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8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**
11

12 Mark Finchem, an individual,

Case No.: CV2022-053927

13 Contestant,

14 vs.

**OPPOSITION TO SECRETARY OF
STATE-ELECT ADRIAN FONTES'
MOTION FOR SANCTIONS**

15 Adrian Fontes, *et al.*,

(Re Contest of election
A.R.S. §16-1672 *et seq.*)

16 Contestee

17 This contest was, and has always been, about election mismanagement and the failure to
18 adhere to statutory election process requirements – not political theater. Arizona citizens, and in
19 particular those in Maricopa and Pima Counties, suffered through nationally recognized election-
20 day chaos. Chaos severe enough to render the results, at best, uncertain to half of our voters.
21 Reportedly tens of thousands of our citizens, irrespective of party, stood in unimaginably long
22 lines. According to the SoS website, literally hundreds of thousands of them then entered
23 properly completed ballots into tabulation machines that repeatedly rejected those votes.
24 Ultimately, frustrated voters had their ballots take longer to count than anywhere else in the
25 entire country. The outcome was reprehensible. Arizona was embarrassed nationally and
26 internationally.

27 This election-day chaos has never been denied, not by Governor-elect Hobbs or
28 Secretary-elect Fontes, not in their *Motions to Dismiss* and not in their *Motion for Sanctions*. It
can't be because it is a matter of record. According to testimony in *Lake v. Hobbs*, seen live

1 nationally via the Superior Court video system, hundreds of thousands of ballots were somehow
2 “missing” or “unaccounted” for.

3 Contestee’s incorporation of incendiary terms such as “political agenda”, “election
4 denier” and “misguided political minority” into their *Motions* were deliberately inserted to, like
5 fruit of a poisoned tree, camouflage the issues and prejudice the Court.

6 However, Mr. Finchem’s Contest has nothing to do with political party and everything
7 to do with political process. A citizen of this State who raises legitimate, good-faith, concerns
8 about an undeniably chaotic election, whose perspective of election mismanagement is supported
9 by multiple expert declarations and written reports, should be able to look to the courts for redress
10 without the fear of being punitively sanctioned. The *Motion for Sanctions* should itself be
11 grounds for its lawyer proponents to be themselves sanctioned.

12 Contestant, Mark Finchem (“Mr. Finchem”), by and through counsel undersigned, and his
13 attorney, Daniel McCauley, hereby object to, oppose and request the Court deny both Adrian
14 Fontes’ *Motion for Sanctions* (“*Motion*”) and Governor-elect Hobbs’ joinder in their entirety based
15 on the following.

16 The *Motion* is wholly fabricated, misleading rhetoric intermixed with statements as to
17 what documents were already on the record that had little or nothing to do with the *Motion*.

18 That Mr. Finchem and Mr. McCauley “signed the filing pursuant to Arizona Rule of Civil
19 Procedure 11” (Motion 3:13) is untrue. Mr. McCauley signed an election contest under Title 16,
20 the applicable statutory authority for election contests. Mr. Finchem did not “sign” he executed
21 a verification and thereby **Verified** the Contest document as required by the relevant statute;
22 A.R.S. 16-673(B). His signature is not in any way related to ARCP 11.

23 Again, nothing was ever “signed ... pursuant to Arizona Rule of Civil Procedure 11” as
24 repetitively, misleadingly and untruthfully alleged throughout their *Motion*. For another
25 example of statements that was irrelevant to the *Motion* and provide illustration of the
26 continuance use throughout the documents of conclusory statements and inaccurate opinions of
27 what purportedly occurred during the referenced hearing, or the results thereof, *see* the *Motion*
28 4:11-5:2.

1 **I. REVIEW AND ANALYSIS OF CONTESTEE’S MOTION**

2 **A. NO DAMAGES HAVE BEEN SHOWN**

3 1. Fontes’ *Motion* is a partisan political diatribe disguised as a statutorily
4 questionable document. It is replete with conclusory statements, unsupported
5 legal conclusions, misstatement of “fact”, misrepresentations, *ad hominem*
6 personal attacks, irrelevant conclusory rhetoric, and defamations disguised as
7 pleading. That aside, first and foremost, nowhere does Fontes state or show he
8 or Hobbs suffered harm. Nor, most importantly, does it show Finchem’s
9 Contest manifest bad faith and groundless assertions required for any court to
10 sanction Mr. Finchem or his counsel.
11

12 **B. APPLICABLE LEGAL STANDARD**

13 2. The issue now before this Court is one based on Fontes’ statutory
14 misinterpretation. Despite the misstatements proffered, the court must interpret
15 and apply the accurate statutes as written that relate to sanctions. *See, Bilke V.*
16 *State*, 206 Ariz. 464, 464, 80 P.3d 269, 271 (2003). When a statute is “clear and
17 unambiguous, we apply its plain language and need not engage in any other
18 means of statutory language.” *See Kent v. Bobby M.*, 210 Ariz. 279, 283, 110
19 P.3d 1013, 1017 (2005).
20
21 3. In interpreting statutes, the court’s “goal is to fulfill the intent of the
22 legislature.” *See Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230
23 (1996). Further, statutes are to be construed so as to give effect to the whole
24 and presume that “[t]he legislature does not include in statutes provisions which
25 are redundant, void, inert, trivial, superfluous or contradictory. *See Vega v.*
26 *Morris*, 184 Ariz. 461, 463; 910 P.2d 68 (1996).
27
28

- 1 4. Further, “[C]ourts should not impose sanctions lightly.” *Estate of Craig*, 174
2 Ariz. at 239. Accordingly, an order imposing sanctions must be supported by
3 specific factual findings; those findings must in turn be supported by reasonable
4 evidence; and they must be sufficient to support the conclusion that the
5 punishment imposed is both reasonable and proportionate to the alleged
6 misconduct. A.R.S. § 12-350; *Takieh v. O’Meara*, 252 Ariz. 51, 61, ¶ 38 (App.
7 2021); *Wells Fargo Credit Corp. v. Smith*, 166 Ariz. 489, 497 (App. 1990).
- 9 5. Filing a Contest is not sanctionable merely because an opponent advances a
10 dispositive and ultimately successful defense. *See Ariz. Tax Research Ass’n v.*
11 *Dep’t of Revenue*, 163 Ariz. 255, 258 (1989) (stating that whether a claim is
12 frivolous “does not depend on either the outcome . . . or on the novelty of the
13 issue presented”). To warrant sanctions, the claim itself must be *entirely*
14 *frivolous*. (emphasis added) (*Id.*)¹
- 16 6. Here, the applicable statute is clear and unambiguous. A.R.S. 44-2083 *Sanctions*
17 *for Abusive Litigation*, addresses sanctions under ARCP Rule 11 and any
18 applicable Title or Section of the Arizona Revised Statutes. Section D(1) of
19 A.R.S. 44-2083 states in pertinent part that no award of sanctions or attorney’s
20 fees can be imposed if it will impose a burden on a party or attorney and would
21 be unjust, and the failure to make an award would not impose a greater burden
22 on a party in whose favor a sanction would be imposed.

26
27 ¹ See *Goldman v. Sahl*, 248 Ariz. 512, 531, ¶ 68 (App. 2020) (“The basis for a
28 sanction according to Civil Procedure Rule 11 is the same as A.R.S. § 12-
349(A) (1).”).

1 **Mr. Finchem**

2 7. Here we have just such a situation. Fontes, by admissions proffered in his
3 *Motion*, confesses he did not participate in compensating his attorney.²
4 Presumably neither did Hobbs, whose legal bill is compensable via the
5 taxpayers. Fontes' legal fee was paid by an anonymous donor. Therefore, no
6 burden was imposed on either Contestant by Mr. Finchem's Contest.

7 8. Mr. Finchem, on the other hand, would be greatly burdened by any sanction.
8 He exhausted his campaign funds and personal finances during his run against
9 Fontes. He currently has an appeal at the 9th Circuit disputing the election on
10 well-founded Arizona and federal Constitutional grounds. The appeal is
11 expected by all the parties to traverse to the United States Supreme Court, no
12 matter which litigant prevails.

13 9. Decidedly expensive and irrespective of the outcome, the appeal is an important
14 matter to the Nation and Mr. Finchem must not be deterred by a sanction from
15 helping to fund the matter.

16 10. Contestee is fully aware of this appeal and its related cost because it is the case
17 behind the sanction alluded to in the Motion as imposed on Mr. Finchem.
18 Opposing counsel underhandedly asserted/IMPLIED Mr. Finchem is a serial
19 sanctionee and litigation addict. Misleadingly implying he has been sanctioned
20 many, many times. Nonsense. Mr. Finchem has had a long political career and
21 22 23 24

25 ² Contestee could not "afford ... to *personally* finance a proper defense to an expedited
26 election challenge ..." (Motion 2:14, emphasis in original); which means **Contestee did**
27 **not pay for his (own) purported "defense;"** that " ... a third-party... agreed to fund his
28 defense ..." (Motion 2:15-16); and therefore Contestee not only failed to show he
 incurred any damages but also admitted he did not incur the likewise unspecified costs
 for his purported "defense."

1 it's only in recent instances of election contest grievance was he ever
2 sanctioned.

3 11. This sanction request is an improper, devious, bad faith scheme to improperly
4 harass Mr. Finchem and increase the cost his Contest. Its less obvious goal is to
5 jeopardize his ability to finance his pending appeal.

6
7 12. Furthermore, the contentions in the *Motion* are not based on facts since the no
8 statutorily required verified Answer was ever filed. The *Motion* has no
9 verification or affidavit attached as an exhibit. There are no facts in the record
10 other than those presented under oath, through verification, by Mr. Finchem.

11 13. The accusation in Contestee's *Motion* against Mr. Finchem is another poisonous
12 misstatement proffered by Contestee to mislead this Court in its understanding
13 of the current *Motion*.

14
15 **INTERFERENCE WITH MR. FINCHEM'S CAMPAIGN**

16 14. Jurisprudence related to the basic principles of the Eleventh Amendment to the
17 U.S. Constitution hold that state sovereign immunity does not immune Hobbs,
18 as secretary of State, from interfering with Mr. Finchem's free speech, or allow
19 her to interfere with his election by soliciting Twitter to suspend his account for
20 "misinformation. In fact, it violates his right under that Amendment. Eleventh
21 Amendment jurisprudence related to immunity cuts both ways. It allows
22 immunity for government officials and entities acting within the scope of their
23 office but provides limits for same for injury to free speech.

24
25 15. Hobbs did not even attempt to assert Eleventh Amendment defenses in her
26 *Motion to Dismiss*. On information and belief, that is because a choice was
27

1 made not to address Hobbs' attempt, and success, in cajoling Twitter to suspend
2 Mr. Finchem's account. Censoring his speech.

3 16. Hobbs' suggesting such action to Twitter is the causative event that led to the
4 censoring. Twitter had no reason or history of observing Mr. Finchem or his
5 postings.

6
7 17. The release of Twitter's business records proves that Hobbs, at the time the
8 Arizona Secretary of State, contacted Twitter and demanded it censor Mr.
9 Finchem, who was running for Secretary of State, by placing his account in
10 "Twitter jail" thus removing it from public view.³

11 18. It is perfectly reasonable for Mr. Finchem to view and assert in his Contest
12 document that this interference and sequestering of his Twitter account,
13 acknowledged in Twitter's release of its related business records, affected his
14 campaign. His opinion is that SoS Hobbs used Twitter to knowingly commit
15 election interference, that her act was intentionally done to impede his
16 campaign, censor his political opinions and caused him injury. There is no
17 denial by Hobbs in the record just meaningless posturing by her counsel.
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22 ³ As Americans are wrapping their heads around the implications of Elon Musk's "Twitter Files," a leaked internal email reveals that
23 Arizona Governor-elect and current Secretary of State Katie Hobbs allegedly colluded with Twitter's old guard by flagging accounts she determined
24 were spreading election "misinformation." In an email dated January 7, 2021, the communications director for the Office of the Arizona Secretary
25 of State reportedly emailed the Center for Internet Security (CIS), a 501 nonprofit that claims to be "leading the global community to secure our
26 ever-changing connected world," to say, "I am flagging this twitter account for your review." The subject line read, "Election Related
27 Misinformation" and two people at the Secretary of State's office were copied on the request. Additionally, the [Daily Wire](https://www.bizpacreview.com/2022/12/05/arizona-gov-elect-katie-hobbs-colluded-with-twitter-to-censor-election-related-misinformation-report-1314559/) reports, the email went
28 to "an unknown employee at the Cybersecurity and Infrastructure Security Agency, a branch under the federal government's Department of
Homeland Security." The email was forwarded to an employee at Twitter along with a note saying, "Please see this report below from the
Arizona SOS office. Please let me know if you have any questions." The dutiful Twitter employee reportedly emailed back, thanking
the sender and saying, "We will escalate." A follow-up email reads, "Both Tweets have been removed from the service." It is thus
proven that Twitter made a habit of censoring conservative voices for the Democrats, including Secretary Hobbs. Party, the
exchange is nothing short of explosive. See: <https://www.bizpacreview.com/2022/12/05/arizona-gov-elect-katie-hobbs-colluded-with-twitter-to-censor-election-related-misinformation-report-1314559/>

1 **Mr. McCauley**

2 19. As Mr. McCauley advised the Court, he will be 75 on July 4th. He was in the
3 process of retiring when he undertook this matter. Contestee alleges in his
4 *Motion* that Mr. McCauley took this case because he saw no risk. Nonsense.
5 Every case has some degree of risk. He was not worried, with regards to future
6 clients and his legal career.

7
8 20. Contestee deliberately misstates him. Clearly, what Mr. McCauley meant by
9 his statement is taken out of context and deliberately twisted; another contrived
10 attempt to mislead this Court.

11 21. Retiring has nothing to do with the merits of the Contest. Obviously, Mr.
12 McCauley had faith in the Contest because, as seen below, his pre-filing
13 investigation clearly established Finchem’s Contest was indeed meritorious.

14
15 22. Nevertheless, Mr. McCauley offered this case to a number of experienced
16 litigators who had a larger staff and could better operate within the very limited
17 timeframe set forth in Title 16. Each demurred specifically because they were
18 familiar with the vitriol, mis-information and vicious half-truths put forward by
19 the opposition in election contest cases. They were concerned that, as a result
20 of becoming involved in a politically charged matter, it could cause half their
21 clientele to forsake them. This seems to be the goal of the opposition lawyers,
22 their attempts at intimidation that is, in this highly charged political
23 environment.

24
25 23. This, however, was not a concern for Mr. McCauley because he was in the
26 process of retiring and handing off his clients.
27
28

1 24. But, an onerous sanction represents a substantial burden to almost any lawyer in
2 the verge of retiring. Mr. McCauley is no exception.

3 25. The chance of a sanction was inconceivable because the contest is/was, as
4 outlined more fully below, very well grounded.

5 26. A sanction could negatively affect the funding of Mr. McCauley's retirement
6 for years.

7 27. Whereas neither Fontes nor Hobbs face any cost at all if a sanction is not
8 granted.

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11 **C. ATTORNEYS FEES NOT TO BE AWARDED.**

12 28. Our courts have long been crystal clear on awards of attorney's fees in election
13 cases. "[S]ince there is no statutory provision for attorney's fees in election
14 contests we have no authority to grant attorney's fees..." See Moore v. City of
15 Page, 148 Ariz. 151, 166 (Ariz. Ct. App. 1986).

16 29. Thus, as a matter of law, attorney's fees can not be awarded in this case. And
17 the public policy plainly set forth in Title 16 is absolutely against any such an
18 award.

19 30. First, such awards can be exceptionally onerous and may well deter the
20 aggrieved from pursuing their right to contest the election. A direct
21 contravention of legislative intent and public policy.

22 31. Such an award can deter qualified electors from exercising their statutory right
23 by influencing attorneys, like in this case, that participating in an election
24 contest could damage their reputation and cause clients of a particular political
25 bent to abandon them.
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- 1 32. Take for example the request for attorney’s fees and sanctions made in the
2 current Maricopa County Superior Court case of Lake V. Hobbs. The attorneys
3 for Hobbs demanded an award of \$600,000.00 in attorney’s fees and sanctions.
4 Certainly, a contra-statutory attempt to quash future contestants.
5
6 33. Pursuant to Moore, *Supra*, the court summarily denied the request. Neither fees
7 nor sanctions were awarded.⁴
8
9 34. The same should be done here. Public policy specifically promotes a right for
10 the aggrieved to contest an election. The legislative intent recognized
11 historically by our appellate courts prohibits any such award. And therefore,
12 this Court must recognize and support both policy and precedent by declining to
13 award any sanction in this matter.
14

15 **D. THE CONTEST WAS FAR FROM FRIVOLOUS**

16 **LEGAL STANDARD**

- 17 35. Again, courts must give the words of a statute “their plain meaning.” *See City of*
18 *Tucson v. Clear Channel Outdoor, Inc*, 209 Ariz. 544, 105 P.3d 1163, 1178.
19 Further, statutes are to be construed to give the effect to the whole. *See, Vega v.*
20 *Morris*, 184 Ariz. 461, 463, 910 P.2d 6, 8.
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26 ⁴ Kari Lake files appeal for election lawsuit; judge denies request for sanctions (*Published: Dec. 27,*
27 *2022|Updated: Dec. 28, 2022*). [https://www.azfamily.com/2022/12/27/judge-denies-request-maricopa-county-katie-](https://www.azfamily.com/2022/12/27/judge-denies-request-maricopa-county-katie-hobbs-request-sanction-kari-lake/)
28 [hobbs-request-sanction-kari-lake/](https://www.azfamily.com/2022/12/27/judge-denies-request-maricopa-county-katie-hobbs-request-sanction-kari-lake/)

1 36. Rule 11 governs attorney signed pleadings wherein the signature serves as a
2 verification. *See Villa de Jardins Assn v Flagstar Bank*, 253 P.3d 288 Ariz. Ct.
3 App. (2011)

4 37. A frivolous claim is one that “indisputably has no merit.” *Id.* If the claim
5 presents a legal question about which reasonable persons could differ, it is not
6 frivolous. *City of Phoenix v. Bellamy*, 153 Ariz. 363, 367-68 (App. 1987); *State*
7 *v. Thompson*, 229 Ariz. 43, ¶ 3 (App. 2012) (stating “legal points arguable on
8 their merits” are not frivolous) (quoting *Anders v. California*, 386 U.S. 738, 744
9 (1967)). This is true even if the claim “was a long shot.” *Goldman*, 248 Ariz. at
10 531, ¶ 68.
11

12 38. That is not the case here. One of the things Mr. McCauley pointed out to this
13 Court was that that since the Legislature revisited the Contest Rules after the
14 2020 election no attorney has objected to Motion Practice in Election Contests.
15

16 39. In 2020 Arizona passed a number of laws related to election reform. The
17 relevant statute is AZ Rev Stat § 16-672 which states in relevant part:
18

19 A. Any elector of the state may contest the election of any person
20 declared elected to a state office, or declared nominated to a state office at a
21 primary election, or the declared result of an initiated or referred measure, or a
22 proposal to amend the Constitution of Arizona, or other question or proposal
submitted to vote of the people, upon any of the following grounds:

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

25 2. That the person whose right to the office is contested was not at the time of
the election eligible to the office.

26 3. That the person whose right is contested, or any person acting for him, has
27 given to an elector, inspector, judge or clerk of election, a bribe or reward, or
28

1 has offered such bribe or reward for the purpose of procuring his election, or has
2 committed any other offense against the elective franchise.

3 4. On account of illegal votes.

4 5. That by reason of erroneous count of votes the person declared elected or the
5 initiative or referred measure, or proposal to amend the constitution, or other
6 question or proposal submitted, which has been declared carried, did not in fact
7 receive the highest number of votes for the office or a sufficient number of
8 votes to carry the measure, amendment, question or proposal.

9 B. The contest may be brought in the superior court of the county in
10 which the person contesting resides or in the superior court of Maricopa County.

11 40. The cases the Court cited were published in 1986 and 1929. They are arguably
12 old law.

13 41. When an addition to the law was passed subsequent to a case ruling like those, it
14 overturns those rulings if it they are in dispute.

15 42. Further, when determining the meaning of legislation, a court must begin with
16 the plain language of the text. In this case, the plain language of the text makes
17 it clear that the argument that the courts must revisit the statutes and strictly
18 construe them can reasonably challenge past decisions and the interpretation of
19 the statutes related thereto.

20 43. Coincidentally, the same argument to revisit the legislative intent was made in
21 Mr. Hamadeh's case by another attorney, neither with knowledge the other was
22 presenting it. Obviously, it is a valid question made in good faith by at least
23 two lawyers that the election statutes have recently been revisited by the
24 legislature.

25 44. Also, nowhere in this statute or any revision is anything close to an indication
26 that the legislature intended for the civil rules of procedure to be cherry picked
27 to select certain Civil Rules that appealed to past jurists.
28

1 45. Rather, it is quite clear by the plain language of the statute that standing to
2 challenge election outcomes was meant to be strictly construed.⁵

3 46. And, under the election statutes Finchem’s verification only means: “[t]hat to
4 **the best of the signor’s knowledge, information and belief** formed after
5 reasonable inquiry [the document] is well grounded in fact and is warranted by
6 existing law or good faith argument for the extension of, or reversal of existing
7 law; and that it is not interposed for any improper purpose.” (*Id.*)

8 47. As such, it is not governed by Rule 11 which governs lawyers not clients.
9 Nothing in the statute addresses a client’s signature any differently.
10

11
12 **REQUISITE EVALUATION CONDUCTED**

13 48. Obviously, Contestee’s counsel did not conduct the relevant assessment before
14 they filed this frivolous *Motion for Sanctions* (under Rule 11).

15 49. All “allegations” in the Statement of Contest were supported by facts and first-
16 hand knowledge by experts that were not even allowed an evidentiary hearing.

17 50. Contestee’s assertion in the *Motion* that “legal requirements to obtain the relief
18 requested” required “the Amended Statement” to somehow itself “provide the
19 required bond or seek appointment of the required advisors” completely
20 misrepresents the process, statutory procedures and requirements related to
21 A.R.S. § 16-677.
22

23 51. Had Contestee’s lawyers examined the Exhibits attached to the Contest they
24 would have agreed these Exhibits make it absolutely undeniable that a thorough
25 examination of the merits of the claims made are, forgive the pun, on exhibit.
26

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⁵ Credit Attorney Tom Renz, Renz Newsletter, Substack Article, Dec 11, 2022.

1 52. Mr. McCauley had read the resumes/curriculum vitae of two of his experts. He
2 then interviewed each and discussed their findings and opinions.

3 53. Expert, Michael Shafer, has been in the verification business for more than 18
4 years and owns an election verification lab.

5 54. Shafer's expert opinion is that the voting systems used across the state in 2022
6 were not properly verified, in fact not verified at all. His opinion, based on
7 nearly two decades working every day in the verification business, is that the
8 failure to properly examine and verify the operation of the voting system was a
9 direct cause of the widespread failure of these systems literally across Arizona.

10 55. During his interview with Mr. McCauley, expert Shafer noted that his extensive
11 experience in the industry is the basis for his opinion. He opined that Secretary
12 Hobbs was responsible to supervise the routine maintenance and verification of
13 the voting systems and that she failed to do so. Her failure and the resulting
14 election chaos was misbehavior tantamount to gross negligence.

15 56. We now see that the direct result of Hobbs' failures are election contests across
16 the state.

17 57. The Exhibits also contain the opinion of expert Daniel LaChance. Mr.
18 LaChance is a retired U.S. Army officer with over 33 years of experience. His
19 service was in the U.S. Army Signal Corps where he spent his career in cyber
20 systems analysis, creation, implementation, defense and management.

21 58. He literally was important to U.S. national defense. If the United States
22 Government relied on his opinions when it came to top secret aspects of
23 domestic and foreign cyber systems so too can Mr. McCauley.

- 1 59. Mr. McCauley's reliance on Mr. LaChance was justified in that his expert
2 analysis of Arizona's cyber voting machine system supported filing the Contest.
3
4 60. Each of these experts is more than qualified to testify. And, Mr. McCauley had
5 ample justification to build his Contest based on their knowledge and opinion.
6
7 61. Mr. McCauley was introduced to another expert, a now retired career military
8 officer who worked for decades in Military Intelligence, Cyber Division.
9
10 62. This expert would have been added to the witness list and would have testified
11 that his examination of the cyber voting process in our state was deficient and
12 defective, resulting in the resultant chaos.
13
14 63. Also included in the Exhibits were approximately 80 emails from the election
15 management in Pinal County from election night surrendered by that office
16 pursuant to a freedom of information request.
17
18 64. Each and every email documents the confusion and chaos that occurred during
19 the voting process. They are a testimony to the mismanagement of the election
20 by the most responsible party, Secretary of State Hobbs.
21
22 65. In our state even lay witnesses can give opinion testimony if it is rationally
23 based. *See State v Koch*, 138 Ariz. 99, 102, 673 P.2d 297, 300 (App. 1994). So,
24 the expert witnesses proffered by Mr. Finchem would undoubtedly have been
25 qualified in the eyes of the court.
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CONSTITUTIONAL VIOLATIONS

66. Further, Arizona citizens' federal constitutional rights to vote were violated by
Hobbs' approval for use of voting equipment that unauthorized persons can
cause to change vote totals. ER-53-54, 89-92.

1 67. Hobbs did not argue that she lacked a connection with enforcement of the acts
2 complained of in the Amended Contest and “[V]oting” is “the most basic of
3 political rights.” *FEC v. Akins*, 524 U.S. 11, 18 25 (1998).

4 68. Citizens possess a fundamental right to vote and a free and fair election.
5 *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). A state may not by arbitrary
6 action or other unreasonable impairment burden the right to vote. *Baker v. Carr*,
7 369 U.S. 186, 208 (1962).

8 69. The right to vote includes the right to have the vote properly counted, *United*
9 *States v. Classic*, 313 U.S. 299, 315 (1941), “correctly counted and reported,”
10 *Gray v. Sanders*, 372 U.S. 368, 380 (1963), and not debased or diluted by the
11 introduction of fraudulent votes, *Reynolds v. Sims*, 377 U.S. 533, 556 (1964).
12 “[T]he free exercise and enjoyment of the rights and privileges guaranteed to
13 the citizens by the Constitution and laws of the United States” entails “the right
14 and privilege . . . to have their expressions of choice given full value and effect
15 by not having their votes impaired, lessened, diminished, diluted and destroyed
16 by fictitious ballots fraudulently cast and counted, recorded, returned, and
17 certified.” *United States v. Saylor*, 322 U.S. 385, 386 (1944). “[S]ince the right
18 to exercise the franchise in a free and unimpaired manner is preservative of
19 other basic civil and political rights, any alleged infringement of the right of
20 citizens to vote must be carefully and meticulously scrutinized.” *Reynolds*, 377
21 U.S. at 562. Candidates’ federal constitutional rights to vote are violated by
22 Hobbs’s approval for Arizona to use voting equipment that unauthorized
23 persons can cause to change vote totals.
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1 **HOBBS DID NOT PROTEST ANYTHING PROFFERED IN THE CONTEST.**

2 70. Hobbs did not argue ANYTHING. **She never filed her *Statutorily Required***
3 ***Answer. All that was offered *In Response To A Verified Contest* was***
4 **unsubstantiated lawyer talk - and that is all the *Motion to Dismiss* was**
5 **based on.**

6 71. “[V]oting” is “the most basic of political rights.” *FEC v. Akins*, 524 U.S. 11, 18
7 25 (1998). Citizens possess a fundamental right to vote. *Burdick v. Takushi*,
8 504 U.S. 428, 433 (1992). A state may not by arbitrary action or other
9 unreasonable impairment burden the right to vote. *Baker v. Carr*, 369 U.S. 186,
10 208 (1962).

11 72. The right to vote includes the right to have the vote counted, *United States v.*
12 *Classic*, 313 U.S. 299, 315 (1941), “correctly counted and reported,” *Gray v.*
13 *Sanders*, 372 U.S. 368, 380 (1963), and not debased or diluted by the
14 introduction of fraudulent votes, *Reynolds v. Sims*, 377 U.S. 533, 556 (1964).

15 73. “[T]he free exercise and enjoyment of the rights and privileges guaranteed to
16 the citizens by the Constitution and laws of the United States” entails “the right
17 and privilege . . . to have their expressions of choice given full value and effect
18 by not having their votes impaired, lessened, diminished, diluted and destroyed
19 by fictitious ballots fraudulently cast and counted, recorded, returned, and
20 certified.” *United States v. Saylor*, 322 U.S. 385, 386 (1944).

21 74. “[S]ince the right to exercise the franchise in a free and unimpaired manner is
22 preservative of other basic civil and political rights, any alleged infringement of
23 the right of citizens to vote must be carefully and meticulously scrutinized.”
24 *Reynolds*, 377 U.S. at 562.

1 **II. CONCLUSION**

2 The Court is fully aware that the true gravamen of Mr. Finchem’s election contest was the
3 failure of Secretary Hobbs’ foremost duty as SoS to properly supervise and manage the election
4 process. As the press and analysts have determined nationwide she misbehaved, and her failures
5 to properly supervise resulted in the most chaotic election in United States history. Mr. Finchem
6 expects an abusive name-calling Reply. Such a personal-attack document is insulting to Mr.
7 Finchem and this Court, redundant and unnecessary. Therefore, Mr. Finchem requests that motion
8 practice be closed at this point.

9 Contestees clearly fail to meet their burden to assert any reasonable grounds upon which
10 this Court can rely and make a ruling granting sanctions. In fact, based on the above, it is obvious
11 Contestee’s *Motion for Sanctions* is itself frivolous.

12 Contestant filed a valid Contest based on irrefutable and highly publicized election-day
13 chaos, supported by vastly experienced and qualified experts, dozens of individual accounts, and
14 potential election interference. Even if ultimately the Contest proved unsuccessful, it was well-
15 founded and Contestee knows it.

16 In the interest of judicial expediency, and in an effort to save costs, Mr. Finchem
17 respectfully requests the Court:

- 18 1. make its ruling based on the pleadings, and as its Final Judgment;
- 19 2. deny in total Contestee’s *Motion for Sanctions*; and
- 20 3. assess the costs associated with their frivolous *Motion* against Contestant in an
21 amount of not less than \$3,500.00.

22 DATED this 5th day of January, 2023.

23 McCauley Law Offices, P.C.

24
25 By: /s/ Daniel J. McCauley III
26 Daniel J McCauley III
27 Attorney for Contestant
28

1 A copy of the foregoing was
e-filed on January 5, 2023.

2 A copy of the foregoing was served this
3 5th day of January 2023, via the court's
ecf/cm system to the following:

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