

EXHIBIT 1





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

ARIZONA REPUBLICAN PARTY,

Plaintiff;

vs.

**ADRIAN FONTES, as Maricopa County
Recorder; and the MARICOPA COUNTY
BOARD OF SUPERVISORS, by and through
CLINT HICKMAN, JACK SELLERS,
STEVE CHUCRI, BILL GATES, and
STEVE GALLARDO,**

Defendants.

Case No. **CV2020-014553**

VERIFIED AMENDED COMPLAINT

(Elections Matter)

(Expedited Relief Requested)

Plaintiff Arizona Republican Party (“Plaintiff”), for its Verified Amended Complaint against the above-named Defendants, alleges as follows.

INTRODUCTION

1. Plaintiff seeks a Court order declaring that a particular section of the Arizona Secretary of State’s manual is in violation of state law, and directing Defendants Fontes to conduct a “sampling” of elections results in strict accordance with state law, A.R.S. § 16-602(B). Because

1 ~~the “sampling” is Defendants intend to certify election results soon expected to begin soon,~~
2 Plaintiff seeks expedited relief.

3
4 **PARTIES, JURISDICTION AND VENUE**

5 2. The Arizona Republican Party is a political party committee organized and operated
6 pursuant to Title 16, Chapter 5 of the Arizona Revised Statutes.

7 3. Adrian Fontes is named in his official capacity as the county recorder for Maricopa
8 County, Arizona.

9 4. The Maricopa County Board of Supervisors is named in its official capacity, by and
10 through its members Clint Hickman, Jack Sellers, Steve Chucuri, Bill Gates, and Steve Gallardo.
11 Pursuant to A.R.S. § 16-622, the Board of Supervisors has the ultimate responsibility of certifying
12 countywide voting results and issuing an official canvass of the election results; it is therefore
13 named as a real party in interest.

14 5. Jurisdiction and venue are appropriate.

15 **GENERAL ALLEGATIONS**

16 6. The foregoing allegations are reincorporated as if set forth herein.

17 7. ~~As of the filing of this Verified Complaint, the Maricopa County Recorder’s Office~~
18 ~~is still in the process of counting votes and providing updated unofficial vote totals for the 2020~~
19 ~~general election; but it appears to be very nearly done.~~

20 8. A.R.S. § 16-602(B) provides that once the County Recorder has made the unofficial
21 vote total public, then it must hand-count a random sampling of “ballots cast in the polling places
22 and ballots from direct recording electronic machines,” essentially as a kind of quality control.
23 The statute provides that “[t]he hand count shall be conducted as prescribed by this section and in
24 accordance with hand count procedures established by the secretary of state in the official
25 instructions and procedures manual adopted pursuant to § 16-452.

1 place in their own precinct. There were approximately 175 vote centers for the 2020 general
2 election.

3 13. The Arizona Secretary of State’s manual provides that “[i]n counties that utilize vote
4 centers, each vote center is considered to be a precinct/polling location and the officer in charge
5 of elections must conduct a hand count of regular ballots from at least 2% of the vote centers, or
6 2 vote centers, whichever is greater.”² In other words, the manual provides that when vote centers
7 are used, the random sample will be at least two percent of “polling places,” instead of “precincts.”

8 14. However, A.R.S. § 16-602(B)(1) requires that two percent of “precincts” be
9 sampled, not “polling places.”

10 15. The legislature could have chosen to use the language “two percent of the polling
11 places,” as evidenced by the fact that it did use that language to define the scope of the hand count
12 for presidential preference elections (i.e. presidential primary elections) in a separate subsection,
13 16-602(B)(3).

14 16. ~~Upon information and belief,~~ Maricopa County ~~intends to~~ conducted the a sampling
15 in accordance with the Secretary of State’s manual, i.e. it ~~intends to~~ sampled 2% of polling places
16 (vote centers) and not 2% of precincts.

17 17. In cases of conflict between Title 16 and the Arizona Secretary of State’s manual,
18 Title 16 controls. *See* A.R.S. Const. Art. 5 § 1 (providing that Secretary of State “shall perform
19 such duties as are prescribed by the constitution and as may be provided by law”); *W. Devcor, Inc.*
20 *v. City of Scottsdale*, 168 Ariz. 426, 431, 814 P.2d 767, 772 (1991)(“our statutes do not authorize,
21 nor would our constitution permit” the Secretary of State’s office to pass judgment on the law,
22

23
24 ² Page numbered 215 of the Manual, section “A”:
25 [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROV
ED.pdf#page=229](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf#page=229)

1 because that is a “judicial function”; and a party cannot rely on the Secretary of State’s
2 documentation that contradicts the law “any more than they can rely on a statute that conflicts
3 with the constitution.”)

4 **COUNT ONE**

5 **(Declaratory Action, Special Action/Mandamus, Injunctive Relief)**

6 18. The preceding allegations are reincorporated as if set forth herein.

7 19. There exists a real, justiciable and immediate controversy for the Court to resolve:
8 whether the sampling for the statutorily-required hand count must be at least 2% of vote centers
9 (polling places), as the Secretary of State’s manual contends; or 2% of precincts, in accordance
10 with the plain language of A.R.S. § 16-602(B)(1), as Plaintiff contends.

11 20. Mandamus is a remedy used to compel a public officer to perform a duty required
12 by law. *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 464, ¶ 9, 160 P.3d 1216, 1222
13 (App.2007); *see also* A.R.S. § 12-2021.

14 21. There is not a plain, adequate and speed remedy at law, and therefore mandamus
15 relief is proper under A.R.S. § 12-2021.

16 22. Further, Defendants intend to certify the results and issue an official canvas as early
17 as this Thursday. Plaintiff seeks a preliminary injunction to enjoin the Defendants from certifying
18 the results until a trial or other dispositive ruling in this matter. Finally, to the extent that Plaintiff’s
19 request to order a legal hand count may be deemed a request for injunctive relief, Plaintiff seeks
20 such injunctive relief.

21 21.—

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff requests the following relief:
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1 A. That the Court declare that the hand-count sampling be of “precincts,” in accordance
2 with the plain language of the statute, and not of “vote centers.”

3 B. A preliminary injunction enjoining Defendants from certifying the results until a
4 trial or other dispositive ruling in this matter. To the extent that Plaintiff’s request
5 to order a legal hand count may be deemed a request for injunctive relief, Plaintiff
6 also seeks such injunctive relief.

7 A.

8 B.C. That the Court enter an order compelling Defendant ~~Fontes~~ s to perform the hand
9 count of “precincts,” and not of vote centers.

10 C.D. For Plaintiff’s taxable costs under A.R.S. § 12-341, and attorneys’ fees under any
11 applicable authority.

12 D.E. For such other and further relief that the Court may deem proper in the
13 circumstances.

14 **RESPECTFULLY SUBMITTED** this 12th day of November, 2020.

15 **WILENCHIK & BARTNESS, P.C.**

16 /s/ Jack Wilenchik, Esq.
17 Dennis I. Wilenchik, Esq.
18 Lee Miller, Esq.
19 John “Jack” D. Wilenchik, Esq.
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22 **ORIGINAL** of the foregoing filed
23 this 12th day of November, 2020, with:

24 The Clerk of the Superior Court
25 Maricopa County Superior Court
26 201/101 West Jefferson Street

1 Phoenix, Arizona 85003

2 COPY also emailed to

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18 By _____

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1 **VERIFICATION**

2 (Rule 80(i), Ariz.R.Civ.P.)

3 I, John “Jack” D. Wilenchik, declare as follows:

4 I have read the foregoing Verified Complaint, and the statements made therein are true and
5 correct to the best of my knowledge, information, and belief.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 DATED this 12th day of November, 2020.

8
9 _____
10 John “Jack” D. Wilenchik, Esq.