

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, et al.,	)	
	)	
Plaintiffs,	)	CV-20-2321-PHX-DJH
	)	
vs.	)	Phoenix, Arizona
	)	December 8, 2020
Doug Ducey, in his official	)	9:21 a.m.
capacity as Governor of the	)	
State of Arizona, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

BEFORE: THE HONORABLE DIANE J. HUMETEWA, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
VIDEO TELECONFERENCE - ORAL ARGUMENTS

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P R O C E E D I N G S

1  
2 THE CLERK: CV-20-02321, Tyler Bowyer versus Doug  
3 Ducey and others, on for oral argument.

4 Counsel, please announce you presence for the record,  
5 with plaintiffs' counsel going first.

6 MS. HALLER: Julia Haller for plaintiffs' counsel, and  
7 I have Alex Kolodin, our local counsel, I'm sorry, Alex  
8 Kolodin, our local counsel, with us. And I have Emily Newman  
9 on -- present on the line, but does not plan to speak.

10 THE COURT: All right. Good morning.

11 MS. HALLER: Good morning, Your Honor.

12 MR. NELSON: Good morning. Justin Nelson from Susman  
13 Godfrey, representing the Secretary of the State Hobbs.

14 With me I have Pali Desai, from Coppersmith  
15 Brockelman, Davida Brook, Stephen Shackelford, and Stephen  
16 Morrissey from Susman Godfrey, all representing the Secretary.

17 In addition, for Governor Ducey, Brett Johnson and  
18 Colin Ahler from Snell & Wilmer. And for Maricopa County and  
19 the Maricopa County Attorney, Emily Craiger, Thomas Liddy,  
20 Joseph LaRue, and Joseph Vigil.

21 THE COURT: I'm sorry, I lost you with the last name?

22 MR. NELSON: Joseph Vigil was the last name I said for  
23 Maricopa County.

24 THE COURT: All right. Thank you.

25 All right. The Court has already issued a minute

1 entry directing the parties as to how much time each of you  
2 have with respect to oral argument on the motion to dismiss,  
3 and we can certainly give you an additional allotment of time,  
4 if I have questions that take some of that time up.

5 I don't necessarily think all of the time needs to be  
6 taken, because this matter is fully briefed. I have read  
7 everything that has been submitted so far. And so if there are  
8 critical points that you wish to make, please do so.

9 And I guess with respect to -- Ms. Haller, with  
10 respect to plaintiffs, I want to just at the outset ask you to,  
11 number one, clarify what, if any, significance today's date has  
12 on your complaint as the safe harbor date, December 8th.

13 Secondly, I want to understand, because this was a  
14 question that I asked at the status conference last week, I  
15 want to understand the specific status of the named plaintiffs.

16 We were told that -- and we were told in the  
17 responsive briefing that the distinction in the named  
18 plaintiffs were that some were electors, others were registered  
19 voters.

20 The complaint isn't clear with respect to whom is who,  
21 and so I would like you to address that so that I have an idea  
22 of who these individuals are.

23 And then thirdly, it is critical for you to address  
24 the supplemental authority that was filed yesterday with  
25 respect to Judge Warner's ruling in the state litigation.

1           So if you can touch upon those three things, in  
2 addition to what oral presentment you are going to make, then  
3 that would be for my benefit. And so we can proceed now.

4           MS. HALLER: Yes, Your Honor.

5           As to your first question on this safe harbor date,  
6 yes, the date is significant. It is the date all state  
7 litigation should be at least filed for -- if not a better  
8 word. But it looks like all state litigation needs to be  
9 handled by this date. 3 U.S.C. 5 makes that clear.

10           We also have an order from an Eastern District of  
11 Wisconsin court where she laid out citations to that point, and  
12 I did cite that or we did cite that order in our reply at --  
13 bear with me, Your Honor.

14           We cited to that in our reply, the court's order from  
15 Wisconsin, where she -- that court set forth that December 8th,  
16 six days prior to the date of the college of electors scheduled  
17 to meet.

18           And that safe harbor deadline is pursuant to 3 U.S.C.  
19 5. That statute provides that if a state has provided by laws  
20 enacted prior to the date fixed for the appointment of the  
21 electors, for its final determination of any controversy or  
22 contest concerning the appointment of all or for any of the  
23 electors of such state.

24           And that final determination has been made at least  
25 six days before the time fixed for the meeting of electors.

1 That determination said -- that court, if it is made under the  
2 state's law at least six days prior to the date -- to that  
3 date -- shall be conclusive, and shall govern in the counting  
4 of the electoral votes.

5 And so she -- her conclusion is, or that court's  
6 conclusion is, it appears therefore that December 8th is a  
7 critical date for resolution of any state court litigation  
8 involving an aggrieved candidate who is contesting the outcome  
9 of an election.

10 And that's at case 20-CV-1771 from the Eastern  
11 District of Wisconsin on December 4th. And we cited to it at  
12 our reply brief at page 11.

13 THE COURT: Thank you.

14 MS. HALLER: As to Your Honor's second question -- or  
15 should I wait?

16 THE COURT: No, go forward, please.

17 MS. HALLER: The plaintiffs are all presidential  
18 electors that we have in this case. So there are -- I am not  
19 aware of any plaintiffs -- I know none of the plaintiffs are  
20 simply -- I don't mean to say "simply," but aren't candidates.

21 MR. KOLODIN: Your Honor, if I may clarify? This is  
22 Alexander Kolodin. The plaintiffs who are presidential  
23 electors are Mr. Kern, Mr. Safsten, Mr. Hoffman, Mr. Lamon,  
24 Ms. Ward, Ms. Pellegrino, Mr. Ward, Ms. Cottle, Mr. Montgomery,  
25 Mr. Moorhead and Mr. Bowyer.

1 I believe the remaining plaintiffs are county party  
2 chairs to the Republican Party. So we have President Trump's  
3 full slate of presidential electors as plaintiffs in this  
4 matter.

5 THE COURT: Okay, thank you.

6 Ms. Haller, go forward.

7 MS. HALLER: And as for the state litigation and the  
8 status of it, as we -- to the extent the supplemental authority  
9 cites to the Wood case, I think there's a misunderstanding of  
10 what happened in the Wood litigation.

11 The Wood litigation was based on a voter, not a  
12 candidate. And what the court held in that litigation was that  
13 there was no particular -- excuse me, particularized injury.

14 THE COURT: Ms. Haller, I'm talking about the Arizona  
15 State case, Ward v. -- yes, the Ward case.

16 MS. HALLER: Yes, Your Honor.

17 THE COURT: And the supplemental authority from  
18 yesterday.

19 MS. HALLER: So in the Ward case, on -- the plaintiffs  
20 do not have privity even, or not the same parties as the  
21 plaintiffs in our case, with the exception of the one plaintiff  
22 Kelli Ward.

23 Kelli Ward's case yesterday went up to the Supreme  
24 Court, I believe. And in that case, there's -- we don't have  
25 the identical issues, very simply, Your Honor. The elements



1 under estoppel require that the disputed issue is identical.  
2 That there is a resolution of the previous action. That it was  
3 fully litigated, and that the parties whom you seek to enforce  
4 estoppel or issue jurisprudence against had a full and fair  
5 opportunity to litigate.

6 We have, of course, 12 of 13 plaintiffs who have not  
7 had that opportunity. The one plaintiff who is litigating her  
8 case is not litigating on the same issues. While there are  
9 some similar overlap in certain accounts, this case is based on  
10 our suit against a governor and a secretary of state.

11 And why that distinction is so critical is the  
12 governor -- we are seeking relief to decertify the election, to  
13 invalidate the election, based on the governor's certification  
14 and the secretary of state's role in that process.

15 That is very different from the contest statute,  
16 pursuant to which plaintiff Ward in that case is seeking  
17 relief.

18 She is seeking relief against very different parties,  
19 making a different claim. And, yes, she has allegations of  
20 fraud, but the allegations of fraud we are presenting here  
21 against the governor and the secretary of state are based on  
22 concrete evidence of widespread voter fraud.

23 And the allegations in the complaint, for example, as  
24 we pointed out in our reply, our complaint is over 100 pages,  
25 plaintiff Kelli Ward's complaint is, I believe, under 20 pages,

1 and that's only to make a very rough showing, a very plain  
2 showing, Your Honor, that they are very different allegations.

3 She does make certain fraud and constitutional claims,  
4 but not against the governor, not against the secretary of  
5 state, and not based on the certification and the widespread  
6 fraud based on Dominion, based on the statistical evidence, in  
7 addition to the individual accounts that we are put -- setting  
8 forth.

9 THE COURT: I guess the question that I have really  
10 focuses on, for example, count two of your complaint related to  
11 the 1983 claims include paragraphs related to inability to  
12 actually observe or meaningfully observe the process and  
13 handling.

14 I'm looking at specifically paragraphs 118 and 120 of  
15 the complaint. And in my view -- well, from what I understand,  
16 Judge Warner threw those particular allegations out.

17 And my concern is that it is a generalized complaint  
18 related to observation and access. And so it's based on the  
19 same sort of argument and evidence, isn't it? I mean, how can  
20 it be any different?

21 And certainly, at least with respect to this  
22 litigation, if one of your named plaintiffs, Ms. Ward, filed  
23 her litigation in the state court, it seemed -- and she had  
24 evidence of that, it seems to me that those particular claims  
25 are late filed here then.

1 MS. HALLER: First of all, Your Honor, addressing your  
2 last question first, the late filing isn't -- under Arizona  
3 State Law 16 -- I have the citation. Your Honor, 16-927, I  
4 believe, under the contest statute, I shall say, under the  
5 contest statute you filed your certificate -- you file your  
6 claim within five days of the certification by the state, by  
7 the governor or by the secretary of state, and you file that  
8 after certification.

9 So under state -- if you were to bring this -- base  
10 this case on state law, we are timely because we filed on  
11 December 2nd. The State certified on November 30th. So we  
12 were well within the five days after the certification of the  
13 election. There's nothing late.

14 There's been a number of cases dismissed exactly  
15 because they were brought before certification.

16 As far as Ward's case goes, as far as the element Your  
17 Honor is pointing to at paragraph 118, observation is one fact  
18 that is part of a pattern of fraud that we are showing to show  
19 widespread fraud. In the same vein as Rule 404(b) operates,  
20 where you have a pattern, showing an absence of mistake.

21 The fact is observation or the failure to be allowed  
22 to substantively observe how the election occurred is one piece  
23 of a pattern of evidence that we are bringing forward. To us,  
24 that is not a fundamental element to the entire -- to the  
25 elements of the fraud that we are bringing. That is one fact

1 included in our complaint, of course, among 118 other facts.

2 But the fact is the failure to observe precedes  
3 widespread fraud that we can show. So we can show that the  
4 actual fraud happened on election night, and that goes to the  
5 point that we are not late. Because when we learned of the  
6 actual fraud in this case, is based on the spikes in the  
7 election data feed on the night of November 3rd.

8 And in our expert reports, we show that injections of  
9 data happened at a certain point in time on November 3rd. And  
10 it's that reporting data feed that relates to our claim that  
11 there is an algorithm that Dominion Voting Systems uses.

12 And in that algorithm, the parameters of which only  
13 Dominion Voting Systems and Scytl know, there is the algorithm  
14 that presents. And by their own user manual, they admit that  
15 they use this algorithm to tabulate votes.

16 And our claim is that they send this information to  
17 Scytl, which is based in their servers offshore, not in this  
18 country. And when they send that information for tallying,  
19 they then redistribute the votes and the algorithm is applied,  
20 and they determine what are valid votes and what are not valid  
21 votes in this transmission between their servers offshore from  
22 this country.

23 That violates election law on many levels because we  
24 have law related to transparency, one ballot per person. When  
25 this algorithm occurs, it's based on points.

1           In the points that occur, what you have is votes  
2 broken down from one vote to actually decimal points, which  
3 reflects again the algorithm and spikes and the evidence that  
4 we will set forth on the proof of how this algorithm operates  
5 to make the determination and how the point in time is very  
6 significant to that injection of votes.

7           The pattern --

8           THE COURT: Well, let me just give you a little bit of  
9 guidance here, Ms. Haller. I know I gave you 20 minutes for  
10 your argument. You've answered a number of my questions. I am  
11 going to give you an additional five minutes.

12           So you have about 10 more minutes to argue your  
13 position with respect to the motion to dismiss, and so I will  
14 let you use the remainder of your time however you choose. But  
15 it seems to me you are trying to get into the merits of the  
16 complaint, and I think at this juncture, I would like to  
17 understand why your complaint should survive.

18           MS. HALLER: Yes, Your Honor. So are you asking me to  
19 address why the complaint should survive?

20           THE COURT: Well, if you would like to respond to the  
21 motion to dismiss in whatever way you wish.

22           MS. HALLER: Yes, Your Honor. Okay.

23           So in a nutshell, the motion to dismiss are joined  
24 with the motion to not allow -- you know, oppose the  
25 preliminary injunction. And we first submit that electors have

1 standing. We want to point out that Bognet or Bognet, which  
2 was cited to by defendant Hobbs specifically, but in that case,  
3 they cite to the Third Circuit opinion, which I think is  
4 significantly distinguishable from our case, and from Carson,  
5 the Eighth Circuit Case that we cited to.

6 But we would point out that in Bognet, the Court found  
7 that they were private citizens. The one person who was not a  
8 private citizen was a private citizen who had run for  
9 candidacy.

10 In that situation, the court said, even a party who  
11 meets Article III must rest his claim on its own right. And  
12 because he had failed to actually plead that the election would  
13 have changed, he didn't have a particularized injury because he  
14 didn't even plead an allegation that it would be altered. And  
15 the court did not go so far as to say he couldn't prove it, he  
16 didn't even plead it.

17 The plaintiffs therein were denied because of the lack  
18 of injury in fact because they were private citizens, and so  
19 the injury was generalized, which the court found to show a  
20 lack of standing.

21 The other case that's very relevant is the Ninth  
22 Circuit case, which is Porter versus Jones, which we also cited  
23 to, which is 319 F.3d 483, which also discusses standing and  
24 makes clear that it gets in that case because the claim was  
25 justiciable, as the court said. And they really look instead

1 at, is there a particularized injury?

2 And the court set forth the standard that on a motion  
3 to dismiss, the allegations of the plaintiff are to be accepted  
4 as true. And in that case, they explain in footnote 4 how  
5 plaintiffs establish standing, in addition to the Carson case,  
6 which is very particular to this case, because it's based on  
7 presidential electors. And in that case the Court found they  
8 had Article III standing, in addition to Pullman standing.

9 The -- excuse me, Your Honor. The case McPherson  
10 versus Blacker, which is the Supreme Court case, and also the  
11 Bush case, Bush v. Palm Beach County Canvassing Board,  
12 531 U.S. 70, both explain that ensuring the final vote tally is  
13 a particularized injury to electors. Our claim is about the  
14 vote tally, and that is what we saw, again, in the spike.

15 The reason I raise that spike on election night is  
16 because that ties in to the other claims against us in the  
17 motion to dismiss related to laches, related to lack of, you  
18 know, pleading fraud, et cetera.

19 So I think that to understand the claim itself that  
20 the plaintiffs are making in this case, is to understand that  
21 it's three-part. It's based first on individual accounts of  
22 seeing votes switched by the machines. It's based also on  
23 statistical evidence, and it's based on election law  
24 violations.

25 And then number 4 -- or not 4, maybe number 1, it's

1 based on this Dominion Voting System and how it operates and  
2 how it uses this algorithm.

3 And this is a very different claim, because this  
4 widespread fraud is tied together through this picture. And in  
5 equal protection cases, as well as in other cases, we have seen  
6 that a combination of individual anecdotal evidence, together  
7 with statistical proof, is the standard to show when broader  
8 remedial relief is justified.

9 And the fact that the court has repeatedly used  
10 anecdotal evidence, combined with statistical evidence under  
11 equal protection standards, that's very significant.

12 And that is cited to in 122 F.3d 895, Eleventh  
13 Circuit, 1997, citing to Supreme Court case of Richmond versus  
14 J.A. Croson, 488 U.S. 469.

15 The evidence of pattern of individual discriminatory  
16 acts can, if supported by appropriate statistical proof -- the  
17 court that a broader remedial measure is needed.

18 It is based on that argument that we come back to the  
19 idea that we have equal protection law that's applicable to  
20 voting cases. As Your Honor knows, the right of suffrage can  
21 be denied by a debasement or dilution of the weight of the  
22 citizens' vote just as effectively as by wholly prohibiting the  
23 free exercise of the franchise. Reynolds, 377 U.S. 533 (1964)  
24 with many cases that go beyond that.

25 In Anderson versus United States, 417 U.S. 211, again,



1 every voter in the federal election, whether he votes for a  
2 candidate with little chance of winning or for one with little  
3 chance of losing, has a right under the Constitution to have  
4 his vote fairly counted.

5 Our plaintiffs have particularized injury as  
6 presidential electors with the right to vote and have  
7 Article III standing.

8 Now defendants -- I believe it is Secretary Hobbs,  
9 focuses heavily on a case related to laches, and again argues  
10 16-673, which is the state contest statute. They rely on that  
11 to say that we are late. Well, that statute actually requires  
12 that you file within five days of state certification, 11/30.

13 Nonetheless, as we have shown, or as we have submitted  
14 with our papers and with our complaint, it is on election night  
15 that the evidence of fraud is -- becomes actually visible and  
16 is actual fraud that is pled in the case.

17 And to the point that the defendants make about 9(b),  
18 Your Honor, that is not the standard for fraud in Arizona where  
19 the Supreme Court of Arizona has held that election fraud,  
20 election fraud, is based on being able to show that you would  
21 have a likelihood of proving that the election had fraud. And  
22 for that case, we cite in our reply, Miller. And -- Miller  
23 versus Picacho, P-I-C-A-C-H-O, 179 Arizona 178, Supreme Court  
24 (1994).

25 THE COURT: What page is that on?

1 MS. HALLER: Yes. I'm sorry, Your Honor. 179 Arizona  
2 178.

3 THE COURT: What page of your reply is that on?

4 MS. HALLER: Oh.

5 THE COURT: If you recall?

6 MS. HALLER: I think it is near the -- it is in our  
7 complaint if it is not in our reply -- but I believe it's in  
8 our reply.

9 THE COURT: Well, in any event, you can move on.

10 MS. HALLER: So as to the idea of mootness, this claim  
11 is very much alive, Your Honor. And the --

12 THE COURT: Let me just ask you this question, and I  
13 will give you an additional -- a couple of minutes to wrap up.

14 It seems to me that a couple of courts in the last  
15 week or so, even within the last day, have asked the question  
16 or resolved the question really for themselves about what the  
17 continuing violation of federal law is that you are seeking to  
18 enjoin.

19 Because in their view, already addressing the  
20 question, the election results were already certified. And so  
21 the governor has already transmitted the same to the United  
22 States Archivist, so why shouldn't this court follow those  
23 courts that have already spoken on the issue? What makes this  
24 different?

25 MS. HALLER: Well, Your Honor, we would also disagree

1 with the opinions in the courts Your Honor is, I believe,  
2 referencing, because I think there's a misunderstanding.

3 We would never have a federal election law claim under  
4 the theory that one had to follow only state law. This Court  
5 sits on supplemental jurisdiction as well as original  
6 jurisdiction in this case, and it's very commonplace for this  
7 Court to have cases come to it based on supplemental  
8 jurisdiction.

9 In removal cases, for example. And when cases come to  
10 the court on removal cases, what the court does is keep the  
11 state law claim next to the federal law claim, and there's even  
12 Ninth Circuit cases that have held that where the state court  
13 claim is the only thing to survive because the federal claim  
14 got dismissed, they still held that the federal court has  
15 jurisdiction.

16 And it's very critical to understand this Court's  
17 supplemental jurisdiction as well as its original jurisdiction  
18 in plaintiffs' case, where we have both Article III standing  
19 for presidential electors and the fundamental, I think,  
20 disconnect on the evidence in this case, which is what we  
21 really need to show, is that we would have a substantial  
22 likelihood of success.

23 And there's a presumption that there's irreparable  
24 harm if we can show the substantial likelihood of success. And  
25 that goes back to our motion for preliminary injunction, which

1 is what we filed on December 2nd.

2 The plaintiffs' response -- excuse me, the defendants  
3 responded with oppositions to those motions, as well as motions  
4 to dismiss. But what's fundamental to this case is that it's  
5 injunctive relief that is requested. And injunctive relief is  
6 not full and final, so the whole idea that there's, you know, a  
7 denial somewhere on issuing an injunction, is not precedential,  
8 I would submit, because it is not a full hearing on the merits  
9 or final -- or a final resolution.

10 But even so, if the idea is that this case rests on  
11 election law, then we know that the Supreme Court has a number  
12 of times and federal cases a number of times have addressed  
13 voting rights cases or -- Bush v. Gore is the case that went up  
14 after certification, and the U.S. Supreme Court heard it.

15 The U.S. Supreme Court did not say it's too late, you  
16 know. The challenge is that in election law, and courts have  
17 explained this, there is a very short time that is being  
18 recognized in current jurisprudence for plaintiffs to bring a  
19 claim.

20 If you bring it preelection, then you are violating  
21 the Pullman abstention. If you bring it post election, people  
22 want to submit that it's late, but we are two days after  
23 certification. We filed December 2nd. They certified November  
24 30th. We went immediately -- and this is a complicated case,  
25 as Your Honor knows from all of the filings.

1           So the challenge of putting all that evidence together  
2 in that time period from when the evidence is really seen on  
3 election night in the election feed, and this is a case where  
4 they continued to count.

5           So it's not like election night, and then we knew that  
6 the fraud -- or what signs of fraud we had at the time. This  
7 was a case where they continued to count. And -- making our  
8 case very much a live question as opposed to a moot question or  
9 a case that -- raises the issues of laches.

10           THE COURT: All right, Ms. Haller, your time is just  
11 about up. If you have one more point to make, I will let you  
12 make it, and then we will hear from Mr. Nelson.

13           MS. HALLER: Yes, Your Honor. I would point out that  
14 when it comes to Ward v. Jackson, as Your Honor had asked,  
15 non-mutual offensive collateral estoppel or defensive  
16 collateral estoppel is not shown here.

17           The issue of preclusion does not prevent a  
18 determination because of not -- because of Idaho Potato,  
19 425 F.3d 708, a Ninth Circuit (2005).

20           Previously litigated defensive use of  
21 non-collateral -- non-mutual collateral estoppel is addressed  
22 in Mendoza, 464 U.S. at 159. I would just point those two  
23 cases out to Your Honor.

24           What's very significant in our case is evidence that  
25 we have 5,790 votes that were done by people outside of the

1 jurisdiction. We can show 86,000 ballots that were returned  
2 and they were disenfranchised, where the votes were not  
3 accepted. 86,000 and 5,000. And then we can show an  
4 additional 219,000 of unlawfully mailed ballots.

5 The difference in Arizona between the President and  
6 Mr. Biden is well below that. So we do have the ability to  
7 show that there is a substantial likelihood that we will be  
8 successful on the merits of this case.

9 And we will have testimony from the affidavits that we  
10 have submitted, but we have a significant amount of evidence to  
11 put forward. We have Ph.D. statisticians, mathematicians. We  
12 have computer science, cyber forensics. We have evidence of  
13 the fact that there was a significant tampering with the tally  
14 of the election, specifically November 3rd.

15 THE COURT: What declaration points me to that  
16 significant tampering with the tally? What is the declaration  
17 attached to your complaint that attests to that?

18 MS. HALLER: Yes, Your Honor. Exhibit 13 would be the  
19 first one that I would point you to. I would also point you  
20 to -- bear with me, Your Honor -- 17 -- or wait. No, not 17.

21 I would point Your Honor to 19, to plaintiffs'  
22 complaint, which I believe is the same number in our actual  
23 submission. But it's Exhibit 19, exhibit 13 of TM. She is --  
24 and then Exhibit 12, and Exhibit 7.

25 And then, Your Honor, I would also point you to our

1 exhibits which relate to the senators' letter in 2019. It was  
2 Senators Warren, Klobuchar, Wyden, who wrote about the concerns  
3 they had with the lack of security over Dominion Voting  
4 Systems, and they wrote that letter in 2019, and we attached  
5 that to our complaint, and it is in our exhibit binder.

6 But it makes clear the concerns over Dominion Voting  
7 Systems, as does Congresswoman Maloney's letter, that predates  
8 that back in 2006, where she dug into the connections Dominion  
9 Voting Systems had with Smartmatic.

10 We raise those points that these questions have been  
11 out there and people have been trying to investigate this. And  
12 we only see its brazen actual fraud take place on this election  
13 because we can see in the numbers and our mathematicians can  
14 see in the numbers and in the data feeds.

15 The evidence is also buttressed by the actual  
16 out-of-state voter evidence that we submit, which is also  
17 buttressed by the individual accounts where they testify in  
18 their sworn affidavits that they saw votes switched.

19 So the combination of that evidence is the standard,  
20 and it is very serious evidence, and we would point to the  
21 studies, like the Apple study we include on ballot --

22 THE COURT: I am going to stop you here, because I  
23 have read these affidavits, and so let me hear from Mr. Nelson.

24 MR. NELSON: Thank you, Your Honor, and may it please  
25 the Court, and I want to directly answer a number of questions

1 that this Court raised.

2 Let me first clarify that I am here not just to  
3 present on behalf of Secretary Hobbs, but also on behalf of  
4 Governor Ducey and Maricopa County.

5 Although they represent different parts of government  
6 and indeed are members of different political parties, they  
7 stand united in defending a free and fair election, and they  
8 would be here defending the outcome of this election,  
9 regardless of who had prevailed in the election.

10 As other courts have recognized, plaintiffs' suit is  
11 an attack on democracy. Worse, they are using the federal  
12 court system in an attempt to undermine the rule of law and  
13 obtain breathtaking, startling, and unprecedented relief to  
14 overturn the will of the people. This Court should grant the  
15 motion to dismiss.

16 First, this Court asked about the safe harbor date and  
17 the significance of today. Of course we do think that this  
18 Court should resolve this matter expeditiously, but this case  
19 has no bearing on the safe harbor clause.

20 Your Honor, may I share my screen?

21 THE COURT: I'm sorry?

22 MR. NELSON: May I share a presentation with you?

23 THE COURT: Wait. I am conferring with my courtroom  
24 deputy to make sure we have the capacity to do what you are  
25 asking.



1 THE CLERK: It is going to appear on the television.

2 THE COURT: All right, yes.

3 MR. NELSON: Thank you, Your Honor.

4 As Your Honor can see, what happened first and why we  
5 are here is that on November 30th, Governor Ducey and Secretary  
6 Hobbs performed their ministerial duties under Arizona law to  
7 canvass. With Secretary Hobbs canvassing in the presence of  
8 Governor Ducey and Attorney General Brnovich.

9 Governor Ducey and Secretary Hobbs then signed the  
10 Certificate of Ascertainment attesting to the results of that  
11 canvass.

12 This end result was months, if not years, in the  
13 making. In the midst of an epidemic, all levels of Arizona  
14 government worked together to conduct a safe and secure  
15 election that protected the foundational right to our  
16 democracy, the right to vote.

17 After the election, however, this country has seen a  
18 proliferation of suits attempting to challenge the results.

19 Plaintiffs' counsel here has brought this nearly  
20 identical suit in four states, including Arizona. All of these  
21 cases were filed weeks after the election in an attempt to  
22 overturn the result.

23 Just yesterday, the Michigan court dismissed on a  
24 variety of grounds, all applicable here too. Those plaintiffs  
25 also were presidential electors. It summarized that the

1 plaintiffs seek relief that is stunning in its scope and  
2 breathtaking in its reach. The Court declines to grant  
3 plaintiffs this relief.

4 Likewise yesterday morning, in minute order after a  
5 hearing and an opinion from the bench, a Georgia court granted  
6 the motion to dismiss these claims.

7 And although the transcript is not public yet, these  
8 are the publicly reported statements that the court made.

9 The relief that the plaintiffs seek, this Court cannot  
10 grant. They ask the court to order the Secretary of State to  
11 decertify the election results as if such a mechanism even  
12 exists, and I find that it does not.

13 Federal courts don't entertain contests about vote  
14 counting misconduct post election.

15 In their complaint, the Court said, Plaintiffs  
16 essentially ask the Court for perhaps the most extraordinary  
17 relief ever sought in any federal court in connection with an  
18 election. They want this Court to substitute its judgment for  
19 that of two and a half million Georgia voters who voted for Joe  
20 Biden, and this I am unwilling to do.

21 And the court also said, like the Michigan court, that  
22 the plaintiffs waited too late to file suit.

23 There is a breathtaking scope of relief here, Your  
24 Honor. They are seeking to overturn an election. The  
25 Wisconsin court, Justice Hagedorn in the Wisconsin Supreme

1 Court analyzing very similar -- factual allegations stated that  
2 at stake, in some measure, is faith in our system of free and  
3 fair elections, a feature central to the enduring strength of  
4 our constitutional republic. It can be easy to blithely move  
5 on to the next case with a petition so obviously lacking, but  
6 this is sobering. The relief being sought by the petitioners  
7 is the most dramatic invocation of judicial power I have ever  
8 seen. Judicial acquiescence to such entreaties built on so  
9 flimsy a foundation would do indelible damage to every future  
10 election.

11 This court should dismiss for numerous grounds.  
12 First, this complaint is about Arizona law. It is the  
13 exclusive remedy here.

14 This Court asked a number of questions about this. It  
15 is not just what the Court cited from the complaint. This is  
16 from the introductory part of the complaint, paragraphs 15 and  
17 16. The factual basis of the complaint, they say, would also  
18 support an election contest under Arizona law.

19 Paragraph 16, the relief sought is in accord with  
20 Arizona law.

21 In their complaint, part one and what they base their  
22 entire complaint on is, quote, violations of Arizona election  
23 law.

24 The claims here belong in an election contest. In  
25 fact, it is almost as if they originally intended their

1 complaint to be a contest under Arizona law.

2 This is what they say, plaintiffs contest the results  
3 because it is fundamentally corrupted by fraud. That's  
4 paragraph 141.

5 Their election clause claim appears to be about  
6 violations of Arizona law. The Governor and the Secretary are  
7 acting under the law passed by the legislature. That's why  
8 they canvassed, certified, together. So their claim fails just  
9 by describing it. They are alleging violations of Arizona law.  
10 That's a state claim.

11 And in fact, in their proposed relief of the Electors  
12 Clause Claim, this is what they asked the Court to order and  
13 why. Arizona's failed system of signature verification --  
14 paragraph 145, number 5, Arizona's failed system of signature  
15 verification violates the Electors and Elections Clause by  
16 working a de facto abolition of the signature verification  
17 requirement.

18 Those claims, in fact, were brought in the state court  
19 action filed by Kelli Ward as a contest proceeding. And of  
20 course she is also named as a plaintiff in this case as well.

21 The grounds for relief, what they seek again is  
22 exactly the same as the state case. This is from their  
23 contest.

24 The Court should declare the certificate of election  
25 of the Biden electors has no further force or effect and the

1 election is annulled.

2 Here is the relief here, plaintiffs seek an emergency  
3 order instructing defendants to decertify the results of the  
4 election of the office of President. The relief they seek is  
5 virtually identical. It is overturn the election and undo the  
6 certification.

7 This federal court proceeding, however, is not a  
8 contest under Arizona law. Arizona has established a detailed  
9 and strict procedure for challenging election results.  
10 Plaintiffs are trying to use this court as an end-run around  
11 this system.

12 If allowed, it would signal that courts are willing to  
13 entertain such drastic remedies, and no election would ever be  
14 safe and would be over when the votes were counted.

15 To quote the Third Circuit's recent opinion in the  
16 Trump case decided right after Thanksgiving, "Voters, not  
17 lawyers, choose the president."

18 And this is, Your Honor, what the state court held in  
19 Ward versus Jackson. "The court finds no misconduct, no fraud,  
20 and no effect on the outcome of the election. The evidence  
21 does not show illegal votes. The evidence does not show an  
22 erroneous vote count. It is further ordered as required by  
23 Arizona 16-676(B) confirming the election."

24 Now, there is collateral estoppel here. We have the  
25 same plaintiffs and the same defendants. Plaintiff Ward is not

1 just plaintiff, an elector, she is chair of the Arizona  
2 Republican Party. And actually, under Arizona law, Section  
3 16-344(A) appoints the electors and the other plaintiffs in  
4 this case. The other elector plaintiffs are in privity with  
5 Ward and had the opportunity to participate in the contest.

6 Next is the Eleventh Amendment. Under Pennhurst, the  
7 Eleventh Amendment bars relief against state officials based  
8 upon state law, even when styled as federal claims.

9 Neither Governor Ducey nor Secretary Hobbs should have  
10 been named as a party to the complaint here. Indeed, more  
11 generally, Governor Ducey is not involved in election  
12 administration, and the claims are nonsensical against him.

13 Pennhurst applies to state claims, even if styled as  
14 federal ones. And even if plaintiff satisfied Pennhurst, they  
15 failed for two more reasons.

16 First, there is no connection under Ex Parte Young  
17 between defendants and the factual allegations. Second,  
18 allegations of general oversight are insufficient.

19 Next, this Court should dismiss for standing.  
20 Plaintiffs lack standing to sue under the Elections and  
21 Electors Clause. That is the King opinion from Michigan just  
22 yesterday, the Bognet case from the Third Circuit.

23 Their other counts, counts 2 through 4, are for  
24 vote dilution. They admit they are -- this is paragraph 117,  
25 diluting the ballots, and they say that the right to vote is

1 infringed if a vote is canceled or diluted.

2 But as the Wood case filed on December 5th stated,  
3 vote dilution in this context is, quote, a paradigmatic  
4 generalized grievance that cannot support standing.

5 There's also no traceability or redressability here to  
6 justify standing. There's no traceability because neither  
7 plaintiffs' conspiracy allegations nor allegations of state law  
8 violations are traceable to either Governor (sic) Hobbs or  
9 secretary -- excuse me, Governor Ducey or Secretary Hobbs.

10 No redressability because the federal court has no  
11 power to order a decertification.

12 Under mootness the claims also fail. The claims are  
13 moot. The ministerial task of canvassing and certification  
14 have occurred. A federal court cannot simply undo them. Any  
15 claim to undo or decertify belongs in state court under state  
16 law.

17 As the Wood case stated, the Court cannot turn the  
18 clock back and create a world in which the 2020 election  
19 results are not certified.

20 On laches, they bar plaintiffs' claims here. As the  
21 Soules case stated in the Ninth Circuit, laches is appropriate  
22 lest the granting of post-election relief encourage sandbagging  
23 on the part of wily plaintiffs and the extremely disruptive  
24 effect of election invalidation and the havoc it wreaks upon  
25 local political continuity.

1           The King case from Michigan likewise stated,  
2 plaintiffs waited too long to knock on the Court's door; so too  
3 the Georgia case yesterday as well.

4           Plaintiffs have known about these for months. Even  
5 the post-election allegations have been known for weeks, and  
6 their excuse, even you just heard it right now, is that there's  
7 a contest provision and so therefore it is timely based upon  
8 Stale law contest provisions.

9           For abstention, Pullman abstention applies. First,  
10 the conduct of elections is a quintessential state activity.  
11 Second, adjudication can be avoided by the resolution of the  
12 state issues. And third, plaintiffs' argument depends on a  
13 decidedly uncertain assertion that Arizona law requires  
14 invalidation of ballots in these circumstances.

15           Finally, the pleading standards under Rule 9 and  
16 Rule 12 require a dismissal. They allege an utterly  
17 implausible fraud. This is the nature of their action. The  
18 first sentence, "A massive election fraud and a scheme."

19           In second paragraph, "to defraud."

20           The claims are simply not plausible. Even if we  
21 engage in this implausible fiction that these allegations are  
22 true, there is still no tie to Arizona.

23           You heard plaintiffs' counsel talk about these  
24 exhibits, these confidential witnesses. Spider, the  
25 confidential witness as well. Literally what they say, from



1 Venezuela, to rogue actors, countries such as Serbia, foreign  
2 interference by Iran and China to compromise voting machines,  
3 to compromise software, to thousands of election officials  
4 around the country. But even still, the problem is, they don't  
5 tie these back to Arizona.

6 So even if you assume that these are true allegations  
7 and are totally plausible, there's still no plausible tie to  
8 Arizona itself.

9 But the allegations are not plausible. Iqbal requires  
10 dismissal where the well pleaded facts do not permit the court  
11 to infer more than the mere possibility of misconduct.

12 Plaintiffs do not attempt to show the connection  
13 between fraud and any change of vote.

14 Their supposed experts have no expertise and their  
15 opinions have fatal methodological flaws that should this Court  
16 allow the hearing to proceed, there are motions pending with  
17 respect to that. But even at this pleading stage, this Court  
18 may consider, for purposes of plausibility.

19 And you just heard plaintiffs' counsel again say that  
20 their claims are justified under the pleadings standards, not  
21 under the federal standard, but based upon state law.

22 On the left is the Maricopa County courthouse. On the  
23 right is this courthouse. They say nothing about Rule 12. And  
24 they say that Rule 9(b) doesn't apply based upon state law.  
25 That is what they say in response in the case that Your Honor

1 asked plaintiffs' counsel about. It is a state law case.

2 The state pleadings standard does not apply in federal  
3 court, yet all plaintiffs offer in their response is a citation  
4 that respond to Rule 9(b) to an Arizona Supreme Court opinion.

5 And the claims are not plausible based upon what we  
6 know from the judicial record. Plausibility is especially  
7 unlikely here, and this was in the state court proceedings,  
8 part of the Ward proceedings. Given the verification  
9 procedures under Arizona law, like the hand audit that found no  
10 discrepancies.

11 Plaintiffs also cannot satisfy Rule 9(b). Rule 9(b)  
12 requires particularized allegations of the circumstances  
13 constituting fraud. Plaintiffs do not mention any fact to  
14 support their fraud claims. There are no firsthand allegations  
15 of fraud, and their expert reports are wildly implausible,  
16 fatally flawed, and even still couched in uncertainty.

17 And finally, I want to end where we started. Our  
18 democracy depends on free and fair elections. These cases --  
19 this case is an attempt to undermine our confidence in the  
20 system with no basis in law or fact.

21 As Justice Hagedorn said, "Judicial acquiescence to  
22 such entreaties built on so flimsy a foundation would do  
23 indelible damage to every election."

24 Arizona conducted its election fairly. This Court  
25 should grant the motion and not allow such a frivolous suit to

1 continue in plaintiffs' attempt to undermine the will of the  
2 Arizona people.

3 Thank you, Your Honor.

4 THE COURT: Thank you. And plaintiffs' counsel can  
5 have the last rebuttal.

6 Ms. Haller.

7 MS. HALLER: Thank you, Your Honor.

8 I would just respond to defendant's argument that the  
9 Governor or the Secretary of State are not just ministerial in  
10 this regard. 3 U.S.C. 6 makes clear that they have the ability  
11 to decertify.

12 This is an election integrity issue that we have in  
13 this complaint. This should not be partisan. And what shows  
14 how nonpartisan this issue should be, the House passed a bill  
15 HR-2722 last year -- I mean, actually in 2019. And it is at  
16 Congress.gov and we've attached it.

17 What that bill makes clear is voting machines should  
18 not be connected to the Internet, and we should have separate  
19 paper ballots. And the House passed that bill, and we also  
20 have the senators' concerns, which we included.

21 The point is that this is an election integrity issue.  
22 And this evidence needs to be read very carefully, because it  
23 is about a very big question, and we do not bring it lightly.

24 We have collected affidavits, sworn statements from  
25 both fact witnesses and professionals. The statisticians, the

1 cyber experts, but we also have a whistleblower fact witness  
2 that knows that this technology was used, and she claims how it  
3 was used, and we have put this evidence together, which -- some  
4 of which may not come out at the hearing, but the bottom line  
5 is, the relief requested is what is appropriate.

6 We can show with a substantial -- we can show, period,  
7 that the evidence is there that we have over 86,000 unlawfully  
8 accepted votes in this state.

9 We can show that that brings -- in addition that there  
10 are additional votes in question, and that bring this into a  
11 place where it cannot go forward as it stands.

12 We are not saying, change the election. We are saying  
13 Arizona needs to invalidate and take a good look at what  
14 happened here rather than go forward with this certification.

15 Arizona has a difference of 10,000 votes  
16 approximately, and it came after election night. And if you  
17 look at the data and the feeds, you will see the spikes that  
18 -- where these votes injected in a totally unnatural way that  
19 presents with an algorithm, which was a predetermined computer  
20 fact. And to get into that evidence, the machines operate  
21 offshore, not in this country. The entire idea of elections  
22 are that they are local. That is the crux of oppositions  
23 claims against us.

24 This is a local matter. It is not for the federal  
25 court. It is not for, you know, Congress, despite the fact

1 that Congress enacted HAVA. Congress enacted the Voting Rights  
2 Act.

3 The federal court has stepped in so many times to make  
4 sure that states do not arbitrarily deny the voters rights, and  
5 it is the federal government that sits in that position with  
6 its courts, inside of these states, to do exactly that.

7 Because when you sue the governor in a state court, or  
8 when you sue the secretary of state in the state court, you  
9 have the option to come to federal court for the very reason  
10 that it would make things very complicated for a judge in state  
11 court to have to address a claim against a sitting governor.

12 And while this Court sits in the state -- and that  
13 16-627 is a "may" statute. It is not a "must" or a "shall"  
14 statute. it is a statute -- the contest statute is a "may"  
15 statute. It "may" be brought in Maricopa County. It "may" be  
16 filed as a contest. It is not "shall."

17 And to preclude this Court's jurisdiction when this  
18 Court always has federal jurisdiction over fundamental rights  
19 of voters, of individuals who are disenfranchised of people  
20 with specific standing for presidential electors -- very  
21 specific identifiable injury not to be able to vote.

22 Those individuals have the standing and the  
23 meritorious claim that can be shown with a substantial  
24 likelihood on the merits to show that that widespread fraud  
25 occurred in this case, and the evidence really comes about at

1 the time of the election.

2 We responded as fast as one can respond when you are  
3 talking about serious litigation, when you are talking about a  
4 very heavy question for the Court, one that should be  
5 nonpartisan. We did it within three days -- or two days.

6 Your Honor, November 30th was the certification.  
7 December 2nd was the suit brought with 100 pages -- over 118 or  
8 130 paragraphs, with over 20 affidavits and other evidence  
9 attached, was put together to bring this very heavy question to  
10 this Court, to weigh this evidence, to accept the allegations,  
11 to understand that there is a fundamental issue at the heart of  
12 this country when a state goes forward as if it's ministerial  
13 to validate a state's vote.

14 If the Governor isn't the one who takes a good look at  
15 how this voting happens, or the Secretary of State, then who  
16 does it? The entire point of an elected official with the  
17 federal statute setting forth his duties, is that he take that  
18 role very seriously, that he takes it with the greatest due  
19 diligence, and that he take the steps that are necessary to  
20 understand what happened in this election.

21 And that is a question of election integrity that is  
22 made clear in HR-2722, because the Dominion voting machines  
23 does not spit out paper ballots that are the same as the paper  
24 votes that were put into them. They come out with a QFR code  
25 on them. They are not the same sheet that the voter puts in.

1           And as a result, there are several questions in this  
2 voting system that need to be questioned and examined and  
3 looked at, based on the very clear evidence of the injections  
4 and the spikes on the evening of November 3rd.

5           And we can show show those spikes happened in the four  
6 or five other states at about the same time. And we have  
7 experts. If you look at Dr. Briggs' report, he puts the  
8 evidence together from five states in a row where it is  
9 reflected, five states in a row, that -- the statistical  
10 significance is there to show a disparity of votes that were  
11 unlawfully obtained in the nearly 100,000 or more in each of  
12 those five states.

13           We can show it in Michigan. We can show it in  
14 Wisconsin. We can show it in Georgia. And we can show it in  
15 Arizona.

16           And the evidence shows, in the filings, and in the  
17 affidavits. And for a Court to believe it doesn't have the  
18 authority or the jurisdiction to sit over such an important  
19 question, where would the plaintiffs really go for such relief  
20 when the fundamental right to vote is recognized in this  
21 country to sit?

22           At B&B Hardware, 135 Supreme Court 1293, addresses the  
23 idea of actually litigated. And this idea of collateral  
24 estoppel, which does not apply because someone made a similar  
25 claim or someone raised a similar allegation.

1           The fact is the parties are different. The claims are  
2 different, and the full and final litigation only has happened  
3 in cases that are completely not similar.

4           So in the litigation yesterday in Georgia, that is a  
5 completely separate case. That is not precedential on this  
6 case. And it is not full and final, from what I understand.

7           The case -- Lin Wood's case is not this case, and he  
8 was a private individual, not a candidate in any way. And in  
9 the Kelli Ward case, that case is not final. It's in a  
10 different court now in Arizona, and that case does not make the  
11 same allegations we make, nor are the parties identical.

12           And again, B&B Hardware, 135 Supreme Court 1293, is a  
13 2015 case. It is the Supreme Court speaking in 2015 to the  
14 issues of issue preclusion and claim preclusion, and makes  
15 clear that you need to be the party who actually litigated and  
16 that you had the opportunity for a full and fair opportunity to  
17 be heard, and the issue has to be identical. They use the word  
18 "identical." They emphasize the word "identical."

19           It is 135 Supreme Court 1293 (2015). It has been made  
20 clear in Porter versus Jones in the Ninth Circuit, 319 F.3d  
21 483, in a case where plaintiffs brought up an election that  
22 happened in 2000, and the case was in 2003. And the Court said  
23 it wasn't moot or late under laches.

24           The Court said the Eleventh Amendment did not apply.  
25 And in that case, the Court made clear that the declaratory



1 relief sought in that case, that the Secretary of State was  
2 sued in their individual capacity, and as such, that was  
3 upheld. And that's a very important point, because we sued  
4 this Secretary of State and this Governor in their official  
5 capacity. And that was a very -- and Eleventh Amendment most  
6 certainly does not bar even a case where they were sued in  
7 their individual capacity.

8           The individual accounts, the statistical evidence  
9 election law violations, need to be understood in this picture  
10 together, because it is a pattern. It is not one incident on  
11 one particular moment that everything -- although we can  
12 specifically show the fraud at -- after 8:00 p.m. It is in our  
13 chart with the exact time in two different exhibits we  
14 submitted.

15           Ramsland's affidavit, and then we have a fact witness  
16 affidavit TM, which is Exhibit 15. They both show where the  
17 spike occurs in what should be a natural progression in a data  
18 feed, and suddenly it is like this (indicating).

19           And before the spike occurred, we also know they went  
20 off line, and so something is happening. And it happened  
21 systematically over five states.

22           And the statisticians look at this state in particular  
23 and can show the significant evidence, but they can also  
24 compare it to the other states.

25           And we respectfully request, Your Honor, that you take

1 this case as seriously as we have brought it, as seriously as  
2 our opposition opposes it. And we are grateful for the  
3 consideration. Thank you.

4 THE COURT: Thank you. And apparently I jumped the  
5 gun, Mr. Nelson. It was your motion. I will give you an  
6 opportunity for a surrebuttal, if you will.

7 MR. NELSON: Your Honor, unless this court has any  
8 questions, we will rest on our papers and our prior argument.

9 THE COURT: All right. It is fully briefed. The  
10 intervenors have also submitted their motions as well. And as  
11 I have mentioned to the parties, I have read the entirety of  
12 the briefing, as well as the declarations. And so I will do my  
13 level best to issue an order shortly.

14 And so I appreciate the diligence of the parties in  
15 getting this briefed so quickly, and I ask for your patience as  
16 I weed through all of these fairly complex issues and very  
17 important issues to both parties as well as the citizenry of  
18 Arizona.

19 Mr. Nelson, you had your hand up.

20 MR. NELSON: I did, Your Honor. There is a logistical  
21 and jurisdictional point. As the Court is aware, there's  
22 currently a hearing that this court has scheduled for Thursday.  
23 That will require a significant amount of work to get up to  
24 speed and to get parties and witnesses ready for that.

25 We do not believe that the hearing should take place

1 while the motion is pending. As my colleagues inform me who  
2 are currently in a status conference in Wisconsin on this very  
3 identical case, the Court has delayed the evidentiary hearing  
4 until after a ruling on the motion to dismiss on the ground  
5 that before there can be any evidentiary hearing, the Court  
6 needs to make sure that it has jurisdiction under Article III,  
7 and that the plaintiffs have proper standing and all of the  
8 other reasons about why a Court should or should not have  
9 jurisdiction here.

10 And especially given the tremendous amount of work,  
11 the rulings that will be required and -- from the parties and  
12 from the Court, we would suggest that the hearing be scheduled  
13 until a time that -- after the Court has ruled on the motion to  
14 dismiss, should such a hearing be necessary.

15 THE COURT: Well, I understand, Mr. Nelson, your  
16 concern. And when I say, I am asking for your patience in  
17 issuing the order, it is an important order to the Court, to  
18 the parties, as I mentioned.

19 But I intend to do that no later than tomorrow  
20 afternoon at the very latest. I do that because, as you recall  
21 at the status conference, the plaintiffs were adamant that some  
22 decision be made by December 14th, the day of the meeting of  
23 the electors. That was one of the operative dates that I think  
24 the parties agreed to.

25 So I am going to keep the hearing on the calendar.

1 You will be advised whether or not it will go forward,  
2 hopefully by again, no later than tomorrow afternoon.

3 And I think -- although the Court did not grant the  
4 plaintiffs' motion with respect to moving the hearing up to  
5 today, this afternoon, if you would, they did have a legitimate  
6 concern about, depending on how this Court rules, whether or  
7 not they would have sufficient time to appeal a ruling. And so  
8 I have all of that in mind, and therefore, I am going to work  
9 extra hard to make sure that the parties are aware of what my  
10 decision is.

11 Again, I will try my level best to get that ruling out  
12 by tomorrow afternoon at the very latest. And so as lawyers  
13 know, you have to continue to prepare your case, and so I trust  
14 that you will.

15 And so if there's nothing further, then this matter is  
16 adjourned.

17 Thank you, Counsel.

18 MR. NELSON: Thank you.

19 MS. HALLER: Thank you.

20 (Proceedings conclude at 10:36 a.m.)  
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C E R T I F I C A T E

I, ELVA CRUZ-LAUER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 8th day of December, 2020.

s/Elva Cruz-Lauer  
Elva Cruz-Lauer, RMR, CRR