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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

**APPLICATION FOR
PRELIMINARY INJUNCTION**

(Elections Matter)

(Expedited Relief Requested)

**(Assigned to the Honorable
John R. Hannah, Jr.)**

Plaintiff Arizona Republican Party ("Plaintiff") hereby asks the Court to issue a preliminary injunction enjoining Defendants from certifying the countywide voting results and issuing an official canvass until there has been a judgment or other dispositive ruling in this matter, and the terms of such ruling or judgment, if any, have been complied with. This Application is necessitated by the fact that today the Defendants disclosed that, even though they have a "non-final" deadline of Monday, November 23rd to prepare and certify the canvass, they intend to do so as early as this

1 Thursday, November 19th. Further, the earliest date by which the Court could conduct a trial in
2 this matter is Tuesday, November 24th.

3 “A party seeking a preliminary injunction traditionally must establish four criteria: (1) a
4 strong likelihood of success on the merits, (2) the possibility of irreparable injury if the requested
5 relief is not granted, (3) a balance of hardships favoring that party, and (4) public policy favoring
6 a grant of the injunction.” *Arizona Ass'n of Providers for Persons with Disabilities v. State*, 223
7 Ariz. 6, 12, 219 P.3d 216, 222 (Ct. App. 2009). “A court applying this standard may apply a
8 ‘sliding scale.’” *Id.* “In other words, the moving party may establish either 1) probable success on
9 the merits and the possibility of irreparable injury; or 2) the presence of serious questions and that
10 the balance of hardships tips sharply in favor of the moving party.” *Id.* (internal bracketing and
11 quotation marks omitted).

12 Here, at the minimum, there are serious questions, and the balance of hardships tips sharply
13 in favor of Plaintiff—because there is zero real hardship to Defendants (or to the Intervenor
14 Secretary of State) if the certification is delayed to only one day beyond the deadline prescribed
15 by A.R.S. § 16-642(A) for the Board of Supervisors to “meet and canvass the election.” First, as
16 pointed out in Court, A.R.S. § 16-642(C) already allows for a six-day postponement of the
17 deadline where the voting returns are “found to be missing” at the meeting to canvass the results.
18 This language goes back to at least the Civil Code of 1913, and can be broadly construed as
19 encompassing any situation in which the returns are not ready, including for the reason that they
20 have not been properly verified in accordance with A.R.S. § 16-602, which is the issue in this suit.
21 *See* A.R.S. § 16-602(I)(“[t]he hand counts prescribed by this section...shall be completed before
22 the canvassing of the election for that county”). Further, the deadline for the county to issue its
23 canvass is really for the benefit of the Arizona Secretary of State, which then has the relatively
24 simple task of taking the copying the vote totals, inputting them onto a spreadsheet to combine
25 them statewide, and then submitting the final statewide totals for certification on November 30th.

1 Liberally, that task should take only a couple of days at most, as attested by former Deputy
2 Secretary of State Lee Miller, whose Declaration is submitted herewith and incorporated as if set
3 forth herein. In other words, so long as the Board of Supervisors submits its canvass earlier than
4 Friday 27th, then the Secretary can still issue the canvass on November 30th. Finally, just like the
5 county’s “deadline” to submit a canvass, the Secretary of State’s “deadline” of November 30th is
6 subject to be legally postponed to December 3, 2020 (thirty days from the date of the election),
7 “[i]f the official canvas of any county has not been received on the fourth Monday following the
8 general election [November 30th].” A.R.S. § 16-648(C).

9 As of this writing, Plaintiff has both contacted the Defendants’ counsel informally, and
10 propounded formal discovery, to determine whether there is in fact a means of doing what Plaintiff
11 wants to be done here, i.e. a hand count in strict accordance with the statute (by precinct and not
12 by polling place). As of this writing, Defendants have not responded to Plaintiff’s formal
13 discovery or given a definitive answer (even informally) to that question. And the merits of this
14 lawsuit are otherwise clear – the statute says what it says: “precincts” and not “polling places.”
15 The question is simply whether there is a remedy that the Court can grant at this time, i.e. can the
16 correct sampling be done, and can it be done before November 30th. (Plaintiff again notes that the
17 “incorrect” sampling took only a day and a half. Plaintiff has also propounded discovery to
18 determine whether, if the correct sampling can be done, how long it would take and why, as well
19 as who at the county is most knowledgeable to testify about these matters.)

20 Given the importance of this election, and of doing everything with respect to this election
21 “by the book,” there are also powerful public-policy reasons to grant this preliminary injunction.
22 If an injunction is not granted, then there will be lingering questions about the legitimacy of these
23 results which could otherwise be answered through a proper hand count. This is also the basic
24 prejudice that Plaintiff and the voting public will suffer if the Court declines to grant an injunction
25 – it will create a cloud over the legitimacy of this election and its results.

1 For the foregoing reasons – especially the lack of prejudice to Defendants and the important
2 public-policy concerns at issue here – the Court should enjoin the Defendants from certifying the
3 countywide voting results and issuing an official canvass until there has been a judgment or other
4 dispositive ruling in this matter, and the terms if any of such ruling or judgment have been
5 complied with.

6 **RESPECTFULLY SUBMITTED** this 16th day November, 2020.

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

8 /s/ John “Jack” D. Wilenchik

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18 **ELECTRONICALLY** filed via
19 AZTurboCourt.com this 16th day
20 of November, 2020.

21 **ELECTRONICALLY** transmitted via
22 AZTurboCourt.com and emailed this 16th
23 day of November, 2020 to the Honorable
24 John R. Hannah, Jr.

25 **COPIES** electronically transmitted via
26 AZTurboCourt.com and emailed this 16th
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By: /s/Christine M. Ferreira