that the outcomes for the Contested Races were "affected" by a material number of illegal votes due to Maricopa's impermissible application of A.R.S. § 16-550(A) and the EPM. Hamadeh's election was decided by a mere 280 votes and Proposition 309 was decided by a margin essentially equivalent to the margin at issue in *Lake.*[14] In any event, the burden to prevail for one challenging the results of an election in a *quo warranto* action is to prove that the litigant "has received the highest number of **legal votes** for the office[.]" *Campbell v. Hunt*, 18 Ariz. 442, 448 (1917) (emphasis added). When the Maricopa Election results for the Attorney

[14] Proposition 309 failed to pass by just 18,488 votes whereas Proposition 308 passed by 60,433 votes. APPV1-134. These elections are contested because their results change when the votes from Maricopa are removed from the statewide canvass (*i.e.*, only the Contested Races were "affected").

General race are set aside, Hamadeh won the election by over 24,000 votes. APPV1-1610.

Accordingly, Hamadeh has plead the strength of his own title, and this Court should reverse and remand with instructions to grant him leave to file a private *quo warranto* action.

d. Neither claim preclusion nor issue preclusion bar Hamadeh's suit.

The trial court further misapplied the law by dismissing Hamadeh's complaint based on claim preclusion and issue preclusion—allegedly because of Hamadeh's assertions and arguments in *Kentch, et. al. v. Mayes, et. al.*, CV-2022-01468 (Mohave Cty. Super. Ct. 2022) ("*Kentch*") and *Hamadeh et al. v. Mayes et al.*, CV2022-015455 (Maricopa Cty. Super. Ct. 2022) ("*Hamadeh*"). APPV2-975–76. The doctrine of claim preclusion applies when there is (1) an "identity of claims" between a previous lawsuit and the current one; (2) a final judgment on the merits in the previous litigation; and (3) "identity of privity between the parties in the two suits." *Peterson v. Newton*, 232 Ariz. 593, 595 ¶ 5 (App. 2013) (quotation omitted). Hamadeh does not contest that the second two elements of claim preclusion are met when this case is compared to *Kentch* and *Hamadeh*. However, Arizona law is much more restrictive as to what constitutes an "identity of claims" than federal law and the law of other states.

In Arizona, "[f]or an action to be barred, it must be based on the **same cause of action asserted in the prior proceeding**." *Phx. Newspapers v. Dep't of Corr.*, 188 Ariz. 237, 240 (App. 1997) (citing *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 573 (1986) (emphasis added).[15] Here, the test to resolve the identity of claims question is "rather restrictive"—"[i]f no additional evidence is needed to prevail in the second action than that needed in the first, then the second action is barred." *Id.* (citations omitted).

Newspapers is particularly instructive to show that Hamadeh's claims are not precluded. In 1994, Phoenix Newspapers, Inc. and its reporter, Randall Collier ("Newspapers") sought a declaratory judgment that "Arizona Department of Corrections ('ADOC') Director's Management Order 89-21 ('DMO 89-21') and the ADOC's Internal Management Policy for 'Release of Information to the News Media' unconstitutionally discriminated against media representatives by denying them prison visitation privileges enjoyed by the general public." *Id.*, at 239.

[15] The *Newspapers* court was highly critical of the "identity of claims" test. Nevertheless, it held that: "[n]eedless to say, we are not free to ignore or alter the law as enunciated by our [S]upreme [C]ourt…. Accordingly, we are compelled to hold that the judgment in the first action does not bar the claim asserted in this action. Although the claims involved in the two proceedings arise out of the same event, the denial of access to prisoners, they do not constitute the same cause of action under existing Arizona law [because additional evidence is needed to prevail in the second action than that needed in the first]." 188 Ariz. at 240, 241.

Furthermore, in the 1994 suit, the Newspapers "sought an injunction against ADOC's enforcement of the DMO against the Newspapers and all members of the media." *Id.*

After dismissal of the Newspapers' 1994 complaint, the same plaintiffs filed a new action in 1995, which "again sought declaratory and injunctive relief, claiming that DMO 89-21 unconstitutionally denies media representatives equal access to visitation of inmates." *Id.* The trial court dismissed the second complaint pursuant to the doctrine of claim preclusion. The Arizona Court of Appeals (Division One) reversed the trial court's ruling that the 1995 complaint was barred by claim preclusion. *Id.*

The *Newspapers* court held, as a matter of law, that claim preclusion did not bar the second suit because the "Newspapers assert[ed] **a new theory** in their second action, **supported by some additional facts**." *Id.*, at 241 (emphasis added). The appellate court explained that the "identity of claims" approach "permits the Newspapers—**and any other plaintiff**—to avoid preclusion **merely by posturing the same claim as a new legal theory**." *Id.* (emphasis added). The Phoenix Newspapers court explained, "[u]nder the same evidence test, for example, an action on an open or stated account is not barred by a prior action on a promissory note, even though both actions are based on the same debt." *Id.* (citing *Wilson v. Bramblett*, 91 Ariz. 284, 371 (1962)). Accordingly, the *Newspapers* court concluded

that "[a]lthough the claims involved in the two proceedings arise out of the same event, the denial of access to prisoners, they do not constitute the same cause of action under existing Arizona law." *Id.* at 242.

Here, not only does Hamadeh's current case rely on different facts from *Kentch* and *Hamadeh*, but the present case also asserts an entirely new theory of law. By comparison, the *Kentch* and *Hamadeh* complaints allege that the EPM purportedly authorizes the validation of early ballot affidavit signatures in a way that is "contrary to the plain language of A.R.S. § 16-550(A)."[16] APPV2-352–60 ¶¶ 53–57, 96–102; APPV2-040–47 ¶¶ 47–51, 88–94. Indeed, the December 20, 2022, order in *Kentch* dismissing Count V (regarding signature verification) expressly disclaimed the theory now asserted by Hamadeh, **dismissing the former suit because it did not contain "an allegation of election workers improperly not complying with the EPM**." APPV2-371. The present case rests on both newly discovered facts and a new theory of law (*i.e.*, not that the EPM was illegal as asserted in *Kentch* and *Hamadeh*, but that Maricopa failed to comply with the clear

[16] Specifically, the *Kentch* complaint asserts that <u>*all*</u> signatures from "prior early ballot affidavit[s] or early ballot request form[s]" <u>*are not*</u> a part of the voter's "registration record" as that term is used in A.R.S. §16-550(A) and, therefore, any ballots tabulated following a comparison to signatures from such documents are illegal. APPV2-352–60 ¶¶ 53–57, 96–102. The *Hamadeh* complaint raised the same argument. APPV2-040–47 ¶¶ 47–51, 88–94

requirements of the EPM when conducting signature verification, APPV1-1480 ¶ 5) and, therefore, this case is not barred by claim preclusion. *Newspapers*, 188 Ariz. 237.

Also, without even attempting to explain why Hamadeh's suit is barred by issue preclusion, the trial court made the conclusory determination that this action is barred by collateral estoppel. APPV2-975–76. However, this doctrine clearly does not apply to bar this action because none of the parties or the court below have shown that the issue at stake in this case is the same as that litigated in *Kentch* or *Hamadeh. Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 254 Ariz. 485, 492 ¶ 24 (2023) ("For a party to successfully assert issue preclusion as an affirmative defense, . . . it must show that (1) the issue at stake is the same in both proceedings …" (citations omitted)). As explained herein and as is evident from the record below, this case is not a challenge to the validity of the EPM—as was the contention in *Kentch* and *Hamadeh*. Rather, this suit contends that Maricopa failed to follow the clear provisions of the EPM, which **does not** allow **mail-in** affidavit signatures to be incorporated into the "registration record."

e. Mast and Crosby have standing.

The trial court erroneously found that Mast and Crosby lack standing because their claim for vote dilution is a generalized harm that is shared alike by all or a large

class of citizens, as opposed to a distinct and palpable injury to themselves. APPV2-971–72.

Mast and Crosby have standing to bring the claims asserted in their FAC on at least four grounds. First, the Arizona special action rules and applicable case law recognize that citizens, voters, and taxpayers have standing to bring claims if they have a broadly interpreted "beneficial interest" at stake in the case. Second, standing is afforded to Mast and Crosby under Arizona's Declaratory Judgment Act. Third, Mast and Crosby have standing given the substantial and enduring importance of the issues raised in the FAC. Fourth, Crosby's injury is not unduly speculative and impermissibly generalized because he belongs to a small group of voters affected by Maricopa's unique signature verification process, and Mast has standing to pursue his vote dilution claim by virtue of Crosby's standing.

Any person has standing to seek judicial redress when an election official exceeds his statutory authority or fails to effectuate a non-discretionary legal duty. *Archer v. Bd. of Supervisors of Pima Cty.,* 166 Ariz. 106, 107 (1990) (*en banc*): ("Absent other authority, which we do not find, any elector or voter, regardless of his political party registration, has the responsibility to uphold the integrity of the nomination process, and therefore, may challenge the nomination or the election of any person."). This controlling maxim finds its most apt and authoritative

encapsulation in *Arizona Public Integrity Alliance v. Fontes,* 250 Ariz. 58 (2020) ("*APIA*").

In *APIA,* the then-Maricopa Recorder enclosed with early ballots illegal instructions for how mail-in voters could correct errors on their ballots. Those instructions were contrary to Arizona law. An individual voter and a non-profit organization sued, seeking mandamus and injunctive relief. The trial court ruled that the plaintiffs lacked standing. This Court disagreed, holding that the Recorder acted unlawfully:

> Our decision today underscores the role of public officials in preserving and protecting our democratic system. Election laws play an important role in protecting the integrity of the electoral process…. But when public officials, **in the middle of an election, change the law based on their own perceptions of what they think it should be**, they undermine public confidence in our democratic system and destroy the integrity of the electoral process.

Id. at 61, ¶ 4 (internal citations omitted and emphasis added).

In rejecting the claim that the plaintiffs lacked standing, the *APIA* Court cited the general rule that a plaintiff must allege a "distinct and palpable injury," but then held:

> [W]e apply a more relaxed standing in mandamus actions. Specifically, under A.R.S. § 12-2021, a mandamus allows a "party beneficially interested" in an action to compel a public official to perform an act imposed by law…. The phrase "party beneficially interested" is "applied liberally to promote the ends of justice."…. Thus, the 'mandamus statute [§ 12-2021] reflects the Legislature's desire to

> broadly afford standing to members of the public to bring lawsuits to compel officials to perform their basic duties.
>
> Here, Plaintiffs, as Arizona citizens and voters, seek to compel the Recorder to perform his non-discretionary duty to provide ballot instructions that comply with Arizona law. **Thus, we conclude that they have shown a sufficient beneficial interest to establish standing.**

Id. at 62, ¶¶ 11, 12 (citations omitted) (emphasis added).

APIA is controlling, and the result here should be no different. Mast and Crosby have a beneficial interest in ensuring that the "non-technical" directives of the legislature governing the administration of Arizona's elections are followed. Mast and Crosby were and are beneficiaries of those valid statutory provisions. They are thus entitled to protect their constitutional rights and to cause Respondents to comply with the "non-technical" signature verification requirements of A.R.S. §16-550(A) and the EPM. None of the Respondents are entitled to augment or enhance that statute in derogation of what the legislature (and, here, also what the EPM) mandated. *See Leibsohn v. Hobbs*, 517 P.3d 45, 51 ¶ 22 (2022) ("[I]t is this Court's role, not the Secretary's [or the Recorder's], to interpret [a statute's] intended meaning.").

Other Arizona cases demonstrate that Mast and Crosby have standing. In *Armer v. Superior Court of Arizona, In & For Pima Cnty.*, the respondents were citizens and taxpayers of Pima County who sought to force the members of the Board

of Directors of the Central Arizona Water Conservation District (a multi-county water conservation district) to file financial disclosure statements under state and county laws. 112 Ariz. 478, 480 (1975). While deciding that the directors were not subject to financial disclosure requirements, this Court held that the citizens had standing. In doing so, this Court rejected rulings of numerous federal courts having narrowed standing requirements. Instead, *Armer* stated: "We do not believe, however, that those cases are controlling in the instant action in the Arizona courts. The question for this [C]ourt is whether, as a matter of Arizona law, respondents have standing in the trial court to bring a special action in the nature of a mandamus…." *Id*. It then quoted A.R.S. §12-2021 which allows any "party beneficially interested, to compel … performance of an act which the law specifically imposes as a duty resulting from an office …." *Id.* Ultimately, this Court held that, as citizens and taxpayers, respondents were beneficially interested in having the petitioners comply with the law on financial disclosure:

> Where the question is one of public right and the object of the mandamus is to procure the enforcement of public duty, the people are regarded as the real party and the relator need not show that he has any special interest in the result, since it is sufficient that he is interested as a citizen or taxpayer in having the laws executed and the duty in question enforced.

Id. (Cleaned up).

In addition to standing under the special action statutes, Mast and Crosby also have standing under Arizona's Declaratory Judgment Act. More particularly, standing is conferred by A.R.S. §§ 12-1831 and 1832. Section 1831 empowers the courts to "declare rights … whether or not further relief is or could be claimed." Section 1832 provides that "**Any person** … whose rights, status or other legal relations are affected by a statute … may have determined any question or construction or validity arising under the … statute … and obtain a declaration of rights, status or other legal relations thereunder." (Emphasis added). "Declaratory judgment relief is an appropriate vehicle for resolving controversies as to the legality of acts of public officials." *Rivera v. City of Douglas,* 132 Ariz. 117, 119 (App. 1982); *see also, Pena v. Fullinwider,* 124 Ariz. 42, 44 (1979) (*en banc*) (Even as mere "consumers," who would be affected by legislation eliminating "cost-per-unit" labeling, the plaintiffs had standing to bring their challenge because they had "an actual or real interest in the matter for determination").

The FAC requests declaratory relief because Maricopa has been violating the "non-technical" aspects of A.R.S. § 16-550(A) and, thereby, infringing upon several rights afforded to Mast and Crosby under the U.S. and Arizona Constitutions. APPV1-005–027 ¶¶ 6, 37, & 67. Furthermore, Plaintiffs requested that the trial court "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 light of the

circumstances." APPV1-027 ¶ 71. At the very least, therefore, this Court should remand this case directing the trial court to determine that mail-in ballot affidavit signatures may not be included in registration records and grant declaratory and injunctive relief that—**in future elections**—Maricopa must only compare early affidavit signatures against voters' signatures **properly** included in their "registration records" as provided by A.R.S. § 16-550(A) and the EPM.

Moreover, Arizona courts will relax standing requirements for cases that are of great public importance. *Fraternal Order of Police Lodge 2 v. Phoenix Employee Relations Bd.,* 133 Ariz. 126, 127 (1982) (*en banc*) ("We will make an exception [to refusing to consider moot or abstract questions], however, to consider a question of great public importance or one which is likely to recur even though the question is presented in a moot case."). The integrity of elections is an issue of great public importance and is acutely dependent on lawful signature verification rubrics that conform to controlling statutes and the EPM. *See e.g.*, *Miller*, 179 Ariz. at 180 (review granted by this Court "*because the integrity of the electoral process is an issue of statewide importance.*").

Below, Mast and Crosby cited *Moore v. Circosta,* 494 F.Supp.3d 289, 312 (M.D.N.C. 2020).[17] *Moore* is instructive because it confirms the validity of

[17] APPV2-924–37

Petitioners' Equal Protection violation claims for vote dilution. The *Moore* court recognized the principle that "the Equal Protection Clause is violated where the state, having once granted the right to vote on equal terms, through later arbitrary and disparate treatment, values one person's vote over that of another." *Id.* at 310. More particularly, the *Moore* court recognized that "*the state must protect against the diluting effect of illegal ballots*…." (citing *Gray v. Sanders,* 372 U.S. 368, 379–80 (1963)); and "to this end, states must have specific **rules designed to ensure uniform treatment of a voter's ballot**." *Id.* (citing *Bush v. Gore,* 531 U.S. 98, 106 (2000) (*per curiam*)) (emphasis added), *see also Baker v. Carr,* 369 U.S. 186, 208 (1962) ("A citizen's right to vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution **by a false tally**[.]") (cleaned up) (emphasis added).

The harm caused by vote dilution is "unduly speculative and impermissibly generalized where all voters in the same state were affected, **rather than a small group of voters**." *Moore*, 494 F. Supp. at 312. Here, however, the FAC alleges that Crosby is a Cochise County Resident, who cast his ballot by mail. APPV1-006. Thus, he was specifically affected by Maricopa's failure to uniformly apply the "non-technical" signature verification standards set forth by A.R.S. § 16-550(A) and the EPM. Because Maricopa made up sixty percent of the voting population for the

Contested Races (APPV1-007 ¶ 16), and because Crosby voted by mail and his signature was compared to all signatures in his "registration record" using the AVID system, while voters in Maricopa were permitted to vote under a different and unequal set of rules (APPV2-247–64.), Crosby belongs to a relatively small group of voters that was not treated equally and, therefore, he has standing.

Because Crosby's **vote-by-mail** affidavit signature was verified under a different standard than early voters in Maricopa, he has also sufficiently established a concrete and particularized injury under the arbitrary and disparate treatment analysis of the equal protection clause. *Moore*, 494 F. Supp. at 313. Here, Crosby is asserting a plain, direct, and adequate interest in maintaining the effectiveness of his vote—which **is not** merely a claim of the right possessed by every citizen, to require the Government be administered according to law. *Baker*, 369 U.S. at 208. Just like the Plaintiffs in *Moore*, who had cast their ballots by mail prior to the State Election Board adopting new rules that would subject other absentee voters to different standards, Crosby's signature was compared to multiple signatures from his "registration record" at the same time and, therefore, his vote was subject to different standards than those who voted early in Maricopa. 494 F. Supp. at 313. Thus, Crosby has standing and, just as all the plaintiffs in *Moore* had standing because at least one other related plaintiff had standing, Mast has standing by virtue of Crosby's standing. *Id.*

Given the more lenient standing requirements under Arizona law and Crosby's unique position as a Cochise County citizen that cast his ballot by mail, Mast and Crosby have standing to pursue mandamus relief and—at the very least—declaratory relief. Accordingly, this Court should reverse and remand the trial court's erroneous ruling to the contrary.

f. The trial court abused its discretion in awarding sanctions against Petitioners and their counsel.

The trial court correctly noted that "[s]anctions should be imposed with caution[]" and "great reservation[,]" especially in election matters to avoid "the chilling effect a sanctions award may have on legitimate challenges in the future." APPV2-977–78. (citations omitted). In awarding sanctions under A.R.S. § 12-349, the superior court must make an "objective determination" to decide whether a claim is groundless, and a claim is only groundless "'if the proponent can present **no rational argument** based upon the evidence or law in support of that claim.' However, a claim is not groundless if it is 'fairly debatable,' even if such a claim constitutes a 'long shot.'" *Ariz. Republican Party v. Richer*, No. CV-23-0208-PR, 2024 Ariz. LEXIS 99, at *12 ¶ 15 (May 2, 2024) (cleaned up and citations omitted).

Despite these maxims, the trial court awarded sanctions against Hamadeh and his counsel finding that this lawsuit was "groundless" and not brought in "good faith" because the "current action was brought raising the same issues raised in two

previously unsuccessful cases that contained identical claims." APPV2-977–79. As explained herein and to the court below, the issues involved in this proceeding (**alleging that Maricopa failed to follow the EPM**) are axiomatically different from the issues at stake in both *Hamadeh* and *Kentch* (**both alleging that the EPM itself violated Arizona statutes**). Unlike the present action, *Kentch* and *Hamadeh* were post-election challenges to procedures known prior to the election**.** Despite the obvious differences between the present action and Hamadeh's prior suits, the trial court concluded that "[c]ounsel **ignored** the Arizona case law establishing that an election contest requires not only alleged acts of misconduct, but also evidence that the misconduct or irregularities rendered the outcome of the election uncertain. He also **ignored** the long list of cases regarding the timing of challenges to election procedures and **ignored** that public policy requires that these challenges be made prior to the election to allow for the alleged error to be corrected prior to the election." APPV2-978–79. (emphasis added). These conclusions are baseless.

As the record below and this Petition reveal, Hamadeh has demonstrated both misconduct by Maricopa election officials and that such rendered the outcome of the election "uncertain." Moreover, the record below plainly demonstrates that counsel established—as a matter of fact and law—that this case **is not** a post-election procedural challenge that should have been brought prior to the election. APPV2-885–94. **Instead of addressing the substantive arguments raised below and**

explaining why Hamadeh's contentions are incorrect—the court simply ignored Hamadeh's arguments and the factual allegations set forth in his complaint.

Because the trial court's award of sanctions against Hamadeh and his counsel is entirely predicated on the erroneous conclusion that Hamadeh's *quo warranto* action involved the same issues litigated in two prior proceedings, this Court should reverse.

g. The trial court abused its discretion by not awarding sanctions against the Respondents.

In various filings, the Respondents[18] blatantly lied to the trial court violating their duties of candor (Ethical Rule 3.3(a)(1) and (2)) by stating that: (a) during the Election, Maricopa used the same signature verification process as all other counties in Arizona (APPV2-870–71) when—in reality—nearly all other counties in Arizona do not allow signature reviewers to **exclusively compare** signatures to the most recent "historical signature" submitted by the purported elector (APPV2-247–64); (b) the signature verification process used by Maricopa during the Election was the same as what it used in 2020 and that courts considered this exact process in 2020—

[18] All Respondents, via joinder, are responsible for the material representations discussed herein. APPV2-869.

which is demonstrably false (APPV2-871–72); (c) *Lake v. Richer*, CV2023-051480 (Maricopa Cty. Super. Ct. 2023) held that previously verified vote-by-mail affidavit signatures could be used for signature comparison pursuant to A.R.S. § 16-550(A) when—in fact—that case expressly declined to rule on what signatures are included in the "registration record" as that term is used in A.R.S. § 16-550(A) (APPV2-872–73); and (d) Maricopa used exclusive comparisons to vote-by-mail affidavit signatures during prior elections (APPV2-873–74) even though the Maricopa Recorder publicly advertised on its website, until May of 2022 (under the frequently asked questions tab), that "[w]hen an early ballot is received through the mail, the unopened affidavit packet . . . is scanned . . . 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**." (APPV2-874–75 (emphasis added)).

All semblance of impartiality is lost when government officials (or their counsel) are allowed to make material misrepresentations to the court with impunity while, at the same time, chilling sanctions are imposed against Petitioners for asserting good-faith arguments seeking to uphold and enforce election laws. For the reasons provided herein and at oral argument (APPV2-869–75), this Court should reverse and remand with instructions to sanction Respondents and their attorneys.

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VI. CONCLUSION

For the foregoing reasons, this Court should reverse and remand the trial court's erroneous ruling on all issues—with the specific instruction to grant Hamadeh leave to pursue his *quo warranto* action.

RESPECTFULLY SUBMITTED this 21st day of May, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Ariz. R. Spec. Act. 7, the undersigned certifies that the attached Petition 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.

RESPECTFULLY SUBMITTED this 21st day of May, 2024.

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ORIGINAL of the foregoing (including appendices)
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