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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.** **MARICOPA COUNTY BOARD OF SUPERVISORS, et al.** **Defendants.**	**Case No. CV2020-014553** **PLAINTIFF'S REPLY RE: INJUNCTIVE RELIEF** **(Oral Argument Requested)** **(Assigned to the Honorable John R. Hannah, Jr.)**

Plaintiff Arizona Republican Party ("Plaintiff") hereby files this Reply in advance of the 3:15 hearing today.

Plaintiff just contacted the Defendants regarding their latest filing and the Declaration from Mr. Jarrett that was attached to it. Defendants admit that the Declaration contains a (material) error at paragraph 12, which is that the vote-tabulation machines *do* in fact read the precinct on each ballot, and they record that data (which Defendants have in their possession). Further, the County has an electronic "poll list" which is sortable by precinct, as mentioned in the Complaint.

To back up for a moment: what the statute at issue (16-602) contemplates is a comparison between "the number of votes cast as indicated on the machine or tabulator with the number of

votes cast as indicated on the poll list," by precinct as opposed to polling place. The problem that has been raised by the County is that doing a "hand" comparison of ballots to poll lists by precinct cannot be done in fewer than fourteen days, which Mr. Jarrett's Declaration was submitted to support.

However, the "error" in Mr. Jarrett's Declaration mentioned above means one very important thing: that the County can do an *electronic* comparison, which Plaintiff believes is *extremely easy to do*. It should be as easy as comparing two sets of data in an Excel spreadsheet: (1) the number of votes reported by machines for each precinct (which Jarrett now admits *is* read and recorded electronically), and (2) the number of votes recorded by the poll list for each precinct (which is also electronic). This comparison would be an "electronic" (instead of hand-count) comparison that otherwise satisfies the statute fully, i.e. a comparison of poll lists to tabulation machines by precinct.

When, in a mandamus action, the government claims that relief is impossible to award, the Court still retains an equitable discretion to create an equitable remedy. *Garcia v. City of S. Tucson*, 135 Ariz. 604, 606, 663 P.2d 596, 598 (Ct. App. 1983). In the *Garcia* case, the plaintiff sought mandamus to have the court order the City of South Tucson to pay on a large judgment that the plaintiff held against it; and the City claimed that it simply did not have the money to pay. So the Court balanced the equities and ordered that City follow a payment plan over a number of months (and to levy taxes if necessary). The Court of Appeals upheld this decision, noting that while "[i]mpossibility of performance is a recognized defense to mandamus," courts "have balanced the equities and exercised discretion as to the manner" of performance, and such discretion "will be sustained on appeal absent a showing of an abuse of that discretion." *Id.*, 135 Ariz. at 606, 663 P.2d at 598.

Here, at the minimum, Plaintiff asks the Court to order that the County quickly crunch the numbers and provide the result before certifying the canvas (which by all accounts is not due until

next Monday). To put this request for relief in even more certain terms: Plaintiff asks the Court to order that the County "compare the number of votes cast as indicated on the machine or tabulator with the number of votes cast as indicated on the poll list," by comparing the electronic poll list to the machines' electronic tabulation of votes. While Plaintiff expects that this can be done very, very quickly -- Plaintiff also asks the Court to enjoin the canvas/certification at least until Defendants can respond to the question of whether this can be done as easily as Plaintiff believes (which Plaintiff's counsel just called Defendants' counsel to ask – apparently Mr. Jarrett is busy right now and has not gotten back with an Answer). Assuming that the electronic comparison can be done before Monday, then the Court can decide whether Plaintiff's request to enjoin the canvass beyond that date is moot.

Plaintiff will of course be available to discuss at the 3:15 hearing but wanted to submit this brief in advance.

RESPECTFULLY SUBMITTED on November 18, 2020.

WILENCHIK & BARTNESS, P.C.

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By: */s/Christine M. Ferreira*