

Exhibit A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014083

11/06/2020

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT

K. Ballard

Deputy

LAURIE AGUILERA, ET AL

ALEXANDER M KOLODIN

v.

ADRIAN FONTES, ET AL

JOSEPH EUGENE LA RUE

THOMAS J. BASILE

ROOPALI HARDIN DESAI

SARAH R GONSKI

ROY HERRERA

BRETT W JOHNSON

COURT ADMIN-CIVIL-ARB DESK

DOCKET-CIVIL-CCC

JUDGE MAHONEY

HEARING SET

The Court has reviewed the parties' Joint Scheduling Statement, filed 11/6/2020. The Court's view is that this matter needs to proceed to resolution more expeditiously than accounted for in the Joint Scheduling Statement, and therefore **IT IS ORDERED** as follows:

1. Dispositive motions shall be filed, and simultaneously emailed to Court staff and opposing counsel, no later than **4:45 p.m. on 11/9/2020**, and shall not exceed 5 pages. No more than one dispositive motion shall be filed per party. To the extent any of the movants have similar interests, they shall endeavor to file a consolidated dispositive motion.

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2. Responses to the dispositive motions shall be filed, and simultaneously emailed to Court staff and opposing counsel, no later than **4:45 p.m. on 11/11/2020**, and shall not exceed 5 pages. To the extent any of the responding parties have similar interests, they shall endeavor to file a consolidated Response.
3. No Reply briefs will be permitted.
4. The parties shall simultaneously exchange any witness and evidence disclosure no later than **midnight on 11/11/2020**.

IT IS FURTHER ORDERED setting a **virtual** Oral Argument on any dispositive motions filed along with an Evidentiary Hearing on Plaintiffs' Special Action for **Friday, 11/13/2020 at 10:00 a.m. (time allotted: 2 hours)** in this Division.

Honorable Margaret R. Mahoney
East Court Building
101 West Jefferson, Courtroom 411
Phoenix, Arizona 85003-2202
Telephone: (602) 506-0387

Counsel are hereby advised that the hearing will be **conducted via GoToMeeting**. Court staff will email an invitation to counsel that contains a link and phone number for purposes of participating in the hearing remotely. **PLEASE NOTE: Counsel are responsible for sharing the GoToMeeting invitation with any clients, client representatives and witnesses who will appear at the hearing.**

IT IS FURTHER ORDERED counsel shall file, no later than **midnight on 11/11/2020**, a Joint Hearing Statement signed by all counsel/parties that includes:

- a) **Exhibit List and Final List of Witnesses**: The Joint Hearing Statement shall include an Exhibit titled: Exhibit List and Final List of Witnesses. The Exhibit shall contain a list of each party's exhibits and a list of the names of each witness a party **actually intends to call** at the hearing, and the **estimated time needed for direct, cross and re-direct examination**.
- b) Counsel shall confer with one another to attempt to stipulate to as many exhibits as possible and shall reflect such stipulations in the Exhibit List submitted to the Court and referenced above in "a".

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IT IS FURTHER ORDERED that counsel shall immediately notify the Court if they reach a settlement of the case or otherwise reach an agreement that the oral argument/evidentiary hearing is no longer necessary.

IT IS FURTHER ORDERED that all hearing Exhibits will need to be submitted **electronically** through the Clerk of Court Exhibit Portal (see website below) **and** to this Division's staff (see email addresses listed later in this Minute Entry) by no later than **noon on 11/12/2020**.

Please visit the following Clerk of Court website for information on submitting Exhibits: <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission>. **The webpage will provide instructions and guidance for electronic submission as well as locations for in-person (paper) submission of exhibits. Due to the expedited nature of this hearing, electronic exhibits are preferred.**

This Division requires Bench copies of all exhibits to be submitted in binders and with numbered, tabbed dividers for the Judge's use.

Accordingly, **IT IS FURTHER ORDERED** no later than **1:00 p.m. on 11/12/2020**, the parties shall deliver their **set of Bench copies of Exhibits** to this Division.

IT IS FURTHER ORDERED the parties are directed to exchange their Exhibits before presenting same to the Clerk. The parties will make sure they do not present the Clerk a set of Exhibits that includes duplicate Exhibits. The parties should not reserve Exhibit numbers for all Defendants' Exhibits, all Plaintiffs' Exhibits, miscellaneous demonstrative Exhibits, and the like.

Exhibits are marked in numerical order per party, making it necessary to mark all of one party's exhibits before marking the other party's. Accordingly, the Defendants' Exhibits numbering shall start at the next number following the last of Plaintiff's Exhibits. (For example, Plaintiff submits 82 exhibits, which are marked Exhibits 1 through 82. Defendants submit 63 exhibits, which are marked 83 through 145). Please do not combine the parties' Exhibits. Each side's Exhibits must be submitted separately and in numerical order, this would include any Exhibits submitted by any Intervenor as well.

NOTICE: Exhibits Marked But Not Offered

Exhibits submitted to the Court for an evidentiary hearing/trial, whether through hard copy or submitted electronically, that are marked as Exhibits but are not offered into evidence at the hearing/trial will be destroyed following the hearing/trial, unless a party requests that the evidence be returned at the conclusion of the hearing. Such requests must be filed with the Court and served on all parties in advance of the hearing/trial or by no later than the conclusion of the hearing/trial.

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NOTE: All Court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

Email addresses for Court staff are as follows:

JA, Jennifer “JJ” Sommerville, Jennifer.Sommerville@jbazmc.maricopa.gov
Courtroom Assistant/Bailiff, Ana Meza, Ana.Meza@jbazmc.maricopa.gov

To ensure public access to the hearing, **members of the public may call** into the Court’s public access number at 1-646-749-3122, and enter the following public access code: 975-769-277. Members of the public will only be able to listen to the proceedings and will not be permitted to participate.

* * * *

PLEASE NOTE: This Division requires that all motions, responses, replies and other Court filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. **No filing will be accepted if filed in combination with another. Additionally, all filings shall be fully self-contained and shall not “incorporate by reference” other separate filings for review and consideration as part of the pending filing.**

ALERT: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a Court facility to wear a mask or face covering at **all times** while they are in the Court facility. With limited exceptions, the Court will not provide masks or face coverings. Therefore, any individual attempting to enter the Court facility must have an appropriate mask or face covering to be allowed entry to the Court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the Court facility or asked to leave. In addition, all individuals entering a Court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the Court facility.

Exhibit B

CLERK OF THE
SUPERIOR COURT
FILED
A. PLASCENCIA, DEP

2020 NOV -9 AM 8:47

1 Alexander Kolodin (SBN 030826)
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16 Tel: (317) 203-5599 Fax: (888) 815-5641
17 sbecker@publicinterestlegal.org
18 *Pro hac motion forthcoming

19 *Attorneys for Proposed Intervenors Laurie Aguilera and*
20 *Donovan Drobina*

21 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
22 **IN AND FOR THE COUNTY OF MARICOPA**

23 DONALD J. TRUMP FOR PRESIDENT,
24 INC.; et al.,

25 *Plaintiffs,*

26 v.

27 KATIE HOBBS; et al.,

28 *Defendants,*

LAURIE AGUILERA, a registered voter in
Maricopa County, Arizona; DONOVAN
DROBINA, a registered voter in Maricopa County,
Arizona; DOES I-X;

Intervenors.

Case no.: CV 2020-014248

MOTION TO INTERVENE

Pursuant to Arizona Rule of Civil Procedure 24, Proposed Intervenors Laurie Aguilera and Donovan Drobina ("Intervenors"), respectfully move to intervene in this

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1 action as of right, or alternatively, with the permission of the Court.¹

2 Plaintiffs have informed Intervenors that they do not oppose intervention and
3 Defendants, to the best of counsel's knowledge, have yet to appear.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Under Rule 24, individuals and entities may intervene in an action either as of right
6 or with permission of the court. Although the two intervention rubrics contemplate
7 different criteria, Arizona courts have long recognized that Rule 24 as a whole "is remedial
8 and should be construed liberally in order to assist parties seeking to obtain justice in
9 protecting their rights." *Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life*
10 *Obstetricians & Gynecologists*, 227 Ariz. 262, 279, ¶ 54 (App. 2011) (internal citations
11 omitted).

12 This case will undoubtedly continue to attract the interest of candidates and groups
13 that have the outcome of a single election as their primary concern. Like Plaintiffs,
14 Intervenors' concern lies in ensuring that their interests in the lawful, efficient and accurate
15 tabulation of votes are protected. Disposition of this action will certainly affect those
16 interests. However, Intervenors' interest is also that of citizens of Arizona and Maricopa
17 County voters, who believe that this election has illuminated ongoing issues with our
18 voting system caused by Defendants' failure to follow the law. Intervenors believe that
19 these issues must be addressed now, while public attention is focused on the process, to
20 restore confidence in the electoral system in which we all place our faith. Therefore,
21 Intervenors assert various causes of action, primarily for declaratory relief, in the hopes of
22 illuminating violations of the law and improving our voting system both now and in the
23 future. As discussed below, resolution of the majority of these causes of action will likely
24 depend on the resolution of Plaintiffs' factual claims.

25 Alternatively, the Court should grant leave to intervene in light of the Proposed
26 Intervenors' interest in the proceedings, the procedural posture of the litigation, and the
27 absence of any prejudice to any existing party as a consequence of their intervention.

28

¹ Pursuant to Rule 24(c), the Proposed Intervenors have attached a copy of their Proposed Complaint-In-Intervention.

1 **I. The Proposed Intervenors.**

2 Laurie Aguilera and Donovan Drobina are registered voters in Maricopa County,
3 Arizona and voted on November 3, 2020 at polling places located in Maricopa County.

4 **II. The Proposed Intervenors May Intervene as of Right.**

5 “Intervention of right is appropriate when the party applying for intervention meets
6 all four of the following conditions: (1) the motion must be timely; (2) the applicant must
7 assert an interest relating to the property or transaction which is the subject of the action;
8 (3) the applicant must show that disposition of the action may impair or impede its ability
9 to protect its interest; and (4) the applicant must show that the other parties would not
10 adequately represent its interests.” *Woodbridge Structured Funding, LLC v. Arizona*
11 *Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014) (citing Ariz. R. Civ. P. 24(a)(2)).² Each criterion
12 is met here.

13 **A. The Motion to Intervene is Timely.**

14 The timeliness of this Motion is not subject to reasonable dispute. By moving within
15 one judicial day of the commencement of this action, prior to any hearing or substantive
16 dispositions by the Court, and before Defendants have appeared, the Proposed Intervenors
17 have acted with reasonable, if not extraordinary, celerity in vindicating their protected
18 interests. Courts have routinely found intervention timely when sought much later than
19 Proposed Intervenors have here.³ The result should be no different in this case.

20 **B. The Proposed Intervenors Have a Protected Legal Interest In Ensuring the**
21 **Proper Tabulation of Their Individual Ballots. As Citizens of Arizona They**

22
23 ² Because Federal Rule of Civil Procedure 24 is “substantively indistinguishable” from its state law analogue, Arizona
24 courts “may look for guidance to federal courts’ interpretations of their rules.” *Heritage Village II Homeowners Ass’n*
v. Norman, 246 Ariz. 567, 572, ¶ 19 (App. 2019).

25 ³ See, e.g., *Heritage Vill II.*, 246 Ariz. at 571-72, ¶ 17 (motion filed five days after applicants became aware that their
26 interests were at risk was timely); *Winner Enterprises, Ltd. v. Superior Court in & for County of Yavapai*, 159 Ariz.
27 106, 109 (App. 1988) (finding that motion to intervene in “extremely compressed” special action was timely when it
28 was filed thirty days after initiation of lawsuit and 21 days after court entered preliminary injunction); see also *Arakaki*
v. Cayetano, 324 F.3d 1078, 1084 (9th Cir. 2003) (“The district court did not abuse its discretion by finding Hoohuli’s
motion [to intervene], filed three weeks after the filing of Plaintiffs’ complaint, timely.”); *Citizens for Balanced Use*
v. Mont. Wilderness Ass’n, 647 F.3d 893, 897 (9th Cir. 2011) (“Applicants filed their motion to intervene in a timely
manner, less than three months after the complaint was filed and less than two weeks after the [defendant] filed its
answer to the complaint.”).

**Also Have a Protected Legal Interest in Ensuring that Our Elections
Officials Follow the Law.**

The Proposed Intervenors “have a significant protectable interest in the action.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011). This element is satisfied if “the interest is protectable under some law and . . . there is a relationship between the legally protected interest and the claims at issue,” though “[n]o specific legal or equitable interest need be established.” *Id.* “Instead, the ‘interest’ test directs courts to make a ‘practical, threshold inquiry’ and ‘is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.’” *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (internal citations omitted); *see also Planned Parenthood*, 227 Ariz. at 279, ¶ 57 (holding that healthcare providers’ “liberty of conscience rights” were an interest sufficient to support intervention in litigation challenging abortion-related laws).

Though the “interest” sufficient for intervention can be substantially more generalized and diffuse than the concrete “injury” required for standing, *see Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011) (“In general, an applicant for intervention need not establish . . . standing to intervene.”), the Arizona Supreme Court has recognized that Arizona voters, such as Intervenors, have a “beneficial interest” in ensuring that elections officials follow the law sufficient to confer standing. *Ariz. Pub. Integrity All. v. Fontes*, No. CV-20-0253-AP/EL, 2020 Ariz. LEXIS 309, at *6 (Nov. 5, 2020). Intervenors, as properly registered voters who voted in the November 3, 2020 general election, also have a legally protected interest in ensuring that their votes are properly counted and that every vote on each ballot is counted. *Anderson v. United States*, 417 U.S. 211, 226 (1974) (discussing “the right of all voters in a federal election to express their choice of a candidate and to have their expressions of choice given full value and effect, without being diluted or distorted by the casting of fraudulent ballots”); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“The right to vote cannot be . . . diluted by ballot-box stuffing . . . [or] denied by a debasement or dilution of the weight of a citizen’s vote”).

1 **C. A Judgment Could Substantially Impair the Proposed Intervenors’ Legal**
2 **Interest In Ensuring the Accurate, Speedy and Statutorily Compliant**
3 **Tabulation of Ballots and in Conforming the Behavior of Elections Officials**
4 **to Arizona Law.**

5 Where a proposed intervenor has a “significant protectable interest” in the case,
6 there is “little difficulty concluding that the disposition of this case may, as a practical
7 matter, affect it.” *Calif. ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006).
8 In general, “[i]f an absentee would be substantially affected in a practical sense by the
9 determination made in an action, he should, as a general rule, be entitled to intervene.”
10 *Sw. Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (internal
11 citation omitted).

12 Disposition of this action “may as a practical matter impair or impede Proposed
13 Intervenors ability to protect [their] interest[s]” because this Court’s ruling inevitably will
14 affect the course and conduct of this Election. Ariz. R. Civ. P. 24(a)(2). Intervenors’ and
15 Plaintiffs’ claims both flow, in part, from the assertion that bleed-through on ballots, along
16 with other issues, caused certain ballots to be misread in the 2020 general election. *See e.g.*
17 Verified Complaint (“**Complaint**”) ¶¶ 29, 30; Proposed Verified Complaint-In-
18 Intervention (“**CI**”) ¶¶ 2.14, 2.21. The Court will decide the truth or falsity of that
19 assertion in this suit. Accordingly, this case represents the only real opportunity to litigate
20 the issues set forth in the Complaint-In-Intervention. As a practical matter, Proposed
21 Intervenors will have no other opportunity to protect or assert their rights and interests.
22 This Court’s ruling will directly impact the weight of Plaintiffs’ votes.

23 Additionally, Intervenors’ fifth cause of action seeks relief declaring that they have
24 a right, as citizens of Arizona, to view, in person, the electronic adjudication of votes
25 (which, name notwithstanding, is performed by human beings). Although the current vote-
26 counting in Arizona is winding down, one of the forms of relief that Plaintiffs seek is to
27 subject un-tabulated ballots to adjudication. Complaint ¶ 81.⁴ Given the speed at which

28

⁴ Plaintiffs draw a distinction between the “Electronic Vote Adjudication Board”, which they claim adjudicates voter

1 vote-counting moves, it would be extremely difficult for the courts to resolve an action for
 2 public access, commenced only after Plaintiffs prevail, in time to allow for public
 3 observation of any further adjudication which Plaintiffs obtain.

4 **D. Neither Plaintiffs Nor Defendants Will Adequately Represent the Proposed**
 5 **Intervenors’ Interest in Protecting Their Constitutional Rights and Rights**
 6 **Under Arizona Law.**

7 Intervenors’ independent interests will not be fully and adequately represented by
 8 either the Plaintiffs or the Defendants for two primary reasons.

9 First, Political candidates may presume to have winning their race as their interest
 10 and political parties may be presumed to have partisan interests at heart. *See Hoblock v.*
 11 *Albany County Bd. of Elections*, 233 F.R.D. 95, 99 (N.D.N.Y. 2005) (“Candidates have
 12 demonstrated that their interests are ‘not adequately protected by the parties to the action .
 13 . . the Plaintiff Voters have shown that they are not puppets of the candidates, but rather
 14 have separate interests.”). However, in this case, Proposed Intervenors have an interest in
 15 helping Arizona’s electoral system better conform to the law for the benefit of all Arizona
 16 voters, no matter which candidate or party they may back. Accordingly, Intervenors have
 17 identified several violations of Arizona law that must be addressed so that future elections
 18 may proceed more smoothly. As set forth in the next section, resolution of the majority of
 19 Intervenors’ causes of action likely depends on the resolution of Plaintiffs’ factual
 20 assertions.

21 It also appears that the reasons for the problems Intervenors encountered are similar,
 22

23 intent for early ballots which cannot be fully read by the tabulator, Complaint ¶ 23, and the “Ballot Duplication
 24 Board[.]” *Id.* ¶ 24. Plaintiffs claim, pursuant to A.R.S. 16-621(A), that this later board performs the adjudication
 25 function for election day ballots. *Id.* However, both A.R.S. 16-621 and the EPM allow for the substitution of an
 26 “electronic adjudication program” in place of a Ballot Duplication Board. A.R.S. 16-621(B), Electronic Adjudication
 27 Addendum p 1
 28 https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf. It is unclear to Intervenors the extent to which Defendants substituted their electronic adjudication program for
 ballot duplication boards with regard to election-day ballots, and Plaintiffs’ Complaint indicates that there is a
 possibility that at least some election-day ballots may have been, or should have been, subjected to electronic
 adjudication. *See e.g.*, Complaint 16:1-5. Similarly, if this court orders adjudication of un-tabulated ballots as Plaintiffs
 have requested, it is unclear whether Defendants will elect to perform that task via electronic adjudication, as the law
 permits. As this case proceeds, many more details about the process can be expected to come to light.

1 but not fully identical, to those identified by Plaintiffs. *See Sagebrush Rebellion, Inc. v.*
 2 *Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (When a third party attempts to intervene “early on”
 3 in a lawsuit, it must make only a “minimal” showing that its interests may differ from those
 4 of the named parties.). Like Plaintiffs, Intervenors allege that problems with bleed through
 5 on ballots created a situation where their ballots could not be properly read. However,
 6 Intervenors allege that the actions that poll workers took in response were different from
 7 those alleged by Plaintiffs. Plaintiffs have alleged that poll workers responded to misreads
 8 caused by the bleed-through by hitting a green button marked “cast” on the tabulators.
 9 Complaint ¶ 29. In contrast, Intervenor Aguilera alleges that the poll-worker hit a button
 10 marked “cancel” on her own screen, not one marked “cast” on the voting equipment when
 11 she experienced difficulties feeding her ballot through the tabulator as a result of the bleed-
 12 through. CII ¶ 2.16. Intervenor Drobina, on the other hand, alleges that when he
 13 experienced difficulty feeding his ballot through the tabulator as a result of the bleed-
 14 through, a poll worker did not push any button at all but instead put his ballot through a
 15 separate slot on the tabulator. CII ¶ 2.18-2.22. Thus, Intervenors’ first cause of action
 16 alleges that some ballots were improperly subject to adjudication when voters like Mr.
 17 Drobina had a right, having properly followed all instructions for the operation of the
 18 County’s electronic voting system, to have the entirety of their ballots read and tabulated
 19 with perfect accuracy in a fully automated process. This points to an additional source of
 20 error on the part of Defendants distinct from Plaintiffs’ concern about the adjudication
 21 process being bypassed entirely. Complaint ¶ 25.

22 The facts as to why Intervenors Aguilera and Drobina allege their ballots were
 23 improperly counted therefore differ somewhat from the facts identified by Plaintiffs and
 24 they accordingly have a right to intervene to develop the facts and argument necessary to
 25 protect their own rights to have their votes properly counted and handled.

26 **III. In the Alternative, Permissive Intervention Is Appropriate Because the**
 27 **Proposed Intervenors’ Arguments Share Common Questions of Law and**
 28 **Fact with the Named Parties’ Claims and Defenses.**

1 If the Court finds that one or more of the prerequisites for intervention as of right
 2 remain unsatisfied, Rule 24(b) supplies an independent basis for Proposed Intervenors’
 3 permissive intervention.⁵ The Court may allow permissive intervention when the applicant
 4 “has a claim or defense that shares with the main action a common question of law or fact.”
 5 Ariz. R. Civ. P. 24(b)(1)(B). Both the parties’ claims and the Proposed Intervenors’
 6 arguments embrace the same subject matter-*i.e.*, the existence and prevalence of errors
 7 attributable, or partially attributable, to ballot bleed through, the way Maricopa County’s
 8 new tabulation machines work, the way poll workers dealt with the situation, and the
 9 appropriateness of judicial intervention. *See Zenith Elecs. Corp. v. Ballinger*, 220 Ariz.
 10 257, 264, ¶ 25 (App. 2009) (allowing third party nonprofit seeking access to certain records
 11 produced in discovery under a protective order to intervene permissively, reasoning that
 12 “not only is [applicant’s] motion timely, but it presents a common question of law or fact
 13 concerning the propriety of the protective order”); *see also Kootenai Tribe of Idaho v.*
 14 *Venveman*, 313 F.3d 1094, 1110 (9th Cir. 2002); *abrogated in part on other grounds by*
 15 *Wilderness Soc. V. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (noting that permissive
 16 intervenors “asserted defenses . . . directly responsive to the claims for injunction asserted
 17 by plaintiffs. Intervenors satisfied the literal requirements of Rule 24(b)”). Some examples:

18 Intervenors’ first cause of action is for declaratory relief that Defendants violated
 19 voters’ rights under Arizona law to have their ballots read and tabulated in a fully
 20 automated process by a perfectly accurate machine when the Electronic Voting System is
 21 operated according to the instructions. Obviously, if, as Plaintiffs claim, the tabulators were
 22 sometimes unable to read ballots with perfect accuracy for various reasons (including that
 23 some voters, as instructed, used marking devices which bled through the ballot paper), then
 24 this right has been violated. This may also depend on the facts concerning how exactly the
 25 voting system operates, how poll workers were trained to respond to misreads, and how
 26 they in-fact responded to such misreads. *See e.g.*, Complaint ¶¶ 18-21, 24-28. Plaintiffs

27
 28 ⁵ As discussed *infra* Section II(A), this Motion is undisputedly timely, which is a prerequisite to any variant of permissive intervention.

1 have made certain allegations concerning these factual questions and can be expected to
2 develop facts which speak to these issues as the case progresses. *See Anderson v. Martinez*,
3 158 Ariz. 358, 363, 762 P.2d 645, 650 (App. 1988) (intervention is appropriate where it
4 serves the interests of judicial economy).

5 Intervenor's second cause of action is for declaratory relief that Defendants, by
6 requiring some but not all voters to use marking devices whose ink bled through the paper
7 ballots, failed to maintain the maximum degree of correctness, impartiality, and uniformity
8 of procedures for voting and tabulating ballots in violation of A.R.S. §§ 16-449(B), 16-
9 452(A), *etc.* The success of this cause of action may depend, in part, on Plaintiffs
10 establishing the truth of their claim that bleed through on ballots caused issues with the
11 reading and tabulation of ballots. If ballot bleed though caused such issues, the provision
12 of different marking devices could have prevented those issues from occurring, and some
13 voters in Maricopa County did not receive marking devices which bled through their
14 ballots, then Intervenor will prevail on this claim. Intervenor themselves have
15 experienced such bleed through. CII ¶¶ 2.14, 2.21. Again, the facts that Plaintiffs develop
16 concerning how exactly the voting system operates, how poll workers were trained to
17 respond to misreads, and how they in-fact responded to such misreads can also be expected
18 to have a bearing on Intervenor's entitlement to relief on this cause of action.

19 Intervenor's third cause of action is for declaratory relief that Defendants failed to
20 provide voters with ballots of sufficient thickness to prevent ink from bleeding through
21 ballots when voters used the marking devices provided by Defendants, in violation of
22 A.R.S. § 16-502. The success of this cause of action depends, in part, on establishing that
23 bleed through occurred as Plaintiffs claim, and as Intervenor have alleged that they
24 themselves experienced.

25 Intervenor's fourth cause of action is for declaratory relief that Defendants failed to
26 comply with the Elections Procedures Manual ("EPM"). Intervenor allege that Defendants
27 did this by, among other things, failing to provide voters with the opportunity (in a private,
28 secret, and independent manner) to correct any error before their ballots were cast and

1 counted or cast a replacement ballot if the previous ballot was spoiled or unable to be
2 changed or corrected. Plaintiffs have claimed poll workers frequently and improperly
3 overrode protections in the tabulation equipment, forcing ballots which were wholly or
4 impartially unreadable through the machine in a way that would make them not subject to
5 further review to determine voter intent. Complaint ¶ 19. Plaintiffs have claimed that this
6 sometimes occurred without the voters' knowledge. *Id.* If this is true then, contrary to law,
7 some Arizona voters have been denied the opportunity to correct errors on their ballot or
8 obtain a new ballot before their ballot is cast and counted. Conversely, Plaintiffs have
9 indicated that voters at least sometimes voluntarily pressed the override. Complaint ¶ 27.
10 If, as Defendants are expected to claim, this is what occurred in almost every instance, and
11 it occurred only after voters were properly informed as the consequences, then Defendants
12 will likely prevail on their claim that they have satisfied this legal obligation under the
13 EPM.

14 Intervenor's fifth cause of action claims that Defendants have failed to meet the
15 EPM's requirement to open the facility where the electronic adjudication process occurs to
16 public inspection and seeks declaratory and injunctive relief. As set forth above, for the
17 reasons discussed by both Plaintiffs and Intervenor (including bleed-through), Intervenor
18 Drobina's ballot was not properly read. However, unlike Plaintiffs, who allege that the
19 adjudication process was bypassed, giving voters no chance to rehabilitate overvotes,
20 Intervenor Drobina is concerned that the misread caused his ballot to be improperly
21 subjected to a human adjudication process. Having followed the procedures set in place by
22 Defendants, Drobina was entitled to have his ballot counted by a fully automated and
23 impartial system that tabulated his ballot with perfect accuracy. As set forth in Plaintiffs'
24 complaint, human adjudication is a default method to be used only when the voter has
25 erroneously completed his ballot such that the electronic system cannot discern the voter's
26 intent—it is a "safeguard[.]" Complaint ¶ 2. Like a seatbelt, it should not be needed unless
27 someone has made a mistake. Having followed the instructions of elections officials and
28 still, contrary to law, seeing his ballot subjected to counting and tabulation by a human

1 process, Intervenor Drobina seeks to vindicate the public's right to observe the electronic
2 adjudication process. This includes during any recount that Plaintiffs may obtain which
3 utilizes the electronic adjudication process, Complaint ¶ 81, as well as in future elections.

4 While they reserve the right to invoke any and all legal arguments, claims or cross-
5 claims that may bear on the questions in dispute, the Proposed Intervenors are prepared to
6 adhere to all deadlines and schedules established by the Court, and, given the significant
7 factual overlap between their and Plaintiffs claims, foresee largely being able to use the
8 discovery developed by Plaintiffs. *See Bechtel v. Rose In & For Maricopa Cty.*, 150 Ariz.
9 68, 72 (1986) (applicant's willingness not to "prolong or unduly delay the litigation"
10 weighs in favor of permissive intervention). In sum, permitting the intervention will not
11 impede or encumber the expeditious disposition of this matter; to the contrary, the
12 Proposed Intervenors' joinder will only ensure that the Court's adjudication of the parties'
13 claims and defenses is informed by the perspective interests of all interested participants.

14 **CONCLUSION**

15 For the foregoing reasons, this Court should find the Proposed Intervenors are
16 entitled to intervene as of right, pursuant to Ariz. R. Civ. P. 24(a). In the alternative, the
17 Court should in its discretion permit Proposed Intervenors to intervene, pursuant to Ariz.
18 R. Civ. P. 24(b).

19
20 RESPECTFULLY SUBMITTED this 9th day of November, 2020

21
22
23 By /s/Alexander Kolodin

24 Alexander Kolodin
25 Christopher Alfredo Viskovic
26 Chris Ford
27 **Kolodin Law Group PLLC**
28 3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85012

Attorneys for Proposed Intervenors

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I CERTIFY that a copy of the forgoing will be served on Defendants when they appear
and on Plaintiffs in accordance with the applicable rules of procedure

By /s/Alexander Kolodin

Exhibit C

CLERK OF THE
SUPERIOR COURT
FILED
A. PLASCENCIA, DEP
2020 NOV -9 AM 8:47

1 Alexander Kolodin (SBN 030826)
2 Christopher Viskovic (SBN 035860)
3 Chris Ford (SBN 029437)
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18 *Pro hac motion forthcoming
19 *Attorneys for Intervenors*

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

22 DONALD J. TRUMP FOR PRESIDENT,
23 INC.; et al.,

Case no.:

CV2020-014248

24 *Plaintiffs,*

25 v.

26 KATIE HOBBS; et al.,

27 *Defendants,*

**PROPOSED VERIFIED
COMPLAINT-IN-INTERVENTION
[EXPEDITED ELECTION MATTER]**

28 LAURIE AGUILERA, a registered voter in
Maricopa County, Arizona; DONOVAN
DROBINA, a registered voter in Maricopa
County, Arizona; DOES I-X;

Intervenors.

Plaintiffs-In-Intervention Laurie Aguilera and Donovan Drobina ("Intervenors")
join in Plaintiffs' Complaint and additionally assert as follows:

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SECTION I

PARTIES, JURISDICTION, AND VENUE

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

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

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

1.4. Intervenor Donovan Drobina is a resident of Maricopa County, Arizona. He is and was, at all times relevant hereto, a registered voter in Maricopa County.

1.5. Defendant Katie Hobbs is the Secretary of State of Arizona. She is being sued in her official capacity.

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

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

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

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

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

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

1.12. Given the looming election deadlines, Intervenors seek to have this heard as an expedited election-related-matter.

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1 1.13. This Court has jurisdiction to hear this matter and venue is proper pursuant to
2 A.R.S. §§ 12-2001, 12-1831, 12-2021, 16-672, 41-1034, and other applicable law.

3 **SECTION II**

4 **FACTS**

5 2.1. Intervenors incorporate by reference the preceding allegations.

6 2.2. Joshua D. Banko was working as a clerk for the Maricopa County Elections
7 Department at the polling location located at Paradise Valley Mall in Phoenix, Arizona.

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

9 2.4. Starting at the beginning of the day Joshua D. Banko noticed voters experiencing
10 problems feeding their ballots into the tabulation machine which cause significant delays
11 throughout the day.

12 2.5. Joshua D. Banko was notified by the tabulation machine that it was detecting
13 errant or extraneous lines outside of the voting section of the ballot. However, in Joshua
14 D. Banko's presence, voters showed their ballot to the elections marshal and the site
15 inspector to demonstrate that there were no errant marks on their ballot.

16 2.6. Ballots that were rejected by one machine were tried on the other tabulation
17 machine and in different orientations, typically without success.

18 2.7. Based upon the foregoing, Joshua D. Banko believes that the issue was caused by
19 ink bleeding through the ballots cast by voters at the polling location.

20 2.8. Voters who experienced this issue were told by the marshal that they could spoil
21 their ballot but if they did not care about the candidate for the section of the ballot where
22 they were having the issue, they could double vote and spoil just that vote. The marshal
23 and site inspector encouraged voters to do this instead of spoiling their ballot and
24 obtaining a new one.

25 2.9. Joshua D. Banko estimates that approximately 80% of voters at the Paradise
26 Valley Mall polling place experienced this issue.

27 2.10. Named Intervenors are two voters who experienced issues similar to those
28 identified by Joshua D. Banko.

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- 1 2.11. **Exhibit A** is a true and correct copy of the declaration by Joshua D. Banko setting
2 out the facts outlined above.
- 3 2.12. Intervenor Laurie Aguilera voted in person in Maricopa County on election day,
4 November 3, 2020.
- 5 2.13. She was provided with a marking device by the poll workers with which to mark
6 her ballot.
- 7 2.14. Intervenor completed her ballot with the provided marking device. While
8 completing it she noticed that the ink was bleeding through.
- 9 2.15. Intervenor fed her ballot into the ballot box.
- 10 2.16. The ballot box failed to properly register her vote causing a poll-worker to cancel
11 her ballot in the presence of Intervenor.
- 12 2.17. Intervenor requested a new ballot but, upon information and belief, upon
13 consultation with the Maricopa County Reorder's Office, the poll workers refused to
14 provide her with one.
- 15 2.18. Intervenor Donovan Drobina voted in person in Maricopa County on election day,
16 November 3, 2020.
- 17 2.19. He was provided with a marking device by the poll workers with which to mark
18 his ballot and was not given the option of using a different marking device.
- 19 2.20. He attempted to insert his ballot into the slot at the top of the ballot box and it was
20 rejected.
- 21 2.21. The poll worker that assisted him told him that they had been having issues with
22 ink bleeding through ballots, which had been causing issues with the scanner.
- 23 2.22. The poll worker had him attempt to put the ballot in the slot at the top of the box
24 twice, after it failed to scan both times the poll worker had him put the ballot in a slot
25 lower down on the box.
- 26 2.23. **Exhibit B** is a true and correct copy of the declaration by Donovan Drobina setting
27 out the facts outlined above.
- 28

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1 2.24. According to Pima County Supervisor Allyson Miller, Pima County instructed
2 voters that felt pens may bleed through ballots, causing issues with the scanner. *See*
3 **Exhibit C**. However, Maricopa County no longer manually duplicates ballots but instead
4 tries to have ballots reviewed by human beings to determine “voter intent.”

5 2.25. Upon information and belief, many other voters have experienced similar issues.
6 **Exhibit D**. Although Intervenors are not at this time asking for class certification, they
7 feel an acute responsibility to vindicate the voting rights of all Arizonans and the
8 integrity of our elections.

9 2.26. Upon information and belief not all Arizona counties and polling places provided
10 in-person voters with marking devices that bled through ballots.

11 2.27. Upon information and belief, November 9, 2020 is the first day to canvass the
12 election results, November 23, 2020 is the last day to canvass the election results, and the
13 deadline to certify election results is November 30, 2020.

14 **SECTION III**
15 **CAUSES OF ACTION**

16 3.1. Intervenors incorporate by reference the preceding allegations.
17 3.2. Intervenors seek to ensure that their votes in this election are properly handled.
18 Therefore, they join with Plaintiffs in asserting their causes of action.
19 3.3. Intervenors also join this action to further illuminate and fix chronic voting system
20 problems in Maricopa County and elsewhere caused by Defendants’ failure to follow the
21 law. Intervenors believe that these issues must be addressed now, while public attention
22 is focused on the process, to restore confidence in the electoral system in which we all
23 place our faith. Therefore, Intervenors assert the following additional causes of action.
24 The resolution of the majority of these causes of action will likely depend on the
25 resolution of Intervenors’ factual claims.

26 *FIRST CAUSE OF ACTION*
27 *(Failure to Maintain Statutorily Compliant Electronic Voting System)*
28

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1 3.4. Maricopa County utilizes an “electronic voting system” within the meaning of
2 A.R.S. § 16-444(A)(4) wherein “votes are recorded on a paper ballot by means of
3 marking, and such votes are subsequently counted and tabulated by vote tabulating
4 equipment at one or more counting centers.”

5 3.5. “Vote tabulating equipment” means “apparatus necessary to *automatically*
6 examine and count votes as designated on ballots and tabulate the results.” A.R.S. § 16-
7 444(A)(7) (emphasis supplied).

8 3.6. By statute, the county’s electronic voting system must, “When properly operated,
9 record correctly and count accurately every vote cast.” A.R.S. § 16-446(B)(6).

10 3.7. In other words, voters have a right to know with certainty that, when they follow
11 the instructions of election officials, their votes will be counted automatically and
12 perfectly. The acts of Defendants have deprived them of that right.

13 3.8. Intervenors her properly operated the County’s electronic voting system but, upon
14 information and belief, it failed to automatically record some or all of their votes. Upon
15 information and belief, it also failed to record some or all their votes correctly and count
16 them accurately.

17 WHEREFORE Intervenors pray:

18 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
19 law: That the conduct of Defendants complained of herein and by Plaintiffs
20 constitutes a violation of Intervenors’ right under Arizona law to have their votes
21 read and tabulated in a fully automated process by a perfectly accurate machine
22 when Intervenors operate the Electronic Voting System as instructed.

23 *SECOND CAUSE OF ACTION*

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

26 3.9. By statute Arizona elections are to be conducted so as to ensure the maximum
27 degree of correctness, impartiality, and uniformity of procedures for voting and
28 tabulating ballots. *See e.g.* A.R.S. §§ 16-449(B), 16-452(A), *etc.*

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1 3.10. The provision of a marking device which bleeds through ballots fails to satisfy
2 these requirements. It failed to provide for the maximum degree of correctness because at
3 least some voters, including Intervenors, experienced issues having their ballots read
4 because of the use of the these marking devices. It failed to provide for the maximum
5 degree of impartiality. Nothing is more impartial than a machine that counts votes with
6 perfect accuracy. Upon information and belief, some ballots had to have voter intent
7 adjudicated by humans because the machines were unable to read them due to the use of
8 the provided marking devices. The provision of marking devices which bled through
9 ballots failed to provide for the maximum degree of uniformity insofar as not all voters
10 were provided with such marking devices by poll workers.

11 WHEREFORE Intervenors pray:

12 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
13 law: That the conduct of Defendants complained of herein and by Plaintiffs
14 constitutes a violation of Defendants' obligation under Arizona law to ensure
15 the maximum degree of correctness, impartiality, and uniformity of procedures
16 for voting and tabulating ballots.

17 *THIRD CAUSE OF ACTION*

18 *(Violation of A.R.S. § 16-502)*

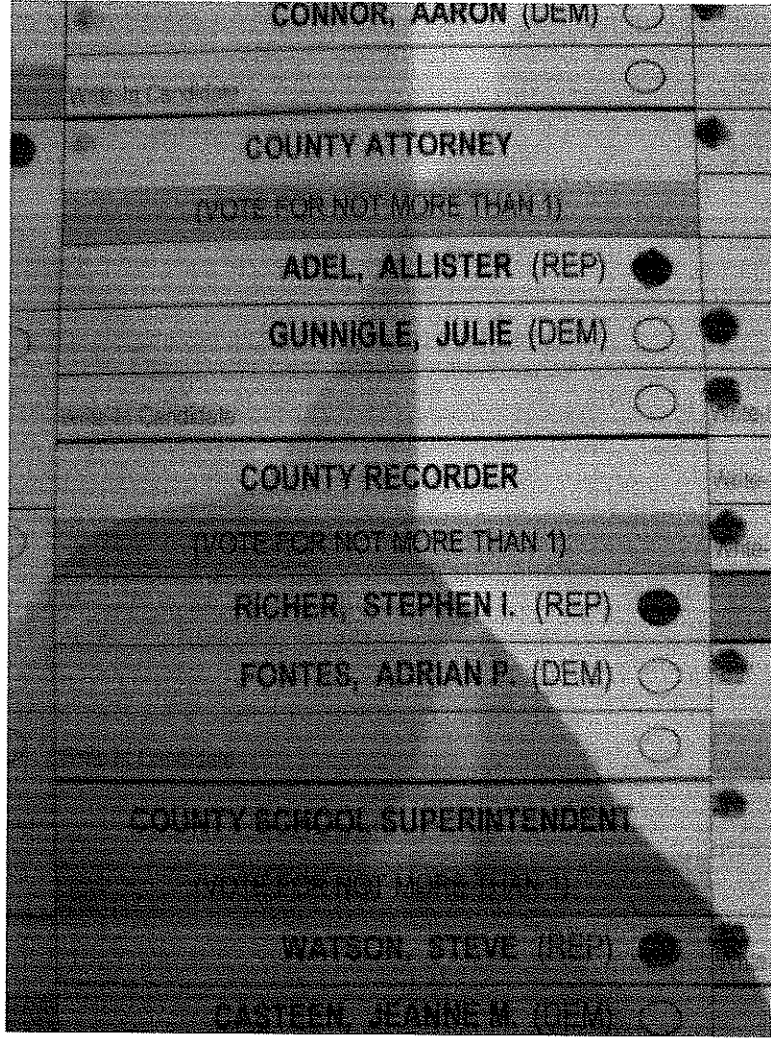
19 3.11. Arizona law provides that “[b]allots shall be printed with black ink on white paper
20 of sufficient thickness to prevent the printing thereon from being discernible from the
21 back and the same type shall be used for the names of all candidates.” A.R.S. § 16-
22 502(A).

23 3.12. Defendants violated A.R.S. § 16-502(A) by failing to provide ballots with
24 sufficient thickness to prevent the marking devices provided to Intervenors from bleeding
25 through.

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WHEREFORE Interveners pray:

A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable law: That the conduct of Defendants complained of herein and by Plaintiffs constitutes a violation of Interveners' right under Arizona law to have their votes read and tabulated in a fully automated process by a perfectly accurate machine when Interveners operate the Electronic Voting System as instructed.

FOURTH CAUSE OF ACTION

(Failure to Comply with the Election Procedures Manual – Failure to Provide Appropriate Opportunities to Correct Mistakes)

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1 3.13. By statute Arizona elections are to be conducted pursuant to the Election
2 Procedures Manual (“EPM”) which has the force of law. A.R.S. § 16-452.¹

3 3.14. Pursuant to the EPM, the marking devices provided to voters must: “Provide the
4 voter with an opportunity (in a private, secret, and independent manner) to correct any
5 error before the ballot is cast and counted or cast a replacement ballot if the previous
6 ballot is spoiled or unable to be changed or corrected.” EPM p 79.

7 3.15. Upon information and belief, because of the provision of marking devices which
8 bled through ballots, Intervenors did not realize that their ballots would not be properly
9 read or would be read as spoiled until their ballots were cast.

10 WHEREFORE Intervenors pray:

11 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
12 law: That the conduct of Defendants complained of herein and by Plaintiffs
13 constitutes a violation of their obligation under Arizona law to provide voters
14 with an opportunity (in a private, secret, and independent manner) to correct
15 any error before the ballot is cast and counted or cast a replacement ballot if
16 the previous ballot is spoiled or unable to be changed or corrected.

17 *FIFTH CAUSE OF ACTION*

18 *(Failure to Comply with the Election Procedures Manual – Failure to Allow for Public*
19 *Access)*

20 3.16. In February of 2019, an Electronic Adjudication Addendum (the “Addendum”)
21 was added to the EPM.²

22 3.17. The Addendum provides in pertinent part as follows: “The electronic adjudication
23 of votes must be performed in a secure location, preferably in the same location as the
24 EMS system, but open to public viewing.”

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27 ¹[https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_A](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
[PPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)

28 ²[https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019 E](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf)
[lections_Procedures_Manual.pdf](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf)

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1 3.18. Defendants Maricopa County, Maricopa County Board of Supervisors, and Adrian
2 Fontes have failed to open the location where electronic adjudication occurs to public
3 viewing.

4 WHEREFORE Intervenors pray:

- 5 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other
- 6 applicable law: That the conduct of Defendants complained of herein and
- 7 by Plaintiffs constitutes a violation of their obligation to open the location
- 8 where the electronic adjudication of votes is occurring to the public.
- 9 B. For injunctive relief opening the location where electronic adjudication is
- 10 taking place to the public.

11 ADDITIONALLY, Intervenors pray:

- 12 A. That the relief requested by Plaintiffs be GRANTED.
- 13 B. For their attorneys' fees and costs pursuant to A.R.S. §§ 12-2030, 12-348,
- 14 common law doctrine, and other applicable law.
- 15 C. For such other relief as this Court deems just and proper.

16 Respectfully submitted this 8th day of November, 2020

17 By /s/Alexander Kolodin

18 Alexander Kolodin
19 **Kolodin Law Group PLLC**
20 3443 N. Central Ave. Ste. 1009
21 Phoenix, AZ 85012

22 Attorneys for Intervenors

23 I CERTIFY that a copy of the of the forgoing will be served on Defendants in conformity
24 with the applicable rules of procedure.

25 By /s/Alexander Kolodin

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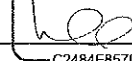
VERIFICATION

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.

11/8/2020

DATE

DocuSigned by:



C2484F857D8844A...

LAURIE AGUILERA

KOLODIN LAW GROUP PLLC

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Phoenix, Arizona 85012

Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

Exhibit A

DECLARATION

I declare and state as follows:

1. My name is Joshua Banko. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I was working as a clerk for the Maricopa County Elections Department at the polling location located at Paradise Valley Mall in Phoenix, Arizona. I worked there from approximately 5:30 in the morning to approximately 8:15 at night.
4. Starting at the very beginning of the day, voters began experiencing problems feeding their ballots into the tabulation machine. This caused significant delays in voting and lasted throughout the day. The tabulation machine was telling me that it was detecting errant or extraneous lines outside of the voting section of the ballot. However, in my presence many voters showed their ballot to the elections marshal and the site inspector to demonstrate that there were no errant marks on their ballot. Ballots that were rejected by one machine were tried on the other tabulation machine and in different orientations, always without success. For these reasons I believe that the issue was caused by the use of sharpies at the polling location. Voters who experienced this issue were told by the marshal that they could spoil their ballot but if they didn't care about the candidate for the section of the ballot where they were having the issue they could double vote and spoil just that vote. The marshal and site inspector encouraged voters to do this instead of spoiling their ballot and obtaining a new one. I would estimate that approximately 80% of voters at this polling location

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experienced this issue. There was a steady flow of voters through the location all day with long lines all day.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Scottsdale (city), Arizona.

DocuSigned by:
Joshua Banks
42B4EBE7FA1741F...

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Exhibit B

DECLARATION

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I declare and state as follows:

1. My name is DONOVAN DROBINA. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at Arrowhead Town Center, Glendale AZ (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen. I attempted to insert my ballot into the slot at the top of the ballot box and it was rejected. The poll worker assisting me told me that they had been having issue with the sharpies bleeding through which had been causing issues with the scanner. The poll worker had me try to put the ballot in the slot of the top of the box twice. It failed to scan both times. Then the poll worker had me put the ballot in a slot lower down on the box.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Peoria (city), Arizona.

DocuSigned by:

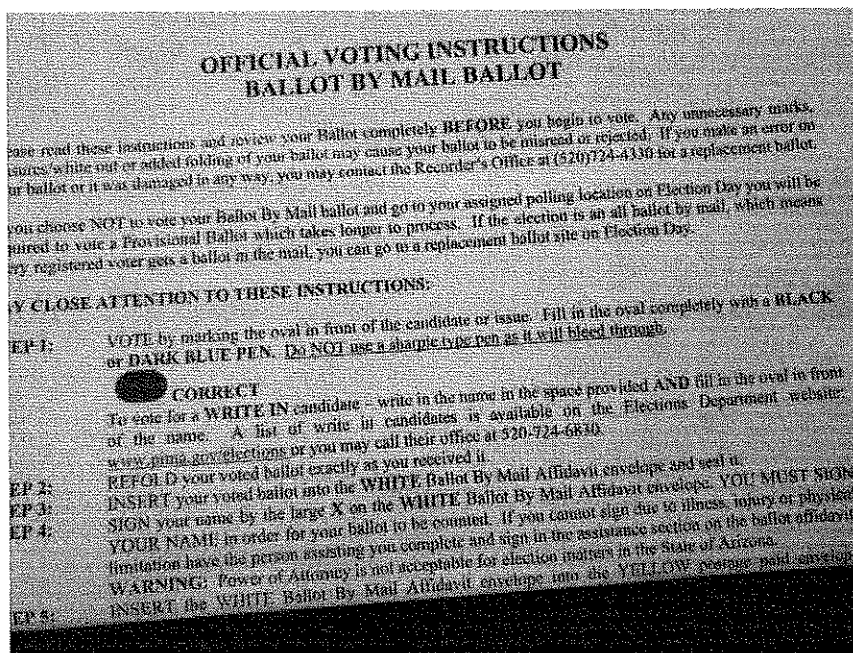
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Exhibit C

DECLARATION

I declare and state as follows:

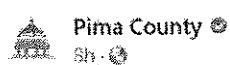
1. My name is Allyson Miller. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a duly elected member of the Pima County Board of Supervisors.
3. Although the Pima County Recorder has a great deal of responsibility for elections, part of my responsibilities also involve oversight of Pima County elections.
4. In that capacity I am familiar with the instructions that we provide to voters. The below is a true and accurate copy of those instructions for the 2020 general election. The below is a true and accurate copy of the instructions we provided to early voters for that election. We advised voters not to use sharpies because they make ballots harder for our tabulators to read. For the 2020 general election, early voters and election-day voters received identical ballots.



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5. In that capacity I am also familiar with our county's communications concerning elections. The below is a true and accurate copy of a communication that Pima County put out on Facebook for the 2020 general election.



The felt-tip pen ballot controversy burning through social media is false. Don't get caught up in it. Arizona ballot tabulating machines can read ballots marked with a felt tip pen. Felt pens are discouraged because the ink can bleed through. If it does bleed through, the ballot will most likely get sent for duplication so it can be read by the scanner. The image with this post is the text from the Arizona Secretary of State's Elections Manual, Chapter 10, Section D, subsection 3.
All ballots in which voter intent can be discerned will be counted. That's also in the manual. No ballots will be discarded because of the method used to color in the ovals.

https://azsos.gov/.../2019_ELECTIONS_PROCEDURES_MANUAL...

3. Procedures for Duplicating a Ballot A damaged or unreadable ballot must be duplicated according to the following procedures:
- Ensure the correct ballot style for the voter's precinct will be used to create the duplicated ballot;
 - Mark the proper precinct identification code, if applicable;
 - Record an identical serial number on both the original and duplicate ballot (including spoiled duplicates) - this ties the ballots together and creates a paper trail as required by statute, A.R.S. § 16-621(A);
 - Conspicuously mark the original ballot as "DUPLICATED,"
 - Conspicuously mark the duplicate ballot as "DUPLICATE," A.R.S. § 16-621(A);
 - Using the damaged or unreadable ballot as a guide, mark a blank ballot with votes identical to those on the original ballot;
 - Do not duplicate write-in names that are not on the authorized write-in list ("blank" or "unofficial" may be typed in if using a ballot marking device to duplicate and the name/line cannot be left blank). However, mark the arrow or fill in the oval to indicate the vote cast;
 - After marking the duplicate ballot, check to make sure it is identical to the original, including over-votes if voter intent cannot be determined and any under-votes;
 - If the Ballot Duplication Board makes any errors, mark the duplicate ballot "SPOILED" in a conspicuous

Dated this 11/5/2020, Executed at Tucson, AZ (city).

I DECLARE under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

DocuSigned by:
Allyson Miller
F3F8A04A4C7740B...

Exhibit D

DECLARATION

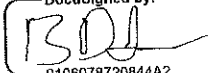
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I declare and state as follows:

- 1. My name is Brian Zeman. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
- 2. I am a registered voter in Maricopa County.
- 3. On Tuesday, November 3, 2020, I voted in person in at Biltmore Fashion Park: 2502 E. Camelback Rd.
- 4. I was given a sharpie by the poll workers.
- 5. I filled out my ballot. The tabulation machine rejected it three times before finally accepting the ballot.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/5/2020, in Phoenix (city), Arizona.

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I declare and state as follows:

- 1. My name is Courtney Childers. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
- 2. I am a registered voter in Maricopa County.
- 3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at Queen creek library 21802 south Ellsworth rd queen creek (address of polling place – please include city).
- 4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
- 5. Then (please check one):
 - Option 1: My ballot was rejected and was placed into a special pile.
 - Option 2: My ballot was rejected and I was given the option of filling out a new ballot.
 - Option 3: My ballot was rejected and I was not given the option of filling out a new ballot.
 - Option 4: My ballot was rejected one or more times but was eventually accepted.
 - Option 5: My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Queen creek (city), Arizona.

DocuSigned by:
Courtney Childers
21AA94CAD609488...

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I declare and state as follows:

1. My name is Jennifer Cline. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at Precinct 73 Pinal County- Santa Rosa School (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
 - Option 1: My ballot was rejected and was placed into a special pile.
 - Option 2: My ballot was rejected and I was given the option of filling out a new ballot.
 - Option 3: My ballot was rejected and I was not given the option of filling out a new ballot.
 - Option 4: My ballot was rejected one or more times but was eventually accepted.
 - Option 5: My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Maricopa (city), Arizona.

DocuSigned by:
Jennifer Cline
 DA3A21E19E8349C...

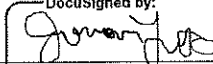
DECLARATION

I declare and state as follows:

1. My name is Jennifer Flores. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at Anthem Outlets, Anthem AZ (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
 - Option 1: [] My ballot was rejected and was placed into a special pile.
 - Option 2: [] My ballot was rejected and I was given the option of filling out a new ballot.
 - Option 3: [] My ballot was rejected and I was not given the option of filling out a new ballot.
 - Option 4: [x] My ballot was rejected one or more times but was eventually accepted.
 - Option 5: [] My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Phienix (city), Arizona.

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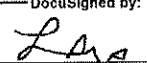
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I declare and state as follows:

1. My name is Lora Wuollet. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at 4250 W Anthem Way 110, Phoenix, AZ 85086 (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
 - Option 1: My ballot was rejected and was placed into a special pile.
 - Option 2: My ballot was rejected and I was given the option of filling out a new ballot.
 - Option 3: My ballot was rejected and I was not given the option of filling out a new ballot.
 - Option 4: My ballot was rejected one or more times but was eventually accepted.
 - Option 5: My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Phoenix (city), Arizona.

DocuSigned by:

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DECLARATION

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I declare and state as follows:

- 1. My name is Michael Long. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
- 2. I am a registered voter in Maricopa County.
- 3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at 21802 S Ellsworth Rd, Queen Creek, AZ 85142 (address of polling place – please include city).
- 4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
- 5. Then (please check one):
 - Option 1: My ballot was rejected and was placed into a special pile.
 - Option 2: My ballot was rejected and I was given the option of filling out a new ballot.
 - Option 3: My ballot was rejected and I was not given the option of filling out a new ballot.
 - Option 4: My ballot was rejected one or more times but was eventually accepted.
 - Option 5: My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Queen Creek (city), Arizona.

DocuSigned by:
Michael Long
0AC1A0CF1961465...

DECLARATION

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I declare and state as follows:

1. My name is Rebecca Novicki. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at 4250 W Anthem Way, Anthem, AZ (address of polling place – please include city).
4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
5. Then (please check one):
 - Option 1: [] My ballot was rejected and was placed into a special pile.
 - Option 2: [] My ballot was rejected and I was given the option of filling out a new ballot.
 - Option 3: [] My ballot was rejected and I was not given the option of filling out a new ballot.
 - Option 4: [] My ballot was rejected one or more times but was eventually accepted.
 - Option 5: [] My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/4/2020, in Anthem (city), Arizona.

DocuSigned by:
Rebecca Novicki
70C15E690EB940D...

DECLARATION

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I declare and state as follows:

- 1. My name is Yanive Masjedi. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
- 2. I am a registered voter in Maricopa County.
- 3. On Tuesday, November 3, 2020, I voted in the general election at the polling place located at 7700 E McCormick Pkwy Scottsdale, AZ 85258 (address of polling place – please include city).
- 4. I was provided with a sharpie by poll workers to fill out my ballot and was not given the option of using a ballpoint pen.
- 5. Then (please check one):
 - Option 1: My ballot was rejected and was placed into a special pile.
 - Option 2: My ballot was rejected and I was given the option of filling out a new ballot.
 - Option 3: My ballot was rejected and I was not given the option of filling out a new ballot.
 - Option 4: My ballot was rejected one or more times but was eventually accepted.
 - Option 5: My ballot was accepted.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/5/2020, in Scottsdale, Arizona (city), Arizona.

DocuSigned by:
Yanive Masjedi
3A926E14448545D...

DECLARATION

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I declare and state as follows:

1. My name is Zachery Knudsen. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a registered voter in Maricopa County.
3. On Tuesday, November 3, 2020, I voted in person in Scottsdale, Arizona.
4. I was given a sharpie by the poll workers.
5. I filled out my ballot. The tabulation machine rejected it three times before finally accepting the ballot.

I acknowledge that Kolodin Law Group PLLC is not my attorney and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 11/5/2020, in Tempe (city), Arizona.

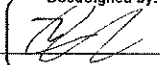
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Exhibit D

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014248

11/09/2020

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
P. McKinley
Deputy

DONALD J TRUMP FOR PRESIDENT INC, et
al.

THOMAS J. BASILE

v.

KATIE HOBBS, et al.

ROOPALI HARDIN DESAI

SARAH R GONSKI
ALEXANDER M KOLODIN
KORY A LANGHOFER
CHRISTOPHER A VISKOVIC
CHRISTOPHER B FORD
SUE BECKER
JOSEPH I VIGIL
JOSEPH EUGENE LA RUE
DANIEL A ARELLANO
EMILY M CRAIGER
THOMAS PURCELL LIDDY
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE KILEY

MINUTE ENTRY

East Court Building – Courtroom 911

3:01 p.m. This is the time set for virtual Order to Show Cause Return Hearing. Plaintiffs Donald J. Trump for President, Inc., Republican National Committee and Arizona Democratic

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014248

11/09/2020

Party are represented by counsel, Kory Langhofer for attorney of record Thomas Basile. Defendant Katie Hobbs (in her official capacity as the Arizona Secretary of State) is represented by counsel, Roopali Hardin Desai. Defendant Adrian Fontes (in his official capacity as the Maricopa County Recorder) and Defendants Jack Sellers; Steve Chucri; Clint Hickman; Bill Gates and Steve Gallardo (in their official capacities as members of the Board of Supervisors for Maricopa County) (collectively, the “Maricopa County Defendants”) are represented by counsel, Thomas P. Liddy and Joseph LaRue. Proposed Intervener Arizona Democratic Party is represented by counsel, Sarah R. Gonski. Proposed Interveners Laurie Aguilera and Donovan Drobina are represented by counsel, Alexander Kolodin, Christopher Viskovic and Sue Becker. All appearances are virtual via the GoToMeeting platform.

A record of the proceedings is made digitally in lieu of a court reporter.

The Maricopa County Defendants object to proceeding with today’s Order to Show Cause hearing on the grounds of lack of service.

Discussion is held regarding the Court’s disclosure contained in the Order to Show Cause filed November 9, 2020.

Following discussion, the Court will recess to provide counsel the opportunity to review the Order to Show Cause in detail.

3:11 p.m. Court stands at recess.

3:31 p.m. Court reconvenes with counsel present.

A record of the proceedings is made digitally in lieu of a court reporter.

Further discussion is held regarding the Court’s disclosure contained in the Order to Show Cause filed November 9, 2020.

The parties find no conflict of interest exists and have no objection to the Court proceeding.

Discussion is held regarding the Proposed Intervenor Arizona Democratic Party’s Motion to Intervene filed November 9, 2020.

Following discussion and there being no objections,

IT IS ORDERED granting Arizona Democratic Party’s Motion to Intervene.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014248

11/09/2020

Argument is presented regarding the Proposed Intervenors Laurie Aguilera and Donovan Drobiná's Motion to Intervene filed November 9, 2020.

For the reasons stated on the record,

IT IS ORDERED denying Proposed Intervenors Laurie Aguilera and Donovan Drobiná's Motion to Intervene.

Discussion is held regarding how this matter should proceed.

Following discussion, and for the reasons stated on the record,

IT IS ORDERED setting a combined Evidentiary Hearing and Oral Argument on the legal issues on **November 12, 2020 at 9:30 a.m. (time allotted: 5 hours)** in this division via the GoToMeeting platform.

<https://www.gotomeet.me/Rolena>

Parties can access the hearing by using a telephone by calling:

Telephone Number: [+1 \(786\) 535-3211](tel:+17865353211)
Access Code: [346-956-893](tel:+17865353211)

The audience line is:

Telephone Number: [1-877-309-2073](tel:18773092073)
Access Code: [697-460-909](tel:18773092073)

If you have trouble accessing the hearing, contact Judge Kiley's judicial staff at 602-372-3839.

Time allocation for the hearing shall be as follows:

Plaintiffs: 2.5 hours
Government Defendants: 1.5 hours
Intervenor: 1.0 hours

IT IS FURTHER ORDERED the parties shall file and exchange simultaneous pre-hearing briefs **no later than November 10, 2020 at 8:00 p.m.** The parties shall exchange their

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014248

11/09/2020

briefing by email and also to this division. Plaintiff's prehearing brief shall not exceed a combined page count of 50 pages. The Defendants and intervenor's briefs shall not exceed 17 pages each.

IT IS FURTHER ORDERED each party shall file and exchange lists of witnesses and exhibits by no later than **November 10, 2020 at 3:00 p.m.**

IT IS FURTHER ORDERED by no later than **3:00 p.m. November 10, 2020**, the parties shall submit their exhibits through the exhibit submission portal at this link <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission> or deliver them to this division for marking.

For electronic and in-person exhibit submission, please visit, <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission>. The webpage will provide instructions and guidance for electronic submission as well as locations for in-person submission of exhibits.

NOTICE: Exhibits Marked But Not Offered

Exhibits submitted to the court for an evidentiary hearing/trial, whether through hard copy or submitted electronically, that are marked as exhibits but are not offered into evidence at the evidentiary hearing will be destroyed following the hearing/trial, unless a party requests that the evidence be returned at the conclusion of the hearing. Such requests must be filed with the Court and served on all parties in advance of the hearing or by no later than the conclusion of the hearing.

4:36 p.m. Matter concludes.

Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a court facility to wear a mask or face covering at all times they are in the court facility. With limited exceptions, the court will not provide masks or face coverings. Therefore, any individual attempting to enter the court facility must have an appropriate mask or face covering to be allowed entry to the court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the court facility or asked to leave. In addition, all individuals entering a court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the court facility.

Exhibit E

1 Alexander Kolodin (SBN 030826)
2 Christopher Viskovic (SBN 035860)
3 **KOLODIN LAW GROUP PLLC**
4 Alexander.Kolodin@KolodinLaw.com
5 CViskovic@KolodinLaw.com
6 3443 N. Central Ave. Ste. 1009
7 Phoenix, AZ 85012
8 Telephone: (602) 730-2985
9 Facsimile: (602) 801-2539

10 Sue Becker (MO 64721)*
11 **Public Interest Legal Foundation**
12 32 E. Washington Street, Suite 1675
13 Indianapolis, IN 46204
14 Tel: (317) 203-5599 Fax: (888) 815-5641
15 sbecker@publicinterestlegal.org
16 *Pro hac motion forthcoming
17 *Attorneys for Plaintiffs*

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*.¹ 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.² At some point, it
 21 became apparent to the Trump campaign that obtaining the relief they were seeking
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25 ¹ The pleadings in *Trump v Hobbs* can be found at
 26 <https://www.clerkofcourt.maricopa.gov/records/election-2020/cv2020-014248>.

27 ² 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.³

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.⁴
 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 ³ 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.

⁴ 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 15th day of November, 2020

By /s/Alexander Kolodin

Alexander Kolodin
Christopher Viskovic
Kolodin Law Group PLLC
3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85012

Attorneys for Plaintiffs

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

Christopher Alfredo Viskovic
Kolodin Law Group PLLC
3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85012