



649 North Fourth Avenue, First Floor  
 Phoenix, Arizona 85003  
 (602) 382-4078  
 Kory Langhofer, Ariz. Bar No. 024722  
 kory@statecraftlaw.com  
 Thomas Basile, Ariz. Bar. No. 031150  
 tom@statecraftlaw.com

Brett W. Johnson (#021527)  
 Eric H. Spencer (#022707)  
 SNELL & WILMER L.L.P.  
 One Arizona Center  
 400 E. Van Buren, Suite 1900  
 Phoenix, Arizona 85004-2202  
 Telephone: 602.382.6000  
 bwjohnson@swlaw.com  
 ehspencer@swlaw.com  
 Attorneys for Plaintiffs

CLERK OF THE  
 SUPERIOR COURT  
 RECEIVED CDC #3  
 NIGHT DEPOSITORY

20 NOV -7 PM 3:46

FILED  
 BY R. MERINO, DEP

*Election contest: new  
 pd 333.*

*RCPT 280131d03*

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

DONALD J. TRUMP FOR PRESIDENT,  
 INC., a federal political committee;  
 REPUBLICAN NATIONAL COMMITTEE,  
 a federal political party committee; and the  
 ARIZONA REPUBLICAN PARTY, a  
 political party committee,

Plaintiffs,

v.

KATIE HOBBS, in her official capacity as the  
 Secretary of State of Arizona; ADRIAN  
 FONTES, in his official capacity as the  
 Maricopa County Recorder; and JACK  
 SELLERS, STEVE CHUCRI, BILL GATES,  
 CLINT HICKMAN, AND STEVE  
 GALLARDO, in their respective official  
 capacities as members of the Maricopa County  
 Board of Supervisors,

Defendants.

No. CV 2020-014248

**VERIFIED COMPLAINT**

*(Expedited Election Matter)*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiffs hereby state and allege as follows:

**SUMMARY OF THE CASE**

1. Qualified electors casting ballots in person on Election Day in Maricopa County submitted their completed ballot to an electronic tabulation machine. Numerous voters were alerted by these devices to a facial irregularity in their ballot—frequently an ostensible “overvote”—but were induced by poll workers to override the tabulator’s rejection of the ballot in the good faith belief that their vote would be duly registered and tabulated. In actuality, overriding the electronic tabulator’s alert automatically disqualifies the putative “overvotes” without additional review or adjudication.

2. Arizona law requires that putative overvotes be subjected to further review in an effort to discern the actual intent of the voter. While this safeguard was afforded to putative overvotes cast on early ballots and on Election Day ballots that poll workers properly segregated in a separate repository, potentially thousands of voters across Maricopa County have been disenfranchised by systematic improper tabulator overrides.

3. Upon information and belief, the adjudication and tabulation of these ballots will prove determinative of the outcome of the election for President of the United States in Arizona and/or other contested offices in Maricopa County.

4. Declaratory, injunctive and mandamus remedies are necessary to prevent irreparable injury to the Plaintiffs, vindicate the clear directives of the Arizona Legislature, ensure the fair and equal treatment of all Maricopa County electors, and secure the integrity of the results of the November 3, 2020 general election.

**JURISDICTION**

5. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the Arizona Constitution, and A.R.S. §§ 12-1801, 12-1803, 12-1831, and 12-2021.

6. Venue lies in Maricopa County pursuant to A.R.S. § 12-401(7) and (16) because at least one of the Defendants resides or holds office in this county.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PARTIES**

7. Plaintiff Donald J. Trump for President, Inc. is the principal campaign committee of President Donald J. Trump, who is a candidate for the office of President of the United States in the November 3, 2020 general election.

8. Plaintiff Republican National Committee is a national political party committee that is responsible for the day-to-day operation of the Republican Party at the national level and for promoting the election of Republican candidates for federal office in Arizona and across the United States.

9. Plaintiff Arizona Republican Party is a political party committee organized and operated pursuant to Title 16, Chapter 5 of the Arizona Revised Statutes, and brings this action on its own behalf and on behalf of its membership, which consists of all registered Republican electors in the State of Arizona.

10. Defendant Katie Hobbs is the Secretary of State of Arizona and is named in this action in her official capacity only. The Secretary of State is the chief elections officer of the state, and is responsible for conducting the canvass of the statewide vote for the office of President of United States in the November 3, 2020 general election and certifying the candidate who received the highest number of votes. *See* A.R.S. §§ 41-121(6), 16-142(A)(1), -648, -650.

11. Defendant Adrian Fontes is Recorder of Maricopa County, and is named in this action in his official capacity only. The County Recorder is the principal elections officer of Maricopa County and is responsible for overseeing and directing numerous components of election administration within this jurisdiction, to include early voting procedures and the tabulation and auditing of votes. *See* A.R.S. §§ 16-541, -542, -543, -544, -550, -602, -621.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

12. Defendants Jack Sellers, Steve Chucri, Bill Gates, Clint Hickman, and Steve Gallardo comprise the Maricopa County Board of Supervisors, and are named in this action in their respective official capacities only. The Board of Supervisors is charged by law with conducting elections within its jurisdictional boundaries, to include overseeing the operations of polling locations on Election Day, and canvassing the returns of elections in Maricopa County. *See* A.R.S. §§ 11-251(3), 16-446, -447(A), -511, -531, -642, -645.

**GENERAL ALLEGATIONS**

**Overview of Voting Procedures**

13. Broadly speaking, the voting process in Arizona is bifurcated; qualified electors may cast either an “early ballot” or an Election Day ballot.

14. A qualified elector may cast an “early ballot” at any time during the 27 days preceding the election. Early ballots may be obtained and returned via mail. Alternatively, early ballots may be cast in-person at designated early voting locations or dropped off at voting centers on Election Day. In-person early voting concludes on the Friday preceding the election, although voters confronting unforeseen exigencies that would prevent them from voting in-person on Election Day may cast a ballot at an “emergency” early voting location during the ensuing three-day period. *See* A.R.S. § 16-542.

15. As an alternative to early voting, voters may obtain and cast a ballot in-person at a polling location on Election Day.

16. Maricopa County utilized a “voting center” model in the November 3, 2020 general election. Under this framework, a qualified elector of Maricopa County may appear at any designated voting center site within the county, regardless of whether the voting center is located within the precinct in which the voter resides. Once the voter’s identity is verified and s/he signs the electronic pollbook, the poll workers print a customized ballot that includes all candidate races and ballot propositions for which the elector is eligible to vote.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

17. The overwhelming majority of voting centers in Maricopa County employed electronic tabulation devices in the November 3, 2020 general election. Upon information and belief, the tabulation device model placed in most or all voting centers has never been used in any Maricopa County election prior to 2020.

18. After marking their ballots, voters deposit them into the tabulation device. If the tabulator detects an apparent defect or irregularity on the face of the ballot, it will display an alert and eject the ballot. At that juncture, the voter may obtain and cast a new ballot, and the original ballot is deemed “spoiled.” Alternatively, if the voter chooses to cast the original ballot notwithstanding the apparent defect or irregularity, the ballot must be physically deposited in a drawer (known as “Tray 3”) within the tabulation device. Ballots in Tray 3 are later subjected to further review and adjudication at the counting center.

19. As detailed below, however, poll workers frequently deviated from this protocol by pressing, or inducing voters to press, the so-called “green button” on tabulation devices when confronted with alerts signaling apparent defects or irregularities. Pushing the green button effectively overrides the tabulator’s rejection and causes the ballot to be cast. Ballots cast in this manner do not receive any additional review or assessment at the counting center. If a field on the ballot contains what the tabulator deems an apparent defect or irregularity, the voter’s intended selections in the affected candidate races or ballot proposition contests will not be tabulated, even if the voter’s intent could be discerned by a visual review of the ballot.

**Disposition of Apparent Overvotes**

20. A frequently encountered defect or irregularity is an apparent “overvote.” An “overvote” results when the voter selects more than the permitted number of candidates in a given race. For example, if a voter selects two candidates for the office of President of the United States, she or he has “overvoted” that contest.

21. There is a critical distinction, however, between *apparent* overvotes detected by tabulation devices and *actual* overvotes. For example, ink splotches, stray markings, or

1 inadvertent voter errors can cause the tabulator to register an apparent “overvote,” even  
2 though a manual inspection of the ballot would convey that the voter clearly intended to  
3 select only one identifiable candidate.

4         22. Recognizing the risk of disenfranchisement that inheres in exclusive reliance  
5 on electronic tabulation, Arizona law, as interpreted in the official Election Procedures  
6 Manual (“EPM”), mandates specific secondary review processes designed to identify and  
7 tabulate apparent “overvotes” from which the voter’s actual intended choice can be  
8 ascertained.

9         23. Early ballots containing apparent overvotes or other ostensible defects or  
10 irregularities are subjected to a process known as electronic adjudication. Under this  
11 framework, an “Electronic Vote Adjudication Board” that consists of three members,  
12 including two judges who are members of different political parties, must “evaluate over-  
13 vote conditions to determine the voter’s intent and make corresponding adjustments to the  
14 record if the voter’s intent is clear.” EPM, Electronic Adjudication Addendum, *available*  
15 *at*

16 [https://azsos.gov/sites/default/files/Electronic\\_Adjudication\\_Addendum\\_to\\_the\\_2019\\_Ele](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf)  
17 [ctions\\_Procedures\\_Manual.pdf](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf).

18         24. As set forth above, if a ballot generated and cast at a polling place on Election  
19 Day contains an apparent overvote and the voter chooses not to complete and submit a new  
20 ballot, the ballot must be deposited in Tray 3 of the electronic tabulator. Once at the  
21 counting center, ballots in Tray 3 are assessed by a Ballot Duplication Board that is  
22 comprised of two members affiliated with different political parties. If the Ballot  
23 Duplication Board can determine the voter’s intended choice, it will manually transpose the  
24 voter’s candidate selections onto a new ballot, which is then duly tabulated. If the Ballot  
25 Duplication Board members disagree in their assessments of the voter’s intent, the ballot is  
26 forwarded to the Snag Board, which is appointed by the Board of Supervisors, for final  
27 adjudication. *See* A.R.S. § 16-621(A), EPM at pp. 201-02, 212.

28

1           25. By contrast, if a tabulator’s alert signaling an apparent overvote or other  
2 putative defect or irregularity is overridden by pressing the green button, then the ballot is  
3 cast. All fields containing apparent overvotes or other putative defects or irregularities are  
4 not tabulated, and the ballot is not afforded any manual review or evaluation.

5                   **Systemic Poll Worker Error in the November 3, 2020 General Election**

6           26. Upon information and belief, when ballots containing ink “bleeds,” splotches,  
7 stray marks, or other facial irregularities were submitted to the electronic tabulator, the  
8 tabulator frequently signaled an alert indicating that the ballot contained one or more  
9 overvotes or other apparent defects.

10           27. Upon information and belief, when confronted with tabulator alerts, poll  
11 workers in Maricopa County regularly and systematically either (a) pressed the green button  
12 without the voter’s authorization or assent, or (b) instructed or induced the voter to press  
13 the green button without disclosing that doing so would cause the ballot to be disqualified  
14 and not tabulated with respect to any candidate races or ballot propositions that contained  
15 the apparent overvote or other ostensible defect or irregularity.

16           28. The Plaintiffs have received numerous phone calls and electronic messages  
17 from qualified electors in Maricopa County who attempted to cast ballots in-person on  
18 Election Day. These individuals reported that upon receiving an alert on the electronic  
19 tabulator, either they or the poll worker pressed the green button to override the tabulator’s  
20 indication. In none of these instances was the voter informed that pressing the green button  
21 would cause one or more of the voter’s candidate or ballot proposition selections to be  
22 automatically disqualified and not tabulated. *See* Decl. of Gina Swoboda, attached hereto  
23 as Exhibit A.

24           29. Mia Barcello, a qualified elector of Maricopa County, appeared at a voting  
25 center in Anthem on Election Day. When marking her ballot, Ms. Barcello noticed that the  
26 ink permeated the paper in certain locations. The tabulation device rejected Ms. Barcello’s  
27 ballot but did not indicate a reason. After a second unsuccessful attempt to submit the  
28

1 ballot, a poll worker instructed Ms. Barcello to push a green button labeled “Cast” on the  
2 tabulation device. The poll worker did not advise Ms. Barcello that doing so likely would  
3 cause her selections in all candidate races or ballot proposition affected by the putative  
4 overvote or other defect or irregularity to be automatically disqualified and not tabulated.  
5 *See* Decl. of Mia Barcello, attached hereto as Exhibit B.

6 30. Upon information and belief, a visual inspection of Ms. Barcello’s ballot  
7 would confirm that she had not “overvoted” any candidate race or ballot proposition, and  
8 that her intended selections could be identified with reasonable certainty.

9 31. Bailey Larsen, a qualified elector of Maricopa County, appeared at a voting  
10 center in Mesa on Election Day. When marking her ballot, Ms. Larsen noticed that the ink  
11 permeated the paper in certain locations. The tabulation device rejected Ms. Larsen’s ballot  
12 but did not indicate a reason. After Ms. Larsen inserted the ballot a second time, the poll  
13 worker queried whether Ms. Larsen observed a check mark on the tabulator screen. Ms.  
14 Larsen answered in the negative. The poll worker appeared to touch something on the  
15 tabulator and advised Ms. Larsen that she was “fine.” The poll worker did not advise Ms.  
16 Larsen that overriding the tabulator would cause her selections in all candidate races or  
17 ballot proposition affected by the putative overvote or other defect or irregularity to be  
18 automatically disqualified and not tabulated. *See* Decl. of Bailey Larsen, attached hereto as  
19 Exhibit C.

20 32. Upon information and belief, a visual inspection of Ms. Larsen’s ballot would  
21 confirm that she had not “overvoted” any candidate race or ballot proposition, and that her  
22 intended selections could be identified with reasonable certainty.

23 33. Colin T. Willoughby served as a credentialed polling place observer at a  
24 voting center in Phoenix on Election Day. Mr. Willoughby observed numerous instances  
25 in which a voter would encounter an error notification when attempting to feed his or her  
26 ballot into the electronic tabulator. Mr. Willoughby recalled approximately 80 occasions  
27 on which the poll worker provided vague or confusing explanations to the voter concerning  
28



1 the reasons for the ballot's rejection and the consequences of pushing the green button on  
2 the tabulator. In approximately forty instances, the poll worker himself or herself depressed  
3 the green button. *See* Decl. of Colin T. Willoughby, attached hereto as Exhibit D.

4 34. Upon information and belief, visual inspections of these ballots would  
5 confirm that the electors had not "overvoted" any candidate race or ballot proposition, and  
6 that their intended selections could be identified with reasonable certainty.

7 35. Michelle Masters served as a credentialed polling place observer at a voting  
8 center in Mesa on Election Day. Ms. Masters observed numerous instances in which a voter  
9 would encounter an error notification when attempting to feed his or her ballot into the  
10 electronic tabulator. Poll workers regularly and consistently instructed or advised these  
11 voters to simply press the green button on the tabulator without explaining why the ballot  
12 had been rejected or the consequences of overriding the tabulator's determination. *See*  
13 Decl. of Michelle Masters, attached hereto as Exhibit E.

14 36. Upon information and belief, visual inspections of these ballots would  
15 confirm that the electors had not "overvoted" any candidate race or ballot proposition, and  
16 that their intended selections could be identified with reasonable certainty.

17 37. Upon information and belief, one at least one occasion a poll worker was  
18 observed removing approximately a dozen ballots from Tray 3, inserting them into the  
19 tabulator, and depressing the green button to override the tabulator's rejection of the ballots.  
20 *See* Decl. of Albert Joseph Garre, attached hereto as Exhibit F.

21 38. Upon information and belief, visual inspections of these ballots would  
22 confirm that the electors had not "overvoted" any candidate race or ballot proposition, and  
23 that their intended selections could be identified with reasonable certainty.

24 39. Upon information and belief, up to thousands of other qualified electors in  
25 Maricopa County had their ballots rejected by the tabulation device due to apparent  
26 overvotes or other ostensible defects or irregularities. Rather than advise these voters to  
27 either complete and submit a new ballot or to deposit the existing ballot in Tray 3 for further  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

adjudication at the counting center, the poll workers pressed the green button on the tabulator, or induced the voters to press the green button on the tabulator, without disclosing that doing so would cause the voter’s selections in all candidate races or ballot propositions affected by the putative overvote or other defect or irregularity to be disqualified without further review and not tabulated.

40. Upon information and belief, visual inspections of these ballots would confirm that the electors had not “overvoted” any candidate race or ballot proposition, and that their intended selections could be identified with reasonable certainty.

41. Upon information and belief, the adjudication and tabulation of these ballots would yield up to thousands of additional votes for President Trump and other Republican candidates in the November 3, 2020 general election.

**COUNT I**  
**Failure to Adjudicate and Tabulate Ballots**  
**(A.R.S. §§ 16-611, -622(A), -452))**

42. The Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

43. Arizona law provides that “[i]f any ballot . . . is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot.” A.R.S. § 16-621(A).

44. The review and adjudication of putative overvotes or other defects or irregularities contained on ballots generated and cast on Election Day must be conducted by a duly constituted Ballot Duplication Board. *See* EPM at pp. 201-02.

45. A putative vote should be disqualified only if the Ballot Duplication Board (or, if necessary, the Snag Board) concludes that the elector actually marked more names than there are persons to be elected to an office, or “if from the ballot it is impossible to determine the voter’s choice for an office.” A.R.S. § 16-611.

1           46. Upon information and belief, up to thousands of qualified electors in  
2 Maricopa County attempted to cast ballots at voting centers but had their ballots rejected by  
3 the electronic tabulation device.

4           47. Poll workers had a legal duty to advise these voters to either (a) complete and  
5 cast a new ballot, or (b) if the voter chose to submit the original ballot notwithstanding the  
6 tabulator's inability to process it, the ballot must be deposited in Tray 3 for subsequent  
7 adjudication by the Ballot Duplication Board at the counting center.

8           48. Upon information and belief, poll workers consistently, regularly and  
9 systematically overrode the tabulator's rejection of the ballot, or induced voters to override  
10 the tabulator's rejection of the ballot, without disclosing that doing so would cause the  
11 voter's selections in all candidate races or ballot propositions affected by the putative  
12 overvote or other defect or irregularity to be automatically disqualified and not tabulated,  
13 without any further review or adjudication.

14           49. Upon information and belief, ballots that were submitted by overriding the  
15 tabulator's rejection have not in fact been reviewed or adjudicated by the Ballot Duplication  
16 Board.

17           50. Upon information and belief, if these ballots are reviewed and adjudicated by  
18 the Ballot Duplication Board, they will yield up to thousands of additional votes for  
19 President Trump and for other Republican candidates in the November 3, 2020 general  
20 election.

21           51. The Recorder and the Board of Supervisors have a nondiscretionary legal duty  
22 to provide for the review and adjudication of these ballots by the Ballot Duplication Board.

23           52. The Recorder and Board of Supervisors' failure to provide for the review and  
24 adjudication of these ballots will irreparably injure the Plaintiffs by disqualifying valid  
25 votes that must by law be duly tabulated.

26           53. The balance of equities and considerations of public policy support the entry  
27 of injunctive relief.  
28

1           54.    Accordingly, the Plaintiffs are entitled to declaratory, injunctive and  
2 mandamus remedies requiring the Recorder and the Board of Supervisors to provide for the  
3 review and adjudication by the Ballot Duplication Board of all ballots generated and cast at  
4 voting centers on Election Day that have not been tabulated because ostensible overvotes  
5 or other defects or irregularities prevented the tabulation device from recording the voter’s  
6 selection of a candidate.

7  
8  
9                                   **COUNT II**  
10                                   **Deprivation of the Franchise Without Due Process**  
11                                   **(Ariz. Const. art. II § 4)**

12           55.    The Arizona Constitution guarantees that “no person shall be deprived of  
13 life, liberty, or property without due process of law.” Ariz. Const. art. II, § 4.

14           56.    The right to vote is a liberty interest protected by the Arizona Constitution  
15 that cannot be abridged or divested without due process of law. *See generally Raetzl v.*  
16 *Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1364 (D. Ariz. 1990).

17           57.    By disqualifying without review and adjudication by the Ballot Duplication  
18 Board voters’ candidate selections on ballots that were cast by overriding the tabulation  
19 device’s rejection of the ballot, the Recorder and Board of Supervisors have deprived  
20 thousands of Arizona voters, to include numerous supporters of President Trump and other  
21 Republican candidates, of a protected liberty interest without adequate due process of law.

22           58.    Upon information and belief, if these ballots are reviewed and adjudicated by  
23 the Ballot Duplication Board, they will yield up to thousands of additional votes for  
24 President Trump and for other Republican candidates in the November 3, 2020 general  
25 election.

26           59.    The Recorder and the Board of Supervisors have a nondiscretionary legal duty  
27 to provide for the review and adjudication of these ballots by the Ballot Duplication Board.  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

60. The Recorder and Board of Supervisors' failure to provide for the review and adjudication of these ballots will irreparably injure the Plaintiffs by disqualifying valid votes that must by law be duly tabulated.

61. The balance of equities and considerations of public policy support the entry of injunctive relief.

62. Accordingly, the Plaintiffs are entitled to declaratory, injunctive and mandamus remedies requiring the Recorder and the Board of Supervisors to provide for the review and adjudication by the Ballot Duplication Board of all ballots generated and cast at voting centers on Election Day that have not been tabulated because ostensible overvotes or other defects or irregularities prevented the tabulation device from recording the voter's selection of a candidate.

**COUNT III**  
**Violation of Equal Privileges and Immunities**  
**(Ariz. Const. art. II § 13)**

63. The Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

64. Article 2, Section 13 of the Arizona Constitution secures the equal "privileges or immunities" of all citizens.

65. Arizona law requires that ostensible overvotes or other apparent defects or irregularities contained on early ballots or Election Day ballots must be reviewed and adjudicated by the Electronic Vote Adjudication Board or the Ballot Duplication Board, respectively. If the adjudicatory body can ascertain the voter's intended candidate selection, the vote must be tabulated.

66. Upon information and belief, the Recorder and Board of Supervisors have afforded these safeguards to early ballots and to Election Day ballots that were deposited in Tray 3 of the tabulation device, but not to Election Day ballots that were cast by overriding the tabulator's rejection of the ballot.

1  
2 67. By disqualifying without review and adjudication by the Ballot Duplication  
3 Board voters' candidate selections on ballots that were cast by overriding the tabulation  
4 device's rejection of the ballot, the Recorder and Board of Supervisors have deprived  
5 qualified electors of their right to cast, on the same terms as similarly situated voters  
6 elsewhere in Maricopa County, valid votes that are duly tabulated, in violation of the Equal  
Privileges & Immunities Clause.

7 68. Upon information and belief, if these ballots are reviewed and adjudicated by  
8 the Ballot Duplication Board, they will yield up to thousands of additional votes for  
9 President Trump and for other Republican candidates in the November 3, 2020 general  
10 election.

11 69. The Recorder and the Board of Supervisors have a nondiscretionary legal duty  
12 to provide for the review and adjudication of these ballots by the Ballot Duplication Board.

13 70. The Recorder and Board of Supervisors' failure to provide for the review and  
14 adjudication of these ballots will irreparably injure the Plaintiffs by disqualifying valid  
15 votes that must by law be duly tabulated.

16 71. The balance of equities and considerations of public policy support the entry  
17 of injunctive relief.

18 72. Accordingly, the Plaintiffs are entitled to declaratory, injunctive and  
19 mandamus remedies requiring the Recorder and the Board of Supervisors to provide for the  
20 review and adjudication by the Ballot Duplication Board of all ballots generated and cast at  
21 voting centers on Election Day that have not been tabulated because ostensible overvotes  
22 or other defects or irregularities prevented the tabulation device from recording the voter's  
23 selection of a candidate.

24 **COUNT IV**  
25 **Violation of the Free & Equal Elections Clause**  
**(Ariz. Const. art. II § 21)**

26 73. The Plaintiffs incorporate by reference the foregoing allegations as if fully set  
27 forth herein.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

74. The Arizona Constitution guarantees “the right of suffrage” and mandates that “[a]ll elections shall be free and equal.” Ariz. Const. art. II, § 21.

75. “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, ¶ 34 (App. 2009).

76. By disqualifying without review and adjudication by the Ballot Duplication Board voters’ candidate selections on ballots that were cast by overriding the tabulation device’s rejection of the ballot, the Recorder and Board of Supervisors have deprived qualified electors of their right to cast, on the same terms as similarly situated voters elsewhere in Maricopa County, valid votes that are duly tabulated, in violation of the Free & Equal Elections Clause.

77. Upon information and belief, if these ballots are reviewed and adjudicated by the Ballot Duplication Board, they will yield up to thousands of additional votes for President Trump and for other Republican candidates in the November 3, 2020 general election.

78. The Recorder and the Board of Supervisors have a nondiscretionary legal duty to provide for the review and adjudication of these ballots by the Ballot Duplication Board.

79. The Recorder and Board of Supervisors’ failure to provide for the review and adjudication of these ballots will irreparably injure the Plaintiffs by disqualifying valid votes that must by law be duly tabulated.

80. The balance of equities and considerations of public policy support the entry of injunctive relief.

81. Accordingly, the Plaintiffs are entitled to declaratory, injunctive and mandamus remedies requiring the Recorder and the Board of Supervisors to provide for the review and adjudication by the Ballot Duplication Board of all ballots generated and cast at voting centers on Election Day that have not been tabulated because ostensible overvotes

1 or other defects or irregularities prevented the tabulation device from recording the voter's  
2 selection of a candidate.

3 **DEMAND FOR RELIEF**

4 WHEREFORE, the Plaintiffs demand relief in the following forms:

5 A. A declaration pursuant to A.R.S. § 12-1831 that the Maricopa County  
6 Recorder and the Maricopa County Board of Supervisors are required by  
7 A.R.S. §§ 16-611, -621(A) and -452, and Arizona Constitution article II,  
8 §§ 4, 13, 21 to provide for the review and adjudication by the Ballot  
9 Duplication Board of all ballots that were cast by overriding the  
10 tabulator's rejection of the ballot.

11 B. Injunctive and/or mandamus remedies pursuant to A.R.S. §§ 12-1801, -  
12 2021 and Arizona Rule of Civil Procedure 65 providing that the Maricopa  
13 County Recorder and Maricopa County Board of Supervisors must:

14 (i) Identify (by means of electronic tabulation devices or  
15 otherwise) all Election Day ballots that contain apparent overvotes or  
16 other putative defects or irregularities in connection with the voter's  
17 selection of a candidate that have not been adjudicated by the  
18 Electronic Vote Adjudication Board or the Ballot Duplication Board;

19 (ii) Provide for the review, adjudication and duplication by the  
20 Ballot Duplication Board of all ostensible overvotes or other putative  
21 defects or irregularities in connection with the voter's selection of a  
22 candidate on ballots identified pursuant to subparagraph (i) above; and

23 (iii) Tabulate and canvass all votes adjudicated and duplicated by  
24 the Ballot Duplication Board pursuant to subparagraphs (i) and (ii)  
25 above;  
26  
27  
28





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

C. Injunctive and/or mandamus remedies pursuant to A.R.S. §§ 12-1801, -  
2021, 16-650, and Arizona Rule of Civil Procedure 65 providing that the  
Secretary of State and Maricopa County Board of Supervisors:

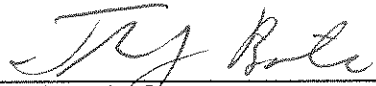
(i) shall not canvass or certify any returns in the November 3,  
2020 general election unless and until the Maricopa County Recorder  
and Maricopa County Board of Supervisors have completed the  
process set forth in paragraph B above; and

(ii) Shall include in their canvass and certification all votes that are  
tabulated pursuant to the process set forth in paragraph B above; and

D. Such other relief as the Court deems necessary, equitable, proper, and just.

DATED this 7th day of November, 2020.

STATECRAFT PLLC

By:   
Kory Langhofer  
Thomas Basile  
649 North Fourth Avenue, First Floor  
Phoenix, Arizona 85003

Brett W. Johnson  
Eric H. Spencer  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 E. Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202

*Attorneys for Plaintiffs*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VERIFICATION

I hereby swear or affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Kelli Ward  
Kelli Ward, Chairman of the Arizona Republican Party

Sworn to and subscribed before me  
this 1 day of November, 2020.



Kahla M. Bishop  
Notary Public

My commission expires: 7/17/2023

STATOCRA

## **Exhibit A**

**DECLARATION OF GINA SWOBODA**

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

I, Gina Swoboda, make this Declaration consistent with 28 U.S.C. § 1746 and under penalty of perjury and state that all statements herein are true and accurate and that I have personal knowledge of all statements herein.

1. My name is Gina Swoboda, I am of sound mind, capable of making this Affidavit, and have personal and direct knowledge of the facts herein stated and if called to testify I would provide the same testimony.

2. I am a citizen, resident, and registered voter of the County of Maricopa, State of Arizona.

3. I am the Arizona State Election Day Operations Director, for Donald J. Trump for President, Inc., in the State of Arizona.

4. Donald J. Trump for President, Inc., has the sole purpose of re-electing Donald J. Trump as President of the United States and Michael Pence as Vice-President of the United States.

5. In my capacity as Arizona State Election Day Operations Director, I oversaw and participated in the election day phone operations for Arizona.

6. On November 3, 2020, I received phone calls from a number of voters and poll observers in Maricopa County, Arizona. I personally answered these calls and additionally I have personal knowledge due to direct observation and supervision that many other members of my staff also answered phone calls.

7. The callers identified themselves as registered Arizona voters who attempted to cast ballots for Donald J. Trump for President and Michael Pence for Vice-President on November 3, 2020, at voting centers in Maricopa County, Arizona.

8. The callers specified that they marked their ballots and attempted to feed the

ballots into the tabulator machine at their respective voting center and the tabulator machine notified that there was an overvote or an undervote.

9. Upon receiving that notice on the tabulator machine it is my understanding, some poll workers depressed the green button to have the tabulator machine accept the ballot without the voter having an opportunity to review the ballot to review and/or correct.


10. It is also my understanding that other voters were not informed or instructed by the pollworkers that depressing the red button would allow them to review and correct their ballot and thus they depressed the green button and the tabulator machine took the ballot.

11. It is my understanding that another group of callers were instructed to mark their ballots using a Sharpie pen and noticed that the ink bled through their ballot. The tabulator showed the notice when they submitted their ballot but the pollworker depressed the green button to accept the ballot. The ballot then went into the tabulator machine.

12. Each of the callers believed that their vote for Donald J. Trump and Michael Pence was not counted due to actions of the pollworkers and the tabulator machines in the various voting centers in Maricopa County, Arizona.

13. As Arizona State Election Day Operations Director, and on behalf of Donald J. Trump for President, Inc., the votes that were not counted for Donald J. Trump for President and Michael Pence for Vice-President, are critical to our purpose and the failure to count those ballots will irreparably harm Donald J. Trump for President, Inc., and myself as a voter and citizen of the State of Arizona and the County of Maricopa.

Further, Affiant sayeth not.

  
GINA SWOBODA

Subscribed this 5<sup>th</sup> day of November, 2020.

## **Exhibit B**

DECLARATION OF MIA A. BARCELLO

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

I, Mia A. Barcello, make this Declaration consistent with 28 U.S.C. § 1746 and under penalty of perjury and state that all statements herein are true and accurate and that I have personal knowledge of all statements herein. My name is Mia Angelina Barcello, I am of sound mind, capable of making this Affidavit, and have personal and direct knowledge of the facts herein stated and if called to testify I would provide the same testimony .

1. I am a citizen of the United States of America, the State of Arizona and of Maricopa County, Arizona.

2. I am a registered voter in Maricopa County, Arizona. This was my first time voting in an election.

3. On November 3, 2020, I went to the voting center at 4250 W ANTHEM WAY 110, PHOENIX, AZ 85086 in Maricopa County, Arizona (the "Voting Center.").

4. After receiving my ballot, I was given a Sharpie pen to fill out my ballot. I noticed that the Sharpie pen had bled through the paper.

5. At the Voting Center, I marked my ballot, including voting for Donald J. Trump for President and Michael Pence for Vice President.

6. After marking my ballot, I took my ballot the ballot tabulator machine (the "Tabulator.")

7. I inserted my ballot into the ballot scanner on the Tabulator.

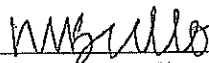
8. The ballot scanner rejected my ballot twice. On both occasions my ballot was held in the machine. The machine had two options: (1) a red button and a (2) green button labeled. The red button said "Return" and the green button said "Cast." The Tabulator had no mechanism to explain why my ballot was not accepted.

9. I was then instructed by the pollworker that I should depress the green "Cast" button to override the problem. The pollworker asked if this was okay with me, and did not explain to me that I needed to correct something on my ballot in order to avoid voting for two candidates.

10. The ballot then went into the Tabulator.

11. I believe my vote for Donald J. Trump and Michael Pence was not counted due to this action.

Further, Affiant sayeth not.

  
Mia. A. Barcello

Subscribed this 5<sup>th</sup> day of November, 2020.



## **Exhibit C**

**DECLARATION OF BAILEY LARSEN**

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

I, Bailey Larsen, make this Declaration consistent with 28 U.S.C. § 1746 and under penalty of perjury and state that all statements herein are true and accurate and that I have personal knowledge of all statements herein. My name is Bailey Larsen, I am of sound mind, capable of making this Affidavit, and have personal and direct knowledge of the facts herein stated and if called to testify I would provide the same testimony:

1. I am a citizen of the United States of America, the State of Arizona and of Maricopa County, Arizona.
2. I am a registered voter in Maricopa County, Arizona.
3. On November 3, 2020, I went to the voting center at ASU Polytechnic Campus, 7001 E Williams Field Rd, Mesa, AZ 85212 in Maricopa County, Arizona (the "Voting Center.")
4. The only writing instruments available to voters at my Voting Center were Sharpie markers. I used a Sharpie marker to complete my ballot. The ink bled through to the other side of my ballot.
5. At the Voting Center, I marked my ballot, including voting for Donald J. Trump for President and Michael Pence for Vice President.
6. After marking my ballot, I took my ballot to the ballot tabulator machine (the "Tabulator.")
7. I inserted my ballot into the Tabulator.
8. My ballot was rejected by the Tabulator.
9. A computer screen on the Tabulator indicated that my ballot had been rejected at that time.
10. A poll worker came over to assist me.

11. The poll worker told me that they had been having "problems" with the machines having rejections all day.

12. The poll worker instructed me to reinsert my ballot into the Tabulator.

13. The poll worker then became engaged in a conversation with another poll worker about an unrelated issue.

14. I reinserted my ballot into the Tabulator.

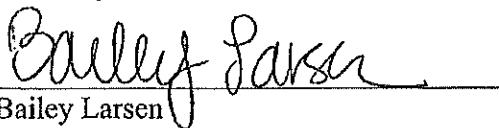
15. My ballot went into the Tabulator.

16. The poll worker turned her attention back on me and asked me if I saw a checkmark on the computer screen when I reinserted my ballot. I told her that I did not see a check mark. The poll worker then said that I was "fine."

17. The poll worker was touching the side of the Tabulator at this time.

18. I believe my vote for Donald J. Trump and Michael Pence was not counted due to this action.

Further, Affiant sayeth not.

  
Bailey Larsen

Subscribed this 5<sup>th</sup> day of November, 2020.

## **Exhibit D**

**DECLARATION OF COLIN T. WILLOUGHBY**

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

I, Colin T. Willoughby, make this Declaration consistent with 28 U.S.C. § 1746 and under penalty of perjury and state that all statements herein are true and accurate and that I have personal knowledge of all statements herein. My name is Colin Thomas Willoughby, I am of sound mind, capable of making this Affidavit, and have personal and direct knowledge of the facts herein stated and if called to testify I would provide the same testimony .

1. I am a citizen of the United States of America, the State of Arizona and of Maricopa County, Arizona.

2. I am a registered voter in Maricopa County, Arizona.

3. On November 3, 2020, I served as a pollwatcher at the voting center at 1221 N. Central Ave, Phoenix, AZ 85004 in Maricopa County, Arizona (the "Voting Center.") from approximately 6:00am until 4:00pm.

4. I observed as voters, after marking their ballots, took their ballots to the ballot tabulator machine (the "Tabulator.")

5. I observed them insert their ballots into the ballot scanner on the Tabulator.

6. I observed many instances where the ballot was rejected by the ballot scanner.

7. I observed two types of rejections by the ballot scanner.

8. For one type of rejection, the ballot scanner would simply spit the ballot out of the machine and back to the voter. Voters would then generally attempt to make additional marks on the ballot and/or re-insert the ballot into the ballot scanner. Some voters required 6 or 7 attempts until the ballot scanner accepted the ballot. Some voters were issued a new ballot by pollworkers.

9. For the second type of rejection, the ballot would be held in the machine and the screen on the ballot tabulator would display a message indicating that there was a problem with the ballot in one or more areas. The screen also presented two options to the voter: (1) a red button labeled "Return," which returned the ballot to the voter for correction and re-insertion; or (2) a green button labeled "Cast," which submitted the ballot for tabulation notwithstanding any defects such as an overvote or undervote.

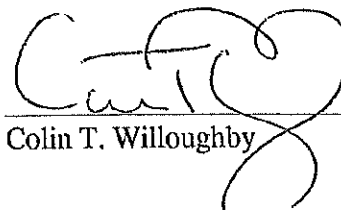
10. I observed many, if not all, voters in this situation being visibly confused by this screen and the options it presented to the voter.

11. I witnessed approximately eighty (80) instances for this type of rejection where a pollworker provided a vague and/or confusing explanation to the voter as to the nature of the problem and the consequences of depressing the "red" or "green" button. In particular, the pollworker did not make clear to these voters that depressing the green button would submit the voter's ballot and not give the voter an opportunity to correct any defect(s).

12. I witnessed approximately forty (40) instances where the pollworker depressed the green button on behalf of the voter.

13. I witnessed one particularly egregious instance where the pollworker depressed the green button on behalf of the voter. The voter was noticeably upset and complained. The pollworker told this voter that nothing was wrong. The voter was not satisfied by this assurance and left.

Further, Affiant sayeth not.



Colin T. Willoughby

Subscribed this 5<sup>th</sup> day of November, 2020.

## **Exhibit E**

**DECLARATION OF MICHELLE MASTERS**

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

I, MICHELLE MASTERS, make this Declaration consistent with 28 U.S.C. § 1746 and under penalty of perjury and state that all statements herein are true and accurate and that I have personal knowledge of all statements herein. My name is Michelle Masters, I am of sound mind, capable of making this Affidavit, and have personal and direct knowledge of the facts herein stated and if called to testify I would provide the same testimony.

1. I am a citizen of the United States of America, the State of Arizona and of Maricopa County, Arizona.
2. I am a registered voter in Maricopa County, Arizona.
3. On November 3, 2020, I went to the voting center at Mesa Baptist Church, 2425 S Alma School Road, Mesa, Arizona 85210 in Maricopa County, Arizona (the "Voting Center.")
4. I was a credentialed Poll Observer and observed voting at the Voting Center.
5. The Voting Center provided fine point Sharpie markers. I observed that these Sharpie markers bled through the paper on ballots completed by voters.
6. After completing their ballots, voters took their ballots to the ballot tabulator machine (the "Tabulator").
7. I observed numerous instances where the Tabulator reject ballots inserted by voters.
8. I observed poll workers come to assist voters whose ballots were rejected by the Tabulator.
9. One time when a voter's ballot was rejected by the Tabulator, the poll worker gave the voter no explanation as to why the Tabulator had rejected the ballot. Instead, the



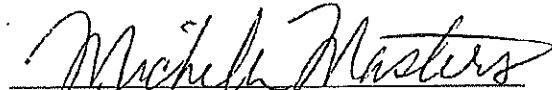
poll worker simply instructed the voter to "push the green button." The voter complied.

10. During another incident where a poll worker assisted a voter whose ballot was rejected, the poll worker told the voter, "if you don't care about this one, just mark yes or no." The voter marked the ballot and reinserted it into the Tabulator. It was rejected again, at which point the voter was instructed to hit the green button. The voter complied.

11. I observed multiple additional incidents where a poll worker assisted a voter whose ballot was rejected by the Tabulator. Various explanations and instructions were given to the voter by the poll worker during these incidents.

12. I observed multiple instances where voters were ultimately instructed by poll workers to press the green button and did so.

Further, Affiant sayeth naught.

  
Michelle Masters

Subscribed this 5<sup>th</sup> day of November, 2020.

## **Exhibit F**

**DECLARATION OF ALBERT JOSEPH GARRE**

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

I, Albert Joseph Garre, make this Declaration consistent with 28 U.S.C. § 1746 and under penalty of perjury and state that all statements herein are true and accurate and that I have personal knowledge of all statements herein. My name is Albert Joseph Garre, I am of sound mind, capable of making this Affidavit, and have personal and direct knowledge of the facts herein stated and if called to testify I would provide the same testimony.

1. I am a citizen of the United States of America, the State of Oregon and of Multnomah County, Oregon.
2. I am a registered voter in Multnomah County, Oregon.
3. On November 3, 2020, I went to the voting center at the Pendergast Early Learning Center, 3841 N 91<sup>st</sup> Avenue, Phoenix, in Maricopa County, Arizona (the "Voting Center") as a Republican Poll Observer.
4. I observed the poll workers instruct every voter to use Sharpie markers to complete their ballots.
5. After the Voting Center closed, I remained behind to observe the proper break down of the Voting Center, including the closing of the Tabulators.
6. I observed poll workers remove more than one dozen ballots from Door 3 in the front of the ballot tabulating machine ("the Tabulator").
7. I observed the poll workers insert each of those ballots back into the Tabulator one at a time.
8. I observed a poll worker press buttons on the top of the Tabulator, including the green button, while inserting multiple individual ballots.
9. I observed the tabulator accept multiple, but not all, of the ballots.

10. I observed that some of these ballots were accepted after the poll worker pressed the green button.

11. I observed that the remaining, non-accepted ballots were placed into a sealed, clear plastic pouch.

Further, Affiant sayeth naught.

  
ALBERT JOSEPH GARRE

Subscribed this 7<sup>th</sup> day of November, 2020.