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

20 LAURIE AGUILERA, a registered voter in  
21 Maricopa County, Arizona; DONOVAN  
22 DROBINA, a registered voter in Maricopa  
23 County, Arizona ; DOES I-X; ON THEIR  
24 OWN BEHALF AND ON BEHALF OF ALL  
25 THOSE SIMILARLY SITUATED;

*Plaintiffs,*

v.

26 ADRIAN FONTES, in his official capacity as  
27 Maricopa County Recorder; et al.;

*Defendants.*

**Case no.:**

**FIRST AMENDED VERIFIED  
COMPLAINT FOR A SPECIAL  
ACTION  
[EXPEDITED ELECTION MATTER]**

(Order to Show Cause Requested)

(Oral Argument Requested)

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1 Plaintiffs hereby submit this amended complaint as a matter of right pursuant to  
2 Ariz. R. Civ. P. 15(a)(1).

3 **SECTION I**

4 **PARTIES, JURISDICTION, AND VENUE**

5 1.1. Plaintiff Laurie Aguilera is a natural person registered to vote in Maricopa County.

6 1.2. Does I-X are other individuals similarly impacted. When identified Plaintiff will  
7 seek leave to amend this Complaint to add their true.

8 1.3. Plaintiff Laurie Aguilera is a resident of Maricopa County, Arizona. She is and  
9 was, at all times relevant hereto, a registered voter in Maricopa County not on the early  
10 voting list.

11 1.5. Plaintiff Donovan Drobina is a resident of Maricopa County, Arizona. He is and  
12 was, at all times relevant hereto, a registered voter in Maricopa County.

13 1.6. Defendant Adrian Fontes is the Maricopa County Recorder. He is being sued in  
14 his official capacity.

15 1.7. Defendant Fran McCarroll is Clerk of the Maricopa County Board of Supervisors.  
16 She is being sued in her official capacity.

17 1.8. Defendants Clint Hickman, Jack Sellers, Steve Chucri, Bill Gates, and Steve  
18 Gallardo are the members of the Maricopa County Board of Supervisors. They are being  
19 sued in their official capacity.

20 1.9. Maricopa County is a political subdivision of the State of Arizona.

21 1.10. All or substantially all of the acts and occurrences giving rise to this Verified  
22 Complaint occurred in Maricopa County, Arizona.

23 1.11. Pursuant to A.R.S. § 12-401(16) an action against public officers shall be brough  
24 in the county in which the officer, or one of server officers holds office.

25 1.12. Plaintiffs may proceed by special action where there is no equally “plain, speedy  
26 and adequate remedy” available. A.R.S. §§ 12-2001, 12-2021, Rules of Procedure for  
27 Special Actions (“**RPSA**”) 1. For the reasons set forth below, there is no equally plain,  
28 speedy, and adequate remedy available.

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1 1.13. A special action may be instituted with or without an application for order to show  
2 cause why the requested relief should not be granted. RPSA 4(c). Where a show-cause  
3 procedure is used, the court must set a speedy return. *Id.* Given the looming election  
4 canvassing and certification deadlines, Plaintiffs seek an order to show cause.

5 1.14. A special action may be brought in the superior court for the county that is the  
6 principal place of business for the public officer or body being sued. RPSA 4(b).

7 1.15. This Court has jurisdiction to hear this matter and venue is proper pursuant to  
8 A.R.S. §§ 12-2001, 12-2021, 16-672, RPSA 1-4, and other applicable law.

9 1.16. Under Arizona law, a special action may be litigated as a class action. *See Arnold*  
10 *v. Arizona Dep't of Health Servs.*, 160 Ariz. 593, 606, 775 P.2d 521, 534 (1989).

11 1.17. Under Ariz. R. Civ. P. 23(a) there are four prerequisites that must be met for a  
12 class action.

13 1.18. Ariz. R. Civ. P. 23(a)(1) states that the class must be so numerous that joinder of  
14 all members is impracticable. In this case, one poll worker signed a declaration that at his  
15 polling place alone this issue affected 80% of voters. This shows that joinder of all  
16 members is impracticable.

17 1.19. Ariz. R. Civ. P. 23(a)(2) requires that there are questions of law or fact common to  
18 the class. In this case, all members of the class have been affected by issues with having  
19 their ballot read after being provided with sharpies by poll workers. *See e.g., Exhibit A.*

20 1.20. Ariz. R. Civ. P. 23(a)(3) requires that the claims or defenses of the representative  
21 parties are typical of the claims or defenses of the class. As discussed above, in this case,  
22 all members of the class and the representative parties have similar claims arising from  
23 the issue of sharpies being provided at polling places by poll workers with respect to their  
24 ballots either not being counted or being improperly subjected to human adjudication.

25 1.21. Ariz. R. Civ. P. 23(a)(4) requires that the representative parties will fairly and  
26 adequately protect the interests of the class. In this case, the representative parties and  
27 class members have the same interest, that their vote is counted *both* correctly and  
28 according to law. Even if a particular Plaintiff's ballot was ultimately counted, Plaintiffs

1 emphasize that their concern owes as much to being deprived of their right under Arizona  
2 law to fully automated counting of their ballot as it does to whether their ballot was  
3 ultimately counted. Plaintiffs view automated tabulation of their ballot as an inherently  
4 superior process. Under Arizona law tabulation machines must be certified to have  
5 perfect accuracy. Unlike human adjudicators machines are neither subjective nor subject  
6 to error or bias. As such, the fourth prerequisite has also been met.

7 1.22. As Arizona law provides that special actions may be litigated as a class action, and  
8 all the requirements of Ariz. R. Civ. P. 23(a) have been met, class action is proper in this  
9 case.

10 **SECTION II**

11 **FACTS**

12 2.1. Plaintiffs incorporate by reference the preceding allegations.

13 2.2. Joshua D. Banko was working as a clerk for the Maricopa County Elections  
14 Department at the polling location located at Paradise Valley Mall in Phoenix, Arizona.

15 2.3. He worked there from approximately 5:30 A.M. to approximately 8:15 P.M.

16 2.4. Starting at the beginning of the day Joshua D. Banko noticed voters experiencing  
17 problems feeding their ballots into the tabulation machine which cause significant delays  
18 throughout the day.

19 2.5. Joshua D. Banko was notified by the tabulation machine that it was detecting  
20 errant or extraneous lines outside of the voting section of the ballot. However, in Joshua  
21 D. Banko's presence, voters showed their ballot to the elections marshal and the site  
22 inspector to demonstrate that there were no errant marks on their ballot.

23 2.6. Ballots that were rejected by one machine were tried on the other tabulation  
24 machine and in different orientations, typically without success.

25 2.7. Based upon the foregoing, Joshua D. Banko believes that the issue was caused by  
26 the use of sharpies at the polling location.

27 2.8. Voters who experienced this issue were told by the marshal that they could spoil  
28 their ballot but if they did not care about the candidate for the section of the ballot where

1 they were having the issue, they could double vote and spoil just that vote. The marshal  
2 and site inspector encouraged voters to do this instead of spoiling their ballot and  
3 obtaining a new one.

4 2.9. Joshua D. Banko estimates that approximately 80% of voters at the Paradise  
5 Valley Mall polling place experienced this issue.

6 2.10. Named Plaintiffs are two voters who experienced issues similar to those identified  
7 by Joshua D. Banko.

8 2.11. **Exhibit B** is a true and correct copy of the declaration by Joshua D. Banko setting  
9 out the facts outlined above.

10 2.12. Plaintiff Laurie Aguilera voted in person in Maricopa County on election day,  
11 November 3, 2020.

12 2.13. She was provided with a sharpie by the poll workers with which to mark her  
13 ballot.

14 2.14. Plaintiff completed her ballot with the provided sharpie. While completing it she  
15 noticed that the ink was bleeding through.

16 2.15. Plaintiff has been voting in person for several election cycles. However, upon  
17 information and belief, she has never before been given a sharpie as a marking device by  
18 a poll worker.

19 2.16. Plaintiff fed her ballot into the ballot box.

20 2.17. The ballot box failed to properly register her vote causing a poll-worker to cancel  
21 her ballot in the presence of Plaintiff.

22 2.18. Plaintiff requested a new ballot but, upon information and belief, upon  
23 consultation with the Maricopa County Reorder's Office, the poll workers refused to  
24 provide her with one.

25 2.19. Plaintiff Donovan Drobina voted in person in Maricopa County on election day,  
26 November 3, 2020.

27 2.20. He was provided with a sharpie by the poll workers with which to mark his ballot  
28 and was not given the option of using a ballpoint pen.

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1 2.21. He attempted to insert his ballot into the slot at the top of the ballot box and it was  
2 rejected.

3 2.22. The poll worker that assisted him told him that they had been having issues with  
4 the sharpies bleeding through which had been causing issues with the scanner.

5 2.23. The poll worker had him attempt to put the ballot in the slot at the top of the box  
6 twice, after it failed to scan both times the poll worker had him put the ballot in a slot  
7 lower down on the box.

8 2.24. **Exhibit C** is a true and correct copy of the declaration by Donovan Drobina setting  
9 out the facts outlined above.

10 2.25. According to Pima County Supervisor Allyson Miller, Pima County’s instructions  
11 told voters “Do NOT use a sharpie type pen as it will bleed through.” Pima County also  
12 informed voters that bleed through will “most likely” cause the ballot to “get sent for  
13 [manual] duplication” so it can be read by the scanner. *See Exhibit D.* However,  
14 Maricopa County no longer manually duplicates ballots but instead tries to have ballots  
15 reviewed by human beings to determine “voter intent.”

16 2.26. The Arizona Attorney General has received hundreds of voter complaints  
17 regarding the issues described above and is investigating. *See Exhibit E.*

18 2.27. Upon information and belief, many other voters have experienced similar issues.

19 2.28. Upon information and belief not all Arizona counties and polling places provided  
20 in-person voters with sharpies for marking devices.

21 2.29. Upon information and belief, November 9, 2020 is the first day to canvas the  
22 election results, November 23, 2020 is the last day to canvas the election results, and the  
23 deadline to certify election results is November 30, 2020.

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**SECTION III**

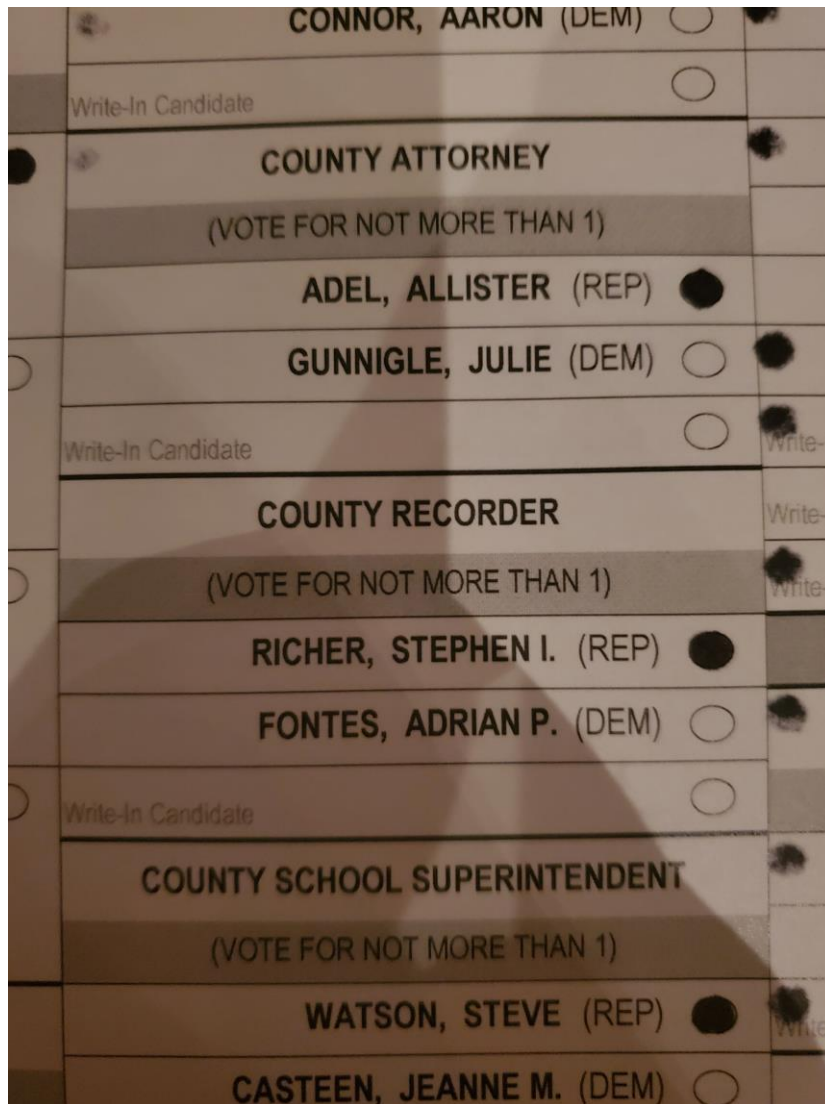
**CAUSES OF ACTION**

3.1. Plaintiffs incorporate by reference the preceding allegations.

*(Violation of A.R.S. § 16-502)*

3.2 Arizona law provides that “[b]allots shall be printed with black ink on white paper of sufficient thickness to prevent the printing thereon from being discernible from the back and the same type shall be used for the names of all candidates.” A.R.S. § 16-502(A).

3.3 Defendants violated A.R.S. § 16-502(A) by failing to provide ballots with sufficient thickness, and providing sharpies to vote on said ballots, to prevent the sharpies from bleeding through.



1                    *(Failure to Maintain Statutorily Compliant Electronic Voting System)*

2        3.4. Maricopa County utilizes an “electronic voting system” within the meaning of  
3        A.R.S. § 16-444(A)(4) wherein “votes are recorded on a paper ballot by means of  
4        marking, and such votes are subsequently counted and tabulated by vote tabulating  
5        equipment at one or more counting centers.”

6        3.5. “Vote tabulating equipment” means “apparatus necessary to *automatically*  
7        examine and count votes as designated on ballots and tabulate the results.” A.R.S. § 16-  
8        444(A)(7) (emphasis supplied).

9        3.6. By statute, the county’s electronic voting system must, “When properly operated,  
10       record correctly and count accurately every vote cast.” A.R.S. § 16-446(B)(6).

11       3.7. In other words, voters have a right to know with certainty that, when they follow  
12       the instructions of election officials, their votes will be counted automatically and  
13       perfectly. The acts of Defendants have deprived them of that right.

14       3.8. Plaintiff and those like her properly operated the County’s electronic voting  
15       system but, upon information and belief, it failed to automatically record her vote. Upon  
16       information and belief, it also failed to record her votes correctly and count them  
17       accurately.

18                    *(Failure to Ensure Maximum Degree of Correctness, Impartiality, and Uniformity of*  
19                    *Election Procedures)*

20       3.9. By statute Arizona elections are to be conducted so as to ensure the maximum  
21       degree of correctness, impartiality, and uniformity of procedures for voting and  
22       tabulating ballots. *See e.g.* A.R.S. §§ 16-449(B), 16-452(A), *etc.*

23       3.10. The provision of a sharpie as a marking device fails to satisfy these requirements.  
24       It failed to provide for the maximum degree of correctness because at least some voters  
25       experienced issues having their ballots read because of the use of the sharpie marking  
26       devices. It failed to provide for the maximum degree of impartiality. Nothing is more  
27       impartial than a machine that counts votes with perfect accuracy. Upon information and  
28       belief, some ballots marked with sharpie marking devices had to have voter intent



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1 adjudicated by humans because the machines were unable to read them due to the use of  
2 sharpies. The provision of a sharpie as a marking device failed to provide for the  
3 maximum degree of uniformity insofar as not all voters were provided with sharpies by  
4 poll workers.

5 *(Failure to Comply with the Election Procedures Manual)*

6 3.11. By statute Arizona elections are to be conducted pursuant to the Election  
7 Procedures Manual (“EPM”) which has the force of law. A.R.S. § 16-452.<sup>1</sup>

8 3.12. Pursuant to the EPM, the marking devices provided to voters must: “Provide the  
9 voter with an opportunity (in a private, secret, and independent manner) to correct any  
10 error before the ballot is cast and counted or cast a replacement ballot if the previous  
11 ballot is spoiled or unable to be changed or corrected.” EPM p 79.

12 3.13. Upon information and belief, because of the provision of sharpies as marking  
13 devices, Plaintiff and those like her did not realize that their ballots would not be properly  
14 read or would be read as spoiled until their ballots were cast.

15 *(A.R.S. Const. Art. II, § 21)*

16 3.14. Arizonans possess a right to a “free and equal election” under our state  
17 constitution. A.R.S. Const. Art. II, § 21. This right is “implicated when votes are not  
18 properly counted.” *Chavez v. Brewer*, 222 Ariz. 309, 320, 214 P.3d 397, 408 (App. 2009)  
19 (citing A.R.S. § 16-446(B)(6)).

20 3.15. Due to the fact set forth above, the votes of Plaintiff and those like her have not  
21 been properly counted according to the law.

22 *(A.R.S. Const. Art. II, § 13)*

23 3.16. The Arizona Constitution’s Equal Privileges and Immunities Clause provides that  
24 “No law shall be enacted granting to any citizen, class of citizens, or corporation other  
25 than municipal, privileges or immunities which, upon the same terms, shall not equally  
26 belong to all citizens or corporations.” A.R.S. Const. Art. II, § 13.

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<sup>1</sup>[https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)

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1 3.17. Upon information and belief the ballots mailed to early voters were thicker than  
2 those used on election day.

3 3.18. Through the acts and omissions set forth above, Defendants have made it less  
4 likely that the ballots of some, but not all, in-person voters will be counted by a perfect,  
5 automated, process.

6 CAUSE OF ACTION – VIOLATION OF RPSA 3

7 3.19. A plaintiff may raise the following questions via special action:

8 (a) Whether the defendant has failed to exercise discretion which he has a duty to  
9 exercise; or to perform a duty required by law as to which he has no discretion; or

10 (b) Whether the defendant has proceeded or is threatening to proceed without or in excess  
11 of jurisdiction or legal authority; or

12 (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

13 3.20. Through the acts and omissions set forth above, Defendants have failed to  
14 properly exercise their discretion or perform duties required by law as to which they had  
15 no discretion.

16 3.21. Through the acts and omissions set forth above, Defendants have proceeded in  
17 excess of their jurisdiction or legal authority.

18 3.22. The determinations of Defendants, discussed above are arbitrary, capricious or  
19 constitute abuses of discretion for the reasons set forth above.

20  
21 WHEREFORE Plaintiffs pray:

22 A. That this Court accept special action jurisdiction, issue the attached Order to Show  
23 Cause, and set a speedy return.

24 B. That all ballots that were uncured or denied as a result of Defendants' actions be  
25 identified and allowed to be cured.

26 C. That this Court permit members of the public who were given sharpie marking  
27 devices to mark their ballots to be present in person to observe the counting of ballots and  
28 the adjudication of voter intent by election workers for ballots that could not be read by

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machine.

D. For a Declaration that the behavior of defendants deprived voters of their right to have their votes read and tabulated with perfect accuracy by an automated system or, alternatively, that Defendants’ behavior was otherwise contrary to law.

E. For a declaration that the Defendants’ use of the sharpies with the ballots provided violated A.R.S. § 16-502.

F. For attorneys’ fees and costs pursuant to A.R.S. §§ 12-2030, 12-348, common law doctrine, and other applicable law.

G. For such other relief as this Court deems just and proper.

Respectfully submitted this 5<sup>th</sup> day of November, 2020

By /s/Alexander Kolodin  
Alexander Kolodin  
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Attorneys for Plaintiffs

I CERTIFY that a copy of the of the forgoing will be served on Defendants in conformity with the applicable rules of procedure with an electronic courtesy copy also sent to the Maricopa County Attorney due to the expedited nature of the action.

By /s/Alexander Kolodin

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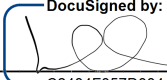
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VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. My knowledge of course being limited to the facts of my particular circumstances.

11/5/2020

DATE

DocuSigned by:  
  
C2484F857D8844A...

LAURIE AGUILERA

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