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18 **SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **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;

24 *Plaintiffs,*

25 v.

26 ADRIAN FONTES, in his official capacity as  
27 Maricopa County Recorder; CLINT  
28 HICKMAN, JACK SELLERS, STEVE  
CHUCRI, BILL GATES AND STEVE  
GALLARDO, in their official capacities as  
members of the Maricopa County Board of  
Supervisors; MARICOPA COUNTY, a  
political subdivision of the State of Arizona;

*Defendants.*

Case No. CV2020-014562

**PLAINTIFFS' NOTICE OF NON-  
OPPOSITION TO DEFENDANTS'  
MOTION TO REASSIGN CASE TO  
THE HONORABLE MARGARET  
MAHONEY**

1 Defense counsel Motion to Reassign Case argues this case (“Aguilera II”)   
 2 involves the same parties, is based on the same issues, and relies on the same set of facts   
 3 and circumstances as CV2020-014083 (“Aguilera I”), which was previously before Judge   
 4 Mahoney. Plaintiffs disagree with this characterization.

5 Firstly, Aguilera I was brought as a class-action on behalf of all Maricopa County   
 6 voters who experienced issues having their ballots read on election day. *See e.g.*   
 7 Amended Complaint (Aguilera I) ¶¶ 1.16-1.22. Aguilera II has been brought only on   
 8 behalf of individual voters Laurie Aguilera and Donovan Drobina. Aguilera I also   
 9 involved the Trump campaign, the Republican National Committee, and the Arizona   
 10 Democratic party as intervenors. As quickly became apparent, these intervenors, unlike   
 11 named Plaintiffs, were actually interested in litigating over the results of the presidential   
 12 election in Arizona and they quickly began to derail Aguilera I with that dispute.   
 13 Subsequent to Aguilera I’s dismissal without prejudice, Intervenors litigated these larger   
 14 issues between themselves in *Trump v Hobbs*.<sup>1</sup> Plaintiffs attempted to intervene in *Trump*   
 15 *v Hobbs* to have their distinct concerns adjudicated as part of that action without being   
 16 the parties in the middle of the crossfire, but Defendants Maricopa County, Maricopa   
 17 County Board of Supervisors, and Adrian Fontes, along with Intervenor Arizona   
 18 Democratic Party objected and intervention was not granted. Among the reasons Judge   
 19 Kiley gave for denying intervention in *Trump v Hobbs* was that he did not wish to   
 20 complicate the case by adding a distinct factual and legal dispute.<sup>2</sup> At some point, it   
 21 became apparent to the Trump campaign that obtaining the relief they were seeking   
 22   
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 24

25 <sup>1</sup> The pleadings in *Trump v Hobbs* can be found at   
 26 <https://www.clerkofcourt.maricopa.gov/records/election-2020/cv2020-014248>.

27 <sup>2</sup> Judge Kiley stated this orally at the return hearing where intervention was adjudicated   
 28 but, due to the expedited nature of this action, no transcript is yet available. Central to the   
 dispute between the parties in *Trump v Hobbs* was the question of whether poll-workers   
 had inappropriately “pressed the green button” on the tabulation machines, forcing the   
 tabulators to accept ballots that they could not fully read. Plaintiffs’ allegations here do   
 not concern the “green button.” Complaint (Aguilera II) ¶ 1.4(C).

1 would not change the results of the presidential election. At that juncture, the parties to  
 2 *Trump v Hobbs* agreed to dismiss that case as moot.<sup>3</sup>

3 In contrast, Plaintiffs in this action are specifically not alleging that the issues they  
 4 wish for this Court to address would change the outcome of any particular race.  
 5 Complaint (Aguilera II) ¶ 1.4(B). Ensuring that their voices as Americans are heard  
 6 matters to Plaintiffs regardless of the outcome.

7 There are also differences even between named Plaintiffs’ case here and their case  
 8 in Aguilera I. For example, in Aguilera I, Plaintiffs asked for much more widespread  
 9 relief insofar as they sought the opportunity for every impacted voter to cure their ballot.  
 10 Amended Complaint (Aguilera I) 10:24-25. In this respect, Aguilera II seeks much more  
 11 tailored relief with respect to the curing of ballots Plaintiffs now ask simply that Ms.  
 12 Aguilera be permitted to cure her own ballot. Amended Complaint (Aguilera I) 12:10-11.  
 13 Named Plaintiffs in Aguilera I were also much more focused on whether the use of  
 14 Sharpies had caused the issues complained of. *See e.g.* Amended Complaint (Aguilera I)  
 15 ¶¶ 1.19-1.20 (“all members of the class have been affected by issues with having their  
 16 ballot read after being provided with sharpies by poll workers.”). In contrast, in Aguilera  
 17 II, Plaintiffs largely contend that the problems they encountered with Defendants’  
 18 tabulators constitute violations of the law regardless of the source of the problem.<sup>4</sup>  
 19 Hence, in Aguilera II Plaintiffs largely need to prove only (1) that Plaintiff Aguilera’s  
 20 ballot was not counted at all and (2) that Defendants’ tabulator machines failed to  
 21 automatically read and record at least one vote (such as either Plaintiff Aguilera or  
 22 Plaintiff Drobina’s vote) with perfect accuracy. Proving “that it happened” can be  
 23 expected to be a much simpler fact-finding process than proving “how it happened”.  
 24 Much like a strict liability action in tort, once the Court has provided declaratory relief,

25 <sup>3</sup> Notice of partial mootness at:

26 <https://www.clerkofcourt.maricopa.gov/Home/ShowDocument?id=1660>. At a subsequent  
 27 hearing, held on the afternoon November 13, 2020, the parties appear to have agreed to  
 28 dismiss the rest of the case as moot. However, the record does not yet seem to have been  
 updated to reflect this as of the morning of November 15, 2020.

<sup>4</sup> In Aguilera II, the cause of the problems with the tabulator machines is only even  
 partially relevant to Plaintiffs’ Second and Fifth causes of action.

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the onus can then be placed on Defendants to more fully investigate the source of the problem and ensure it does not reoccur.

As Defendants point out, the above notwithstanding, Plaintiffs do not object to this case being assigned to Judge Mahoney.

Respectfully submitted this 15<sup>th</sup> day of November, 2020

By /s/Alexander Kolodin

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**I CERTIFY** that a copy of this document will be served upon any opposing parties in conformity with the applicable rule of procedure.

By /s/Christopher Alfredo Viskovic

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